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April 20, 2020

The Honorable Lamar Alexander  
Chairman  
The Honorable Patty Murray  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Robert C. "Bobby" Scott  
Chairman  
The Honorable Virginia Foxx  
Ranking Member  
Committee on Education and Labor  
House of Representatives

Subject: *Department of Labor, Wage and Hour Division: Paid Leave Under the Families First Coronavirus Response Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor (DOL), Wage and Hour Division entitled "Paid Leave Under the Families First Coronavirus Response Act" (RIN: 1235-AA35). We received the rule on April 6, 2020. It was published in the *Federal Register* as a temporary rule on April 6, 2020. 85 Fed. Reg. 19326. The effective date of the rule is April 2, 2020, through December 31, 2020. The operational date of the rule is April 1, 2020.

The temporary rule establishes new regulations governing paid leave requirements. According to DOL, this action implements two emergency paid leave requirements created under the Families First Coronavirus Response Act, as amended (FFCRA), enacted in response to the Coronavirus Disease 2019 (COVID-19) global pandemic. Pub. L. No. 116-127, div. C, E, 134 Stat. 178, 189, 195 (Mar. 18, 2020), *amended by* Pub. L. No. 116-136, div. A, §§ 3601, 3602, 3611, 134 Stat. 281, 410, 414 (Mar. 27, 2020). DOL states that FFCRA entitles certain employees to take up to 2 weeks of paid sick leave, and permits certain employees to take up to 12 weeks of expanded family and medical leave, 10 of which are paid, for specified reasons related to COVID-19. DOL asserts that this temporary rule implements these statutory requirements. According to DOL, after December 31, 2020, FFCRA and this temporary rule do not affect the Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601-2654.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(B), (d), 808(2). Here, although DOL did not

specifically mention the CRA's 60-day delay in effective date requirement, the agency found good cause to waive notice-and-comment procedures and incorporated a brief statement of reasons. First, DOL noted that FFCRA authorizes it to issue certain regulations pursuant to the good cause exception. Pub. L. No. 116-127, div. C, § 3102(b), div E, § 5111, *amended by* Pub. L. No. 116-136, div. A, § 3611. DOL stated that there is an exigency created by the sections of FFCRA that go into effect on April 1, 2020, and expire on December 31, 2020. FFCRA was enacted on March 18, 2020. DOL determined that a decision to undertake notice and comment rulemaking would likely delay final action on the rule by weeks or months, and would, therefore, complicate and likely preclude successful implementation. DOL also noted that delaying the rule would be counter to one of FFCRA's main purposes of establishing paid leave, which is to enable employees to leave the workplace now to help prevent the spread of COVID-19.

Enclosed is our assessment of DOL's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Shruti Shah  
Specialist, Wage and House Division  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF LABOR,  
WAGE AND HOUR DIVISION  
ENTITLED  
“PAID LEAVE UNDER THE FAMILIES FIRST  
CORONAVIRUS RESPONSE ACT”  
(RIN: 1235-AA35)

(i) Cost-benefit analysis

The Department of Labor, Wage and Hour Division (DOL) estimated the number of affected employers and quantified the costs associated with this temporary rule. DOL determined that FFCRA would result in different categories of costs: rule familiarization costs, documentation costs, costs of posting a notice, other managerial and operating costs, and costs to the department. DOL estimated a one-time rule familiarization cost of \$295,072,691 for employers to spend 1 hour to review the rule to determine their responsibilities. DOL estimated that small employers would incur documentation costs of \$28,413,965 to document their use of the exemption from providing paid leave based on a showing that compliance would jeopardize the viability of their business as a going concern. DOL estimated that employers would incur documentation costs of \$153,002,937 for employees requesting the new leave because of the requirement to retain documentation in support of such leave as it may be required for tax credits and other purposes under FFCRA. DOL estimated total documentation costs for employers of all sizes to be \$181,416,902 (\$28,413,965 + \$153,002,937). DOL estimated that employers would incur \$76,718,919 to prepare and post the notice required by FFCRA to inform employees of the new requirements. DOL noted that employers may incur other managerial and operating costs that DOL is unable to quantify. DOL noted that its Wage and Hour Division would also incur costs associated with the new requirements, but that it does not have data to assess this cost. In summary, DOL estimated in 2018 dollars the quantifiable total costs in 2020 to be \$553 million:

Rule Familiarization Costs	\$295,072,691
Documentation Costs	\$181,416,902
Cost of Posting a Notice	\$76,718,919
<b>Total Costs</b>	<b>\$553,208,512</b>

DOL identified transfers associated with this temporary rule as the paid sick leave and expanded family and medical leave that employees will receive as a result of FFCRA. DOL noted that the paid leave will initially be provided by employers, who will then be reimbursed by the Department of the Treasury through a tax credit, up to statutory limits, which is then ultimately paid for by taxpayers. DOL stated that although it lacks data to quantify the transfer of paid leave, it expects that the transfer is likely to exceed \$100 million in 2020. DOL stated that the benefits of the paid leave provisions are vast, not quantifiable, and expected to greatly outweigh any costs.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

DOL certified that this temporary rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

DOL determined that this temporary rule includes a federal mandate that is expected to result in increased expenditures of more than \$165 million (\$100 million, adjusted for inflation) in the first year. Based on its cost analysis, DOL determined that the rule will result in Year 1 total costs totaling \$553 million for rule familiarization, documentation, and posting of notices. DOL stated that there would be no additional costs incurred in subsequent years. DOL determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect on the economy. DOL stated that it chose the least burdensome option given the FFCRA provisions.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 6, 2020, DOL published this temporary rule. 85 Fed. Reg. 19326. DOL issued the rule without prior notice and opportunity to comment and with an immediate effective date. DOL found good cause to waive notice-and-comment-procedures and to make the rule effective immediately and until the underlying statute sunsets on December 31, 2020. DOL noted that FFCRA authorizes it to issue certain regulations pursuant to the good cause exception. Pub. L. No. 116-127, div. C, § 3102(b), div. E, § 5111, *amended by* Pub. L. No. 116-136, div. A, § 3611. DOL stated that there is an exigency created by the sections of FFCRA that go into effect on April 1, 2020, and expire on December 31, 2020. DOL stated that a decision to undertake notice and comment rulemaking would likely delay final action on the rule by weeks or months, and would, therefore, complicate and likely preclude successful implementation. Finally, DOL noted that delaying the rule would be counter to one of FFCRA's main purposes of establishing paid leave, which is to enable employees to leave the workplace now to help prevent the spread of COVID-19.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

DOL determined that this temporary rule contains information collection requirements under the Act. DOL created a new information collection request and submitted the request to the Office of Management and Budget (OMB) for approval—Paid Leave under the Families First Coronavirus Response Act (OMB control number 1235-0NEW). DOL estimated 801,962 burden hours and a burden cost of \$4,255,500.

Statutory authorization for the rule

DOL promulgated this temporary rule pursuant to sections 3102(b) and 5111(3) of Public Law 116-127 and section 3611(7) of Public Law 116-136.

Executive Order No. 12,866 (Regulatory Planning and Review)

DOL prepared a Regulatory Impact Analysis in connection with this temporary rule as required by the Order, and OMB reviewed the rule.

Executive Order No. 13,132 (Federalism)

DOL determined that this temporary rule does not have federalism implications and does not impose substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.