

# Employer Guidance: FFCRA Documentation Requirements

**UPDATED: APRIL 8, 2020**

Under Department of Labor (DOL) regulations, employers may require certain information from employees to verify the need for FFCRA leave. More importantly, under Internal Revenue Service (IRS) guidance, which the DOL incorporated by reference into its FAQs on FFCRA leave, to take advantage of the payroll tax credits, employers are required to obtain and retain (for four years) certain information. The following enumerates all categories of information discussed by the DOL and IRS.

## **INITIAL INFORMATION FROM EMPLOYEE**

Initially, employers should memorialize the following information, which may be provided orally by the employee. If provided orally, according to the DOL/IRS, the employer should document the oral statements.

- Employee's name
- Dates for which leave is requested
- Qualifying reason for leave
- Statement that the employee is unable to work or telework because of the qualifying reason.

## **ADDITIONAL INFORMATION FROM EMPLOYEE**

The regulations further specify forms of additional documentation based on the reason for leave. In each instance, the information may be provided by the employee and does not require any further certification, such as by a health care provider. The nature of the additional information depends on the reason for leave:

- **For leave requested pursuant to an order to isolate or quarantine**—identify the government entity that issued the order.
- **For leave based on advice of a health care provider to self-quarantine**—the name of the health care provider; and, if the leave is to care for another individual, the identity of and relation of the individual to the employee.
- The DOL regulations define an “individual” as someone with whom the employee must have a personal relationship. Examples: an immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation the employee would care for that person if quarantined.
- **For leave due to a school closure or unavailability of childcare**—(1) the name of the child; (2) the name of the school, place of care, or child care provider that closed or is unavailable due to COVID-19; and (3) a statement that no other suitable person is available to care for the child during the period of requested leave.

- In addition, under IRS guidance issued on the same date as the DOL regulations, an employer can require that, if a child is over 14 years and care is during daylight hours, the employee provide a statement of “special circumstances” requiring the employee to provide care. Note that this requirement does not appear in the DOL FAQs or regulations.

## IRS REQUIRED DOCUMENTATION

Additionally, the IRS requires that employers maintain documentation related to the following:

- How the employer determined the amount of EPSL or FMLA-PHE Leave paid to employees, including records of work, telework, and leave
- How the employer determined the amount of qualified health care expenses allocated to wages
- Completed Forms 7200 submitted to the IRS (Advance of Employer Credits)
- Completed Forms 941 (Employer’s Quarterly Federal Tax Return) submitted to the IRS

## TRACK DOCUMENTATION

Employers should set up a system to gather the information from employees seeking leave. Provide the employee with a reasonable period of time to provide the certification (*e.g.*, five business days). If the employee does not respond or provide all required information, notify the employee of the deficiency and give them a reasonable period (*e.g.*, five business days) to cure the issue. If the employee fails to cure the issue, even after being notified, the employer is not required to provide paid leave under the FFCRA.