OLD REPUBLIC CONTRACTORS INSURANCE GROUP

REGREVIEW℠

June 2020

New Hours-of-Service Rules Arrive Monday

New hours-of-service rules from the Federal Motor Carrier Safety Administration (FMCSA) — as announced on May 14 — are slated for publication in the Federal Register on Monday, June 1.

Their official publication starts a 120-day countdown to when the rules will go into effect. This means drivers and motor carriers will need to comply with the new rules beginning September 29, 2020. The June 1 publication date also sets off a 30-day countdown for opponents of the new rules to petition the FMCSA to change them. Those petitions will be due by July 1, 2020.

Four changes

The new rules will include four significant changes for interstate truck and bus drivers:

- Revisions to the **30-minute break** rule for truck drivers so they can remain "on duty" for their breaks and not have to take a break until completing eight hours of driving time, rather than consecutive time.
- Revisions to the **100-air-mile short-haul exception** to lengthen the maximum on-duty period from 12 to 14 hours and extend the distance limit within which the driver may operate from 100 air miles to 150 air miles.
- Revisions to the **sleeper-berth provisions** to allow truck drivers to split their required 10 hours off into two periods, one being at least 7 hours in a sleeper berth and the other being at least 2 hours off (e.g., a 7/3 or 8/2 split). In addition, neither rest period will count against the driver's 14-hour driving window.
- Changes to the **"adverse driving conditions" exception** to extend by two hours the maximum window of time during which driving is allowed after a driver encounters unexpected weather or traffic conditions.

If Screening Workers, Written Questionnaires Must be Saved for at Least 30 Years

Many employers now check employees' temperatures upon arrival for work to identify workers potentially infected with the SARS-CoV-2 virus that causes COVID-19. Some employers even ask employees to fill out questionnaires on how they're feeling. Guidance from OSHA and CDC pointed out that such documentation would be a "medical record" that must be retained according to 1910.1020.

Specifically, the OSHA/CDC joint guidance for meatpacking plants discussed options such as taking temperatures and performing other screening, with tips on how to perform these tasks safely. Then, a footnote to that section stated:

Employers should evaluate the burdens and benefits of recording workers' temperatures or asking them to complete written questionnaires. These types of written products become records that must be retained for the duration of the workers' employment plus 30 years. See OSHA's Access to Employee Exposure and Medical Records Standard (29 CFR 1910.1020).

While OSHA and CDC recommend screening workers, an employer may want to avoid documenting temperature readings and use verbal rather than written questionnaires.

Screening workers is an optional strategy. If implemented, policies and procedures should be developed in consultation with state and local health officials and occupational medicine professionals. Options to screen workers for COVID-19 symptoms include:

- Screen prior to entry into the facility.
- Provide verbal screening to determine whether workers have had a fever, felt feverish, or had chills, coughing, or difficulty breathing in the past 24 hours.
- Check temperatures at the start of each shift to identify anyone with a fever of 100.4 degrees Fahrenheit or greater (or reported feelings of feverishness). Ensure that screeners wear appropriate PPE, are trained to use temperature monitors, and that monitors are accurate under conditions of use (such as cold temperatures).
- Do not let employees enter the workplace if they have a fever of 100.4 or greater (or reported feelings of feverishness), or if screening results indicate that the worker is suspected of having COVID-19.

If a worker does not meet the screening criteria, encourage him or her to self-isolate, and to contact a healthcare provider. Provide the worker with information on your return-to-work policies and procedures. Then, inform human resources, the employer's health unit (if any), and the worker's supervisor so workload adjustments can be made.

Those performing screening should be protected from exposure to potentially infectious workers entering the facility. This may include:

- Engineering controls such as physical barriers or dividers or rope and stanchion systems, to maintain at least six feet of distance between screeners and workers being screened.
- If screeners need to be within six feet of workers, provide them with appropriate PPE based on the repeated close contact the screeners have with other workers. Such PPE may include gloves, a gown, a face shield, and, at a minimum, a face mask.

CDC Offers Guidance on Ending Home Isolation for COVID-19

The Centers for Disease Control and Prevention (CDC) recently published a guidance titled "When You Can Be Around Others After You Had or Likely Had COVID-19."

If you have (or think you might have) COVID-19, stay home and away from other people. Anyone who has close contact with someone with COVID-19 should remain home for 14 days after exposure. When you can be around others (end home isolation) depends on the situation. The CDC's recommendations differ based on circumstances.

Had or likely had COVID-19 with symptoms

If you think or know that you had COVID-19, and you had symptoms, you can be around others after:

- 3 days with no fever, and
- Symptoms improved, and
- 10 days since symptoms first appeared.

Depending on your healthcare provider's advice and availability of testing, you might get tested. If so, you can be around others when you have no fever, symptoms have improved, and you receive two negative test results in a row, at least 24 hours apart.

Tested positive but no symptoms

If you tested positive for COVID-19 but continue to have no symptoms, you can be around others after 10 days have passed since the test. If you will be tested, you can be around others after two negative test results, at least 24 hours apart.

If you develop symptoms after testing positive, follow the guidance above for "Had or likely had COVID-19 with symptoms."

Weakened immune system

If you have a weakened immune system due to a health condition or medication, you might need to stay home longer than 10 days after possible exposure. Talk to your healthcare provider, who may recommend testing. You can be around others after two negative test results in a row, at least 24 hours apart. If testing is not available, your doctor should work with an infectious disease expert at your local health department to determine if you are likely to spread COVID-19 to others and need to stay home longer.

CDC Offers COVID-19 Guidance for Construction Employers and Workers

The Centers for Disease Control and Prevention (CDC) recently published guidance for protecting construction workers from COVID-19. Construction employers should have a plan to protect workers, and designate a safety and health officer who is responsible for responding to COVID-19 concerns at every Jobsite. Workers should know who this person is and how to contact the coordinator.

The CDC recommends that construction employers take steps to reduce transmission by:

- Encouraging sick employees to stay home.
- Providing information about COVID-19, how it spreads, and the risk of exposure.
- Conducting toolbox talks to explain the protective measures in place.
- Minimizing face-to-face contact for employees in higher-risk groups, or assigning work tasks that allow them to maintain a distance of at least 6 feet from others if possible.
- Providing training on handwashing and other preventative measures. Provide access to soap and clean running water, or hand sanitizer containing at least 60% alcohol.
- Implementing social distancing guidance between workers when possible. Maintain social distancing when visiting lunch trucks or construction site vendors. CDC recommends wearing cloth face coverings where other social distancing measures are challenging to maintain.
- Modifying work schedules to stagger work and alternating workdays or providing extra shifts to reduce the number of workers on a job site at any given time.
- Limiting the number of workers in enclosed and confined areas at one time, such as trailers.
- Cleaning and disinfecting frequently touched surfaces using products that meet EPA's criteria from List N, or approved alternatives. Limit tool sharing, if possible.
- Providing disposable disinfectant wipes (when available) so that surfaces commonly touched can be wiped down.

Workers should notify a supervisor and stay home if they have symptoms. Workers should also notify a supervisor if the worker is well but has a sick family member at home with COVID-19.

CDC Offers COVID-19 Best Practice Information for Employers in Office Buildings

Recent COVID-19 guidance from the CDC addresses workers in office buildings. Office building employers, as well as building owners and managers, can take steps to create a safe and healthy workplace and protect workers and clients.

Before resuming business operations, check the building to see if it's ready for occupancy.

- Ensure that ventilation systems operate properly. For HVAC systems that have been shut down, review new construction start-up guidance provided in *ASHRAE Standard 180-2018, Standard Practice for the Inspection and Maintenance of Commercial Building HVAC Systems*.

- Increase circulation of outdoor air as much as possible by opening windows and doors, using fans, and other methods (unless this would allow outdoor contaminants into the building such as carbon monoxide, molds, or pollen).
- Check for hazards associated with prolonged facility shutdowns such as mold growth, rodents or pests, or issues with stagnant water systems, and take appropriate remedial actions.

Identify where and how workers might be exposed to COVID-19 at work. In particular, identify areas where employees could have close contact (within six feet) with others, such as meeting rooms, break rooms, cafeterias, check-in areas, and waiting areas. Evaluate potential engineering and administrative controls.

Engineering controls

- Modify or adjust seats, furniture, and workstations to maintain six feet between employees. Install shields or other physical barriers where possible to separate employees and visitors where distancing is not an option.
- Arrange reception or other communal seating area chairs by turning, spacing, or removing chairs to maintain distancing.
- Use methods to physically separate employees in meeting rooms, break rooms, parking lots, entrance and exit areas, and locker rooms. Replace high-touch items, such as coffee pots and water coolers with alternatives such as pre-packaged, single-serving items.
- Take steps to improve ventilation, increasing the percentage of outdoor air, and increasing airflow. Consider running the ventilation system even during unoccupied times to maximize dilution ventilation.
- Consider using portable high-efficiency particulate air (HEPA) fan/filtration systems to help enhance air cleaning, especially in higher-risk areas.
- Ensure exhaust fans in restroom facilities are functional and operating at full capacity when the building is occupied.

Administrative controls

- Establish policies and practices for social distancing.
- Encourage employees who have symptoms of COVID-19 or who have a sick family member at home to notify their supervisor and stay home. Perform enhanced cleaning and disinfection after anyone suspected or confirmed to have COVID-19 was in the workplace.
- Consider conducting daily in-person or virtual health checks (e.g., symptoms and/or temperature screening) of employees before they enter the worksite.
- Stagger shifts, start times, and break times to reduce the density of employees in common areas such as screening areas, break rooms, and locker rooms.

- Consider posting signs in parking areas and entrances that ask guests and visitors to wear cloth face coverings if possible, to not enter the building if they are sick, and to stay six feet away from employees, if possible.
- Clean and disinfect frequently touched surfaces such as workstations, keyboards, telephones, handrails, printer/copiers, drinking fountains, and doorknobs. Provide employees with disposable wipes and other cleaning materials so that they can properly wipe down frequently touched surfaces before each use.
- Remind employees to wash their hands often with soap and water for at least 20 seconds. If soap and water are not available, they should use hand sanitizer with at least 60% alcohol.
- For employees who commute using public transportation or carpooling, consider offering incentives such as reimbursement for parking for commuting to work alone or single-occupancy rides. If possible, allow employees using public transportation to shift hours so they can commute during less busy times. Ask employees to wash their hands as soon as possible after the commute.
- Employees should wear a cloth face covering to contain the wearer's respiratory droplets. Employees should not wear cloth face coverings if they have trouble breathing, or if they are unable to remove it without assistance.

Educate employees and supervisors about steps they can take to protect themselves at work. Provide information and training on what actions employees should take when they are not feeling well (e.g., workplace leave policies, local and state health department information).

OSHA and CDC Issue Joint Coronavirus Guidance for Manufacturers

The Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) issued joint guidance for manufacturing facilities on protecting employees and reducing the spread of COVID-19.

Facilities developing plans for continuing operations in the setting of COVID-19 occurring among workers or in the surrounding community should:

- Work directly with appropriate state and local public health officials and occupational safety and health professionals,
- Incorporate relevant aspects of CDC guidance, and
- Incorporate guidance from other authoritative sources or regulatory bodies as needed.

The guidance notes that a number of factors impact the risk of transmission, including distance and duration of contact. In simple terms, the more time people spend in close proximity, the more likely an infected person could transmit the virus. As distance increases and duration of contact decreases, the risk of transmission decreases.

Factors that affect workers' risk for exposure include:

- **Distance** – employees often work close to one another, especially on assembly or processing lines. Workers may also be near each other when clocking in or out, during breaks, or in locker/changing rooms.
- **Duration of contact** – employees often have contact with coworkers for an entire shift. Continued contact with potentially infectious individuals increases the risk of transmission.
- **Type of contact** – workers may be exposed to the virus through respiratory droplets. It is possible that exposure could occur from contact with contaminated surfaces or objects such as tools, workstations, or break room tables.

Other factors that may increase risk among workers include carpooling, taking public transportation, or socializing with coworkers outside the workplace.

The guidance provides recommended engineering and administrative controls, including cleaning and disinfection. It also discusses educating workers and supervisors on how to reduce the spread of COVID-19, screening workers, managing sick workers, and addressing return to work.

EPA Launches Web-Based App to Help People Find Approved List N Disinfectants

The Environmental Protection Agency (EPA) released its List, N Tool. This new web-based application allows smartphone users and others to quickly identify disinfectant products that meet EPA's criteria for use against SARS-CoV-2, the virus that causes COVID-19. The agency also announced new actions to ensure that new disinfectant products that are safe and effective to use against SARS-CoV-2 can be added to EPA's *List N: Disinfectants for Use Against SARS-CoV-2* as quickly as possible.

For more than two months, EPA has provided the public with List N, a list of more than 400 surface disinfectant products that meet the agency's criteria for use against SARS-CoV-2. The agency transformed the data from the List N webpage into a browser-based web app that allows users to rapidly identify the disinfectant products best suited for their needs. Users can search by:

- use site (e.g., home, business, health care, etc.),
- surface type (e.g., hard, non-porous surfaces like countertops; porous surfaces like fabrics),
- contact time (i.e., the time the product needs to be visibly wet),

- EPA registration number,
- the active ingredient, or
- product name.

EPA is also continuing its efforts to ensure that List N is updated as quickly as possible with new disinfectant products. Building on the agency's previously announced expedited review for EPA-registered disinfectants that do not require a review of new efficacy data, today, the agency announced an expedited review process for other products that would like to qualify for EPA's List N. These additional products include currently registered products that require a data review and applications for new disinfectant products.

EPA may also consider an expedited review of new active ingredients or new uses for currently registered active ingredients (including higher application rates, new application methods such as fogging and electrostatic sprayers, or use sites such as porous surfaces).

When using an EPA-registered disinfectant, follow the label directions for safe, effective use. Make sure to follow the contact time, which is the amount of time the surface should be visibly wet.

EPA Stops Sale of Pesticides Falsely Claiming to be Effective Against COVID-19

The Environmental Protection Agency (EPA) issued a "Stop Sale" order to an Illinois company regarding the sale or distribution of certain pesticide products. The company made claims that are not allowed under the products' registrations regarding the products' safety and effectiveness against the virus that causes COVID-19.

The order requires the company to stop selling or distributing pesticides, which EPA has determined to be misbranded until those false or misleading claims are removed from their labels and sales materials. In order to make public health claims referencing effectiveness against SARS-CoV-2, the company must apply for and obtain approval from EPA.

In addition, the "Stop Sale" order alleges that the company made false or misleading claims that the products can be used to "sterilize" a facility that is not supported by the product registration. The company's website also stated that the products are "safe" and "not poisonous" even though the labeling required for each product includes language such as "poison," "harmful if swallowed, absorbed through the skin, or inhaled," or "causes irreversible eye damage and skin burns."

Finally, the order addressed claims that a product can be used to sterilize N95 masks using a process approved by the EPA, among other federal agencies. In fact, the product is not registered for use as a sterilant or to sterilize N95 masks.

In a similar case, EPA reported that a woman who sold an unregistered pesticide as protection against viruses such as COVID-19 has pleaded guilty to violating FIFRA. The defendant sold an unregistered pesticide through eBay, claiming that it would help protect individuals from viruses.

These cases show that consumers need to be cautious of products that make claims of controlling viruses. Consumers can visit epa.gov/coronavirus for a list of approved products. Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), products that claim to kill, destroy, prevent, or repel bacteria or viruses, among other things on surfaces, are considered pesticides and must go through EPA's registration process to ensure that the products perform as intended prior to their distribution or sale in commerce.

OSHA Adopts Two Revised Enforcement Policies for Coronavirus

The Occupational Safety and Health Administration (OSHA) has adopted revised policies for enforcing OSHA's requirements concerning coronavirus as economies reopen in states throughout the country.

Throughout the pandemic, understanding about the transmission and prevention of infection has improved, with evolving measures to slow the spread, protect employees, and adapt to new ways of doing business. Now, as states begin reopening their economies, OSHA has issued two revised enforcement policies to ensure employers are taking action to protect their employees.

First, OSHA is increasing in-person inspections at all types of workplaces. The new enforcement guidance reflects changing circumstances in which many non-critical businesses have begun to reopen in areas of lower community spread. The risk of transmission is lower in specific categories of workplaces, and personal protective equipment potentially needed for inspections is more widely available. OSHA staff will continue to prioritize COVID-19 inspections and will utilize all enforcement tools as OSHA has historically done.

Second, OSHA is revising its previous enforcement policy for recording cases of coronavirus. Under OSHA's recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

Under the new policy issued on May 19, 2020, OSHA will enforce the recordkeeping requirements of 29 CFR 1904 for employee coronavirus illnesses for all employers. Given the nature of the disease and community spread, it remains challenging to determine whether a coronavirus illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace. OSHA's guidance emphasizes

that employers must make reasonable efforts, based on the evidence available to the employer, to ascertain whether a particular case of coronavirus is work-related.

Recording a coronavirus illness does not mean that the employer has violated any OSHA standard. Following existing regulations, employers with 10 or fewer employees and certain employers in low hazard industries have no recording obligations; they need only report work-related coronavirus illnesses that result in a fatality or an employee's in-patient hospitalization, amputation, or loss of an eye.

EEO-1 Reporting Deadline Delayed to 2021

Employers subject to EEO-1 filing requirements will get a reprieve this year, according to the Equal Employment Opportunity Commission (EEOC). Due to the COVID-19 health emergency, the EEOC has announced that it will delay the collection of 2019 data until at least 2021.

According to the announcement, covered employers should expect to submit both 2019 and 2020 data during next year's filing window. Currently, the EEOC expects that window to open in March 2021, but it will evaluate and announce the date closer to that time.

The EEOC says that the delay is a result of the unprecedented situation currently impacting the American workforce, and its effect on both employers and employees. The agency believes the delay will "ensure that EEO filers are better positioned to provide accurate, valid, and reliable data in a timely manner." It will also allow filers to focus on more urgent issues at hand.

As a reminder, employers subject to EEO-1 filing requirements include:

- Private employers who are subject to Title VII of the Civil Rights Act and who either:
    - Have 100 or more employees, excluding state and local governments, primary and secondary school systems, institutions of higher education, Indian tribes and tax-exempt private membership clubs other than labor organizations; OR
    - Have fewer than 100 employees if the company is owned or affiliated with another company, or there is centralized ownership, control, or management (such as central control of personnel policies and labor relations) so that the group legally constitutes a single enterprise. The entire enterprise employs a total of 100 or more employees.
- Private employers who have 50 or more employees and who either:
    - Are prime contractors or first-tier subcontractors, and have a contract, subcontract, or purchase order amounting to $50,000 or more; or
    - Serve as depositories of government funds in any amount, or
    - Are financial institutions acting as issuing and paying agents for U.S. Savings Bonds and Notes

Regular filers of the EEO-1 can expect to hear from the EEOC soon, which will reach out with more information about the delay. This change will also impact filers of other EEO surveys, including the 2020 EEO-3 (Local Report), and the 2020 EEO-5 (Elementary-Secondary Staff Information Report).

New OSHA Poster on Proper Workplace Use of Respirators

The Occupational Safety and Health Administration (OSHA) released a new poster for employers and workers on how to properly wear and remove a respirator. For workers who use respirators to protect themselves from coronavirus exposure, a properly worn respirator can help reduce the wearer's risk of viral exposure and help prevent its spread to others.

The poster is available in English and Spanish and describes seven steps every worker should follow when putting on and taking off a respirator.

1. Wash hands with soap and water or alcohol-based hand rub containing at least 60 percent alcohol before putting on and after removing the respirator;
2. Inspect the respirator for damage;
3. Cover mouth and nose with the respirator and pull the strap over the head so that it rests at the back of the head. A second strap should rest at the back of the neck. Use the metal nose clips to mold the respirator to the shape of the nose;
4. Adjust the respirator by placing both hands over it and inhaling and exhaling. Readjust the straps if air leaks from the respirator's edges;
5. Avoid touching the respirator while wearing it;
6. Remove the respirator by grabbing the strap(s) from behind. Do not touch the front; and
7. If the respirator does not need to be reused because of supply shortages, discard it in a closed-bin waste receptacle.

The poster is the latest effort by OSHA to educate and protect America's workers and employers during the coronavirus pandemic. OSHA has also published Guidance on Preparing Workplaces for COVID-19, a document aimed at helping workers and employers learn about ways to protect themselves and their workplaces during the ongoing pandemic.

OSHA Cites Retailer for Exit, Storage, and Fire Hazards

The Occupational Safety and Health Administration (OSHA) cited a retail store in Wisconsin for an exit, storage, and fire hazards. The national discount retailer faces $477,089 in penalties.

OSHA inspectors found the company exposed employees to fire hazards from obstructed and unmarked exit routes and blocked fire extinguishers, and failed to maintain fire extinguishers. The employer also exposed employees to struck-by hazards caused by unstable stacks of stored merchandise, and to fire and electrical hazards associated with blocked electrical panels.

A blocked fire exit could be life-threatening during an emergency. For employers with multiple locations, a citation issued at one location can become a repeat violation at another facility. OSHA cited the retailer for one other-than-serious, two repeat, and three willful violations.

The company has 15 business days from receipt of the citations and penalties to comply, request an informal conference with OSHA's area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

OSHA Cites Roofing Contractor for Exposing Employees to Fall Hazards

The Occupational Safety and Health Administration (OSHA) has cited a Florida-based roofing contractor for exposing employees to fall hazards at a residential work site. The contractor faces penalties of $134,937.

OSHA initiated the inspection in November 2019, as part of the agency's Regional Emphasis Program for Falls in Construction, after inspectors observed employees working on roofs without fall protection. The agency has inspected the company 18 times in the past six years, with 12 of the inspections resulting in repeat violations of the fall protection standard.

The company has 15 business days from receipt of the citations and proposed penalties to comply, request an informal conference with OSHA's area director, or contest the findings before the independent Occupational Safety and Health Review Commission.

Beware FMLA/FFCRA Cyberattacks

As if complying with the federal Family and Medical Leave Act (FMLA) and the employee leave provisions of the Families First Coronavirus Response Act (FFCRA) weren't challenging enough, employers also need to consider another aspect of the situation. Cyberattacks in the form of emails or messages that appear to be from the U.S. Department of Labor.

Employees may receive this type of electronic correspondence referencing the pandemic-related changes to the FMLA — particularly the FFCRA. The message, however, has some obvious misstatements, such as referring to the FFCRA as the Coronavirus (COVID-19) Act, and that the Act became effective April 29, 2020. If read carefully, it's obviously a ruse, but employees might not take the time to read the message carefully.

In at least one scam, an email instructs recipients to open an attachment to see the changes to the FMLA and an employee request form. Using these attachments, employees may “demand paid leave” under the law by completing the form and sending it off to their HR department.

If employees click on the attachment, the attackers can gain control of the device being used and perhaps launch the ransomware.

Spam purporting to come from a government entity is not new, and cybercriminals often take advantage of recent events. The attacks are not limited to the federal government but may also appear to come from a state agency, such as a state labor department or unemployment office. In some cases, spam emails may appear to be from the company’s HR department.

All employees should be trained to spot real or potential threats, to avoid opening attachments or clicking links from unexpected emails or emails from unusual sources — even if the emails appear to be from someone employees recognize. Employees should have a reasonable level of suspicion of messages that have random links and/or attachments.

Employees should know to hover over any suspicious links to help identify the source. The best bet is to directly contact the entity who supposedly sent the email and ensure that it was legitimate. If an email asks employees to log into an account or service, they should log into their account directly through a browser instead of clicking a link or attachment in an email.

Attacks are not restricted to emails, they may come in the form of text messages or other messaging services, phishing and smishing are the leading cause of breaches. Phishing is the practice of sending emails that appear to be from a reputable source in order to induce recipients to reveal personal information or to gain access to a system. Smishing is a phishing attack using messaging instead of email. Ransomware is an insidious type of malware that encrypts, or locks, valuable digital files and demands a ransom to release them.

These attacks are to be taken seriously. According to the FBI’s Internet Crime Complaint Center, people lost $57 million to phishing schemes in 2019.

The Lawsuits Are Coming! The Lawsuits Are Coming!

While stay home orders ease up, employer concerns over the Families First Coronavirus Response Act (FFCRA) should not. This law was created fast and furiously, and employers had little time to become aware of it, let alone comply with it. Within weeks of the law’s enactment, the claims began, arguing that employees were denied leave under the FFCRA, or they were retaliated against because they requested such leave.

In one of the first suits, after an employee was directed to work from home, she requested two hours of paid time off per day under the FFCRA to take care of her son, as his school was shut down due to COVID-91-related reasons. In response to her request, the employee’s supervisor denied the leave and fired the employee a few days later. The company argued that the reason for the termination was that the employee had conflicts with coworkers, and it was best they part ways. In the suit, the employee seeks reinstatement,

recovery of lost wages and benefits, attorney fees, interest on any award, and liquidated damages. All this can be expensive.

The childcare provisions of the FFCRA generally expand upon the regular FMLA, so the FMLA's provision that anyone acting on behalf of the employer (e.g., supervisors, managers, HR professionals) may be individually named in a claim, is also in play.

While claims litigated when the law was new might see a bit more leniency, as time goes by, employers may be held more accountable as they are expected to realize the law's requirements and abide by them.
The FFCRA has a few interesting twists. It does not, for example, require employees (plaintiffs) to exhaust administrative remedies before filing a private lawsuit. This means that claims can come fast.

Employees may also file complaints with the Department of Labor's Wage and Hour Division regarding FFCRA. Early investigations involved employers who allegedly failed to pay employees for what qualified as paid sick leave for reasons such as a doctor's instructions to self-quarantine. Employers generally had to pay the employees' full wages of $20 an hour for 80 hours of leave in these situations. One employer mistakenly believed that an employee had to submit proof of a positive coronavirus test to qualify for the paid leave. Other employers failed to provide the expanded family and medical leave for childcare issues, like the case referenced earlier.

Employers may take some steps to help avoid FFCRA claims. Training management staff on the FFCRA, for example, can help shore up any weak links you may have. Having one company representative be well versed in the FFCRA and responsible for staying up to date on it can also ensure actions taken do not risk a violation. This individual may also be tapped to handle any FFCRA-related issues and questions as they arise.
The FFCRA remains effective until December 31, 2020, so there is plenty of time for claims to be submitted. Friends, U.S. employment law attorneys have enough to do; no need to give them more work.