



Byron P. Decoteau, Jr., Director

Post Office Box 94111
Baton Rouge, LA 70804-9111
225.342.8274
scsinfo@la.gov
civilservice.la.gov

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DATE: September 16, 2020

TO: Heads of State Agencies and Human Resources Directors

SUBJECT: COVID-19 – No. 31: DOL issues Updated Guidance on Families First Coronavirus Response Act

The U.S. Department of Labor’s Wage and Hour Division (WHD) has posted revisions to regulations that implemented the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act (FFCRA).

The revisions made by the new rule clarify workers’ rights and employers’ responsibilities under the FFCRA’s paid leave provisions, in light of the U.S. District Court for the Southern District of New York’s August 3, 2020 decision that found portions of the regulations invalid.

The revisions do the following:

- Reaffirm and provide additional explanation for the requirement that employees may take FFCRA leave only if work would otherwise be available to them.
- Reaffirm and provide additional explanation for the requirement that an employee must have employer approval to take FFCRA leave intermittently.
- Revise the definition of “health care provider” to include only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services, or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care.
- Clarify that employees must provide required documentation supporting their need for FFCRA leave to their employers as soon as practicable.
- Correct an inconsistency regarding when employees may be required to provide notice of a need to take expanded family and medical leave to their employers.

In addition, the DOL’s Wage and Hour Division has published updated FFCRA guidance available at this website: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

In particular, the following questions and answers have been updated: #16, #21, #22, #56, #98-#100.

In addition, the following questions and answers have been added: #101 to #103.

The Wage and Hour Division has also recently released a series of public service announcements in English and Spanish. Please check the following link to listen and watch the recordings and videos and please share them with your stakeholders:

<https://www.dol.gov/agencies/whd/pandemic/public-service-announcements>.

For more information about the laws enforced by the Wage and Hour Division, please visit www.dol.gov/agencies/whd or call 1-866-4US-WAGE.

If you have any questions, please contact your Agency Relationship Manager.

Sincerely,

s/Byron P. Decoteau, Jr.
State Civil Service Director