

CHEYLYNN HAYMAN
Attorney at Law
chayman@parrbrown.com

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UPDATE:
DEPARTMENT OF LABOR GUIDANCE REGARDING
PAID SICK LEAVE AND FMLA CHILDCARE LEAVE UNDER THE FFCRA

Over the weekend, on March 28, 2020, the U.S. Department of Labor's Wage and Hour Division published its latest round of guidance to assist employers with complying with the Families First Coronavirus Response Act ("FFCRA"). This new guidance appears in the form of updated Questions and Answers Nos. 38-59 (available [here](#)) and addresses, among other things, the following:

- Clarifies the interaction of FMLA emergency childcare leave with regular FMLA leave;
- Clarifies that a full-time employee for purposes of the Emergency Paid Sick Leave Act is an employee who is normally scheduled to work 40 or more hours per week. (Please note this supplements and revises our earlier [March 25, 2020](#) update, which presumed that employees regularly scheduled to work *fewer* than 40 hours per week, but whom an employer otherwise classified as full-time, would be entitled to the same calculation as employees who are regularly scheduled to work over 40 hours per week. Under this newest guidance, any employee regularly scheduled to work fewer than 40 hours per week is considered part-time, and therefore only entitled to sick leave in an amount equal to the number of hours such employee works on average over a two-week period.)
- Clarifies the small business exemption and when providing employees with paid emergency sick leave or FMLA childcare leave will be deemed to jeopardize the viability of the small business as a going concern.

We encourage you to review the Department of Labor's website at www.dol.gov for additional guidance regarding the FFCRA and other resources on preparing your workplace for the COVID-19 virus.

The foregoing legislative update is designed to be accurate and authoritative but is not intended to provide and should not be construed as providing legal advice or as creating any attorney-client relationship with the author or Parr Brown Gee & Loveless, P.C. For legal advice regarding the Families First Coronavirus Response Act, you should consult with your legal counsel.