

UPDATE – Does a “Shelter-in-Place” or “Stay-at-Home” Order Trigger Paid Sick Leave under the FFCRA?

Labor & Employment Law Update

By Peter Hansen and Jeffrey Risch on April 6, 2020

As we now know, the Families First Coronavirus Response Act (FFCRA) requires covered employers to provide employees with paid sick leave — under the Emergency Paid Sick Leave Act (EPSLA) — for specified reasons related to COVID-19 starting April 1. These reasons include: because the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.

Many states and local governments have now mandated shelter-in-place (SIP) or stay-at-home orders.

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

The U.S. Department of Labor (DOL) published its FFCRA rules on April 6, 2020 providing a little more guidance on this issue. According to the DOL's regulations:

For the purposes of the EPSLA, a quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any federal, state, or local government authority that cause the Employee to be unable to work even though his or her Employer has work that the Employee could perform but for the order. This also includes when a federal, state, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter-in-place, stay-at-home, isolate, or quarantine, causing those categories of Employees to be unable to work even though their Employers have work for them.

In light of this authority, employers who continue to operate and have work available at their place of business need to carefully review the unique SIP order (s) impacting their operations and determine if there is any information advising categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter-in-place, stay-at-home, isolate, or quarantine and thereby causing those categories of employees to be unable to work even though work is

available. Of course, if an employee is able and allowed to work from home, then the employee would not be eligible for paid sick leave under the EPSLA.

Again, it is critical for employers to evaluate the SIP order(s) covering their geographic footprint(s). Using Illinois as an example, the current stay-at-home order states that, "People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care." However, questions abound. Does Governor Pritzker "urging" certain residents to stay at home render them eligible for EPSLA benefits if they cannot work from home? Notably, St. Louis County (MO) issued its own stay-at-home order with language similar to Illinois, and released an FAQ providing, in relevant part: It is highly recommended that high-risk populations (like persons over 60 years old or persons with underlying health conditions) should stay at home.

Bottom Line: An employee should not be eligible for the paid sick leave under the EPSLA if his/her assigned 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 continue to operate, any employee who cannot work from home may be eligible for paid sick leave depending on the applicable SIP order in place expressly advising the employee to stay home due to specific instructions/restrictions.

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