



Thank you for reading the HR Advisor Newsletter. This month we cover what good leadership requires during a pandemic, the temporary hold on the in-person I-9 inspection requirement, significant rule changes related to the FFCRA, and questions employers have now that the school year has begun.

Leading During a Pandemic

No one knows what the workplace is going to look like in three months. COVID-19 continues to spread. School reopening and attendance plans remain tenuous. Further action from Congress is uncertain. Official rules

from the Department of Labor might even be struck down in court, further adding to the confusion about what employers are supposed to be doing.

Leading an organization right now can feel like driving to a destination you're not sure exists on a road that's changing right before you.

In this situation, we need to accept that the typical ways of leading a team may not prove successful. The simple question of what success looks like right now isn't easy to answer with either clarity or consistency. For instance, conventional wisdom around goal setting says that goals should be specific, measurable, attainable, relevant, and time-bound (SMART goals). But the pandemic has made it much more difficult to pin any of these down. Think of the movie studio executives attempting to calculate the risks of releasing a feature film on a streaming service instead of in movie theaters. Or grocery store employees trying to mandate mask wearing and social distancing when some vocal customers don't want to cooperate. What success looks like in these situations is not at all clear.

While it's unlikely that leaders can bring true clarity and certainty to the present moment, there are leadership practices that can help promote the well-being of the organization and its people. We recommend the following:

- **First and foremost, ensure that employees are healthy and safe in the workplace.** Stay up to date with the latest safety guidelines. Provide employees with adequate PPE, cleaning supplies, and safety training, and prioritize their health and safety when making business decisions. If your employees are doing fine working from home, don't feel pressure to return them to the office just because that's the way things used to be. If they want to take extra measures to protect themselves at work, allow it. If they suggest modifications that they feel will make everyone safer, seriously consider investing in those changes.
- **Enforce the rules.** Employees desire and deserve safety (and OSHA requires it) and are looking to their leaders to create and maintain stability. Although you may have some "squeaky wheels"

who are vocal about not wanting to follow the rules — whether that's wearing a mask in the office or turning on their video for Zoom meetings — consistency will be essential to keeping the workplace both safe and orderly during these strange times. Enforcing company rules and policies, along with the rules of your state or locality, will increase both safety and overall trust in leadership.

- **Be compassionate and fair.** The mental and physical stress of the pandemic is affecting people differently, so they may need different treatment. This doesn't mean bending the safety rules for those who don't like them or letting employees overlook basic online etiquette because they're stressed out. It does, however, mean adjusting your expectations when employees are in a caregiving role, sick themselves, lonely, anxious, dealing with children who are home 24/7 for the foreseeable future, living with unruly pets, or all of the above. Productivity may be down, and it may stay that way for quite some time. If it's any consolation, nearly every organization in the nation is dealing with the same issues right now. Even for companies whose profits are up, productivity, morale, and scheduling are a struggle. Good leaders will accept the situation and set about making it as workable as it can be for employees and the organization as a whole.
 - **Focus on the overall mission of your organization.** Analysis from Gallup [indicates](#) that people in a crisis look to their leaders for trust, compassion, stability, and hope. We've already talked about the first three, but don't underestimate the need for hope right now. Do what you can to reach out proactively to employees and ensure they understand how their work is connected to the mission and success of the organization. Remind everyone of what you're all doing and why you're doing it. Hard numbers and specific projections are still important, but they may not be the most important thing to highlight at this time. Where numbers fail, knowing that at the end of the day (month, or year) your organizations will still be able to deliver a quality product or
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service that will make the lives of your clients and customers better can go a long way toward instilling hope.



News Brief

DHS Relaxes In-Person I-9 Inspection Requirements

The physical presence requirement of the *Employment Eligibility Verification, Form I-9*, requires that employers, or an authorized representative, physically examine, in the employee's physical presence, the unexpired document(s) the employee presents from the Lists of Acceptable Documents to complete the Documents fields in Form I-9's Section 2.

On March 20, 2020, the Department of Homeland Security announced that effective immediately, the physical presence requirement has been temporarily suspended for employers and workplaces that are operating remotely due to COVID-19 related precautions. In other words, employers with employees taking physical proximity precautions due to COVID-19 (and operating remotely) are not required to review the employee's identity and employment authorization documents in the employee's physical presence. **On August 18, DHS announced another 30-day extension of this temporary rule. The rule is now set to expire on September 19, 2020.**

The USCIS has guidance, including example forms, is available [here](#).

Limitations and Liabilities

- If there are employees physically present at a work location, then in-person verification of identity and employment eligibility documentation for Form I-9 continues to be required. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate this on a case-by-case basis.
- Employers may designate an authorized representative to act on their behalf to complete Section 2 and may be any person the employer designates to complete and sign Form I-9 on their behalf. However, employers are liable for any violations in connection with the form or the verification process, including any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer's behalf.

Section 2 Documents Must be Inspected Remotely

Employers must still inspect the Section 2 documents but may do so remotely (for instance, over video link, fax or email). Employers must also obtain, inspect, and retain copies of the documents they inspect, within three business days so as to complete Section 2. Employers are also directed to:

- Enter "COVID-19" as the reason for the physical inspection delay in the additional information field of Section 2 once physical inspection takes place after normal operations resume; and
- Add "documents physically examined," with the date of inspection to either the additional information field of Section 2 or to section 3 (as appropriate) once the documents have been physically inspected.

Employers may implement remote document inspections until May 19, 2020 ("up to 60 days from the date of the announcement") or within three

business days after the termination of the National Emergency, whichever comes first. Importantly, employers who implement remote onboarding and telework policies must provide documentation for each employee. This burden rests solely with the employers.

In-Person Verification Required after Normal Operations Resume

Once normal operations resume, all employees who were onboarded using remote verification must report to their employer within three business days for in-person verification of identity and employment eligibility documentation they presented for their Form I-9. Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field or to section 3, as appropriate.

Any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting date for *record retention purposes* for these employees only.



News Brief

FFCRA Leave – Significant Rule Changes

A federal court in New York recently struck down four federal Department of Labor rules related to the leaves provided by the Families First Coronavirus Response Act (FFCRA). As a result, certain aspects of the

FFCRA are now more favorable to employees. Unfortunately, it's not clear if the ruling applies nationwide or only in the Southern District of New York, where the court is located. Until there is further activity in the case—which may clarify whether the rules remain intact throughout the rest of the country—we recommend that employers err on the side of caution when administering FFCRA leaves and assume these particular rules no longer apply.

What is clear is that these four rules *definitely* do not apply to the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester (i.e., the Southern District of New York).

Here are the rules that the court invalidated:

The requirement that work be available for an employee to use leave

- **DOL Rule:** The DOL said that for an employee to use Emergency Paid Sick Leave (EPSL) or Emergency Family Medical Leave (EFMLA, aka EFMLEA), the employer had to have work available for them during the time they needed leave. For instance, if an employee was furloughed while sick with COVID-19, they would not be eligible for EPSL.
- **The Court's Ruling:** Availability of work is irrelevant. If an employee is still employed, whether on the schedule or not, they should be allowed to use FFCRA leave for qualifying reasons.

The requirement that employers agree to intermittent leave

- **DOL Rule:** Employees must get approval from their employer to use intermittent leave to care for their children when their school or place of care is unavailable because of COVID-19.
- **The Court's Ruling:** If an employee needs intermittent leave (partial weeks or partial days off) to care for their child whose school or place of care is unavailable because of COVID-19, the employer must allow it.

The requirement that employees provide documentation *before* taking leave

- **DOL Rule:** Employers could require that employees provide certain documentation before being allowed to take FFCRA leave or before designating the leave as EPSL or EFMLA.
- **The Court's Ruling:** Employers can still require documentation (which is necessary to get their tax credit), but they can't prevent an employee from starting leave until the documentation is received. The law clearly states that an employee must provide notice "as is practicable" when taking EFMLA and after the first workday of leave when taking EPSL.

The definition of health care provider, for the purpose of exemption from leave

- **DOL Rule:** The DOL defined health care providers very broadly, to include anyone who works for a healthcare entity and many who contract with one. (The rule was so broad that a custodian working at a drugstore or an English professor at a university with a medical school could be exempt.)
- **The Court's Ruling:** The definition is too broad. However, the court did not provide a new definition. We recommend that employers apply the exemption only to those employees capable of directly providing healthcare services.

We will be watching closely for activity in this case and will let employers know if and when things change or become clearer.



Content Spotlight

Back-to-School: Frequently Asked Questions about Leave under the Families First Coronavirus Response Act (FFCRA)

Now that the school year has begun, employers have additional questions about leave under the FFCRA. We created an FAQ on the HR Support Center to help answer these questions. You can find it by searching ***back to school***.

Our HR Pros are ready to help

**Have any questions about this communication?
Our team of HR Professionals is ready to help you.**



Over the phone at:
(877) 880-4772



Online via your
HR Support Center



Available 8am to
8pm
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