



## **DOL-WHD Releases FLSA, FMLA, and FFCRA Guidance Relating to COVID-19 and Work From Home Issues**

During the week of July 20<sup>th</sup>, the Wage and Hour Division of the Department of Labor published new guidance for employers, focusing on compliance under the Fair Labor Standards Act (“FLSA”) and the Family and Medical Leave Act (“FMLA”) in the midst of the pandemic (See [FLSA Q&A](#), [FMLA Q&A](#), and [FFCRA Q&A](#)).

With respect to the FMLA, the Department noted that complications from COVID-19 or the flu may be considered “serious health conditions” under the FMLA. If this occurs, employees may be entitled to take job-protected FMLA leave as a result of their own illnesses, or leave to care for an ill family member. However, in another section, the Department noted that “[l]eave taken by an employee for the purpose of avoiding exposure to COVID-19 would not be protected under the FMLA.” The Department also confirmed that employees need to have in-person visits with health care providers to obtain diagnosis of a serious health condition under the FMLA. However, until December 31, 2020, telemedicine visits are considered visits to establish such conditions and the DOL further clarified that employers should accept electronic signatures on FMLA forms for the remainder of 2020.

In its FLSA guidance, the guidance contained a strong statement regarding the requirements of the FLSA that individuals who provide services to an employer must be compensated for hours worked. The Department also noted that employers may be obligated to reimburse employees for expenses associated with working at home if incurring such an expense “reduces the employee’s earnings below the required minimum wage or overtime compensation.” The Department also noted that compensation reductions may be acceptable for both exempt and non-exempt employees during the pandemic, so long as all of the requirements of the FLSA and applicable state minimum wage laws are met. For example, employers may reduce

salaries of exempt employees temporarily, so long as the employees continue to be paid on a salary basis and the minimum salary threshold is met.

### **Key Takeaways**

1. Employers must continue to comply with obligations to provide job-protected leave under the FMLA.
2. Employers should ensure that any actions taken regarding employee pay during the pandemic (such as reductions in hours or pay) are done in compliance with federal and state wage and hour law.
3. Employers who are covered under the FFCRA must continue to provide emergency paid sick leave emergency family leave through December 31, 2020.

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