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Does A Stay Home or Shelter-in-Place Order Constitute a “Quarantine or Isolation” Order Under FFCRA?

The U.S. Department of Labor (DOL) has issued guidance on the Emergency Family Medical Leave Act expansion and Paid Sick Leave provisions of the Families First Coronavirus Response Act (FFCRA). This guidance includes an [Employer Fact Sheet](#), an [Employee Fact Sheet](#), and a [Question & Answer document](#). These guidance materials have answered some significant questions about the provisions of FFCRA.

Are employees that have been laid off or idled due to Executive Order 2020-21 entitled to Paid Sick Leave or Expanded FMLA Leave under FFCRA?

Based on the DOL guidance, it appears that the answer is ***NO***. In particular, Questions 23 & 24 of the Q&A document referenced above are addressed to a situation where an employer closes a facility, either before or after April 1, 2020 (the effective date of FFCRA). In addition, Questions 25-28 address situations where an employer shuts down or idles employees after April 1, 2020, or during a paid sick leave or extended FMLA leave. DOL’s answers in all these scenarios make clear that employees sent home or idled due to shelter-in-place or stay at home orders, such as Executive Order 2020-21, are most likely not eligible for Paid Sick Leave or Expanded FMLA under FFCRA. The guidance suggests that employees in these situations should apply for unemployment benefits, which have been greatly enlarged under the CARES Act. DOL’s guidance states “this is true whether your employer closes your worksite for lack of business *or because it is required to close pursuant to a Federal, State, or local directive.*” Although the Q&A does not explicitly reference shelter-in-place orders or “stay at home” orders such as Governor Whitmer’s Executive Order 2020-21, it seems safe to assume that such an order constitutes a State “directive.”

Based on this, and barring further additional guidance from DOL, employers with employees who have been laid off or otherwise idled (either with or without pay) due to Executive

Order 2020-21 are NOT required to provide or to count any paid time for those employees as Paid Sick Leave or Extended FMLA under FFCRA, and those employers should not rely on being eligible for any payroll tax credits for any amounts paid to those employees while they are not working due to the Executive Order.

Some businesses have been deemed as “essential infrastructure,” or have been designated as critical suppliers of such businesses, under Executive Order 2020-21. Businesses are also permitted to designate employees to perform functions necessary for “minimum basic operations” in certain circumstances. These employees, who are actually working, are entitled to Paid Sick Leave and Extended FMLA if they subsequently cannot work due to a qualifying reason related to COVID-19; for example, if they are advised to self-quarantine due to COVID-19, have symptoms of COVID-19 and are seeking a medical diagnosis, or need to care for a child whose school or day care has closed.

From this guidance it appears that DOL has determined that FFCRA Paid Sick Leave and extended FMLA Leave are applicable only to employees who are actually working or permitted to work, and does not apply to employees who have been laid off or idled due to stay at home or shelter-in-place orders. DOL recommends that such employees may be eligible for and should apply for unemployment benefits, which now include an additional \$600 per week from the federal government, in addition to any state-sponsored benefits, under the CARES Act relief package enacted on March 27, 2020.

The above article is presented solely for informational purposes, and does not constitute legal advice. If you have questions or concerns about these matters you should consult with legal counsel regarding your specific situation. If you would like to discuss the Families First Coronavirus Response Act and what responsibilities your business may have, the attorneys at Loomis, Ewert, Parsley, Davis & Gotting are happy to consult with you. Please contact Kevin J. Roragen kjroragen@loomislaw.com or call us at 517-482-2400.