

COVID-19 Update – Latest Developments Involving the CARES Act and FFCRA



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Today's Speakers



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Families First Coronavirus Response Act ("FFCRA")



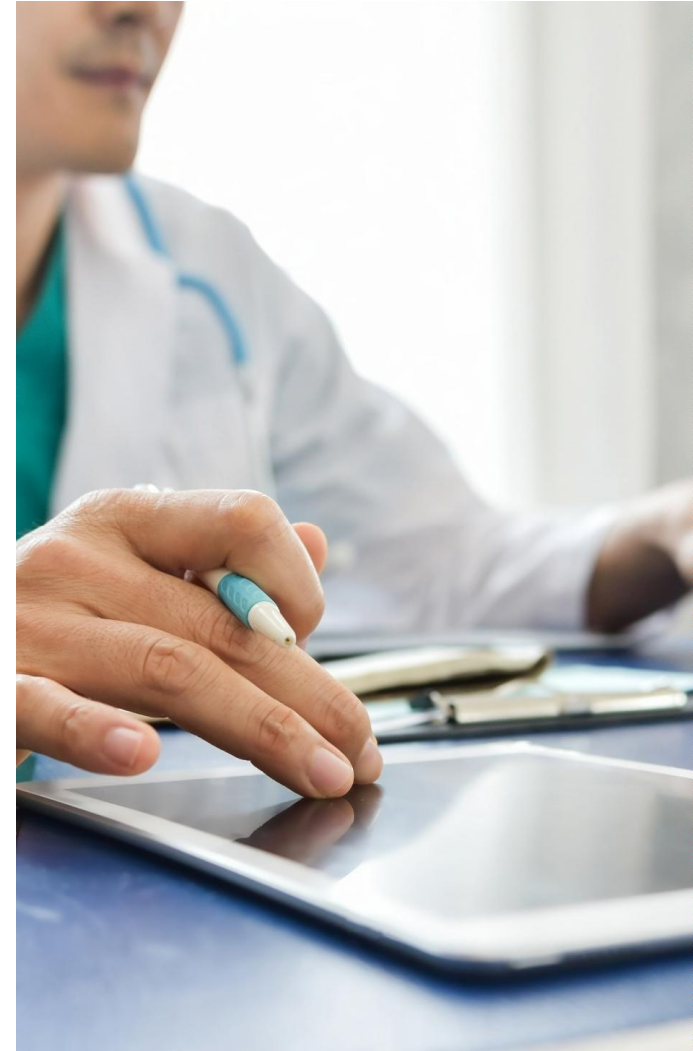
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Families First Coronavirus Response Act (“FFCRA”)

Two Parts:

- Emergency Family and Medical Leave (Amendment to the FMLA)
- Emergency Paid Sick Leave

Effective Only April 1 – December 31, 2020



Families First Coronavirus Response Act ("FFCRA")

**Who
must
comply?**

**Private employers
with fewer than 500
employees at the time
the employee's leave
is to be taken.**

Emergency Family and Medical Leave

**What
is it?**

Emergency Family and Medical Leave

Leave for an employee who is unable to work (or telework) due to a need to care for children under 18 years of age, whose school has closed or whose childcare provider is unavailable, due to COVID-19 closures

Emergency Family and Medical Leave

**Any employee who
has been employed
for at least 30 days
(and who meets the
leave criteria)**

**Who can
take it?**

Emergency Family and Medical Leave

First Two (2) Weeks

- Unpaid leave
- Employees **may** elect to substitute accrued vacation, personal, or other available leave during this time.
- Employees can use Emergency Paid Sick Leave.

Following Ten (10) Weeks

- Paid at an amount not less than 2/3 regular rate of pay for the number of hours the employee is regularly scheduled to work, not to exceed \$200/day (or \$10,000 in the aggregate) per employee

Job Restoration

Emergency Family and Medical Leave

Required unless:

- Employer has fewer than 25 employees;
- Employee's leave was taken to care for child whose school or place of care was closed, or whose child care provider was unavailable; and
 - Employee's position does not exist anymore due to economic or operating conditions due to COVID-19 related reasons.
 - Employer made reasonable efforts to restore employee to the same or an equivalent position;
 - Employer makes reasonable efforts to contact employee if an equivalent position becomes available; and
 - Employer continues to make reasonable efforts to contact employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after leave began, whichever is earlier.

Emergency Paid Sick Leave



What is it?

Emergency Paid Sick Leave

Paid leave for an **employee** who is unable to work because s/he:

- Is **subject to quarantine/isolation order** due to COVID-19
- Has been **advised by health care provider to self-quarantine** due to COVID-19-related concerns
- Is **experiencing COVID-19 symptoms** and is **seeking a diagnosis**

If leave is taken for any of these reasons, pay is at **employee's regular rate of pay (or, if greater, minimum wage)**, capped at \$511 per day, \$5,110 in the aggregate, per employee.

What is it?

Emergency Paid Sick Leave

Paid leave for an **employee** who is unable to work because s/he is ***caring for***:

- an individual **subject to quarantine/isolation order**
- a child because of **school closure or childcare provider** unavailability due to COVID-19

If leave is taken for any of these reasons, pay is at **two-thirds of the employee's regular rate of pay (or, if greater, minimum wage)**, capped at \$200 per day, \$2,000 in the aggregate, per employee.

What
is it?

Emergency Paid Sick Leave

Paid leave for an employee who is unable to work because s/he is experiencing any other **substantially similar condition** as specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor

If leave is taken for this reason, pay is at **two-thirds of the employee's regular rate of pay (or, if greater, minimum wage)**, capped at \$200 per day, \$2,000 in the aggregate, per employee.

Emergency Paid Sick Leave

Any employee

**Who
can
take it?**

Emergency Paid Sick Leave

Full-time employees: 80 hours

Part-time employees: Number of hours worked on average in a two-week period

**Cannot require that other leave be used first*

**How
long?**

Exemptions

May be exempt from obligations to provide expanded family and medical leave and/or paid sick leave *due to school or place of care closures or child care provider unavailability* when doing so **could jeopardize the validity of the business.**

**Employers
with 50 or
fewer
employees
ONLY**

“Jeopardize the validity of the business”

- The provision of the benefit(s) 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;
- The absence of the employee(s) requesting paid sick leave or expanded family and medical leave 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; or
- 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 paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Federal Tax Credits



FULLY REFUNDABLE

Equal to 100 percent of the qualified sick leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified sick leave wages) paid

Tax Credits | How to Claim

Claim on federal employment tax returns
(Form 941, Employer's Quarterly Federal Tax Return)

OR

Reduce federal employment tax deposits

- Insufficient federal employment taxes to cover amount of credits?
 - Request an advance payment of the credits
(Form 7200, Advance Payment of Employer Credits Due to COVID-19)



Documentation

- Forms 941 and 7200
- Records of work, telework, and qualified sick leave and qualified family leave
- Determination of the amount of qualified health plan expenses that was allocated to wages



Example:

An Eligible Employer pays \$10,000 in qualified sick leave wages and qualified family leave wages in Q2 2020. It does not owe the employer's share of social security tax on the \$10,000, but it will owe \$145 for the employer's share of Medicare tax.

$$\$10,000 + \$145 = \$10,145$$

This amount may be applied against any federal employment taxes that Eligible Employer is liable for on any wages paid in Q2 2020.

Any excess over the federal employment tax liabilities is refunded in accord with normal procedures.

New York State COVID-19 Sick Leave



What is it?

New York COVID-19 Sick Leave

Employer size	Employee benefit
Ten (10) employees or fewer, and less than \$1 million income in previous tax year	Unpaid leave until end of quarantine or isolation period
Ten (10) employees or fewer, and greater than \$1 million income in previous tax year	Five (5) days paid leave, and unpaid leave for remainder of quarantine or isolation period
Eleven to ninety-nine (11–99) employees	Five (5) days paid leave, and unpaid leave for remainder of quarantine or isolation period
One hundred or more (100+) employees	Fourteen (14) days paid leave
Public employees	Fourteen (14) days paid leave

Coping with COVID-19

Loan Opportunities and Tax Considerations under the CARES Act



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Small Business Paycheck Protection Program

Overview

- Modeled on existing SBA 7A program except 100% government guarantee
- Small business as defined by SBA size standard (generally up to 500 employees)
- Potential PE firm aggregation rule
- Covers 501(C)(3) organizations
- Includes sole proprietors, self-employed, and independent contractors
- Borrowers will need to certify that they have been impacted by COVID-19 and need funds to support ongoing operations





Regulatory Streamlining

- No credit elsewhere test is waived
- All lenders can provide loans (not just SBA lenders)
- No personal guarantees or collateral
- Lenders defer fees, principal, and interest for no less than six months and no more than one year
- Maturity of two years
- Interest rate of .5%

Loan Provisions

- Formula is tied to payroll, mortgage, rent, and utility payments during the one year period prior to the loan
- Loans are limited to monthly payroll costs for 2 1/2 months, not to exceed 10mm
- Payroll costs include wages, commissions, vacation, and sick pay (not eligible for a credit per coronavirus legislation), health and retirement benefits, and state and local taxes
- The employer must certify that the proceeds will be used to retain workers (includes independent contractors), make mortgage interest or lease payments, and pay utilities
- Includes sick and medical leave and health insurance

Forgiveness Provisions

- Amounts spent during an eight-week period after the loan origination date for the expenses above
- Payroll costs are limited to \$100,000 per year, including self employed
- Payments for the above between February 15 and June 30, 2020
- Reduction of forgiveness is based on the average number of FTEs per month during the covered period divided by either:
 - The average number of FTEs during 2/15/19 to 6/30/19 OR
 - The average number of FTEs during 1/1/20 to 2/29/20
- If wages are reduced by more than 25%, forgiveness is reduced by same ratio
- Rehired employees by 6/30/20 will not count toward the reduction
- Debt forgiveness will be tax free
- No prepayment penalty

Changes to SBA's Economic Injury Disaster Loans (EIDLs)

- Must certify that you have been impacted by a disaster
- Applied for online
- Not forgivable except for 10K below
- Can be made solely on credit score
- Available to nonprofits
- Can be repaid over 30 years
- Amounts below 200K can be approved without personal guarantees
- Borrowers can receive 10K as a forgivable cash advance if the funds are spent on maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue losses

To Do's

- Speak with your bank
- Check for state & local programs
- Company formation documents
- Gather financial data
- Last three years' financial statements and tax returns
- Payroll records for 2019 and 2020
- Schedule of debts (mortgages, accounts payable)



Employee Retention Credit

- Business is not eligible if it receives a loan under the paycheck protection program
- Only applies if the operation of business was active in 2020 and was fully or partially suspended by the government due to COVID-19 **OR**
- The business had seen a significant decline in gross revenue (50% less than the same quarter as last year) until the business recovers to 80% of the prior year's revenue
- Employee retention credit as a refundable payroll tax credit for employers equal to 50% of wages up to 10K per employee
- For employers with more than 100 full-time employees, only wages paid to employees who are not working due to COVID-19 circumstances
- For employers with 100 or less full-time employees, all wages qualify regardless of whether the employer is open or closed due to a shut-down order
- Includes health insurance and wages paid or incurred from March 13 through December 31, 2020
- Average number of employees is based on 2019

Delay of Payment of Payroll Taxes

- Business is not eligible if loan is forgiven under the paycheck protection program
- Applies to employer's share of social security (6.2%) and 50% of self-employment tax between now and December 31, 2020
- 100% deferral for wages paid between March 27 and December 31, 2020
- 50% will be payable on 12/31/21 with the remainder payable on December 31, 2022



Business Tax Provisions

- Increases 163(j) limit to 50% of adjusted income for the years beginning in 2019
- The interest limitation remains at 30% for partnerships, although disallowed interest can be carried forward to 2020 at 50%
- Technical correction to bonus provisions related to qualified improvement property retroactive to 2018
- Five-year NOL carryback retroactive to 2018
- Relief from 461L limitations retroactive to 2018
- Increase in charitable deductions for C Corps to 25% of taxable income
- Increase in charitable deductions for food inventory to 25% of taxable income



State Tax Deadlines and Payments



Other Financial Issues

- Mobilized internal control procedures
- Use of encrypted files
- Subsequent event disclosures
- Going concern analysis
- Potential delayed financial reporting
- Detailed accounting of use of PPP funds



Changes Affecting Individuals

- Federal tax due date moved to 7/15/20
- 2019 tax payments and Q1 estimates due 7/15/20
- Most if not all states expected to adopt same plan
- Same as business changes
- \$300 above the line amount for cash contributions for 2020
- Direct payments equal to \$1200 per individual (\$2400 joint) plus \$500 per child
 - Phased out for incomes above \$75,000 (\$150,000 joint)
 - What happens if you don't file your 2019 returns?
 - What if I receive less than the full benefit and my income is lower in 2020?
- Repeals the requirement for over-the-counter medical items to be prescribed by a physician in order to use tax preferred funds

Retirement Plan Provisions

- Penalty-free COVID-19 related distributions up to 100K from tax-favored plans during 2020
- Ability to recontribute over the next three years
- Flexibility for loans from retirement plans
- Waiver of required minimum pension distributions for 2020



THANK YOU

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