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Question of the Day: DOL's New FFCRA Leave Tool

Legal Update

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Question

What is the DOL's new FFCRA leave tool for employees?

Answer

Last week the United States Department of Labor Wage and Hour Division (DOL) released a new tool designed to help employees determine whether they are eligible for leave under the Families First Coronavirus Response Act (FFCRA). The tool is generally straightforward and asks employees to choose why they are seeking to take leave and takes them to a final screen stating that the employee "may" be eligible for leave, if all of the conditions for leave under the statute are met. If the conditions are not met — for example, if the employee has been furloughed or is a healthcare worker — the employee is shown a screen explaining that they are not eligible for FFCRA leave.

This tool may also be helpful to HR professionals who are attempting to navigate the FFCRA. Although the DOL plans to release an employer tool of the same variety, businesses need not wait for that tool. One option would be to have your HR team use the employee tool with the employee in real time to discuss the employee's needs and eligibility. This conversation could benefit both the employer and employee because it encourages communication and clarity and allows the employee to see that the employer is complying with the FFCRA and the DOL.

Note, however, as with any online tool, there are some pitfalls which may lead to confusion over entitlement to leave under the FFCRA. For example, the tool does not ask the employee if they have already taken some or all of their FFCRA or FMLA leave. Additionally, in answering the questions, the tool asks which situations apply to the employee — like, I am subject to a government quarantine or isolation order — without defining what those terms mean under the FFCRA. While you can scroll down and click on another link, which brings you to the DOL Question & Answer page on the FFCRA, many employees will not take that step.

You certainly want to avoid any misunderstanding arising from employee use of the new DOL tool, so communication is key. If you have not already done so, designate someone in your business to be the FFCRA leave administrator. Have that person become familiar with the tool in the event an employee references it or relies upon it. The administrator can then communicate and memorialize all approvals or denials of FFCRA leave for employees, noting the reason for the approval or denial (you should do this anyway — it is required for reimbursement under the Department of Treasury Regulations). That way, if an employee asks about entitlement to leave under the FFCRA, you will have the information in one place to be able to determine whether the employee is eligible.

Takeaways

The DOL's new tool is neither mandatory nor magical, but it may aid HR professionals in their communications with employees about FFCRA leave by providing visual explanations with the DOL's approval to employees seeking eligibility information so long as your HR professionals understand the employer's obligations under the FFCRA.

As always, if you have questions regarding the application of the FFCRA, please reach out to your Fredrikson & Bryon employment law attorney.

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