

HRW CLIENT ALERT

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DOL Issues Guidance on Calculating Regular Rate of Pay for FFCRA Leave

The United States Department of Labor (DOL) recently updated its guidance on the Families First Coronavirus Response Act (“FFCRA”). One critical aspect of the updated guidance instructs employers how to calculate paid leave under the FFCRA, including how to calculate the employee’s hours and rate of pay. See questions 81-85 of the guidance [here](#).

For each hour of FFCRA leave taken, an employer must pay the employee based on the employee’s **average** regular rate of pay. The average regular rate is computed over a six-month period ending on the first day that paid sick leave or expanded family and medical leave is taken. **This six-month lookback period applies to all employees, regardless of how they are paid or whether they are full-time or part-time.** (If an employee has been employed for less than six months, then the average regular rate is based on the entire term of the employee’s employment.) The updated guidance provides a number of specific examples, however many different scenarios could arise.

Given the potential liability that could arise from improper pay calculation, we urge employers to review the guidance carefully and to reach out to a member of the HRW COVID-19 Team with any specific questions.

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