

Employers Must Stay FFCRA Compliant to Avoid Litigation

The Families First Coronavirus Response Act (FFCRA) is set to expire on December 31, 2020, but employers must remain diligent in complying with their responsibilities as employment litigation related to COVID-19 continues to grow.

The Families First Coronavirus Response Act

Congress enacted FFCRA on March 18, 2020, and it went into effect April 1, 2020. The legislation created new types of paid leave for employees related to the COVID-19 pandemic. Employees who may be entitled to leave under FFCRA can include:

- An employee who is under a quarantine or isolation order.
- An employee who is experiencing COVID-19 symptoms and seeking a diagnosis.
- An employee, who meets certain conditions, seeking intermittent leave related to the care of a child whose school or care provider is closed or unavailable.

There has been [a steady increase of new lawsuits](#) alleging employer violations of FFCRA. Employers must continue to comply with FFCRA through its expiration. Employers who violate FFCRA are subject to the penalties for violating the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA). Those penalties can include fines up to \$10,000, civil penalties and damages.

Increased Employment Litigation Related to COVID-19

Employment lawsuits related to the COVID-19 pandemic are not limited to FFCRA. Since March 12, 2020, there have been at least [1,289 employment lawsuits](#) (including several hundred class actions) alleging violations of workplace protections related to COVID-19 under a variety of employment laws, including the ADA, FMLA and FLSA.

New complaints are increasing every month; starting with fewer than 20 new lawsuits in March and rising to several hundred in October. The most common complaints allege retaliation or failure to provide required leave, highlighting the importance for employers to remain diligent in complying with FFCRA's new protections through the end of the year.

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Key Takeaways

To ensure employers are continuing to comply with their responsibilities to help avoid employment litigation related to COVID-19, they should continue to monitor actions by Congress, as policymakers may choose to extend FFCRA's protections into the New Year. When faced with issues related to COVID-19, employers should evaluate legal obligations under other employment statutes in addition to those imposed by FFCRA. In addition, changes in school operations (e.g., operating in-person, virtual or using a "hybrid" model) may affect FFCRA eligibility and employers must remain diligent when responding to employee requests for leave.

If you have any questions about how to manage employees who are concerned about working during the pandemic, please contact [Rob Driscoll](#) or your Reinhart attorney.

Please visit Reinhart's [Coronavirus Resource Center](#) for additional up-to-date information.

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