

## Department of Labor Issues Guidance on Families First Coronavirus Response Act

By Nathan Pangrace

On March 24th, 2020, the U.S. Department of Labor published guidance for employers regarding compliance with the Families First Coronavirus Response Act, which takes effect on April 1st, 2020. Generally, the Act provides up to 80 hours of emergency paid sick leave to an employee unable to work for a reason related to the coronavirus, including that the employee is quarantined, the employee is experiencing symptoms of the coronavirus, or the employee is caring for an individual subject to quarantine. The Act also provides up to 80 hours of emergency paid sick leave and an additional 10 weeks of expanded FMLA leave to an employee who is unable to work because the employee needs to care for a child whose school or care provider is closed because of the coronavirus. We provided a summary of the Act in prior client alert, available [here](#).

The published guidance includes a Q&A and fact sheets for employees and employers. The guidance clarifies that, for purposes of meeting the 500-employee threshold, the Act includes full and part-time employees, employees on leave, temporary employees, joint employees, and laborers provided by a temporary agency, but not independent contractors. Additionally, if two businesses meet the “integrated employer” test under the FMLA, then all employees of those businesses will be counted in determining coverage for the Act’s expanded FMLA leave provisions.

The guidance also addresses how small employers can obtain an exemption from the Act. It states that if providing leave would jeopardize the viability of a business with fewer than 50 employees, then the business should document this fact. Forthcoming regulations will address the criteria for meeting this exemption in more detail.

The DOL’s guidance clarifies how employers should count hours worked by part-time employees for purposes of emergency paid sick leave and expanded FMLA. Employers should calculate hours of leave for part-time employees based on the number of hours that the employee is normally scheduled to work. If the employee’s schedule varies, then employers should use a six-month average to calculate the employee’s hours of leave. With respect to overtime, the guidance clarifies that the expanded FMLA leave provisions of the Act require businesses to pay an employee for all hours normally scheduled to work, even if those hours are over 40 per week. Emergency paid sick leave however, remains capped at 80 hours over a two-week period.

Lastly, the guidance clarifies that an employee’s regular rate of pay under the Act is equal to the employee’s average rate over a period of six months prior to the date the employee’s takes leave. Commissions, tips, and piece rates are incorporated into this calculation.

The Department of Labor published a [workplace poster](#), and will soon come out with additional fact sheets and Q&A’s later this week. For additional questions about this guidance or the Families First Coronavirus Response Act, please contact one of the listed Roetzel attorneys.

**Doug Spiker**

Practice Group Manager

Employment Services

216.696.7125 | [dspiker@ralaw.com](mailto:dspiker@ralaw.com)**Karen Adinolfi**330.849.6773 | [kadinolfi@ralaw.com](mailto:kadinolfi@ralaw.com)**Aretta Bernard**330.849.6630 | [abernard@ralaw.com](mailto:abernard@ralaw.com)**Bob Blackham**216.615.4839 | [rblackham@ralaw.com](mailto:rblackham@ralaw.com)**Michael Brohman**312.582.1682 | [mbrohman@ralaw.com](mailto:mbrohman@ralaw.com)**Eric Bruestle**513.361.8292 | [ebruestle@ralaw.com](mailto:ebruestle@ralaw.com)**Arthur Brumett II**216.615.4856 | [abrumett@ralaw.com](mailto:abrumett@ralaw.com)**Helen Carroll**330.849.6710 | [hcarroll@ralaw.com](mailto:hcarroll@ralaw.com)**G. Frederick Compton**330.849.6610 | [fcompton@ralaw.com](mailto:fcompton@ralaw.com)**Leighann Fink**330.849.6633 | [lfink@ralaw.com](mailto:lfink@ralaw.com)**Nathan Pangrace**216.615.4825 | [npangrace@ralaw.com](mailto:npangrace@ralaw.com)**Monica Frantz**216.820.4241 | [mfrantz@ralaw.com](mailto:mfrantz@ralaw.com)**Barry Freeman**216.615.4850 | [bfreeman@ralaw.com](mailto:bfreeman@ralaw.com)**Morris Hawk**216.615.4841 | [mhawk@ralaw.com](mailto:mhawk@ralaw.com)**Phil Heebsh**419.708.5390 | [pheebsh@ralaw.com](mailto:pheebsh@ralaw.com)**Deirdre Henry**216.615.4823 | [dhenry@ralaw.com](mailto:dhenry@ralaw.com)**Paul Jackson**330.849.6657 | [pjackson@ralaw.com](mailto:pjackson@ralaw.com)**Doug Kennedy**614.723.2004 | [dkennedy@ralaw.com](mailto:dkennedy@ralaw.com)**Corey Kleinhenz**513.361.8282 | [ckleinhenz@ralaw.com](mailto:ckleinhenz@ralaw.com)**Jonathan Miller**419.254.5273 | [JDMiller@ralaw.com](mailto:JDMiller@ralaw.com)**Stephanie Olivera Mittica**330.849.6671 | [solivera@ralaw.com](mailto:solivera@ralaw.com)**Nancy Noall**216.820.4207 | [nnoall@ralaw.com](mailto:nnoall@ralaw.com)**Brian Tarian**614.723.2028 | [btarian@ralaw.com](mailto:btarian@ralaw.com)