
To: FCA Members
From: FCA CEO Anthony Darkangelo
Subject: **Paying Your Employees FMLA and PSL for COVID-19**
Date: March 26, 2020

While many things continue to be fluid with the "Families First Coronavirus Response Act," (FFCRA) I wanted to take a moment to provide clarification on some common questions.

- **Has the DOL finalized the effective date?** Yes. The FFCRA's paid leave provisions go into effect April 1, 2020. They sunset on Dec. 31, 2020 per the current bill.
- **How do I determine if my company has 500 or fewer employees?** Your company has fewer than 500 employees if, at the time the employee is taking leave, your company employs 500 or fewer full *and* part-time employees in the United States.
- **How much do I pay my employees taking leave under these provisions?** Employees will be paid based on their "regular rate" *up to the payment cap*. This amount is 100 percent dollar-for-dollar refundable.
 - As the language indicates at this time, the "regular rate" is defined as the employee's hourly rate. No taxes or benefits, whether the responsibility of the employee or employer, are included in the "regular rate" paid.

*"Regular rate" under the FLSA specifically **excludes** several amounts, including: "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees." 29 U.S.C. § 207(e)(4).*

- **Do I have to pay health insurance to employees under the FFCRA?** *(Although there continues to be dispute on this issue, we believe the following is factual based on the language).* The DOL requires employers to continue paying their health care contribution under the FFCRA for health coverage if the employee continues paying their portion (if applicable). This applies to your non-bargaining employees, and these contributions are 100 percent dollar-for-dollar refundable. This cost is in addition to the cap amounts of the "regular rate."
 - For your bargaining employees, you do not make employer contributions to the union's health care plan. Therefore, under the current language, you have no responsibility.
- **Is the coronavirus now a "recordable incident" by OSHA?** It can be. Please [click here](#) for guidelines on preparing your workplace to reduce or eliminate your exposure to this recordable.