



LIUNA!

April 6, 2020

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TO ALL LIUNA AFFILIATES IN THE UNITED STATES

Re: Regulations Issued To Implement
Families First Coronavirus Response Act (FFCRA) Sick Leave

Dear Brothers and Sisters:

Further to my letter of March 27, 2020, please take notice that the United States Department of Labor (DOL) has issued the promised regulations interpreting and implementing the sick leave and family medical leave provisions of the Families First Coronavirus Response Act (FFCRA). As more fully explained in that letter, FFCRA provides for two new benefits to most employees at employers with fewer than 500 employees. First, it requires employers to pay workers up to two weeks of sick leave, funded by federal payroll tax breaks, for absences from work for certain reasons related to the COVID-19 pandemic. Second, it expands benefits under the Family Medical Leave Act to provide up to ten additional weeks of paid leave for workers who must stay at home to care for children whose schools or day care are closed by government order.

These new regulations may be found at:

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>.

Many of the questions left open by FFCRA itself are answered in this comprehensive interpretation.

One significant interpretation provided in the regulations is whether workers are entitled to paid leave if they meet the criteria (e.g., they have COVID-19 or are subject to a government-imposed quarantine order), but their employer is not open for business. The answer is that, *unless their employer has work for them* that they could perform absent their COVID-19 issue, they are *not* entitled to sick or family leave under FFCRA. (Section 826.20(a)). That is, only employees of employers that are open for business and have work available, either through telework or otherwise, are eligible for this leave. The DOL's interpretation is that the paid sick leave provision is not intended to provide broad income replacement for workers affected by the pandemic, but to provide relief only to those workers *who would be at work* "but for" their own illness or the needs of someone they are caring for.

Feel the Power

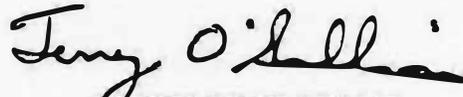
The regulations also clarify a myriad of other issues. Because they are 125 pages long and sometimes technical in their discussion of issues, it is not helpful to try and summarize them here. However, if questions arise on the following key issues, you can find the answers at the link above, and at the section indicated below:

- how sick pay for **part-time workers** should be calculated (Section 826.21(b));
- that the **rate of pay** for leave is calculated under the methods required by the Fair Labor Standards Act (Section 826.25);
- that workers who do not work continuously for an employer may still meet the “**30 calendar day**” **threshold** for family leave if they were employed a total of thirty calendar days between March 1, and December 31, 2020 (Section 826.30(b)(1)(ii));
- that employers have complete discretion to exempt “**health care providers**” (Section 826.30(c));
- how to calculate the **500-employee threshold** for employer coverage (Section 826.40(a));
- that employers with **fewer than 50 employees** may exempt themselves from either paid leave requirement if it “jeopardizes the viability of the business” (Section 826.40(b));¹
- what **notice** and information employers must give their employees (Section 826.100);
- whether an employee is entitled to **reinstatement** after the leave is ended (Section 826.130).

We will continue to provide updated information on this, and other COVID-19 developments that may affect you or our members as it becomes available.

With kind regards, I am

Fraternally yours,



TERRY O'SULLIVAN
General President

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¹ Note that, as explained in my prior letter on paid leave, employers are able to recoup the cost of this paid leave through credits on their payroll taxes.