

Dear Clients and Webinar Attendees:

We know you still have questions related to the COVID-19 situation and your role as employers in complying with the resulting new employment laws. The Department of Labor (DOL), Internal Revenue Service (IRS), and various other government entities are continuing to update their guidance documents and we are monitoring those changes closely in order to ensure our advice is based on the most current information available. Many of you have sought advice on how to properly document requests for leave under the provisions of the new Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Acts that were part of the Families First Coronavirus Response Act (FFCRA) passed on March 18, 2020. Early on, details and guidance from the government entities were lacking, but thanks to clarity gleaned from our most current research, our team of professionals has created a form for your use!

The attached Emergency Paid Leave and Expanded FMLA Request Form is based on the guidance published on the following sites as of April 2, 2020:

- DOL Q&A page: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- IRS tax credit FAQ page: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>
- Wage and Hour Division proposed regulations which are scheduled to become final on 4/6/2020: <https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

We recommend you use this form and obtain the indicated documentation for each employee request for leave. Here are some important things to consider when evaluating employee leave requests:

1. Furloughed and laid off employees are not eligible for these paid leaves until they return to work.
2. Employees on these leaves are not immune to layoff if other similarly situated workers are also being laid off.
3. If you have remote/telework available, leaves may be denied or partially denied to the extent work is available in many circumstances, but you should check with us if you are not certain.
4. The “required documentation” listed for each qualifying reason is the documentation employers will need to prove eligibility for the payroll tax credit. This information must be retained for four (4) years after the taxes become due or is paid, whichever is later.
5. New guidance from the IRS – as of April 2, the IRS tax credit FAQ #44 states that employers should obtain a statement from employees “that special circumstances exist requiring the employee to provide care” to a child older than 14 during daylight hours. This language is not in the language of the FFCRA but was included on the form based on the IRS FAQ response.

We hope you find this update and this documentation tool useful!