

# WADLEIGH STARR & PETERS PLLC

Attorneys since 1899



Kathleen C. Peahl

[kpeahl@wadleighlaw.com](mailto:kpeahl@wadleighlaw.com)

Abby Tucker

[atucker@wadleighlaw.com](mailto:atucker@wadleighlaw.com)

## **Client Alert: Families First Coronavirus Response Act Regulations Amended**

On April 10, 2020 the Department of Labor issued corrections to the FFCRA.

Conflicting portions of the new law left employers unclear whether they could require employees to take paid leave under employer-provided policies concurrently with leave under the Emergency Family and Medical Leave Expansion Act (“EFMLEA”). Specifically, both the DOL’s Q&A guidance and Section 826.23(c) of the FFCRA regulations provided that employers could do so, while Section 826.70(f) stated they could not. To resolve this conflict, the DOL has deleted the prohibitive language from Section 826.70 of the regulations.

This change makes it clear that an employee may elect or an employer may require that an employee take accrued paid leave that the employee is entitled to under employer PTO policies concurrently with expanded family and medical leave after the first two weeks of unpaid leave are exhausted. The PTO time that could be used should be limited to personal leave or paid time off. Medical leave should only be used if the employee is actually sick. Where employees are required to take existing leave concurrently with EFMLEA leave, employers must pay them the full amount to which they are entitled under the paid leave policy.

Employees may also, with employer approval, simultaneously take paid leave under the Emergency Paid Sick Leave Act (“EPSLA”) provisions of FFCRA and preexisting PTO in order to supplement the amount received from paid sick leave up to the employee’s normal earnings.

Because the legal issues pertaining to COVID-19 are constantly evolving, we recommend that our clients consult with an attorney for the most current guidance on these matters.