Proskauer

DOL Releases FFCRA Regulations and Even More Informal Guidance – What Employers Need To Know

Law and the Workplace Blog on **April 5, 2020**

On April 1, 2020, the U.S. Department of Labor ("DOL") posted a "temporary rule" issuing regulations, to implement the Emergency Family and Medical Leave Expansion Act ("EFMLEA") and the Emergency Paid Sick Leave Act ("EPSLA") provisions of the Families First Coronavirus Response Act ("FFCRA").

The regulations clarify, expand and build upon previous question and answer ("Q&As") guidance from the DOL's Wage and Hour Division ("WHD"). The DOL has also modified a number of its Q&As and added an additional 20 questions (for a total of 79 Q&As as of this writing), which you can find here. Our prior posts on the Q&As can be found here and here. DOL Q&As addressing the notice of the FFCRA requirements that employers must post in a conspicuous place can be found here, and our post concerning the notice requirement is here.

Highlights from the DOL's new regulations and Q&As – focused on those that differ or are not covered by the previous guidance – are provided below.

What Documentation Regarding FFCRA Leave Do Employees Need To Provide Employers And What Documentation Can Employers Request?

The regulations provide much-anticipated guidance regarding the documentation required to support an employee's request for leave under the EPSLA or EFMLEA.

For Employees

Prior to taking paid sick leave under the EPSLA or expanded family and medical leave under the EFMLEA, employees are required to provide the following documentation/information to their employer: (i) the employee's name; (ii) dates(s) for which leave is requested; (iii) qualifying reason for the leave; and (iv) an oral or written statement that the employee is unable to work because of the qualified reason for leave.

Employees planning to take paid sick leave for four of the six qualifying reasons must provide additional documentation.

- Employees subject to a quarantine or isolation order must provide the name of the government entity that issued the quarantine or isolation order.
- Employees advised by a healthcare provider to self-quarantine must provide the name of the healthcare provider.
- Employees caring for an individual must provide either (1) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or (2) the name of the health care provider who advised the individual being cared for to self-quarantine due to COVID-19-related concerns.
- Employees caring for a son or daughter must provide: (1) the name of the child being cared for; (2) the name of the school, place of care or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the child during the employee's leave period. An employee seeking leave for this reason may need to explain why a teenaged child is in need of care.

For Employers

Employers may ask employees to provide additional material that will support the employer's request for tax credits pursuant to the FFCRA. If an employee does not supply the employer with sufficient documentation, the employer is not required to provide leave.

The Internal Revenue Service published guidance entitled "COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs," which details the ways in which employers can claim refundable payroll tax credits for qualified leave wages. Eligible employers must retain all documentation provided by employees to support their leave requests for four years. Employers will also need to report their total qualified leave wages and the related credits for each quarter on their federal employment tax returns, usually Form 941 (Employer's Quarterly Federal Tax Return), and must retain Form 7200 (Advance of Employer Credits Due to COVID-19), and any other applicable filings made to the IRS requesting the tax credit.

What Constitutes A "Quarantine or Isolation Order" Under the FFCRA?

Employees who are unable to work because they are subject to a federal, state or local COVID-19 quarantine or isolation order may be eligible for EPSLA leave. The DOL did not define the term “quarantine or isolation order” in any of its previous guidance, but the regulations broadly define a quarantine or isolation order to include:

> [Q]uarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

As the DOL’s guidance has previously stated and as the new rule emphasizes, employees who are subject to a quarantine or isolation order are not eligible for paid sick leave if they are otherwise able to work or telework, the employer has work for the employee to perform and there are no extenuating circumstances preventing the employee from working. Employees who are furloughed or unable to work because the employer’s place of business closes may be eligible for unemployment insurance but are not eligible for EPSLA leave. The DOL makes clear that this is a ‘but for” test that requires a direct causal link between a quarantine or isolation order and an employee’s inability to work and subsequent need to apply for FFCRA relief.

The DOL illustrates the application of this rule with an example of a coffee shop that closes temporarily or indefinitely due to a downturn in business related to COVID-19. Under this scenario, the coffee shop would no longer have any work for its employees and a cashier previously employed who is subject to a stay-at-home order would not be able to work even if he were not required to stay at home. That employee would therefore not be eligible for paid sick leave because the inability to work is not due to a need to comply with the stay-at-home order, but rather due to the closure of the employee's place of employment. Notably, the DOL explains that this analysis would hold even if the closure of the coffee shop was substantially caused by a stay-at-home order, because paid sick leave is only available if the cashier was specifically required to stay at home under the order.

Can Employers Require Employees To Use Existing Leave Entitlements Concurrently With FFCRA Paid Leave?

Employees may first use EPSLA leave before using their existing leave entitlements under (i) federal, state or local law; (ii) a collective bargaining agreement; or (iii) an employer policy that existed prior to April 1, 2020. Employers cannot "require, coerce, or unduly influence" employees to use their existing leave entitlements or unpaid leave prior to taking paid sick leave. In other words, an employer may not require an employee to use provided or accrued paid vacation, personal, medical or sick leave before or concurrently with EPSLA leave. This is because EPSLA leave is in addition to, not a substitute for, an employee's other leave entitlements. An employer and employee may *mutually agree* that the employee will use preexisting leave entitlements to supplement his/her paid sick leave, up to the employee's normal earnings.

With regard to EFMLEA, the situation is murkier. The regulations make clear that an employee may elect to use existing leave entitlements concurrently with expanded family and medical leave under the EFMLEA. However, the regulations contain contradictory guidance regarding whether an employer may require an employee to use existing leave concurrently. § 826.70(f) provides that "[b]ecause this period of [EFMLEA] is not unpaid, the FMLA provision for substitution of the Employee's accrued paid leave is inapplicable, and neither the Eligible Employee nor the Employer may require the substitution of paid leave." This provision appears to be inconsistent with § 826.160(c)(1), which provides that "an Eligible Employee may elect to use, or an Employer ***may require that an Eligible Employee use***, provided or accrued leave available to the Eligible Employee [] under the Employer's policies, such as vacation or personal leave or paid time off, concurrently with Expanded Family and Medical Leave." It appears that the DOL's intent is to permit employers to require employees to use existing paid leave concurrently based on its recently revised Q&A 33, which provides: "After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, you may require that your employee take concurrently for the same hours expanded family and medical leave and existing leave that, under your policies, would be available to the employee in that circumstance."

Can Employers Change Pre-Existing Rights or Benefits in Light of The Benefits Provided Under the FFCRA?

An employee's entitlement to, or actual use of, EPSLA leave "is in addition to—and shall not in any way diminish, reduce, or eliminate—any other right or benefit" under any federal, state or local law, collective bargaining agreement or employer policy that existed prior to April 1, 2020. Similarly, an employee cannot be denied EPSLA or EFMLEA leave because they already took another type of leave from another type of source. However, employees are still bound by the FMLA's 12 weeks within a 12 month period cap.

The DOL interprets “existing employer policy” under the FFCRA “to include a COVID-19-related offering of paid leave that the employer issued prior to April 1, 2020, and under which employees were offered more paid leave than under the employer’s standard or current policy.” Employers with these existing employer policies must provide full paid sick leave and expanded family and medical leave to eligible employees even if those employees already took the employer’s voluntarily offered paid leave. However, “an employer may prospectively terminate such a voluntary additional paid leave offering as of April 1, 2020, or thereafter, provided that the employer had not already amended its leave policy to reflect the voluntary offering. This means the employer must pay employees for leave already taken under such an offering before it is terminated, but the employer need not continue the offering in light of the FFCRA taking effect.”

What Time Can Be Taken For Leave Required When The Employee Is “Seeking Medical Diagnosis”?

The third reason for EPSLA leave applies where an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. The DOL clarifies that paid sick leave taken for this reason should be limited to the time that an employee is unable to work because they are taking affirmative steps to obtain a medical diagnosis – *i.e.*, making, waiting for or attending an appointment for a test. If an employee seeking a diagnosis is able to telework while waiting for test results, the employee may not take paid sick leave if: (i) the employer has work for the employee to perform; (ii) the employer permits the employee to perform work from the location where the employee is waiting; and (iii) there are no extenuating circumstances, such as serious COVID-19 symptoms, that would prevent the employee from performing that work. Continued leave is available under the second reason for EPSLA if an employee is advised by a healthcare provider to self-quarantine as a result of the medical diagnosis (and, as a result, the employee is unable to work or telework).

How Can Businesses Claim The Small Business Exemption?

The regulations provide details regarding the FFCRA's exemption for small businesses with fewer than 50 employees. Such employers may be exempted from the paid leave requirements of FFCRA related to childcare (and none of the other bases for FFCRA leave) if: (i) doing so would raise expenses and financial obligations above available business revenue such that the employer would cease operating at a minimal capacity; (ii) the requesting worker's absence would pose a substantial risk to the employer's financial health or operations because of their specialized skills, knowledge of the business, or responsibilities; or (iii) the employer can't find enough able, willing, available, and qualified workers to perform the work of the employee requesting an absence. Employers should document for their own records the reasons justifying their determination that this exemption applies.

Can Employees Take FFCRA Leave Intermittently?

The regulations reinforce the Q&A guidance that employees may take EPSLA and EFMLEA leave intermittently only if the employer and employee agree. A clear and mutual understanding will suffice, and no written agreement is required, but employers would be well-served to memorialize any such agreement in writing (*e.g.*, an email). This applies equally to employees who are teleworking. The amount of leave actually taken should be counted toward the employee's leave entitlements.

Employees who are not teleworking must take paid sick leave for qualifying reasons related to COVID-19 in full-day increments. EPSLA leave cannot be taken intermittently if it is being taken because the employee is: (i) subject to a federal, state or local quarantine or isolation order related to COVID-19; (ii) advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; (iii) experiencing symptoms of COVID-19 and seeking a medical diagnosis; (iv) caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or (v) experiencing any other substantially similar condition specified by the Secretary of Health and Human Services. Unless an employee is teleworking, once the employee takes EPSLA leave for one or more of these qualifying reasons, he/she must continue to take paid sick leave each day until (1) the allotment of paid sick leave is exhausted or (2) the qualifying reason is no longer in effect. If the employee does not use the full amount of paid sick leave prior to cessation of the qualifying reason, and another qualifying reason arises prior to December 31, 2020, the employee may use the remaining paid sick leave time for that reason.

An employee working at their normal worksite *may* agree with the employer to utilize EPSLA leave intermittently to care for a child whose school or place of care is closed or whose child care provider is unavailable.

When Must Employees Provide Notice of Their Need for Leave?

Employers may require employees planning to take EFMLEA leave to follow reasonable notice procedures as soon as practicable after the first workday for which leave is taken in order to continue to receive such leave. The DOL notes that while advance notice is not required, employees are encouraged to notify employers of their request for EPSLA or EFMLEA leave as soon as practicable. It is generally reasonable for an employer to require oral notice providing sufficient information in order to determine coverage under the EPSLA or EFMLEA. Employers should allow employees who fail to give proper notice an opportunity to provide required documentation before denying the request.

Is A School Considered “Closed” If It Is Still Providing Instruction Online?

Q&A 70 explains that a school or place of care is “closed” for purposes of EPSLA and EFMLEA leave even if instruction is being provided online.

Can Employees Take FFCRA Leave If They Are Receiving Workers' Compensation Or Temporary Disability Benefits?

According to Q&A 76, employees who receive workers' compensation or temporary disability benefits because they are unable to work may not take EPSLA and EFMLEA leave, unless they were able to return to light duty before taking leave.

Can Employees Take FFCRA Leave If They Are On A Leave Of Absence?

Q&A 77 provides that employees on a voluntary leave of absence may end their leave of absence and begin taking EPSLA or EFMLEA leave if a qualifying reason prevents them from being able to work (or telework). However, employees may not take EPSLA or EFMLEA leave if they were on a mandatory leave of absence.

* * *

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

On April 1, 2020, the U.S. Department of Labor ("DOL") posted a "temporary rule" issuing regulations, to implement the Emergency Family and Medical Leave Expansion Act ("EFMLEA") and the Emergency Paid Sick Leave Act ("EPSLA") provisions of the Families First Coronavirus Response Act ("FFCRA").

The regulations clarify, expand and build upon previous question and answer ("Q&As") guidance from the DOL's Wage and Hour Division ("WHD"). The DOL has also modified a number of its Q&As and added an additional 20 questions (for a total of 79 Q&As as of this writing), which you can find here. Our prior posts on the Q&As can be found here and here. DOL Q&As addressing the notice of the FFCRA requirements that employers must post in a conspicuous place can be found here, and our post concerning the notice requirement is here.

Highlights from the DOL's new regulations and Q&As – focused on those that differ or are not covered by the previous guidance – are provided below.

What Documentation Regarding FFCRA Leave Do Employees Need To Provide Employers And What Documentation Can Employers Request?

The regulations provide much-anticipated guidance regarding the documentation required to support an employee's request for leave under the EPSLA or EFMLEA.

For Employees

Prior to taking paid sick leave under the EPSLA or expanded family and medical leave under the EFMLEA, employees are required to provide the following documentation/information to their employer: (i) the employee's name; (ii) dates(s) for which leave is requested; (iii) qualifying reason for the leave; and (iv) an oral or written statement that the employee is unable to work because of the qualified reason for leave.

Employees planning to take paid sick leave for four of the six qualifying reasons must provide additional documentation.

- Employees subject to a quarantine or isolation order must provide the name of the government entity that issued the quarantine or isolation order.
- Employees advised by a healthcare provider to self-quarantine must provide the name of the healthcare provider.
- Employees caring for an individual must provide either (1) the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or (2) the name of the health care provider who advised the individual being cared for to self-quarantine due to COVID-19-related concerns.
- Employees caring for a son or daughter must provide: (1) the name of the child being cared for; (2) the name of the school, place of care or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the child during the employee's leave period. An employee seeking leave for this reason may need to explain why a teenaged child is in need of care.

For Employers

Employers may ask employees to provide additional material that will support the employer's request for tax credits pursuant to the FFCRA. If an employee does not supply the employer with sufficient documentation, the employer is not required to provide leave.

The Internal Revenue Service published guidance entitled "COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs," which details the ways in which employers can claim refundable payroll tax credits for qualified leave wages. Eligible employers must retain all documentation provided by employees to support their leave requests for four years. Employers will also need to report their total qualified leave wages and the related credits for each quarter on their federal employment tax returns, usually Form 941 (Employer's Quarterly Federal Tax Return), and must retain Form 7200 (Advance of Employer Credits Due to COVID-19), and any other applicable filings made to the IRS requesting the tax credit.

What Constitutes A "Quarantine or Isolation Order" Under the FFCRA?

Employees who are unable to work because they are subject to a federal, state or local COVID-19 quarantine or isolation order may be eligible for EPSLA leave. The DOL did not define the term "quarantine or isolation order" in any of its previous guidance, but the regulations broadly define a quarantine or isolation order to include:

> [Q]uarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

As the DOL's guidance has previously stated and as the new rule emphasizes, employees who are subject to a quarantine or isolation order are not eligible for paid sick leave if they are otherwise able to work or telework, the employer has work for the employee to perform and there are no extenuating circumstances preventing the employee from working. Employees who are furloughed or unable to work because the employer's place of business closes may be eligible for unemployment insurance but are not eligible for EPSLA leave. The DOL makes clear that this is a 'but for" test that requires a direct causal link between a quarantine or isolation order and an employee's inability to work and subsequent need to apply for FFCRA relief.

The DOL illustrates the application of this rule with an example of a coffee shop that closes temporarily or indefinitely due to a downturn in business related to COVID-19. Under this scenario, the coffee shop would no longer have any work for its employees and a cashier previously employed who is subject to a stay-at-home order would not be able to work even if he were not required to stay at home. That employee would therefore not be eligible for paid sick leave because the inability to work is not due to a need to comply with the stay-at-home order, but rather due to the closure of the employee's place of employment. Notably, the DOL explains that this analysis would hold even if the closure of the coffee shop was substantially caused by a stay-at-home order, because paid sick leave is only available if the cashier was specifically required to stay at home under the order.

Can Employers Require Employees To Use Existing Leave Entitlements Concurrently With FFCRA Paid Leave?

Employees may first use EPSLA leave before using their existing leave entitlements under (i) federal, state or local law; (ii) a collective bargaining agreement; or (iii) an employer policy that existed prior to April 1, 2020. Employers cannot "require, coerce, or unduly influence" employees to use their existing leave entitlements or unpaid leave prior to taking paid sick leave. In other words, an employer may not require an employee to use provided or accrued paid vacation, personal, medical or sick leave before or concurrently with EPSLA leave. This is because EPSLA leave is in addition to, not a substitute for, an employee's other leave entitlements. An employer and employee may *mutually agree* that the employee will use preexisting leave entitlements to supplement his/her paid sick leave, up to the employee's normal earnings.

With regard to EFMLEA, the situation is murkier. The regulations make clear that an employee may elect to use existing leave entitlements concurrently with expanded family and medical leave under the EFMLEA. However, the regulations contain contradictory guidance regarding whether an employer may require an employee to use existing leave concurrently. § 826.70(f) provides that "[b]ecause this period of [EFMLEA] is not unpaid, the FMLA provision for substitution of the Employee's accrued paid leave is inapplicable, and neither the Eligible Employee nor the Employer may require the substitution of paid leave." This provision appears to be inconsistent with § 826.160(c)(1), which provides that "an Eligible Employee may elect to use, or an Employer ***may require that an Eligible Employee use***, provided or accrued leave available to the Eligible Employee [] under the Employer's policies, such as vacation or personal leave or paid time off, concurrently with Expanded Family and Medical Leave." It appears that the DOL's intent is to permit employers to require employees to use existing paid leave concurrently based on its recently revised Q&A 33, which provides: "After the first two workweeks (usually 10 workdays) of expanded family and medical leave under the EFMLEA, you may require that your employee take concurrently for the same hours expanded family and medical leave and existing leave that, under your policies, would be available to the employee in that circumstance."

Can Employers Change Pre-Existing Rights or Benefits in Light of The Benefits Provided Under the FFCRA?

An employee's entitlement to, or actual use of, EPSLA leave "is in addition to—and shall not in any way diminish, reduce, or eliminate—any other right or benefit" under any federal, state or local law, collective bargaining agreement or employer policy that existed prior to April 1, 2020. Similarly, an employee cannot be denied EPSLA or EFMLEA leave because they already took another type of leave from another type of source. However, employees are still bound by the FMLA's 12 weeks within a 12 month period cap.

The DOL interprets “existing employer policy” under the FFCRA “to include a COVID-19-related offering of paid leave that the employer issued prior to April 1, 2020, and under which employees were offered more paid leave than under the employer’s standard or current policy.” Employers with these existing employer policies must provide full paid sick leave and expanded family and medical leave to eligible employees even if those employees already took the employer’s voluntarily offered paid leave. However, “an employer may prospectively terminate such a voluntary additional paid leave offering as of April 1, 2020, or thereafter, provided that the employer had not already amended its leave policy to reflect the voluntary offering. This means the employer must pay employees for leave already taken under such an offering before it is terminated, but the employer need not continue the offering in light of the FFCRA taking effect.”

What Time Can Be Taken For Leave Required When The Employee Is “Seeking Medical Diagnosis”?

The third reason for EPSLA leave applies where an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. The DOL clarifies that paid sick leave taken for this reason should be limited to the time that an employee is unable to work because they are taking affirmative steps to obtain a medical diagnosis – *i.e.*, making, waiting for or attending an appointment for a test. If an employee seeking a diagnosis is able to telework while waiting for test results, the employee may not take paid sick leave if: (i) the employer has work for the employee to perform; (ii) the employer permits the employee to perform work from the location where the employee is waiting; and (iii) there are no extenuating circumstances, such as serious COVID-19 symptoms, that would prevent the employee from performing that work. Continued leave is available under the second reason for EPSLA if an employee is advised by a healthcare provider to self-quarantine as a result of the medical diagnosis (and, as a result, the employee is unable to work or telework).

How Can Businesses Claim The Small Business Exemption?

The regulations provide details regarding the FFCRA's exemption for small businesses with fewer than 50 employees. Such employers may be exempted from the paid leave requirements of FFCRA related to childcare (and none of the other bases for FFCRA leave) if: (i) doing so would raise expenses and financial obligations above available business revenue such that the employer would cease operating at a minimal capacity; (ii) the requesting worker's absence would pose a substantial risk to the employer's financial health or operations because of their specialized skills, knowledge of the business, or responsibilities; or (iii) the employer can't find enough able, willing, available, and qualified workers to perform the work of the employee requesting an absence. Employers should document for their own records the reasons justifying their determination that this exemption applies.

Can Employees Take FFCRA Leave Intermittently?

The regulations reinforce the Q&A guidance that employees may take EPSLA and EFMLEA leave intermittently only if the employer and employee agree. A clear and mutual understanding will suffice, and no written agreement is required, but employers would be well-served to memorialize any such agreement in writing (*e.g.*, an email). This applies equally to employees who are teleworking. The amount of leave actually taken should be counted toward the employee's leave entitlements.

Employees who are not teleworking must take paid sick leave for qualifying reasons related to COVID-19 in full-day increments. EPSLA leave cannot be taken intermittently if it is being taken because the employee is: (i) subject to a federal, state or local quarantine or isolation order related to COVID-19; (ii) advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; (iii) experiencing symptoms of COVID-19 and seeking a medical diagnosis; (iv) caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or (v) experiencing any other substantially similar condition specified by the Secretary of Health and Human Services. Unless an employee is teleworking, once the employee takes EPSLA leave for one or more of these qualifying reasons, he/she must continue to take paid sick leave each day until (1) the allotment of paid sick leave is exhausted or (2) the qualifying reason is no longer in effect. If the employee does not use the full amount of paid sick leave prior to cessation of the qualifying reason, and another qualifying reason arises prior to December 31, 2020, the employee may use the remaining paid sick leave time for that reason.

An employee working at their normal worksite *may* agree with the employer to utilize EPSLA leave intermittently to care for a child whose school or place of care is closed or whose child care provider is unavailable.

When Must Employees Provide Notice of Their Need for Leave?

Employers may require employees planning to take EFMLEA leave to follow reasonable notice procedures as soon as practicable after the first workday for which leave is taken in order to continue to receive such leave. The DOL notes that while advance notice is not required, employees are encouraged to notify employers of their request for EPSLA or EFMLEA leave as soon as practicable. It is generally reasonable for an employer to require oral notice providing sufficient information in order to determine coverage under the EPSLA or EFMLEA. Employers should allow employees who fail to give proper notice an opportunity to provide required documentation before denying the request.

Is A School Considered “Closed” If It Is Still Providing Instruction Online?

Q&A 70 explains that a school or place of care is “closed” for purposes of EPSLA and EFMLEA leave even if instruction is being provided online.

Can Employees Take FFCRA Leave If They Are Receiving Workers' Compensation Or Temporary Disability Benefits?

According to Q&A 76, employees who receive workers' compensation or temporary disability benefits because they are unable to work may not take EPSLA and EFMLEA leave, unless they were able to return to light duty before taking leave.

Can Employees Take FFCRA Leave If They Are On A Leave Of Absence?

Q&A 77 provides that employees on a voluntary leave of absence may end their leave of absence and begin taking EPSLA or EFMLEA leave if a qualifying reason prevents them from being able to work (or telework). However, employees may not take EPSLA or EFMLEA leave if they were on a mandatory leave of absence.

* * *

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

View Original

Related Professionals

- **Evandro C. Gigante**
  Partner
- **Guy Brenner**
  Partner