Families First Coronavirus Response Act, CARES Act & Navigating COVID-19
Informational and Educational Purposes

These slides are for educational and informational purposes only and not for the purpose of providing legal advice.
Overview of FFCRA

“Families First Coronavirus Response Act “

Division C – Emergency Family & Medical Leave Expansion Act
Division E – Emergency Paid Sick Leave Act
Division G – Tax Credits for Paid Sick and Paid Family & Medical Leave
WHEN – Effective Dates

• Takes effect April 1, 2020
  • NOT retroactive - Any leave that was granted BEFORE April 1 does not apply to the requirements under this law.

• Set to end on December 31, 2020

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"HR SERVICE Inc."
WHO – *Which Employers*?

- All employers with fewer than 500 employees
  - Count full-time AND part-time, no matter where located
  - Count employees on leave

* Small businesses with fewer than 50 employees may qualify for exemption from one of the requirements, to provide leave due to school closings or childcare unavailability, if the leave requirements would jeopardize the viability of the business as a going concern.
WHO – *Which Employees?*

- Full-time *and* part-time *and* temporary

- Eligibility periods
  - Employed at least 30 days for *Expanded Family and Medical Leave* component
  - No eligibility period for *Paid Sick Leave* component

* Special rules apply for Health Care Providers and First Responders.
WHAT – Two Types of Leave

Expanded Family and Medical Leave

- Only for leave to care for children whose school is closed or child care provider is unavailable
- Provides for a total of 12 weeks of protected leave
  - The first two weeks of this 12-week leave are unpaid under this provision, but can be covered by the Paid Sick Leave provision
  - After the first two weeks, the remaining 10 weeks of leave are paid at two-thirds of regular pay.
- Capped at $200 per day / total of $10,000 per employee

Paid Sick Leave

- Two weeks (up to 80 hours) for full-time employees
- For part-time employees, based on average number of hours that employee works over a two-week period*

*Note: The text in the image is not completely visible due to the image resolution.
An employee qualifies if unable to work (or telework) because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order;
2. has been advised by a health care provider to self-quarantine;
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) 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.
HOW MUCH – *It Depends*

If employee is taking Paid Sick Leave for himself / herself –

1. subject to a Federal, State, or local quarantine or isolation order
2. has been advised by a health care provider to self-quarantine
3. experiencing COVID-19 symptoms and is seeking a medical diagnosis

- would entitled to two weeks of pay (up to 80 hours)
  at 100% of their regular rate

Capped at $511 per day / total of $5,110 per employee.
If employee is taking Paid Sick Leave to care for others or has another similar condition --

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) 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.

- would be entitled to pay 2/3 of their regular rate

Capped at $200 per day and $2,000 total.
Pay Calculation Example 1

A full-time employee whose child’s school was closed for COVID 19-related reasons would be eligible for:

- **FFCRA’s Expanded Family and Medical Leave** - a total of 12 weeks of leave, 10 of which are paid at two-thirds of regular pay under this provision

AND

- **FFCRA’s Paid Sick Leave provision** - two weeks of pay at two-thirds of the regular rate of pay

OR

- Could choose to substitute previously-accrued PTO or other leave, which would presumably be at 100% of their pay.

* Leave pay eligibility starts on or after April 1.
Pay Calculation Example 2

A part-time employee who was hired March 2 to work 20 hours per week is exhibiting symptoms of COVID-19, but has not been able to be tested yet.

As of April 1, this employee would be eligible for:

• **FFCRA’s Paid Sick Leave provision** - two weeks of pay (for a total of 40 hours) at 100% of the regular rate of pay

  “An employee qualifies if unable to work (or telework) because the employee: ...(3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis”

• NOT eligible for **FFCRA’s Expanded Family and Medical Leave** because not the qualifying reason to care for children whose school is closed or child care provider is unavailable.
HOW MUCH - Tax Credits

• Employers will receive 100% reimbursement in the form of payroll credits:
  • for all paid leave wages paid out
  • for certain health plan expenses associated with maintaining health coverage during leave

• All FFCRA leave payments are exempt from social security and Medicare withholdings for employee and employer.

• Self-employed individuals “unable to perform services in any trade or business” also eligible for tax credits for paid leave.
WHERE Impacted

- FFCRA is a federal mandate, so it applies to all U.S. states and territories.

* Additional requirements may vary state-by-state.
Application of *Americans with Disabilities Act*

- Regulates employers’ disability-related inquiries and medical examinations for all applicants and employees
  - After conditional offer of employment or during employment
- Prohibits employers from excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat”
  - Based on guidance of the CDC and public health authorities, the COVID-19 pandemic does meet the direct threat standard.
- Requires reasonable accommodations for individuals with disabilities (absent undue hardship)
  - Including accommodations related to pandemic
ADA-Compliant Employer Rights

Employers CAN:

• ask why an employee has not reported for work
• ask employees who report feeling ill questions about COVID-19-related symptoms including fever, chills, cough, shortness of breath, or sore throat
• measure employees' body temperature, if exhibiting other symptoms
• send home employees with COVID-19 or symptoms associated with it
• ask whether employees traveling from CDC-specified locations -- even if the travel was personal – to remain at home for several days until it is clear they do not have pandemic symptoms
• require infection control practices, such as regular hand washing, coughing and sneezing etiquette, proper tissue usage and disposal, and wearing personal protective equipment
Not Allowed under ADA

Employers may NOT:

• divulge confidential medical information, including identifying someone who has tested positive for COVID-19

• make disability-related inquiries or requiring medical examinations of employees without symptoms present
  • If an employee voluntarily discloses a specific medical condition or disability that puts him or her at increased risk of complications, the employer may ask him to describe the type of assistance he thinks will be needed
FFCRA Implementation

• FFCRA Notice to employees (If < 500)
  Non-federal employees:
  Federal Employees:

• Pay exempt, salaried employees for any day they work anytime

• Continue tracking time worked for Non-exempt, hourly employees

• Create a FFCRA Policy & Follow it (Sample Available from HR Service)

• Communicate Supervisor’s role

• Establish procedures within HR & Payroll

• Summary of Material Modification
CARES Act

A Visualization of the CARES Act

Total Cost: $2.3 Trillion

Source
- Direct Payments: $290 billion
- Unemployment Benefits: $260 billion
- Tax Breaks: $300 billion
- Loans: $875 billion (Up to $366 billion forgiven)
- Grants: $230 billion
- Other Spending: $325 billion

Recipient
- Households: $610 billion
- Large Businesses*: $525 billion
- Small Businesses*: $600 billion
- Airline Industry: $75 billion
- States & Municipalities: $175 billion
- FEMA: $45 billion
- Health Providers: $185 billion
- Other: $65 billion

* This includes $454 billion to set up a $4.5 trillion Fed facility, which could help support large businesses but also small businesses and state and local governments.
+ This includes $170 billion of tax cuts for businesses other than corporations, some of which are large companies.

Source: Legislative offices, JCT, bill text, CRFB estimates.
CARES Act Implementation

• The 880-page Coronavirus Relief and Economic Security Act (CARES) was signed into law on March 27, 2020.

• The primary elements to the CARES Act which we will look at today:
  • Changes to Health Benefits
  • Changes to Retirement Plans
  • Payroll Protection Program, OR
    • Deferral of Social Security Taxes and
    • Employee Retention Tax Credit
CARES and Health Benefits

Under the CARES Act, the following changes have been made to benefits programs, retroactive to January 1, 2020:

• For FSAs, HRAs, and HSAs, Over-The-Counter medications and menstrual products (tampons, pads, sponges) are now classed as “eligible expenses”. This is a permanent change and will not sunset after the COVID-19 Crisis ends.

• Telehealth providers are temporarily permitted under High Deductible Health Plans with an HSA, even if the participant deductible has not been met, through December 31, 2021.

• HSA participants may continue making 2019 contributions until the new tax filing deadline of July 15, 2020.

• Health carriers have the discretion to suspend deductible and cost sharing responsibilities for COVID-19 treatments, in which case the IRS will also suspend HSA deductible requirements.
Retirement Provisions

• IRAs and Retirement Plans may now issue distributions of up to $100,000 free of the 10% early distribution penalty.

• The qualifying criteria are:
  • The participant themselves OR a spouse/dependent has been diagnosed with COVID-19 or SARS-COV-2, or
  • The participant must have experienced a financial impact due to these medical conditions.

• The Plan Administrator may accept a simple certification from the participant that they meet one of these criteria for penalty-free distribution.

• The withdrawal MAY be paid back into the plan (similar to a loan) over a three-year period, at the discretion of the participant.
Retirement Provisions

• Federal income tax withholding for these distributions is not required at the time of the distribution, and the taxation may be spread over a three-year period (only on any money not paid back in that three-year period).

• Plans are not required to allow this, and if these penalty-free changes are adopted then Plan Amendments will be necessary. Such amendments are due by the end of the 2022 plan year, and may be set up retroactively to January 1, 2020.

• Retirement plan Loans are now capped at $100,000 ($50,000 previously). Loan payments may be suspended until after December 31, 2020. Loan due dates may be extended by one year as well. Interest shall still accrue during the loan payment suspension period.
Payroll Protection Program Loans

• The PPP provides $350 billion through Small Business Administration loans. This utilizes the existing SBA 7(a) framework, except as modified in some areas regarding affiliation and eligibility.

• The loan is available to cover up to 8 weeks of payroll costs (including PTO/vacation/sick, severance, retirement benefits, and health insurance premiums), mortgage interest, rent, and utilities from February 15, 2020 through June 30, 2020.

• Loans are capped at $10,000,000.

• Up to 100% of the loan is forgivable if certain conditions are met and maintained.
Payroll Protection Program Eligibility

• Businesses must have been in operation on February 15, 2020.

• Eligibility is offered to small business concerns, as well as 501(c)(3) nonprofit organizations, 501(c)(19) veterans organizations, or Tribal business concerns described in section 31(b)(2)(C) that have fewer than 500 employees, or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by SBA, if higher.

• Individuals, sole proprietorships, independent contractors, and self-employed persons are eligible as well.

• Affiliation rules are also waived for any business concern operating as a franchise that is assigned a franchise identifier code by the Administration, and company that receives funding through a Small Business Investment Company.
Payroll Protection Program Loans

• As with the Families First Coronavirus Response Act (FFCRA), this program applies to employers with fewer than 500 employees.

• Exceptions are applied to companies with NAICS Section Code 72 (Hospitality industries).

• There is a cap of $100,000 annual pay ($8,333/month). Wages paid in excess of this may not be paid out of PPP loan monies.

• Employees of US Companies who are residing outside the USA are not eligible.
Payroll Protection Program Loans

Loan size is determined on the business situation:

- Employers who were in business 02/15/2020 to 06/30/2020: maximum loan is 250% of average monthly payroll costs. Seasonal employers may use March 1, 2020 as the starting point.
- Employers who were NOT in business 02/15/2020 to 06/30/2020: maximum loan is 250% of average monthly payroll costs in January and February 2020.
- If a loan were taken out for Economic Injury Disaster Loan between 02/15/2020 to 06/30/2020, this loan may be refinanced into a PPP loan.
Payroll Protection Program Loans

- The PPP loan forgiveness is the amount of the qualifying expenses incurred in the initial eight-week period after the loan is originated.

- The loan is available to cover up to 8 weeks of payroll costs, mortgage interest, health insurance premiums, rent, and utilities from February 15, 2020 through June 30, 2020.

- Any forgiven amounts are interest free and are not deemed taxable income to the business.
Loan example

- XYZ Company has a payroll of $750,000 annually.
- The amount available is (($750000/12) X 250%), which is $156,250. This in theory should cover 2 ½ months of payroll and operating expenses.
- In the initial eight-week period, the company expenses for qualified reasons are $140,000 total for payroll + rent + utilities.
- The $140,000 is fully forgiven at zero interest and zero taxation.
- The remaining $16,250 is payable over a 10-year window with a 4% interest rate cap. Payments will not be due until 2021.
- If the full $156,250 is consumed for qualifying reasons in the eight-week window, the entire loan is forgiven.
Limitations on Loan Forgiveness

• If the Company’s headcount AND payroll dollars drop during the initial eight weeks, the percent of loan forgiveness also drops off proportionally.

• The formula is:
  • Number of FTE & pay during the initial eight weeks / Number of FTE & pay pre-crisis (calculated either 1/1/2020 to 2/29/2020, or 2/15/2020 to 6/30/2020)
  • EXAMPLE: 30 employees in 8-week PPP Loan period, 40 employees pre-COVID, results in a 25% forgiveness reduction (75% forgiven, 25% to be paid back).
  • EXAMPLE: Payroll + rent + utility $120K in initial 8 weeks / P+R+U $150K pre-COVID, results in 20% forgiveness reduction (80% forgiven, 20% to be paid back).
Applying for a PPP Loan

• Loan application forms will be available from qualified lenders **starting Friday, April 3, 2020**.

• Banks and other lending institutions who participate in SBA loans are authorized to issue PPP Loans.

• No requirement to apply through a governmental entity.

• If you do not have a qualified lender, please go to [www.sba.gov](http://www.sba.gov) for assistance in locating a qualified lender in your area.
Employee Social Security Tax Deferral

• **Cannot be used in conjunction with a PPP Loan. One-or-the-other.**

• Employers may defer the employer (not employee) share of Social Security Taxes for the period March 27, 2020 to December 31, 2020. Required payroll tax returns must still be filed and keep track of amounts which are due.

• Payment schedule is half is due on Dec. 31, 2021 and the other half is due one year later, Dec. 31, 2022.
Employee Retention Tax Credit

• As with the Social Security deferral, this cannot be used in conjunction with a PPP Loan. One-or-the-other.

• This provides a 50% payroll tax credit for employers and non-profits who are under government directive to limit business, including travel or group meetings, and whose quarterly receipts 2019 v. 2020 have reduce more than 50%.

• For employers with <100 headcount, 50% of wages and health benefit costs (up to $10,000 X 50% per employee, equals $5,000) are eligible for this Credit.

• Payment made under EFMLA or ESPA are not included in this credit.
Working Remotely

How do you keep employees engaged and productive with everyone working remotely?

• Office Setup & Tools
• Establish clear expectations
  ✓ Same output/KPIs
  ✓ Avoid distractions (No watching kids while working)
  ✓ Establish regular calls/meetings (short)
  ✓ Stay consistent (Same work hours & time management)
• Increase communications
  ✓ Skype/Gotomeeting/Instant Messaging
✓ Consider Telecommuting Agreement
Alternatives to Reductions in Force

• Catch up on lower priority task items
• Plan for growth and scaling your business
• Involve your employees in things that impact them
• Allow or request reduced, temporary work hours
• Consider short-term non-matching retirement plans
• Salary reduction – short term
• Come up with new and creative ideas, such as:
  • how to compete more effectively
  • create new strategies on efficiency
  • brainstorm how to set your company apart from your competition
• Volunteerism
• Consider a temporary shutdown or furlough
Furlough vs RIF

• Keep on books vs termination
• Both collect unemployment
• Stay on medical insurance vs go on COBRA
• Employees on-hold coming back vs terminated (gone)
• Positive morale
Furlough Implementation

• Determine who to furlough?
• How will benefits be handled?
• How will premiums be handled?
• Inform team members
• Communicate pay, what to expect, benefits, etc.
• Provide information to collect unemployment
• Consider providing them with a furlough letter as well
Reductions In Force

• Determine who is impacted?
• Severance or outplacement help?
• Separation agreement?
• Benefits and COBRA
• Items to collect back
• Work transition
• Prepare final check
• Communication to those impacted & those who stay
• Notice or immediate?
Employer COVID-19 Toolkit

https://www.hrserviceinc.com/employer-coronavirus-toolkit/

Articles, Tools, Template & Resources

• FFCRA Overview & FAQs
• Responding to Downturn Market
• Furloughs & RIF
• COVID-19 Solutions
• More
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