



## **IMPORTANT UPDATE: FURLOUGHS, CLOSURES, AND EMPLOYEE LEAVE ELIGIBILITY AFTER APRIL 1**

We actually have two pieces of good news to report to employers. First, the U.S. Department of Labor has now clarified that an employee who is furloughed/laid off due to lack of work on or after April 1 will not continue to be eligible to receive paid sick leave or expanded family and medical leave under the Families First Coronavirus Response Act. The employee's remedy after furlough/lay off will be limited to unemployment benefits, and the employer will only be responsible for paying federal leave the employee used before the furlough/lay off. Second, the DOL has also clarified that if an employee's worksite is closed (whether due to lack of business or pursuant to a federal, state, or local government directive), even if the closure is only short term, the employee will not be eligible for federal leave after the closure. Here again, the employee will be limited to unemployment benefits, and the employer is only responsible for paying federal leave the employee used before the worksite closure.

These clarifications are important for employers who were justified in thinking that they needed to make many all-or-nothing decisions prior to April 1. Now, according to the DOL, even if employers elect to retain employees and not close their worksite(s) by the time April 1 is here, they will not be responsible for paying the full leave (i.e., 80 hours paid sick leave or 12 weeks expanded family and medical leave) if they later decide to furlough/lay off employees for lack of work or close. These clarifications show that the DOL is strictly interpreting the language in the Act, as opposed to the more liberal interpretations we normally see from the DOL. As with all furlough/lay off decisions, employers still need to have nondiscriminatory business reasons why they selected certain employees and not others, if some employees will be retained. Therefore, we recommend consulting labor and employment counsel prior to making any furlough/lay off decisions.

The DOL is continuing to update its Q&A page regarding new federal leave under the Act, which is the source of the clarifications above and now had 37 Q&As as of March 27. Some of the newest Q&As also provide important clarification regarding whether leave under the Act can be used on an intermittent basis – i.e., not all at once. Generally, the answer is that only leave for certain purposes can be used intermittently, and even then only if approved by the employer. The DOL's Q&A page can be found [here](#).

Continue to look for updates from us and consider periodically checking the DOL's Q&A for updates on these and other issues related to the Act while we wait for formal regulations. **Also, please set aside time on your calendar at 2:00 pm on Tuesday, March 31, for another webinar with the latest FFCRA updates and also discussion of the CARES Act, including business loans and other relief that it provides. More information to come!**