



FFCRA & CARES Act: What employers & HR professionals need to know

April 1, 2020

Webinar starts at 8:30 a.m. CT

Presented by:

Administration



Reminder: We are not offering CPE or HR credit for today's discussion.



For best quality, call in by phone instead of using your computer speakers.



To ask questions during the presentation, use the questions box on the right side of your screen.

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Today's topics

Brief overview of EFMLA and EPSL requirements from the FFCRA

Updated guidance from DOL on FFCRA, including:

- Counting employees (am I subject to the provisions?)
- Small business (50-employee) exemption
- Intermittent leave
- EFMLA and other forms of FMLA

CARES Act – Employer specific information, including:

- Employee benefits
- Unemployment insurance expansion
- Health plan changes
- Retirement plan changes

Considerations for layoffs and furloughs

Presenter



CARRIE COX

Senior Consultant, Human Resources Services

- Experience in a variety of human resource functions, including a thorough knowledge of labor laws, compensation structures, employee classification, benefits administration, performance management, and human resource best practices
- Serves clients in a number of industries, including manufacturing, construction, banking and not-for-profits



Presenter

Brad Bechtel

Senior Vice President, Employee Benefits Services

- Leads AGH's employee benefit services department
- Served as consultant to numerous Fortune 500 corporations
- Well-versed in executive compensation planning involving non-qualified plans
- Registered investment advisor with Series 7, 24 and 66 FINRA registrations



Emergency Paid Sick Leave (EPSL) requirements

- Up to 80 hours of paid sick leave for any employee
- Must meet one of six reasons for leave
- Paid at 100% (\$511 max) or 2/3 of regular rate of pay (\$200 max), depending on reason for leave
- Generally must be taken in full-day increments and consecutively, unless teleworking
- Small employers may be exempt from leave for school/child care closure only



Qualifying reasons for EPSL

1. Employee is subject to a federal, state or local quarantine/isolation order related to COVID-19.
2. Employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns.
3. Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
4. Employee is caring for an individual who is under a governmental quarantine or healthcare provider isolation order.
5. Employee is caring for a son or daughter whose school or place of childcare is closed due to COVID-19 precautions.
6. Employee is experiencing any other substantially similar conditions as specified by the Secretary of Health and Human Services and other government officials.



EFMLA requirements

- EFMLA expansion – up to 12 weeks of protected job leave to care for son/daughter due to school/child care closure related to COVID-19
- First 10 days may be unpaid; remaining 10 weeks paid at 2/3 regular rate of pay (maximum \$200 per day); prorate for part-time employees
- Small business exemption available
- Intermittent leave allowed
- EFMLA + other FMLA



DOL guidance

- Who has to provide leave?
 - Counting employees
 - Small business exemption
- Determining regular rate of pay
- Documentation requirements (IRS)
- Posting requirements
- Intermittent leave
- Closures/Furloughs and paid leave

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



Small business exemption

- Provision of EPSL or EFMLA would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity.
- Absence of the employee or employees requesting EPSL or EFMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities.
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting EPSL or EFMLA, and these labor or services are needed for the small business to operate at a minimal capacity.

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



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DOL guidance

Definitions:

- Son or daughter
- Health care provider (for advice to self-quarantine)
- Health care provider (for exemption from Act requirements)
- Emergency provider (for exemption from Act requirements)

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

Polling question

How much have you implemented to get compliant with FFCRA?

- 1) What is FFCRA?
- 2) I'm aware of FFCRA but don't know where to start.
- 3) I've started but have several questions.
- 4) We're almost there. Just a few loose ends.
- 5) We got this.





CARES Act

- Employee benefits
- Unemployment insurance expansion
- Health plan changes
- Retirement plan changes



Retirement plan provisions

Defined contribution plans (i.e. 401k, profit sharing, money purchase)

- If plan allows AND participant is eligible for benefit
- Participant eligibility defined as an individual:
 - Who is diagnosed with COVID-19 or SARs-CoV-2,
 - Whose spouse or dependent is diagnosed with COVID-19, or
 - Who experiences adverse financial consequences due to:
 - Quarantine, furlough, laid-off
 - Having work hours reduced
 - Being unable to work due to lack of child care (caused by COVID-19)
 - Closing or reducing hours of business owned or operated by individual
 - Other factors as determined by the Treasury Secretary
- Plan sponsor may rely on certification by participant of eligibility



Retirement plan provisions

Coronavirus-related distributions: Expanded benefit option

- Optional benefit – not required to be added to a plan
 - Consult with your recordkeeper, advisor or attorney before adopting.
- Waiver of the 10% tax on early withdrawals up to \$100,000 from a retirement plan or IRA (made on or after Jan. 1, 2020)
- Allows individual to repay this early withdrawal tax-free back to the plan or IRA over the next three years (not subject to contribution limits)
- If amounts are not repaid back to the Plan or IRA, permits individuals to pay taxes on the income from the above distribution over a three year period.
- Only applies to individuals that have met the COVID-19 eligibility conditions



Retirement plan provisions

Participant plan loan provisions

- Doubles the current retirement plan loan limits to the lesser of 100% of vested account balance or \$100,000 (currently 50% / \$50,000)
 - Only applies for a limited time on loans made on or before Sept. 23, 2020
 - Only applies for individuals that have met the COVID-19 eligibility conditions
- Individuals with outstanding loan(s) from a plan with a loan repayment due from March 27, 2020, through Dec. 31, 2020, may delay repayment for up to one year
 - Only applies for individuals that have met the COVID-19 eligibility conditions
 - Interest shall continue to accrue on the loan(s)
 - More guidance is needed, but appears to allow loan terms to extend beyond five years



Retirement plan provisions

Plan amendments and adoption of rules

- Plan sponsors are allowed to adopt these new rules immediately even if a plan does not currently allow for hardship, in-service or participant loans.
- **PROVIDED**, the plan is amended on or before the last day of the first plan year beginning on or after Jan. 1, 2022, unless otherwise extended by the Treasury Secretary. For calendar year plans, it will be Dec. 31, 2022.



Retirement plan provisions

For calendar year 2020: Temporary waiver of required minimum distribution rules (RMD) for accountholders who are age 70½ or older or age 72 (for those that turned age 70 on July 1, 2019, or later) and subject to the mandatory minimum distributions for defined benefit plans and IRAs.

- Includes Individual Retirement Accounts, 401(a)/401(k), 403(b) and governmental 457(b) plans.
- Important provisions to consider because RMD amounts are calculated using the balance of the account on Dec 31, 2019.
 - The market has dropped roughly 20% since the end of the year thus resulting in a much larger number of investment shares that must be sold to satisfy the RMD at this time.



Considering reductions

- Business closures, layoffs, furloughs
- Employment law considerations: FLSA, WARN, various anti-discriminatory laws, ADA, FMLA, ERISA, worker's compensation



Recommendations

- Update policies, procedures for required leave; post notices
- Ensure tracking mechanisms and documentation are in place for payroll tax credits
- Consult with advisors, attorneys on changes to benefit plans
- Understand the employment laws that may impact your decision-making related to business reductions



Q & A session

Another COVID-19 webinar



CARES Act: Business & tax implications

April 2nd at 1:30 p.m. CT

No CPE/HR credit offered

AGH professionals will review key provisions from the CARES Act that could affect your organization's tax situation and ability to acquire financing to continue operations.

Register at aghlc.info/ReliefWebinar

COVID19

[Home](#) / [Insights](#) / [COVID-19 resources](#)

COVID-19 resources for employers

Organizations are facing a myriad of decisions and challenges with the rapidly changing landscape on COVID-19.

AGHLC.com/COVID19



Thank you for attending



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Questions?

CARRIE COX

Senior Consultant, HR Services



Carrie.Cox@aghlc.com



316.291.4022



linkedin.com/in/CarrieCoxHR



twitter.com/CarrieCoxHR

BRAD BECHTEL

Senior Vice President,
Employee Benefits Services



Brad.Bechtel@aghlc.com



316.291.4131



linkedin.com/in/bechtelbrad



twitter.com/bechtel_brad

Questions **not** related to today's content: mike.ditch@aghlc.com