

COVID-19: Legal Update

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Families First Coronavirus Response Act (FFCRA)

On March 18, 2020 the Families First Coronavirus Response Act (FFCRA) was passed into law. The FFCRA contains extensive provisions, including a number of employment and employee benefits related laws

Families First Coronavirus Response Act (FFCRA)

Importantly, it is crucial to convey to your employees that coverage of testing for COVID-19 must be provided at no cost to the consumer and that COVID-19 illness will be covered by two weeks of paid sick leave.

Emergency Paid Sick Leave Act

Employers with fewer than 500 employees and all government employers must provide all employees – full time and part time – two weeks of paid sick leave, paid at the employee’s regular rate of pay, for any of the following reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

Emergency Paid Sick Leave Act

- The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Emergency Paid Sick Leave Act

- Full time employees are entitled to 80 hours of pay
- Part-time employees are entitled to the average number of hours they typically would work in a two week period.
- Part-time employees working varying schedules are entitled to the average number of hours worked per week in the prior 6 month period
 - If the employee has not worked for the prior 6 months, then they are eligible for the number of hours the employee reasonably expected to work at the time of hiring. Furthermore, employees who work under a multiemployer collective bargaining agreement must be provided with leave.

Reason for Leave	Daily Pay Rate	Aggregate Pay Cap
Employee ordered to quarantine or isolate	Regular rate of pay. Cap of \$511 per day	\$5,110 total.
Employee recommended to self-quarantine by a health care provider	Regular rate of pay. Cap of \$511 per day	\$5,110 total.
Employee experiencing COVID-19 related symptoms and seeking medical diagnosis	Regular rate of pay. Cap of \$511 per day	\$5,110 total.
Employee caring for another individual under quarantine or isolation order or under advice of healthcare professional	Two-thirds regular rate of pay. Cap of \$200 per day.	\$2,000 total.
Employee must care for child whose school or place of care has closed due to COVID-19.	Two-thirds regular rate of pay. Cap of \$200 per day	\$2,000 total.
Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.	Two-thirds regular rate of pay. Cap of \$200 per day	\$2,000 total.

Emergency Paid Sick Leave Act

- The two weeks of paid sick time is in addition to whatever paid sick time the employer already offered prior to the law being enacted, and employer may not require other accrued paid time off to be used before the mandated paid sick leave under this bill.
- The sick time mandated under this new law cannot carry over from one year to the next and must be available to all employees immediately, regardless of how long the employee has been employed for.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

This Act provide states with substantial additional funding for unemployment benefits provided the state follows specific guidelines and rules. Employers should inform laid-off workers of their potential unemployment insurance eligibility.

Health Provision

- Group health plans and health insurance insurers must provide coverage and not impose any cost sharing or prior authorizations for COVID-19 diagnosis products, office visits, urgent care center visits, and emergency room visits that result in an order for, or administration of, a diagnostic test.
- Further, there may not be any cost sharing for testing and testing services for those who are uninsured, covered by Medicare/Medicaid, CHIP, Tricare, veterans, federal civilians, or others not listed.

Tax Credits for Paid Sick and Paid Family and Medical Leave

- Employers, including self-employed individuals, shall be eligible for a tax credit against the rate of tax imposed for each calendar quarter in an amount equal to 100% of the qualified sick leave and family leave wages paid by such employer with respect to such calendar quarter.
- The IRS has reported that employers should receive 100% reimbursement against for paid leave under the FFCRA as an immediate dollar-for-dollar tax offset against payroll taxes.

Temporary Non-Enforcement Period

- The Department of Labor has issued a temporary non-enforcement policy to allow employers 30 days after the Act takes effect on April 1 to come into compliance with the new law.
- The Act will not be enforced against employers for the first 30 days “so long as the employer has acted reasonably and in good faith to comply with the Act.

Small Business Exemption

- The Act allows the Secretary of Labor “to exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern.”
 - DOL guidance on how this exception will be interpreted or applied is not yet available.

Paycheck Protection Program

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Paycheck Protection Program

Within CARES are a number of programs to assist businesses and keep workers employed during the Coronavirus pandemic and economic downturn. The Paycheck Protection Program designates \$350 billion in federally guaranteed loans to qualifying businesses. Paycheck Protection Program loans can be forgiven when used to maintain payroll through June. The loan amount is based on payroll expenses along with mortgage interest, rent payments and utility payments. While additional federal guidance is pending, a quick summary of the Paycheck Protection Program loan follows:

Eligible Businesses

The Paycheck Protection Program offers loans for:

- small businesses with fewer than 500 employees;
- select types of businesses with fewer than 1,500 employees:
 - 501(c)(3) non-profits with fewer than 500 workers and
 - some 501(c)(19) veteran organizations;
- self-employed, sole proprietors, independent contractors and freelance.

Special notes:

- Businesses, even without a personal guarantee or collateral, can get a loan as long as they were operational on February 15, 2020 – which means not only in legal existence but paid salaries and payroll taxes (or in some instances independent contractors).
- The 500 employee rule is determined on the physical location of the employee for businesses in the accommodations and food services industry (NAICS 72).
- Employees includes all employees (whether full or part time).

Loan Details and Benefits

The maximum loan amount under the Paycheck Protection Act is 2.5 x the borrower's average monthly payroll costs – not to exceed \$10 million, with an interest rate no higher than 4% (currently Treasury has stated 0.5%).

- Typical Borrower – the maximum loan amount is 2.5x the average total monthly payments by the applicant for “payroll costs” (as described in more detail below) incurred during the one-year period before the date on which the loan is made. If the borrower has received an “Economic Injury Disaster Loan” (EIDL), the Paycheck Protection Program loan amount may be increased (to exceed the 2.5x cap) to include and refinance the amount of the EIDL.
- Seasonal Employers – the maximum loan amount is 2.5x the eligible monthly payments of the borrower for payroll costs during the 12-week period beginning February 15, 2019 (or if elected by the borrower, March 1, 2019). Again, if the borrower has received an EIDL, the Paycheck Protection Program loan amount may be increased (to exceed the 2.5x cap) to include and refinance the amount of an EIDL.

Loans will not require collateral or personal guaranties.

In addition to payroll, loan proceeds can be used to maintain payroll or make mortgage, lease, and utility payments.

Loan Details and Benefits

“payroll costs” means:

- For a borrower with employees — the sum of payments of any compensation with respect to employees (in an amount not more than \$100,000 in one year, as prorated for the covered period) that is a:
 - salary, wage, commission or similar compensation;
 - payment of cash tips or equivalent;
 - payment for vacation, parental, family, medical or sick leave (unless a credit is claimed under the Families First Coronavirus Response Act);
 - allowance for dismissal or separation;
 - payment required for the provision of group health care benefits, including insurance premiums;
 - payment of any retirement benefit; or
 - payment of state or local tax assessed on the compensation of employees.
- Sole proprietor or independent contractor — aggregate payments of compensation that is a wage, commission, income, net earnings from self-employment or similar compensation and that is in an amount not more than \$100,000 in one year, as prorated for the covered period.

Loan Details and Benefits

“payroll costs” that are excluded:

- Employee compensation in excess of \$100,000, as prorated for the covered period
- Taxes imposed or withheld under the following Internal Revenue Code Sections:
 - Chapters 21 (Social Security and Medicare taxes, employee and employer portion)
 - Chapters 22 (railroad retirement tax)
 - Chapters 24 (Withholding obligations from employees)
- Compensation to non-US residents

Non-Seasonal Small Business Example:

Example: A small business owner applies for a PPP loan on April 3, 2020. The business is not seasonal**, so it must provide 12-months payroll costs from 4/1/2019 through 3/31/2020. The best way to derive this amount is likely from a tax return, internal accounting reports, payroll reports, and/or the business's accountant. If the annual amount of payroll cost is \$120,000 the average monthly payroll cost is \$10,000 so the business is eligible for a loan of \$25,000 ($\$120,000/12 = \$10,000 \times 2.5$ (if not even, then round to the nearest \$100)).

** For a seasonal employer, the payroll costs are for the 12-week period starting on 2/12/2019, or if elected by the borrower, 3/1/2019.

Loan Forgiveness

Provided the business continues paying employees at normal levels during the eight weeks following the origination of the loan, then forgiveness of the loan will be equal to the amount spent on “payroll costs” (see below); continuation of group health care benefits during periods of paid sick, medical, or family leave, or insurance premiums; salaries or commissions or similar compensation; interest on mortgage obligations; rent; utilities; and interest on other outstanding debt.

Any portion of an unforgiven loan balance will remain due and owed by the borrower.

What if I bring back employees / restore wages?

Reductions in employment or wages that occur between February 15, 2020 and April 26, 2020 will not reduce the amount of loan forgiveness if the reduction in employees or wages is eliminated by June 30, 2020.

Reduction based on reduction of number of employees



**PAYROLL
COST**
Calculated
on page 2

X

Average Number of
Full-Time Equivalent
Employees (FTEs)
Per Month for the
8-Weeks Beginning
on Loan Origination

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Option 1:

Average number of FTEs per month from
February 15, 2019 to June 30, 2019

Option 2:

Average number of FTEs per month from
January 1, 2020 to February 29, 2020

For Seasonal Employers:

Average number of FTEs per month from
February 15, 2019 to June 30, 2019

Reduction based on reduction in salaries



**PAYROLL
COST**
Calculated
on page 2

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For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.

Source: US Chamber of Commerce

Application

Start by speaking with your existing business lender. Applications for the Paycheck Protection Program loans will be administered through lenders, including banks and credit unions. Sample applications are available online.

Questions?

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