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The Department of Labor Issues Critical New Guidance on the Families First Coronavirus Response Act

The DOL has issued new guidance and clarified that employees who do not have work available to them (e.g., as a result of a furlough or business closure) will **not** be eligible for benefits under the Families First Coronavirus Response Act.

As a reminder, to qualify for Emergency Family and Medical Leave Expansion Act (EFMLEA) leave or Federal Paid Sick Leave (FPSL) under the FFCRA, employees must be unable to work or telework. The DOL clarified what exactly it means to be “unable to work”:

Q: *“What does it mean to be “unable to work”, including telework for COVID-19 related reasons?”*

A: *You are unable to work if your employer has work for you and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents you from being able to perform that work, either under normal circumstances at your normal worksite or by means of telework.*

If you and your employer agree that you will work your normal number of hours, but outside of your normally scheduled hours [for instance early in the morning or late at night], then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working that schedule.

In light of the preceding, it appears that those employees whom businesses have already furloughed will not be eligible to receive FFCRA benefits, assuming there is no work for them to perform. This should continue to be the case so long as the business is closed and/or there is no work for them to perform. Nonetheless, these employees will remain eligible for unemployment benefits under state and/or federal law.

Questions? Contact Stokes Wagner.