

FIELD ASSISTANCE BULLETIN No. 2020-1

U.S. Department of Labor

Wage & Hour Division
Washington D.C. 20210

March 24, 2020

MEMORANDUM FOR:

Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM:

Cheryl M. Stanton
Administrator

SUBJECT:

Temporary Non-Enforcement Period Applicable to the Families First Coronavirus Response Act (FFCRA)

This Field Assistance Bulletin provides guidance to WHD field staff regarding the temporary non-enforcement period applicable to the FFCRA.

Background

President Donald J. Trump signed the FFCRA on March 18, 2020. The FFCRA is designed to help both employees and their employers by providing, for private employers, paid sick and family leave that is dollar-for-dollar reimbursed through a refundable tax credit.^[1] To enable public and private employers who are covered by the Act to come into compliance with the new statute, WHD will observe a temporary period of non-enforcement of the FFCRA for the period of March 18 through April 17, 2020.

Enforcement Guidance

The Department will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. For purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts “reasonably” and “in good faith” when all of the following facts are present:

1. The employer remedies any violations, including by making all affected employees whole as soon as practicable. As explained in a Joint Statement by the Department, the Treasury Department and the Internal Revenue Service (IRS) issued on March 20, 2020, ^[2] this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages.^[3]
2. The violations of the Act were not “willful” based on the criteria set forth in *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988) (the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited...”).
3. The Department receives a written commitment from the employer to comply with the Act in the future.

If the public or private employer either (i) violates the Act willfully, (ii) fails to provide a written commitment to future compliance with the Act, or (iii) fails to remedy the violation upon notification by Department, the employee seeking payment, or a

representative of that employee, including by making all affected employees whole as soon as practicable, the Department reserves its right to exercise its enforcement authority.

After April 17, 2020, this limited stay of enforcement will be lifted, and the Department will fully enforce violations of the Act, as appropriate and consistent with the law.

[1] This tax credit, provided for in Division G of the FFCRA, does not apply to the Government of the United States, the government of any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

[2] <https://www.dol.gov/newsroom/releases/osec/osec20200320>

[3] For purposes of this non-enforcement policy, employers who are eligible for tax credits but who have insufficient cash flow should make payment of sick leave or family leave wages as soon as possible, but not later than seven 7 calendar days after the employer has withdrawn an amount equal to the required paid sick leave and expanded family and medical leave wages from the employer's Federal payroll tax deposits or, to the extent such deposits are not sufficient, has received a refund of the credit amount from the IRS to cover the required wages.

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Wage and Hour Division

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