IMPACT OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT ON EMPLOYERS

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In the wake of the spreading pandemic caused by the novel coronavirus, Congress recently passed legislation that will drastically alter the leave policies of most employers. Employers need to quickly gain an understanding of these new provisions and how they will apply to an employers’ business.

On March 18, 2020, Congress passed the Families First Coronavirus Response Act (“FFCRA”) to provide workers impacted by COVID-19 with short-term additional benefits and paid leave. President Trump signed the legislation into law the same day. The following outlines and provides some guidance on the key provisions credit union employers need to be aware of related to the expanded Family Leave and Medical Leave Act of 1993 (“FMLA”) protections, emergency paid sick leave, and tax credits for employers.

I. EXPANDED FMLA PROTECTIONS

The FFCRA amends the FMLA by expanding an employee’s use and benefits to address the current public health emergency. The expanded FMLA leave entitlement will go into effect on April 1, 2020 and expire on December 31, 2020 unless additional legislation or regulations impacts these dates. As discussed below, the Secretary of Labor has issued guidance exempting employers from components of the law with less than 50 employees if certain expanded benefits would jeopardize the “economic viability” of the company. The criteria for such a determination is discussed below.

A) Application to Certain Employers

The expansion of the FMLA protections under FFCRA applies to employers with fewer than 500 employees and public employers. However, on March 29, 2020, the Secretary of Labor published guidance exempting employers with fewer than 50 employees from the requirements of expanded FMLA if providing the benefits would jeopardize the viability of the small business as a going concern.

A credit union with less than 50 employees may claim this exemption if an authorized officer of the credit union has determined that: (1) provision of expanded FMLA 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; (2) the absence of the employee or employees requesting expanded FMLA would entail a substantial risk to the financial health or operational capabilities of the credit union because of their specialized skills, knowledge of the
business, or responsibilities; or (3) there are not 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 expanded FMLA, and these labor or services are needed for the credit union to operate at a minimal capacity.

Credit unions seeking to take advantage of this small business exemption have been directed to document why their business with fewer than 50 employees meets the criteria set forth by the DOL above. However, the DOL has stated that employers should not submit any such documentation to the DOL when seeking the exemption, implying that employers may be able to self-determine the applicability of the exemption to their business. Any credit union claiming the exemption should prepare documentation, signed by an authorized officer, substantiating one of the three conditions described above, and should assume the DOL will have the opportunity to examine the documentation at some point.

To calculate the applicable 500 or 50-employee thresholds, a credit union should calculate the number of employees it has as of the time the employee’s leave is taken. All employees, full-time and part-time, within the United States (including any territory or possession of the United States) should be counted. This should include employees on leave, temporary employees, and, generally, day laborers supplied by a temporary agency. The calculation excludes workers who are independent contractors under the Fair Labor Standards Act (“FLSA”).

Credit unions, including separate divisions or establishments, are deemed a single employer. If a credit union has ownership in or affiliation with another business entity, such as a credit union service organization (CUSO), then the two business entities are separate employers unless they are joint and/or integrated employers with respect to certain employees. To make such a determination, several factors are analyzed, including, without limitation, common management, interrelation between operations, centralized control of labor functions, common ownership/financial control, and shared and interchangeable employees. If two business entities are found to be joint or integrated employers, then all common employees would be counted towards the applicable 500 or 50-employee threshold.

**B) Eligibility of Employees**

Employees who have been working for the credit union or CUSO for at least 30 calendar days are eligible for the expanded benefits. Note that to be eligible for these special FMLA benefits an employee need not be employed by the Employer for 12 months or work 1,250 hours in the last 12 months, so employees not eligible for regular FMLA leave may still be eligible for COVID-19 FMLA benefits. An employee has “been employed for at least 30 calendar days by the employer” if the employee has been on the employer’s payroll for the 30 calendar days immediately prior to the day the employee’s leave would begin. For example, if an employee wants to take leave on April 1, 2020, then the employee would need to have been on the employer’s payroll as of March 2, 2020. Days worked as a temporary employee will count towards the 30-day eligibility period once the temporary employee is hired on a full-time basis. Additionally, as amended through the
CARES Act which was signed into law on March 27, 2020, employees laid off on March 1, 2020 or later who had worked 30 of the last 60 calendar days prior to being laid off are immediately eligible upon rehire by the credit union or CUSO.

An employee is not eligible for these special FMLA benefits if the credit union or CUSO has closed the employee’s worksite or otherwise furloughed or laid off the employee due to a lack of work before or after the April 1, 2020 effective date of the law. Businesses considering this course of action should be aware of other practical considerations, such as any requirement to pay out the employee for accrued and unused paid time off under a company policy, severance pay obligations, if applicable, and other laws against wrongful terminations (e.g. discrimination based on age, sex, disability or other protected classes).

C) Qualifying Leave

Consistent with the current FMLA, employees are eligible for 12 weeks of leave, but the legislation expands FMLA to permit leave if the employee is unable to work (or telework) due to a need to care for the employee’s son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider of the son or daughter is unavailable due to a COVID-19 emergency declared by federal, state or local authorities.

For purposes of leave due to the unavailability of a child care provider, the law provides that the leave is only available if the child care provider is someone who receives compensation for providing child care services on a regular basis. Accordingly, the unavailability of a family member or other individual who provides child care on an irregular basis for an employee is not a qualified leave reason under the law.

Similar to conventional FMLA, employers may require employees to provide any additional documentation in support of their leave requests, to the extent the additional documentation is permitted under the certification rules for conventional FMLA leave requests. In the context of a school or day care closure, for example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider.

Furthermore, notwithstanding any school or child care provider closure or unavailability, if the employee’s job duties can be performed remotely, or the employee is otherwise permitted to work from home, then the employee may not be entitled to leave under expanded FMLA. The law provides that leave is only available if the employee “is unable to work (or telework)”. Accordingly, if the employee has the capability to telework while also caring for their child, expanded FMLA is not available. If the employee cannot work or telework due to the need to provide care to a child for a COVID-19 qualifying reason, however, then the employee would be permitted to take expanded FMLA leave. Credit Unions should consider implementing a “Remote Working Policy” to clarify the job positions permitted to work remotely and the parameters of such remote working arrangements. Doing so may aid in curtailing potential abuse of this leave.
Credit unions also have the flexibility to modify employees work schedules to allow employees to provide child care needs while also fulfilling their job duties – in which case leave also is not necessary. Per DOL guidance, if a credit union and the employee agree that the employee will work their normal number of hours, but work them outside of normally scheduled hours (for instance early in the morning or late at night), then the employee is able to work and leave is not necessary. Another potential solution would be to permit intermittent FMLA. One common question from employers upon implementation of FFCRA was whether employees have the ability to take intermittent leave. The DOL answered that question in guidance published on March 27, 2020:

“…if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently…”

Employers are permitted to establish intermittent leave with employees within any parameters they deem reasonable. For example, employers and employees can agree on intermittent leave in 90-minute increments, so employees could telework from 1:00 PM to 2:30 PM, take expanded FMLA leave from 2:30 PM to 4:00 PM, and then return to teleworking. Additionally, the DOL permits, for example, agreements between employers and employees to take expanded FMLA on Mondays, Wednesdays, and Fridays, while the employee’s child is at home because the child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, but work Tuesdays and Thursdays.

While intermittent leave under conventional FMLA has traditionally been a headache for most employers, in this instance, it may be beneficial because it permits credit unions and their employees to establish mutually beneficial schedules in which an employee can take time off in increments while the credit union still receives valuable services from the employee - as opposed to a 12-week leave period wherein the credit union receives no services.

D) Payment during Leave

Covered employees are eligible for 12 weeks of FMLA leave. The first 10 days are **unpaid**. An employee may elect to use any available paid leave during the first 10 days but cannot be required to do so by the employer. After the first 10 days, and only with respect to employees on FMLA leave for COVID-19 related reasons above, employers are required to provide **paid leave not less than two-thirds of the employee’s regular rate of pay, capped at $200 per day and $10,000 in the aggregate**. Overtime hours should be included in calculating the pay due to employees. However, a premium for overtime hours does not need to be included in the pay.

Employees on a part-time or irregular schedule are entitled pay based on the average
number of hours the employee worked for the 6 months prior to taking leave. Employees who have worked for less than 6 months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work. If these numbers are unknown, then an employer would calculate the appropriate number of hours for leave based on the average hours per day the employee was scheduled to work over the entire term of employment.

Time spent on paid or unpaid leave due to a school closure or unavailability of a child care provider prior to the April 1, 2020 effective date is not credited against the prescribed 12 week allotment or the $10,000 aggregate cap on payment. However, time spent on conventional FMLA prior to and after April 1, 2020, if still within the applicable twelve-month, does count against the 12-weeks allotted to an employee for expanded FMLA.

E) Protection of Job

Generally, an employee’s leave is job protected in the same manner it would have been under conventional FMLA, but such protections are subject to additional limitations for employers with less than 25 employees. Employers with less than 25 employees are excluded from this requirement if (1) the employee took leave under the FFCRA, and (2) that employee’s position at the time the leave started is no longer available because of economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave.

To qualify for this exception, however, employers with less than 25 employees are required to make reasonable efforts to restore an employee who takes leave to an equivalent position to the one the employee had prior to taking leave (with the same or similar pay, benefits, and other conditions). If such efforts are unsuccessful, then the employer needs to make reasonable efforts to contact the employee about an equivalent position that becomes available. This “contact period” lasts for one year starting with the earlier of (1) the date on which the qualifying need related to a public health emergency concludes, or (2) twelve weeks after the employee’s leave commenced.

II. EMERGENCY PAID SICK LEAVE

The FFCRA also provides new paid leave benefits for full-time and part-time employees that will take effect on April 1, 2020 and expire on December 31, 2020. Similar to the expanded FMLA entitlements, the DOL is authorized to issue regulations exempting employers with less than 50 employees if the expanded benefits would jeopardize the “economic viability” of the company. As discussed above, these regulations and the criteria for these determinations are expected to be issued in April 2020.

Employers are required to post notice to employees of these rights. A model notice has been made available by the Department of Labor and is available at https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-
Credit unions should display the poster in a conspicuous place on its premises. Credit unions may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

A) Application to Certain Employers

The emergency paid sick leave provisions of the FFCRA apply to employers with fewer than 500 employees and public employers. The same guidance for calculating the 500 or 50-employee threshold used under the expanded FMLA protection (as discussed above) also apply here. Also like the expanded FMLA protection, the small business exemption for credit unions and other businesses with less than 50 employees applies, but only with respect to paid sick leave taken for school closures or unavailable child care providers (i.e. reason # 5 below), all other qualified leave is still available to employees of small businesses.

B) Eligibility of Employees

All employees of covered employers are eligible, regardless of the employee’s duration of employment. However, similar to the FMLA analysis above, an employee is not eligible for paid sick leave if the employee’s worksite has been closed or the employee has been furloughed or laid off due to a lack of work before or after the April 1, 2020 effective date of the law.

C) Qualified Leave

Employees are able to take paid sick leave if the employee is unable to work (or telework) due to the following reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns (note that this particular reason is not limited to family members);
5. The employee is caring for their son or daughter because the school or place of care of the son or daughter has been closed, or the child care provider is unavailable due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
Employers may require employees to provide additional documentation in support of their leave requests. Per DOL guidance, the IRS will provide applicable forms, instructions and information regarding the content of such supporting documentation. Additionally, if a COVID-19 related sickness rises to the level of a “serious health condition” under conventional FMLA, employers can continue to require medical certifications from the employee’s health care provider. The right to require supporting documentation may aid in curtailing employees’ abusive use of paid sick leave, specifically under leave reasons #3 and #4 above.

With respect to reason #1 above, it is unclear whether a “Federal, State, or local quarantine or isolation order related to COVID-19” would include employees subject to a state-wide or local “stay-at-home” order. As of the date of this document, the State of Kansas and several counties in Missouri have issued stay-at-home orders generally permitting only essential employees of essential businesses to work onsite, and requiring nonessential employees to telework or, if teleworking is not possible, to not work at all. By and large, credit unions have been deemed essential businesses. However, certain nonessential employees of credit unions may not be permitted to work on-site under these orders. Credit unions should take the position that essential employees are not permitted to take leave under reason #1 due to a “stay-at-home” order above because they are expressly permitted to work by the authorities issuing the order. Conversely, absent further DOL guidance, credit unions should be prepared to assume nonessential employees who are unable to work remotely may be eligible for paid sick leave under reason #1 above because they are unable to work (or telework) due to a “local quarantine or isolation order related to COVID-19.” However, legal commentary is split on this issue, as some believe a stay-at-home order is not an order to quarantine or isolate. Nonetheless, under the new law, employees, including nonessential employees, whose scheduled work hours have been reduced or eliminated altogether (i.e. furlough) by their employer because of a lack of work due to COVID-19 are not eligible to take paid sick leave to make up for the hours the employees are no longer scheduled to work. This is because the employees are not unable to work those hours due to a COVID-19 qualifying reason, and instead, they are prevented from working due to a business decision by their employer, even if COVID-19 is the catalyst for the decision. Employees may, however, take paid sick leave (or expanded FMLA leave) if a COVID-19 qualifying reason prevents the employee from working the reduced schedule.

Similar to expanded FMLA, intermittent leave is also available to employees under paid sick leave under certain circumstances as agreed with the employer. For reasons #1, #2, #3, and #4 above, unless the employee is teleworking, paid sick leave must be taken in full-day increments. For these reasons, unless the employee is teleworking, the leave must be continued until the employee either (1) uses the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave (e.g. has recovered from COVID-19 illness). Per the DOL, this limitation is imposed because if the employee is sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide the leave necessary to keep the employee from spreading the virus to others employees. Conversely, if the leave is due to a school closure or unavailability of a child care provider, intermittent leave without teleworking is permitted if the employer agrees to it.
D) Payment during Leave

Full-time employees are entitled to 80 hours of paid leave. Generally, part-time employees are entitled to the average number of hours the employee works over a 2-week period. Paid leave under this legislation does not carryover to 2021.

Employees on a part-time or irregular schedule are entitled pay based on the average number of hours the employee worked for the 6 months prior to taking leave. Employees who have worked for less than 6 months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work. If these numbers are unknown, then an employer would calculate the appropriate number of hours for leave based on the average hours per day the employee was scheduled to work over the entire term of employment.

When calculating the pay due to employees, overtime hours should be included. However, the 80-hour cap for paid sick leave over a two week period applies whether or not overtime is included. For instance, if an employee works 50 hours a week, they would be paid for 50 hours of work in the first week of leave and then 30 hours of leave in the second week. However, pay does not need to include a premium for overtime hours.

Employers are required to pay employees at the following rates:

- The employee’s regular rate of pay if the sick leave is for reasons 1 through 3 above, capped at $511 per day and $5,110 in the aggregate.
- Two-thirds the employee’s regular rate of pay if the sick leave is for reasons 4 through 6 above, capped at $200 per day and $2,000 in the aggregate.

Time spent on paid sick leave for any of the qualified reasons above taken prior to the April 1, 2020 effective date cannot be credited against the employee’s leave entitlement or the applicable cap on payment.

E) Prohibited Acts

A credit union cannot discharge, discipline, or in any other manner discriminate against any employee who takes leave in accordance with the FFCRA. Likewise, a credit union cannot discharge, discipline, or in any other manner discriminate against any employee who has filed a complaint, instituted or caused to be instituted any proceeding under or related to the FFCRA, or has testified or is about to testify in any such proceeding. Beyond potential EEOC investigations, lawsuits, and other civil actions, an employer who performs a prohibited act will be considered in violation of the Fair Labor Standards Act (FLSA) and will be subject to certain penalties under the FLSA for such violation.
III) EMPLOYER TAX CREDITS

Employers required to provide emergency paid FMLA leave or emergency paid sick leave as described above are provided with tax credits against the employer portion of social security taxes. Employers will be reimbursed to the extent of their cost providing the foregoing leave exceeds the taxes owed. These tax credits are available quarterly as they are mainly funded by withholding from the available quarterly payroll taxes that are otherwise deposited with the IRS and are reflected on the quarterly payroll tax returns in Form 941. As explained more fully below, if the quarterly credit from the payroll taxes does not cover the payments for qualified leave, then employers can file a request with the IRS for the remaining amount of the credit. Employers that are not subject to the legislation above (e.g. employers with 500 or more employees) are not entitled to receive these credits.

Although likely inapplicable to most credit unions as non-profit organizations, it is important to note that, pursuant to certain special rules applying to the tax credits under the FFCRA as detailed below, an employer will need to increase its gross income for the taxable year by the amount of any tax credit received by the employer under the FFCRA.

A) Calculation of the Tax Credit

For both paid sick leave wages and emergency FMLA leave paid to employees, employers will be entitled to a refundable tax credit equal to 100% of the leave wages paid pursuant to the FFCRA for each calendar quarter. The credit does not apply to non-qualified leave, including leave for qualified reasons taken prior to April 1, 2020. With respect to paid the sick leave under the FFCRA, the wages and corresponding credits are capped at $511 per day ($200 per day if the leave is for caring for another person per the statute) for up to 10 days per employee in each calendar quarter. With respect to emergency paid FMLA leave, the wages and corresponding credits are capped at $200 per day for each individual up to $10,000 total per calendar quarter.

These caps on tax credits can be increased by as much of the employer’s qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is so allowed. “Qualified health plan expenses” are the amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986 (the “Code”)). However, these amounts only count as “qualified health plan expenses” to the extent they are excluded from the gross income of employees by reason of section 106(a) of the Code. The qualified health plan expenses should be allocated on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate). We anticipate the IRS will release additional guidance soon on how the increase in the tax credit cap from qualified health expenses will work and how these expenses should be allocated.
B) Recoupment of the Tax Credit

When an employer pays for qualifying leave under the provisions of the FFCRA, the employer obtains the tax credit reimbursement in a couple ways. First, the employer should retain the “payroll” taxes that it would otherwise owe quarterly. The language of the FFCRA states that an employer can retain the employer’s share of the Social Security taxes and Medicare taxes that it pays for employees. In a news release issued by the IRS on March 20, 2020, however, the IRS indicates that employers can retain the amounts withheld from employee paychecks for federal income taxes, Social Security taxes, and Medicare taxes, along with the amounts paid by the employer for their share of the Social Security and Medicare taxes, in an amount equal to the amount of the qualifying leave that the employer paid for that quarter. Thus, there is a conflict between what amounts can be used to fund the tax credit from “payroll” taxes, and we expect this issue to be clarified by further regulations and/or guidance.

The IRS new release also sets out that the amounts available to fund the tax credits are not limited to just the amounts withheld for the employee taking the qualified leave. An employer can use the payroll taxes withheld (along with the employer’s respective shares) for all employees to pay any of the qualified leave payments to any or all employees.

Next, if the employer does not have sufficient payroll tax withholdings to cover the cost of the qualified leave paid, then the employer can seek direct payment of the amounts paid in qualified leave from the IRS. The employer would file a request for accelerated payment from the IRS, and, at this time, the IRS expects to process such requests in two weeks or less. The IRS will issue additional guidelines on the procedure for this expedited process.

The IRS has provided a few examples of how this will work. In one example, presume you, as an employer, paid $5,000 in qualified sick leave to employees in a given quarter. If the amount you would typically be required to pay in payroll taxes is $8,000 for all your employees over the same time frame, you could use up to $5,000 of the $8,000 of taxes you would otherwise deposit to make the qualified leave payments. You would then deposit the remaining $3,000 with the IRS on the next regular deposit date.

Alternatively, if you paid $10,000 in qualified sick leave to employees and are required to deposit $8,000 in payroll taxes for all employees, you can use the entire $8,000 of taxes to make leave payments. Then, you would file a request for an accelerated payment of the tax credit with the IRS to cover the remaining $2,000 you pay to employees in qualified leave payments.

Credit unions intending to claim a tax credit under the FFCRA for payment of sick leave or expanded family and medical leave wages, should retain appropriate documentation in their records. The IRS is expected to publish the applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.
C) Special Rules

i) Denial of Double Benefit

As tax exempt organizations, the Denial of Double Benefit rule is likely inapplicable to credit unions. However, it may be relevant to for-profit CUSOs that are not wholly-owned by a credit union(s). Pursuant to the Denial of Double Benefit rule, an employer will need to include any tax credits received under the FFCRA as gross income of the employer for the taxable year. The relevant taxable year for this rule is the last day of any calendar quarter with respect to which a credit is allowed under the section of the FFCRA providing for tax credits. More guidance on how this calculation will be performed is expected, but it is important for employers to consider the tax implications that accepting the tax credit under the FFCRA will have on their yearly taxable income. Because any tax credit taken under FFCRA will be considered gross income for an employer’s yearly taxes, the tax benefits of these credits may not be significant for certain small employers.

Additionally, any credits taken into account for purposes of the FFCRA tax credits cannot not be taken into account for purposes of determining the credit allowed under Code section 45S, which permits a tax credit to employers who provide paid family and medical leave to employees. Thus, an employer cannot receive a tax credit under both provisions.

ii) Election Not to Have Section Apply

The FFCRA permits an employer to opt out of the provisions granting tax credits to employers who pay employees for leave under the FFCRA. Under this rule, the section shall not apply to the employer for any calendar quarter if the employer elects not to have this section apply. At this time, it is not clear how or when this election would be made, but the FFCRA states that it should be “at such time and in such manner as the Secretary of the Treasury (or the Secretary’s delegate) may prescribe”. Therefore, we expect that the IRS will be issuing additional regulations and guidance on the timing and manner such elections could be made.

D) Regulations

The FFCRA section of tax credits provides that the Secretary of the Treasury (or the Secretary’s delegate) will set out the necessary regulations and other guidance to carry out the purposes of this section. Specifically, the Secretary is supposed to issue regulations or other guidance concerning:

1) The prevention of avoidance of the purposes of the limitations under this section;
2) The minimization of compliance and record-keeping burdens created by this section;
3) The providing for the waiver of penalties for failure to deposit amounts in
anticipation of the allowance of the credit allowed;
4) The recapture of the benefits of credits determined under this section in cases
   where there is a subsequent adjustment to the credit determined under
   subsection (a) (which is the section setting out the ability to receive a tax credit
   under the FFCRA); and
5) The ability to ensure that the wages taken into account under this section
   conform with the paid sick time required to be provided under the Emergency
   Paid Sick Leave Act.

As with other regulations and guidance, we expect the IRS to issue the above regulations
and guidance soon.

IV) NON-ENFORCEMENT PERIOD

The DOL has issued guidance on a temporary non-enforcement policy period during which
it will not bring an enforcement action against employers for any violations of the new leave
requirements until at least April 18, 2020, so long as the employer has acted reasonably and in
good faith to comply with the law. Good faith is shown when violations are remedied "as soon as
practicable," the violations are not willful, and the DOL receives a written commitment from the
employer to comply with the FFCRA in the future.
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