



A review of FFCRA, CARES Act and regulatory guidance

April 10, 2020

Webinar starts at 9:00 a.m. CT

Presented by:

Administration



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



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Today's topics

Overview of EFMLA and EPSL requirements from the FFCRA

Temporary regulations issued by DOL on FFCRA

CARES Act – Employer specific information

Considerations for layoffs and furloughs

Presenter



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- Experience in a variety of HR functions, including a compensation structures, performance management, leadership development, employee classification, recruitment, benefits administration, and training
- Thorough knowledge of employment laws, HR best practices, and organizational development
- Serves clients across industries, including manufacturing, construction, banking, local government, and not-for-profits

Families First Coronavirus Response Act

- **Emergency Paid Sick Leave**
- **Expanded Family and Medical Leave**
- **Payroll Tax Credit**



Emergency Paid Sick Leave

Qualifying reasons:

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.



Emergency Paid Sick Leave

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) for employee's own quarantine or illness or 2/3 of regular rate of pay (\$200 max) when caring for other(s), depending on reason for leave
- Generally must be taken in full-day increments and consecutively, unless teleworking
- May not require employees to use other paid leave first
- Small employers may be exempt from leave for school/child care closure only



Expanded Family Medical Leave Act

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 two weeks may be unpaid; remaining 10 weeks paid at 2/3 regular rate of pay (maximum \$200 per day); prorate for part-time employees
- May use EPSL or other paid leave options for first two weeks
- Intermittent leave allowed
- EFMLA + other FMLA = 12 weeks total
- Small business exemption available



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>



Notice requirements

Employer

- Notice sample on DOL website
- Mail or email if employees are working remotely

Employee

- Notice may not be required in advance
- Notice required after the first workday for which the employee takes FFCRA leave
- Oral or in writing
- May be provided by someone else



Required documentation – general

For all leave types:

- Employee's name
- Date for which leave is requested
- Qualifying reason for requesting leave
- Statement that the employee is unable to (tele)work because of the qualifying reason

Required documentation – additional

Reason for leave	Documentation required
1. Employee subject to federal, state or local quarantine/isolation order	Name of government entity ordering quarantine/order
2. Employee advised by health care provider to self-quarantine	Name of health care provider advising quarantine
3. Employee experiencing symptoms	Name of health care provider diagnosing / treating
4. Employee caring for individual under quarantine or self-isolation order	Name of government entity or health care provider; name of individual and relationship
5. Employee caring for son/daughter due to school or child care closure	Name and age of child; name of school or place of care; representation that no other suitable person is available to provide care IRS: If 15-17 years and leave is requested during daylight hours, a statement that special circumstances exist



Recordkeeping

- Maintain records for at least four years after tax becomes due or is paid, whichever is later
- Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the payroll tax credit
- Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages
- Copies of Forms 7200, Advance of Employer Credits
- Copies of Forms 941 (or records of information provided to third party payer)



Payroll Tax Credits – EPSL & EFMLA

- Quarterly payroll tax credits for 100% of required paid sick leave and paid family leave – public agency employers are not eligible
 - Dollar for dollar credit (wage payments + 1.45% ER Medicare tax on such payments + allocable portion of health plan expense)
 - Maximum \$200 per day for EPSL (\$511 in case of EPSL for reasons 1-3)
 - Maximum \$200 per day for which an employee is paid qualified family leave wages (\$10,000 in aggregate)
- If amount of credit exceeds the tax imposed, the excess will be treated as an overpayment and refunded
 - Form 7200



Taxability of covered payments to employees

Subject to the following payroll taxes:

- Federal withholding
- State withholding
- FICA (EE portion only)
- Medicare (ER and EE)
- Unemployment



Recommendations

Timekeeping

- Set up separate codes to record time
 - Emergency sick leave
 - Emergency FMLA

Payroll earnings codes

- Set up separate earnings codes
 - Emergency sick leave
 - Emergency FMLA

Termination codes

- Set up separate termination codes
 - Terminations related to COVID-19



Non-enforcement period

IRS IR-2020-57 (Friday, March 20, 2020)

- US DOL to issue a temporary non-enforcement policy
- During such time, no enforcement action so long as employer acted reasonably and in good faith to comply
- US DOL will instead focus on compliance assistance during the 30-day period

CARES Act

- Federal unemployment insurance expansion
- Health plan changes
- Retirement plan changes
- Business loans and tax credits
 - SBA Loans: Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EISL)
 - Employee Retention (Payroll) Tax Credit



Retirement plan provisions

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

- Optional benefit – not required to be added to a plan
 - Consult with your recordkeeper, advisor or attorney before adopting.
- Waives 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.



Paycheck Protection Program

Overview:

- Intended to provide eight weeks of funding
 - Payroll expenses, rent, utilities, mortgage interest
- Loan amount based on 2.5 months average payroll costs
- Maximum loan \$10 million
- Loan forgiveness feature
- Two year loan with interest at .5%, no payments for six months
- No personal guarantees or collateral required or allowed



Paycheck Protection Program

Who qualifies:

- Business with 500 or fewer employees (12 month average)
 - Must include controlled affiliate entities to test employee count
 - Exception for multi-location accommodation and food services businesses provided 500 or fewer employees per location
- Must have been in operation on 2/15/2020
- 501(c)3 non-profits, 501(c)(19) veteran organizations
- Tribal businesses
- Sole proprietors and independent contractors



Economic Injury Disaster Loans (EIDL)

- Funds to keep the door open
- Small businesses with fewer than 500 employees
- Most private not-for-profits, sole proprietors, independent contractors, COOPS, and employee owned businesses (ESOPs)
- Maximum loan \$2 million
 - Determined by SBA in loan process
- Can be refinanced into Paycheck Protection loan but not used for same purpose
- 30 year term with interest at 3.75%



Emergency Economic Injury Grants

- \$10,000 grant (no repayment required)
- Request when applying for EIDL
- Will be funded within three days of request
- Self-certification application



Payroll tax credits

Employee Retention Credit

- For employers subject to closure or economic hardship
 - Operations fully or partially suspended, or
 - Greater than 50% reduction in quarterly receipts
- Wages of employees furloughed or reduced hours
- All wages qualify for employers with 100 or fewer employees
- Includes health insurance
- Tax credit for 50% of first \$10,000 in eligible wages per employee
- Excludes wages qualifying for required sick leave or family leave payroll credits
- Not available if participating in Paycheck Protection Program



Payroll tax payment deferral

Delay of payment of employer payroll taxes

- Defer paying employer portion through end of 2020
 - Employer portion of FICA taxes
 - Employer and employee portion of Railroad Retirement taxes
 - Half of the SECA tax
- Deferred amounts due in two installments
 - First half due December 31, 2021
 - Second half due December 31, 2022
- Not available if participating in Paycheck Protection Program



Considering reductions

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



Kansas Shared Work Plan

- Layoff alternative
 - Employees receive reduced UI while working reduced schedule
- Must apply to at least 10 percent of workforce
- Reduced normal weekly hours between 20 and 40 percent
- Application at <https://www.dol.kd.gov/employers/shared-work-program>
- **Caution:** may impact amount of Paycheck Protection Program loan forgiven



Help your employees

- Letter citing reason for lack of work (e.g., governor's stay-at-home order), duration
- Inform them of unemployment benefits
 - Waived waiting period
 - Additional federal amounts
 - How to file
- Benefits continuation
- Delay in income tax filing to July 15
- Local protections against evictions
- Payment plans for credit, utilities, bank loans
- Employment assistance programs or other mental health services



Recommendations

- Update policies, procedures forms for required leave; post notices
- Ensure tracking mechanisms and documentation are in place for payroll tax credits
- Consult with advisors, attorneys on changes to staffing or benefits plans

Polling question

What topics would you like to see covered in future AGHU webinars and communications?

- 1) FFCRA/CARES Act guidance
- 2) Managing/leading employees working remotely
- 3) Hiring/furlough/layoff considerations
- 4) Returning to work preparation/requirements
- 5) Planning for a different business environment post-COVID





Q & A session

COVID19

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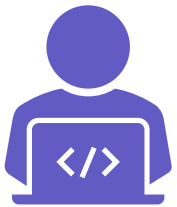
COVID-19 resources for employers

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

AGHLC.com/COVID19



Thank you for attending



A recording of today's webinar will be emailed for your reference or to share with others.



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Questions?

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