



COVID-19

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**Coronavirus / COVID-19
Response Team**

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1

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**Common Mistakes Made
Under the FFCRA**

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Today's Topics

- 7 Common FFCRA Mistakes

Mistake #1: Employee Eligibility

- “The normal FMLA eligibility requirements apply to extended FMLA, right? So employees are only eligible if they’ve been employed for a year and worked 1,250 hours during that year?”



Mistake #1: Employee Eligibility

- An employee is eligible for extended FMLA if he or she has been employed for at least 30 calendar days

Mistake #2: In Loco Parentis

- “No, you can’t take leave under FFCRA because your grandchild’s school is closed. That leave is only available for a “son or daughter.”



Mistake #2: In Loco Parentis

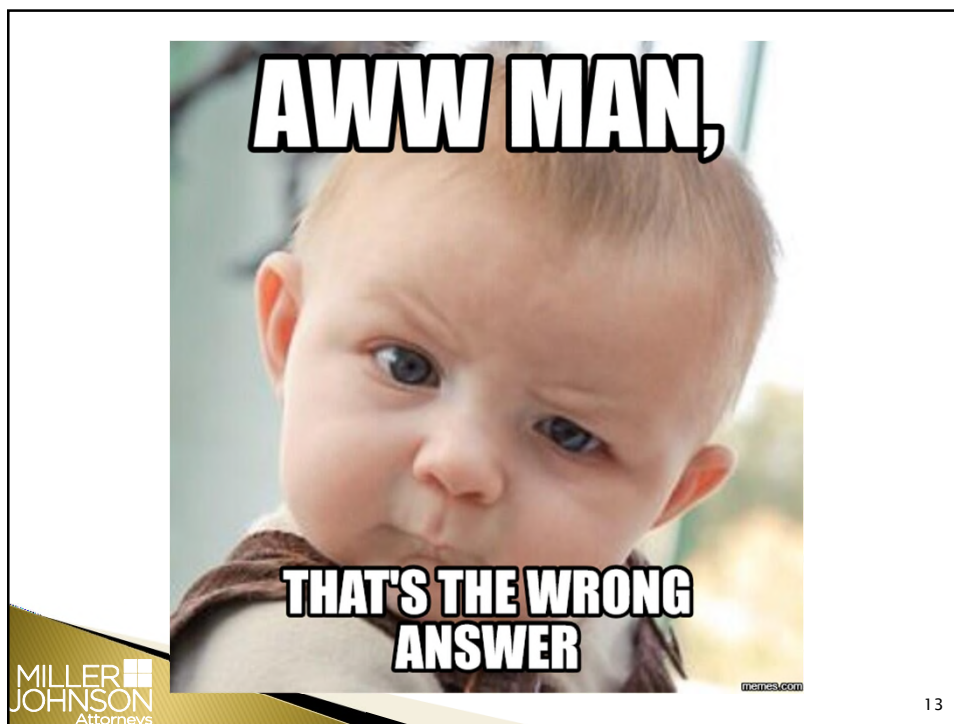
- FFCRA is available for employees who need leave to care for a “son or daughter” due to a school closure or childcare unavailability
 - DOL regulations define “son or daughter” as “a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability”

Mistake #2: In Loco Parentis

- What is “*in loco parentis*?!”
 - A person with day-to-day responsibilities to care for or financially support a child.
 - Factors in determining status:
 - Age of the child;
 - Degree to which the child is dependent on the person;
 - Amount of financial support, if any, provided; and
 - Extent to which duties commonly associated with parenthood are exercised.

Mistake #3: Documentation

- “I’m not documenting when employees are taking emergency paid sick leave or extended FMLA leave. An employee told me that she had COVID-19, so we’re just paying her while she’s out sick and we’ll figure out the tax credits later.”



Mistake #3: Documentation

- According to the IRS, to qualify for tax credits, an employer must obtain a written request from the employee that contains:
 - The employee's name
 - The date or dates for which leave is requested
 - A statement of the COVID-19-related reason the employee is requesting leave and written support for the reason
 - A statement that the employee is unable to work, including telework, because of the reason

Mistake #3: Documentation

- Leave based on a quarantine order (#1) or self-quarantine advice (#2)
 - The request should include the name of the government entity ordering quarantine or the name of the health care professional advising self-quarantine
 - If the person subject to quarantine or advised to self-quarantine is not the employee (#4), the request should include that person's name and relation to the employee

Mistake #3: Documentation

- Leave based on school closing or child care provider unavailability (#5)
 - Name and age of the child(ren)
 - Name of the school that closed or place of care that is unavailable
 - A representation that no other person will provide care for the child during the period to leave
 - If the employee must provide care for a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care



Mistake #3: Documentation

- The employer must create and retain records that include the following information:
 1. Documentation to show how the employer determined the amount of qualified sick and family leave wages
 2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages.
 3. Copies of any completed Forms 7200 (Advance of Employer Credits Due to COVID-19)
 4. Copies of completed Forms 941 (Quarterly Federal Tax Return)

Mistake #3: Documentation

- Keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever is later.

Mistake #4: Quarantine

- My employees are quarantined because the Governor's "Stay Home" Order still applies to my company and there is no "in person" work. I'm giving the FFCRA leave until I'm back in business.



Mistake #4: Quarantine

- DOL broadly defines “quarantine or isolation order” to include any state or local stay at home order, BUT:
 - FFCRA only applies when an employee cannot work “because of” the quarantine order.
 - EO 2020-36 may trigger coverage
 - Directs employees to stay home (and protects them from disciplinary action) when:
 - (1) symptoms/diagnosis of COVID 19
 - (2) “close contact” with a person who has symptoms/diagnosis of COVID-19, subject to certain industry-specific exclusions

Mistake #5: School's Closed = 12 Weeks of Extended FMLA

- “Employees requested extended FMLA leave because their kids’ schools closed, so we gave them 12 weeks of leave and said we’d see them in July.”



Mistake #5: School's Closed = 12 Weeks of Extended FMLA

- According to the DOL, paid sick leave and extended FMLA are not available for reason #5 if the school or child care provider is closed for summer vacation or any other reason that is not related to COVID-19.

- Last Day of School:
 - Grand Rapids Public Schools: June 3
 - Kalamazoo Public Schools: June 12
 - Forest Hills Public Schools: June 5

Mistake #6: Wait, There Are Other Employment Laws?

- I had an employee request leave because he's immunocompromised due to a heart condition, but I know that being immunocompromised is NOT a reason for leave under FFCRA, so I told him that he really needs to come in to work. I bet you're proud of how well I listened at Miller Johnson's other FFCRA webinars.

Mistake #6: Wait, There Are Other Employment Laws?

- Employees are not entitled to take leave under FFCRA because they are immunocompromised and may be more susceptible to COVID-19 complications
- BUT...
 - “Serious Health Condition” under FMLA?
 - “Disability” under the ADA?

Mistake #7: Amount of sick pay

- “An employee only needed 40 hours of emergency sick pay, but we let him take an extra 3 days because he’s entitled to 80 hours total.”



Mistake #7: Amount of Sick Pay

- Employees are only entitled to the amount of emergency paid sick leave for which they qualify
- Employees are capped at 80 hours of emergency paid sick leave total
 - Employee uses 64 hours in April for reason #3
 - In May, the employee requests time off because he or she interacted with someone who has COVID-19
 - Only 16 hours of this leave are paid; the rest are unpaid

Miller Johnson Back to Work Resource Center

<https://resources.millerjohnson.com/>

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Resource Center

Guidance Contact Account Log in

Welcome!

Our online **Back to Work Resource Center** provides a cost-effective one-stop shop for employers who are returning employees to work during this COVID-19 pandemic.

The **Back to Work Resource Center** regularly updates information to:

- ensure compliance with the ever-changing legal requirements
- include practical tools to effectively, safely and confidently return employees to work
- incorporate resources of best practices from outside organizations, including community partners such as Spectrum Health

Updates will be provided to all participants as the law and best practices evolve, including a weekly email of significant postings.

31

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32