

LEGAL ALERT

DOL Publishes Helpful Guidance About Paid Leave Under the FFCRA

March 25, 2020

Yesterday, (March 24, 2020), the U.S. Department of Labor (“DOL”) published some helpful guidance about the new paid leave laws under the Families First Coronavirus Response Act (FFCRA), including a "Fact Sheet for Employees," a "Fact Sheet for Employers," and a Q & A. The Q&A is particularly helpful. Here are some highlights from the Q&A:

- The DOL says the effective date of these new paid leave laws is **April 1, 2020**. I think the DOL has made a math error—paid leave is supposed to be effective 15 days after enactment of the FFCRA on March 18, 2020, i.e., on April 2, 2020. But then I will not be enforcing this law, so I'd go with the DOL on this one.
- We know that employers with 500 or more employees are not covered. The DOL clarifies that this 500-employee threshold is a snapshot “at the time your employee’s leave is to be taken.” This the count includes employees on leave, temp. employees, and “jointly employed employees who are jointly employed by you and another employer.” The 500-employee count excludes independent contractors. Although, my two cents: you will need to count employees misclassified as contractors!
- We know that small businesses with fewer than 50 employees may claim an exemption if providing paid leave would jeopardize the viability of the business. The DOL clarifies that a small business seeking to claim this exemption “should document why your business . . . meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.” The DOL also says that small employers that want to take advantage of this exemption “should not send any materials to” to the DOL.

<https://www.dol.gov/newsroom/releases/whd/whd20200324>



Mark Tolman
mtolman@joneswaldo.com
801-534-7232