

FFCRA and CARE Act Webinar

Wednesday, April 1, 2020



PGATM



FFCRA and CARE Act Webinar

- Webinar
 - All attendees muted until Open Forum
 - Ask questions in the toolbar by clicking on the question mark

FFCRA and CARE Act Webinar

- Panelists
 - Ben Welsh, PGA
 - Eddie Ainsworth, PGA
 - Monica Denler - CEO, InTandem HR
 - Stacy Jensen - HR Director, InTandem HR

**Families First Coronavirus Response (FFCRA) Act
Coronavirus Aid, Relief, and Economic Security Act
CARES Act**



**Monica Denler, CEO and President
Stacy Jensen, SPHR, HR Director**

Families First Coronavirus Response Act

Signed into law on March 19, 2020, with most provisions having an effective date April 1st. Covered employers = 500 or fewer employees.

Includes (for our purposes today)

1. Emergency Family and Medical Leave Expansion Amendments to the FMLA providing for paid-FMLA leave
2. Creation of paid sick leave
3. Tax Credit Provisions for reimbursement of paid leave

Qualifying Reasons for Leave: DOL Guidance

Under the Act, an employee qualifies for expanded family and medical leave if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (sources state stay in place does NOT count);
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the Act, an employee qualifies for expanded family and medical leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Duration of Leave : DOL Guidance

For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay: DOL Guidance

For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason(5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

See: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

PAID FMLA v PSL

- Are there exemptions from paid sick leave for employers with less than 50 employees or is that only for the expanded FMLA section? *It is only available for leave due to school closings or child care unavailability and sick leave.*
- Does the law account for hardship on a company? *Yes, where the viability of the business is threatened.*

EMPLOYER SIZE AND EXEMPTIONS

- Can employers under 50 exempt themselves from PSL? *No, the Secretary of Labor must grant the exemption.*

PAY AND REIMBURSEMENT QUESTIONS

- An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time.
- Does the 80-hour paid sick leave have to be a separate bank or can you utilize an employee's current PTO or sick leave bank where they already have enough hours? *The paid sick time under the Act is in addition to existing employer paid leave.*
- How do we calculate leave pay employee whose schedule varies from week to week? *Use average number of hours the employee was scheduled per day over 6-months ending on the date on which the employee takes leave, including prior leave hours.*
- Does the expanded FMLA or the PSL cover employees that are put on leave because the business doesn't have enough business to remain open? *No. This is not one of the covered circumstances.*

GENERAL QUALIFICATION QUESTIONS

- If an employee has the ability to telework, then the employer does not have to pay any of this, but what if an employee gets coronavirus and is too sick to work from home? *If the employee can no longer work, then he/she qualifies for leave for contracting the virus.*
- How would it work for a person who is “scheduled” to go on regular FMLA (due to unrelated - like bonding with newborn) but is then in this expanded FMLA? *The amount of leave should not exceed 12 weeks for any covered purpose under FMLA or eFMLA.*
- What kind of documentation is required to grant the paid sick leave? *IRS will be uploading forms.*
- Reasons for PSL - would that include 'high risk' who self-isolate? *No. They would have to have be quarantined by a health provider.*

RIGHT TO RETURN TO WORK AFTER LEAVE

Employer has duty to restore Employee to the same or equivalent position upon return from eFMLA OR Paid Sick Leave

- Same FMLA exception applies: Employer lays off an employee for legitimate business reasons during the leave (include business closure)
- DOL clarified employers can deny reinstatement to a “key” employee or
- Employee works for an employer with less than 25 employees, requests Childcare Leave, AND all four of the following factors apply:
 1. Position no longer exists due to economic or operating conditions that affect employment AND are due to COVID-19 related reasons;
 2. Employer made reasonable efforts to restore the employee to the same or equivalent position;
 3. Employer makes reasonable efforts to contact the employee of an equivalent position becomes available;
 4. Employer continues to make reasonable efforts to contact the employee for one year, beginning on the date the COVID-19 leave ends or the date 12 weeks after leave began, whichever is earlier

GETTING REIMBURSED

- Employers should set up separate pay codes
 - One for PSL
 - One for eFMLA
- Immediate Paid Leave Payroll Tax Credits
 - Reimbursed dollar for dollar
 - IRS indicates employers can recoup payments immediately by keeping a portion of the deposit they otherwise would pay as part of their employees' federal, social security and Medicare taxes

Visit the IRS Coronavirus Tax Relief site: <https://www.irs.gov/coronavirus>

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

IRS Form 7200 is in DRAFT Form (Advance Payment of Employer Credits due to COVID-19)

FFCRA Updates

Note: The First Employee Rights Poster Form Issued by DOL was incorrect. Replaced with Poster March 27th. Each covered employer must post FFCRA notice onsite. Email, mail, or post notice on an employee information internal or external website.

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Multiple Q&As Issued by DOL

- “COVID-19 and the Family Medical Leave Act”

<https://www.dol.gov/agencies/whd/fmla/pandemic>

- “COVID-19 and the Fair Labor Standards Act” <https://www.dol.gov/agencies/whd/flsa/pandemic>

- “Families First Coronavirus Response Act: Questions and Answers”

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Coronavirus Aid, Relief, and Economic Security (CARES) Act

- SBA Paycheck Protection Loan Program
- Employee Retention Tax Credit
- Social Security Tax Deferral

Unemployment Benefits in the CARES Act

Federal Pandemic Unemployment Compensation Program

- Provides an emergency an additional sum of to \$600/week - in addition to benefits due under state law
- Referred to as Federal Pandemic Unemployment Compensation
- Available through July 31, 2020
- Not Limited to Employee's Actual Weekly Wage amount
- Eliminates of one week waiting period (Federal Gov't to reimburse states for costs of waiving this)
- Additional 13 weeks of unemployment compensation eligibility (39 weeks total)

We are awaiting further explanation on the UI program, few details available

Small Business Administration (SBA)

Paycheck Protection Loan Program:

Provides eligible businesses with cash to meet payroll (including benefits) and other fixed costs (rent, interest on mortgages, utility payments) for up to eight weeks.

The maximum loan amount = 250% of employer's average monthly payroll costs, \$10 million max.

Accelerates process of obtaining loan.

Loans and interest eligible for loan forgiveness (and not taxable). Guide and checklist on the new loan program from the U.S. Chamber of Commerce:

https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final.pdf

Employee Retention Tax Credit

All employers (regardless of size) uniquely affected by COVID-19 can claim refundable tax credit against the employer portion of payroll tax = 50% of certain employee wages paid between March 13, 2020 through December 31, 2020. \$10,000 of wages can be taken into account for any employee.

50% credit available to businesses (i) that have had their operations fully or partially suspended by government order due to COVID-19 or (ii) that experienced a 50% decline in gross receipts during a 2020 calendar quarter when compared with the same quarter in 2019.

Social Security Tax Deferral

Provision available to employers of all sizes:

Ability to defer the payment of the employer portion of Social Security taxes (6.2% of wages) for the remainder of 2020. Fifty percent of those deferred taxes would have to be repaid by the end of 2021, with the remainder due by the end of 2022.

You Can't Choose All of the Above

- Each alternative provides very generous tax subsidies to assist employers.
- If you obtain one of the new SBA loans, you are not eligible for the 50% employee retention tax credit.
- If you have a new SBA loan forgiven, you cannot take advantage of the Social Security tax deferral.
- If you claim the 50% employee retention credit, you will no longer be eligible for an SBA loan.
- If you take advantage of the Social Security tax deferral, you will no longer be eligible to have your SBA loan forgiven.

Next Steps

- Gather necessary payroll information.
- Discuss with your accounting firm.
- Reach out to your banking institution to discuss loan options.
- Complete the PPP Application:
- <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>
- Treasury Department and the SBA are working to provide regulations that will guide the program. Expected to be done by close of business Thursday.
- Loans may be available as soon as this Friday.

Other Important Links

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- https://napeo.blob.core.windows.net/cdn/docs/default-source/covid-19/sample-notice-to-clients-on-new-cares-act-options.pdf?sfvrsn=bd7a29d4_2
- https://napeo.blob.core.windows.net/cdn/docs/default-source/covid-19/summary-of-payroll-assistance-programs.pdf?sfvrsn=2c7929d4_2
- https://napeo.blob.core.windows.net/cdn/docs/default-source/covid-19/sample-notice-to-clients-on-ffcra.pdf?sfvrsn=b30229d4_4