



NECA Fact Sheet

Stay-at-Home Orders Following DOL Temporary Regulations

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Since our most recent “NECA Fact Sheet: Families First Coronavirus Response Act FAQ,” prepared on Wednesday, April 1, 2020, the Department of Labor (DOL) promulgated temporary regulations applicable to the Families First Coronavirus Response Act (FFCRA) through December 1, 2020.

Among other items, the DOL clarified how **local, state, or federal “shelter in place”/“stay at home” orders** affect entitlements to FFCRA leave. Because the DOL’s regulations diverge, to some extent, from previous guidance and expectations, we highlight this issue for our members.

- Under the FFCRA, an employee is entitled to paid sick time if the employee is “unable to work (or telework)” due to the need for leave because the employee is subject to a “Federal, State, or local quarantine or isolation order.”
- The DOL has now clarified that a “quarantine or isolation order” *includes* shelter in place and stay at home orders.
- Therefore, an employee may take paid sick leave if being subject to a shelter in place/stay at home order *prevents* him/her from working, including teleworking.
- This means the employee would be unable to work or telework “*but for*” the order.
- Examples:

Scenario	Are employees entitled to paid benefits under the FFCRA?
A business closes temporarily or indefinitely due to a business downturn related to COVID-19.	No. The employee could not work even if there was no stay at home/shelter in place order.
A business closes because business is down due to its customers being subject to a stay at home/shelter in place order.	No. The reason the employee could not work is because the customers were subject to the order, not because the employee was subject to the order.
A business is ordered to close due to a stay at home/shelter in place order.	No. The reason the employee cannot work is because the business is ordered closed, not because the employee is subject to the order.
An employee is subject to a stay at home/shelter in place order, but is able to telework.	Maybe. An employee is <i>not</i> entitled to paid sick leave if: (a) the employer has work for the employee to perform, (b) the employer permits the employee to work remotely, <i>and</i> (c) there are no extenuating circumstances that prevent the employee from performing that work (for example, a power outage preventing the employee’s use of a computer).
An employee is subject to a stay at home/shelter in place order, but the employer is not.	Yes. An example of this situation is an employer located in a state without a shutdown order, but the employee works in a state with a shutdown order.
An employee is caring for an individual who is subject to a stay at home/shelter in place order.	Yes, if the employee would be able to perform work but for having to care for the individual and this person is (a) an employee’s immediate family member, or (b) a person who regularly resides in the employee’s home, or (c) has a “personal relationship” with the employee requiring the employee’s care. No, if the employer does not have work for the employee.

