



COVID-19 Legal Issues for Nonprofit Employers Webinar

March 27, 2020

Thank you to everyone who attended last Friday's webinar, *COVID-19 Legal Issues for Nonprofit Employers* with PBPO and United Way of Greater Cincinnati.

Our speaker, Liz Stock, from Bricker & Eckler, reviewed the questions we could not get to during the webinar and provided answers below. Please know these answers are general advice and you should seek legal counsel regarding your specific circumstances. Also, the guidance provided was the law as of **March 27, 2020**. In these uncertain times, the laws and regulations are constantly changing.

If you were not able to dial-in, or you would like to watch it again, the full webinar is available [here](#).

POST WEBINAR Q&A with Liz Stock, Of Counsel, Bricker & Eckler

We recommend you check out the Department of Labor COVID-19 FFRCA related Q&As for the most up-to-date guidance: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- Q: Can we mandate across the board salary reductions for all exempt employees? How does FLSA affect our ability to do so?**
- A: Yes, prospective salary deductions are permitted assuming there is no employment agreement with the employee or union agreement that provides otherwise, and provided the salary is not less than the minimum salary required for exempt status under the FLSA (\$684 per week).
- Q: Does the Expanded FMLA rule apply to organizations with fewer than 50 employees?**
- A: As a general rule, yes, but your organization may be exempt if compliance would jeopardize the viability of your business as a going concern. The DOL has not yet issued guidance for how it will determine whether employers qualify for this exemption. However, the DOL has instructed employers to maintain documentation in support of an exemption application. More guidance is expected soon.
- Q: All of our employees are working from home as part of an essential social service organization. One of our employees requested the Expanded FLMA leave because she has a child at home. Is she eligible for the Expanded FMLA even though the rest of us have children at home as well?**
- A: Yes. DOL guidance suggests that the employee (not the employer) determines whether or not they are able to telework. In its [FFRCA Q&A](#) the DOL states:
If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking 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, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

- Q: Some salaried employees have chosen to reduce hours and go to half pay. Some are part-time and some full-time. Is this a problem?**
- A: If half pay reduces their salary below the minimum salary threshold necessary for exempt status (\$684 per week), this reduction will disqualify them from being classified as exempt employees. One solution might be to temporarily convert these employees to hourly employees, which provides more flexibility to pay them less when fewer hours are worked, so long as pay is at least minimum wage and other requirements for hourly employees are being followed (e.g., tracking hours worked, paying overtime IF an employee works more than 40 hours in a week, etc.).
- Q: Is there guidance regarding age of child?**
- A: Expanded FMLA and paid sick leave is available if an employee is unable to work (or telework) due to the need to care for a son or daughter under the age of 18 due to school or daycare closure.
- Q: What if employee lives with a high-risk individual and is afraid of infecting that person? Would that fall under the FFCRA?**
- A: No.
- Q: Does FFCRA apply to an employee's ability to only work part time while caring for children at home? Would you count 50% of their pay under FFCRA and 50% regular pay?**
- A: The DOL just updated its running list of Q&A regarding the FFCRA to address intermittent use of paid leave. A link to that Q&A is available [here](#). Intermittent leave is covered in questions 20, 21 and 22.
- Q: Can you explain how an employee can use existing PTO to make themselves whole?**
- A: The DOL just updated its running list of Q&A regarding the FFCRA to address this issue A link to that Q&A is available [here](#). See Questions 31, 32 and 33.
- Q: Would the health care provide exclusion include Behavioral Health Care Providers such as therapist, counselors, psychologist?**
- A: The DOL updated its guidance regarding this question on Friday. Please view its responses to questions 56 and 57 [here](#).