

# Does a “Shelter in Place” or “Stay at Home Order” Trigger Paid Leave under the FFCRA?

## Labor & Employment Law Update

By John Hayes on March 31, 2020

*\*\*\*Please see updated information on FFCRA regulations in our April 3, 2020 post.*

A component of the recently passed Families First Coronavirus Response Act (FFCRA) requires covered employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19 starting April 1. Additionally, many states and local governments have now mandated that non-essential businesses close and that its citizens stay at home, subject to certain exceptions, often referred to as Shelter in Place (SIP) or Stay at Home orders.

The question facing many employers now is whether these SIP orders trigger the paid leave requirements of the FFCRA.

The short answer is no.

On March 28, 2020 the U.S. Department of Labor (DOL) issued guidance to address, among other things, the FFCRA provisions related to paid sick leave or expanded medical leave, and whether employers are required to provide paid leave under its provisions if it is forced to close pursuant to SIP orders. The specific questions that address the provisions for the closure of a worksite can be found on the DOL website and the relevant portions of the answers read as follows:

***If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?***

*No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive.*

***If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?***

*If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the employer was required to close pursuant to a Federal, State or local directive.*

***If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?***

*No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive. If your employer reopens and you resume work, you would then be eligible for paid sick leave or expanded family and medical leave as warranted.*

Bottom line: an employee is not eligible for the paid leave requirements of the FFCRA if their worksite closes down pursuant to an SIP order, or if it closes for any other reason, such as lack of business. However, employers should note that when they reopen and recall the affected employees to work, the recalled employees will be eligible for paid sick or family leave, if they meet the requirements under FFCRA.

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