



HR Update and Developments

August 2020

Ensuring your HR policies are in compliance with all current regulations and best practices.

COVID-19 Updates

FFCRA: A Federal Judge issued rulings on August 3, 2020 after NY State sued the US DOL on several components of the FFCRA Final Rule, providing the following restrictions:

Requirement for Documentation: Employers should not require advance documentation for employees taking qualified leave under FFCRA -- employers still should require supporting documentation after leave has commenced.

Availability for Work: Lack of work on the part of the employer contributes to the employee's inability to work, therefore the employee should be entitled to FFCRA benefits.

Intermittent Leave: There does not need to be employer consent for utilizing intermittent leave under FFCRA to care for a child whose school is closed.

Definition of Health Care Provider: The definition of "health care provider" was too broad and should only include workers actually performing health care duties (not workers such as administrative, cafeteria personnel, etc).

DOL has not commented on whether they will appeal this ruling but employers should be aware of this recent development.

OSHA: All employers are now required to engage in a reasonable investigation to determine whether COVID-19 cases are work-related and recordable.

If, after an investigation, the employer is unable to determine whether the Coronavirus exposure was probably work-related, they are not required to record the case.

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Seay Management Report



Reclassifying from Independent Contractor to Employee

One of the key employment questions today is whether a person qualifies as an independent contractor or an employee. This has been a key target issue by the Department of Labor for the last several years.

Independent contractors do not receive overtime nor keep a time card. They pay their own withholding and Social Security taxes, are not eligible for benefits and do not fall under the employment regulations.

In this *Time of COVID*, some employers ...

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Ask a Consultant

Recent Q and A topics from our clients

Q: Does online-only school qualify under the FFCRA?

A: As of now, the FFCRA is still only allowing **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is **closed or unavailable** for reasons related to COVID-19.

From the DOL's FFCRA FAQ:

70. My child's school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it "closed"?

Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is "closed" for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as "distance learning," your child is still expected or required to complete assignments.

Employees whose schools are going online only would qualify under FFCRA, as the physical school space is closed. As of now, the employee would only be ineligible if their child's school was offering some kind of in-person option as well.



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