

Effective Date of the Families First Coronavirus Response Act and Temporary Period of Non-Enforcement

04.01.2020

Our March 20th E-Alert addressing the Families First Coronavirus Response Act ("FFCRA") anticipated an April 2, 2020 effective date, based on Section 3106 of FFCRA providing that the act "shall take effect not later than 15 days after the date of enactment," which was March 18th. Materials recently released by the U.S. Department of Labor ("DOL" or "Department") have stated that **FFCRA will apply from April 1st.**

However, an internal DOL directive set forth in Field Assistance Bulletin No. 2020-1 issued on March 24, 2020, states as follows:

To enable public and private employers who are covered by [FFCRA] to come into compliance with the new statute, [the Wage and Hour Division] will observe a temporary period of non-enforcement of the FFCRA for the period of March 18 through April 17, 2020.

Field Assistance Bulletin No. 2020-1 goes on to state that the DOL will not bring enforcement actions against any public or private employer for violations of FFCRA occurring between March 18 and April 17, as long as the "employer has made reasonable, good faith efforts to comply" with FFCRA. Bulletin No. 2020-1 further states that if all of the following facts are present, an employer will have acted "reasonably" and "in good faith":

1. The employer remedies any violations, including by making all affected employees whole as soon as practicable. . . .
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 DOL finds that an employer willingly violated FFCRA, fails to commit in writing to future compliance, or fails to remedy the violation upon notice by the DOL, an affected employee, or the employee's agent, "including by making all affected employees whole as soon as practicable," the DOL may take enforcement action.

The limited stay provided by Field Assistance Bulletin No. 2020-1 will be lifted after April 17, 2020, and thereafter the DOL will enforce violations of FFCRA in accordance with the law.

The full text of Field Assistance Bulletin No. 2020-1 can be found at <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>. In addition, we recommend that employers consider monitoring the DOL website for additional information and guidance materials related

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to application of and compliance with FFCRA. As one example, regulations soon will be forthcoming to address how an employer with fewer than 50 employees might satisfy the small business exemption from the requirements of FFCRA.

Stone Pigman lawyers are ready and available to assist employers and businesses with navigating and taking advantage of the massive and unprecedented relief measures afforded to employees under FFCRA during these times, as well as to businesses under the CARES Act (which was the subject of our March 27, 2020 e-alert).

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