



Department Of Labor Releases Required FFCRA Poster

Insights

3.25.20

UPDATED: 3/27/20

The Department of Labor's Wage and Hour Division just released today the required notification poster for the Families First Coronavirus Response Act (FFCRA) that will soon need to be posted in many workplaces – and distributed to remote workers – across the country. A copy of the notification can be found here. The agency also released a series of questions and answers about the required FFCRA notification, which we summarize below. However, there are several aspects of the notification and the related guidance that have raised initial questions among the workforce community that need to be addressed first.

Timing?

One initial question many employers asked upon seeing the notice was about timing. While the Department of Labor (DOL) did not indicate the date by which employers would need to post the notification, it would stand to reason that there is no requirement to post it before April 1, 2020, the effective date of the act. We will update this alert if we receive updated information.

Remote Worker Notification?

Although the FFCRA says that the required notification only needs to be placed “in conspicuous places on the premises of the employer where notices to employee are customarily posted,” the DOL's FAQs take the position that this obligation can be satisfied “by emailing or direct mailing this notice to employees.” This raises the question of whether the DOL believes that employers have the responsibility to share this notification with those workers who normally work on premises but are temporarily working remotely due to the COVID-19 coronavirus outbreak. We may receive more guidance on this subject once the agency releases its expected regulations on the FFCRA in the very near future, but this question and answer lead us to suspect that you will be required to distribute a copy of this notice to any of your workers operating remotely since the large majority of them are not visiting physical premises for the time being.

An Error In The First Version Of Poster?

Further, upon initial review, many believed there was an error in this first version of the poster. The version released on March 25 stated that employers must generally provide employees with “up to 10 weeks more of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.” However, the aggregate total for the 10 weeks of paid Emergency FMLA under the FFCRA is spelled out in the Act as \$10,000.

The \$12,000 figure would be correct if an employee received the first 10 days of a leave through paid under the Emergency Paid Sick Leave, which has a \$2,000 cap, before taking Emergency FMLA time, which has a \$10,000 cap.

However, an updated version of the poster released on March 27 does not provide that distinction. It states that employers must provide employees “up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.” This only seemingly refers to the additional 10 weeks provided by Emergency FMLA – it does not specifically address the situation where the employee has combined 10 days of Emergency Paid Sick Leave with 10 weeks of Emergency FMLA.

We suggest that employers wait to print out or download this poster until March 31, as the DOL may provide further clarity in an updated version. Any corrected version should be posted here or under the “Posters” section of the agency’s website.

DOL’S FREQUENTLY ASKED QUESTIONS

Employers Required To Post Notice

I am a small business owner. Do I have to post this notice?

Yes. All employers covered by the paid sick leave and expanded family and medical leave provisions of the Families First Coronavirus Response Act (FFCRA) (i.e., certain public sector employers and private sector employers with fewer than 500 employees) are required to post this notice.

Mechanics Of Posting Notification

Where do I post this notice? Since most of my workforce is teleworking, where do I electronically “post” this notice?

Each covered employer must post a notice of the FFCRA requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

Our employees must report to our main office headquarters each morning and then go off to work at our different worksite locations. Do we have to post this notice at all of our different worksite locations?

The notice needs to be displayed in a conspicuous place where employees can see it. If they are able to see it at the main office, it is not necessary to display the notice at your different worksite locations.

I am running out of wall space. Can I put the required notices in a binder that I put on the wall?

No, you cannot put federal notices in a binder. Generally, employers must display federal notices in a conspicuous place where they are easily visible to all employees—the intended audience.

We have break rooms on each floor in our building. Do I have to post notices in each break room on each floor or can I just post them in the lunchroom?

If all of your employees regularly visit the lunchroom, then you can post all required notices there. If not, then you can post the notices in the break rooms on each floor or in another location where they can easily be seen by employees on each floor.

Recipients Of Notice

Do I have to share this notice with recently laid-off individuals?

No, the FFCRA requirements explained on this notice apply only to current employees.

Do I have to share this notice with new job applicants?

No, the FFCRA requirements apply only to current employees. Employers are under no obligation to provide the notice of those requirements to prospective employees.

Do I have to give notice of the FFCRA requirements to new hires?

Yes, if you hire a job applicant, you must convey this notice to them, either by email, direct mail, or by posting this notice on the premises or on an employee information internal or external website.

Miscellaneous Issues

Do I have to post this notice in other languages that my employees speak? Where can I get the notice in other languages?

You are not required to post this notice in multiple languages, but the Department of Labor (Department) is working to translate it into other languages.

If my state provides greater protections than the FFCRA, do I still have to post this notice?

Yes, all covered employers must post this notice regardless of whether their state requires greater protections. The employer must comply with both federal and state law.

How do I know if I have the most up-to-date notice? Will there be updates to this notice in the future?

The most recent version of this notice was issued on March 25, 2020. Check the Wage and Hour Division's website or sign up for Key News Alerts to ensure that you remain current with all notice requirements: www.dol.gov/agencies/whd.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or [any member of our COVID-19 Taskforce](#). If your business has questions about a designation as an essential business under a local shelter-in-place or shutdown order, contact any member of [our Essential Business Taskforce](#). You can also review our nationwide [Comprehensive and Updated](#)

FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center For Employers, maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Benjamin M. Ebbink
Partner
916.210.0400
Email



Samantha J. Monsees
Partner
816.842.8770
Email



Adam F. Sloustcher
Partner
858.597.9620
Email

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