

# SUPPLEMENTAL INFORMATION RELATED TO COVID-19 FEDERAL LEGISLATION

## ***Tax Credit Documentation:***

In order to qualify for the federal tax credit for providing the emergency paid leave, you will need to obtain a written request for the Emergency Paid Sick Leave or Emergency FMLA leave. In all leave situations, you should ensure you retain the following pieces of documentation:

- Documentation to show how you determine the amount of qualified sick and family leave wages you paid to each employee, including records of work, telework, and qualified family leave;
- Documentation to show how you determine the amount of qualified health plan expenses that the employer allocated to wages (see FAQ 31 through 36 on the IRS Guidance entitled “Determining the Amount of Allocable Qualified Health Plan Expenses” for methods to compute this allocation);
- Copies of any completed Forms 7200 Advance of Employer Credits Due to COVID-19 that you submit to the IRS; and
- Copies of the completed Forms 941, Employer’s Quarterly Federal Tax Return, that you submit to the IRS. If you use third-party payers to meet your employment tax obligations, you should retain the records of information you provide them regarding your entitlement to the credit claimed on Form 941.

## ***FFCRA Application and Clarifications***

### **{From the DOL Temporary Rules – Unpublished}**

Section 826.20(a) explains that an employee may take paid sick leave if the employee is unable to work because of any one of six qualifying reasons related to COVID-19. The first reason for paid sick leave applies where an employee is unable to work because he or she is subject to a Federal, State, or local COVID-19 quarantine or isolation order. Quarantine or isolation orders include a broad range of governmental orders, including orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility. Section 826.20(a)(2) explains that an employee may take paid sick leave only if being subject to one of these orders prevents him or her from working or teleworking as described therein. The question is whether the employee would be able to work or telework “but for” being required to comply with a quarantine or isolation order.

An employee subject to one of these orders may not take paid sick leave where the employer does not have work for the employee. This is because the employee would be unable to work even if he or she were not required to comply with the quarantine or isolation order. For example, if a coffee shop closes temporarily or indefinitely due to a downturn in business related to COVID-19, it would no longer have any work for its employees. A cashier previously employed at the coffee shop who is subject to a stay-at-home order would not be able to work even if he were not required to stay at home. As such, he may not take paid sick leave because his inability to work is not due to his need to comply with the stay-at-home order, but rather due to the closure of his place of employment. That said, he may be eligible for state unemployment. **This analysis holds even if the closure of the coffee shop was substantially caused by a stay-at home order.**

If the coffee shop closed due to its customers being required to stay at home, the reason for the cashier being unable to work would be because those customers were subject to the stay-at-home order, not because the cashier himself was subject to the order. Similarly, if the order forced the coffee shop to close, the reason for the cashier being unable to work would be because the coffee shop was subject to the order, not because the cashier himself was subject to the order.

Additionally, § 826.20(a)(2) explains that an employee subject to a quarantine or isolation order is able to telework, and therefore may not take paid sick leave, if (a) his or her employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is being quarantined or isolated; and (c) there are no extenuating circumstances that prevent the employee from performing that work. For example, if a law firm permits its lawyers to work from home, a lawyer would not be prevented from working by a stay-at-home order, and thus may not take paid sick leave as a result of being subject to that order. In this circumstance, the lawyer is able to telework even if she is required to use her own computer instead of her employer's computer. But, she would not be able to telework in the event of a power outage or similar extenuating circumstance and would therefore be eligible for paid sick leave during the period of the power outage or extenuating circumstance due to the quarantine or isolation order.

#### **§ 826.20(a)**

**(2) Subject to a Quarantine or Isolation Order.** Any Employee Subject to a Quarantine or Isolation Order may take Paid Sick Leave for the reason described in paragraph (a)(1)(i) of this section only if, but for being subject to the order, he or she would be able to perform work that is otherwise allowed or permitted by his or her Employer, either at the Employee's normal workplace or by Telework. An Employee Subject to a Quarantine or Isolation Order may not take Paid Sick Leave where the Employer does not have work for the Employee as a result of the order or other circumstances.

**(3) Advised by a health care provider to self-quarantine.** For the purposes of this section, the term health care provider has the same meaning as that term is defined in § 825.102 of this chapter. An Employee may take Paid Sick Leave for the reason described in paragraph (a)(1)(ii) of this section only if:

(i) A health care provider advises the Employee to self-quarantine based on a belief that—

(A)The Employee has COVID-19;

(B) The Employee may have COVID-19; or

(C) The Employee is particularly vulnerable to COVID-19; and

(ii) Following the advice of a health care provider to self-quarantine prevents the Employee from being able to work, either at the Employee's normal workplace or by Telework.

(4) ***Seeking medical diagnosis for COVID-19.*** An Employee may take Paid Sick Leave for the reason described in paragraph (a)(1)(iii) of this section if the Employee is experiencing any of the following symptoms:

(i) Fever;

(ii) Dry cough;

(iii) Shortness of breath; or

(iv) Any other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention.

(v) Any Paid Sick Leave taken for the reason described in paragraph (a)(1)(iii) of this subsection is limited to time the Employee is unable to work because **the Employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19.**

(5) ***Caring for an individual.*** For the purpose of paragraph (a)(1)(iv) of this section, "individual" means an Employee's immediate family member, a person who regularly resides in the Employee's home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, "individual" does not include persons with whom the Employee has no personal relationship.