

## Coronavirus (COVID-19) and Employees: Stay at Home Order & FFCRA

By now you are aware that Governor Kay Ivey has issued a Stay at Home (Shelter in Place) order. This order can trigger the 1st condition 'Qualifying Reasons for Leave' of the FFCRA.

### Qualifying Reasons for Leave/Emergency Sick Pay

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a **Federal, State, or local quarantine or isolation order related to COVID-19;**

*The employee may only take the leave when the employee would otherwise be able to perform the work or telework permitted by the employer had the order not been in place. Note that if an employer's business is shutdown as a result of an order, it is not required to provide paid leave to employees, because the employer – not the employee – is the subject of the order to shut down.*

2. has been advised by a health care provider to self-quarantine related to COVID-19;

*A health care provider must advise the employee to self-quarantine on a belief that one of the following apply:*

- a) the employee has COVID-19;
- b) the employee may have COVID-19; **or**
- c) the employee is particularly vulnerable to COVID-19.
- d) the employee must be **unable** to work or telework.

3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;

*An employee who experiences the symptoms of fever, dry cough, shortness of breath, or other COVID-19 symptoms identified by the CDC and is **affirmatively** taking steps to obtain a medical diagnosis, may be eligible for paid leave. It also includes the time spent to get the test for COVID-19.*

4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

*The person doesn't have to be an immediate family member, but someone in need of care whom they have a relationship with. This can include a neighbor or friend.*

5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19;

*This is in the case where the employee requests leave to care for a child whose school or place of care is closed, however the Department of Labor dictates that the employee must actually care for the child and no other suitable person (e.g., co-parents, co-guardians, or the usual childcare provider) is available to care for the child during the period. If another caretaker is available to care for the child, the employee is not entitled to leave or pay.*

6. is experiencing any other substantially - similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

### **What does this mean to you?**

The answer is found in the DOL FAQ #60.

#### **60. How do I know if I can receive paid sick leave for a Federal, State, or local quarantine or isolation order related to COVID-19?**

For purposes of the FFCRA, a Federal, State, or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that *cause you to be unable to work (or to telework) even though your employer has work that you could perform but for the order.* **You may not take paid sick leave for this qualifying reason if your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order.** In the instance where your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order, please see [Questions 23-27](#).

#### **Prior to the order did you have work for the employee and would if it were relaxed?**

- If yes, then the employees who would work may be eligible.
- If no, then the employee may not be eligible.
  - Can the employee telework (work from home)? Yes. The employee is not eligible.

### **Small (Fewer than 50 Employees) Business Exemption**

The law provides that an employer, including a religious or nonprofit organization, with 49 or fewer employees, **is exempt from providing FFCRA leave for child-care purposes** when allowing would jeopardize the viability of the business. Be careful when using this exemption. Be prepared to provide adequate justification and review on a case by case basis.

To use this exemption, an authorized officer of the employer must determine that:

- The leave requested would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are no sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting leave, and these labor or services are needed for the small business to operate at a minimal capacity.
- To elect this small business exemption, the employer must document that an authorized officer made this determination and the company is required to retain the documentation in its files. The poster is still mandatory even in the case of exemptions.

Please refer to the Department of Labor website for details at <https://www.dol.gov/agencies/whd/pandemic>

For information on your specific case, feel free to reach out to Morale Resource or contact your employment attorney for assistance.

**Stay Safe!!**