



COVID-19 UPDATE

April 1, 2020

Federal Responses

1. **\$8.3 Billion initial Public Health Funding**
2. **Families First Coronavirus Response Act (“FFCRA”)-signed March 18**
3. **Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)-signed March 27**

Families First Coronavirus Response Act:

What is it?

- Paid Sick Leave
- Paid Emergency FMLA

- **Does not apply if employee is teleworking from home**
- **April 1, 2020-December 31, 2020**

Applies to:

- The FFCRA applies to private sector employers with fewer than 500 employees (unless small business can prove it would threaten the viability)
- and governmental employers with one (1) or more employees

- **DOL regulations expected on April 2 to set forth possible exemptions for emergency responders & health care workers
- **Does not apply to laid off or furloughed employees**

- **80 Hours of *ADDITIONAL* leave (10 days) for full time employees**
 - **Employer cannot require employees to utilize other leave first**
- **Part-time employees also eligible, but at an average of hours worked the past 6 months.**
- **Calculated at an employee's regular rate of pay for certain reasons**
- **2/3 regular rate of pay for other reasons**

Paid Sick Leave

What is it?

- **An eligible employee can take paid sick leave because the employee is:**
- **1. subject to a federal, state or local quarantine or isolation order related to COVID-19;**
- **2. advised by a health care provider to self-quarantine due to COVID-19 concerns;**
- **3. experiencing COVID-19 symptoms and seeking medical diagnosis;**
- **4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;**
- **5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or**
- **6. 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.**

Paid Sick Leave

Reason for Leave

- **1. subject to a federal, state or local quarantine or isolation order related to COVID-19;**
- **2. advised by a health care provider to self-quarantine due to COVID-19 concerns;**
- **3. experiencing COVID-19 symptoms and seeking medical diagnosis;**
- **paid at either their regular rate, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).**

Calculating Pay

Full Pay

- **4. caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns;**
 - **5. caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or**
 - **6. 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.**
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- **employees taking leave shall be paid at 2/3 their regular rate up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).**

Calculating Pay

2/3 Pay

- **Guidance documents permit:**
 - **Employees to utilize the 80 hours over ten working days;**
 - **Employees to utilize the 80 hours over a longer time span**

- **Taxable difference between the two for Cooperatives.**

Calculating Hours

Using the 80 hours

- **Traditional FMLA:** Under the existing FMLA, Public Power Districts are considered “covered employers.”
- However, a PPD only has “eligible employees” if:
 - they work for a covered employer for the past twelve months and
 - worked at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave; and
 - works at a location where the employer has at least 50 employees within 75 miles.
- **Emergency FMLA**
 - eliminates all the above eligibility requirements and, by definition, an employee is a “covered employee” as long as they have been employed by the employer for the past 30 days.

Expanded FMLA

I thought PPDs were
exempt?

- eligible employees who are unable to work (or telework) because of the need to care for a child under 18 years of age due to closure of school or the child's place of care, or if the child care provider is unavailable due to the coronavirus.
- This is now the **only** qualifying need for Expanded FMLA.

Expanded FMLA

Applies when?

- Employers must offer 12 weeks of job-protected leave
- The first 10 days (2 weeks) of Expanded FMLA may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid leave (like vacation or sick leave) to cover some or all of the 10-day unpaid period.
- After the 10-day period, the employer generally must pay full-time employees **at two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled.

Expanded FMLA

For how long?

- After the 10-day period, the employer generally must pay full-time employees **at two-thirds the employee's regular rate** for the number of hours the employee would otherwise be normally scheduled.
- this pay maximum is limited to \$200 per day and \$10,000 in the aggregate per employee.

Expanded FMLA

Pay Calculation

- Purpose of FMLA is to protect the employee's job position
- If the Employer has less than 25 employees, the job position may be eliminated provided:
 - An employee takes emergency leave as provided under the FFCRA.
 - The leave-taking employee's position is eliminated due to "economic conditions" or other changes that affect the employer's operations resulting from the public health emergency.
 - The employer makes "reasonable efforts" to restore the employee to a position equivalent to the position the employee held when leave commenced, with equivalent pay, benefits and other terms and conditions.
 - If those "reasonable efforts" fail, the employer makes an effort to contact the employee if an equivalent position becomes available, within a contact period spelled out in the bill.

Expanded FMLA

Reinstatement

- Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises.
- An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.
- Must post by April 1.
- Poster can be found at:
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Posting Notice

- When employers pay their employees, they are required to withhold from FICA taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.
- **Private** employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS.

Will employers
be reimbursed
under FFRCA?

Cooperatives Only

- IRS Guidance Document States:
 - Employers receive 100% reimbursement for paid leave pursuant to the Act.
 - Health insurance costs are also included in the credit.
 - Employers face no payroll tax liability.
- For paid emergency family leave, the amount of the credit is equal to 100 percent of the “qualified family leave wages” that the employer is required to pay.
 - This dollar-for-dollar credit is capped at \$200 per employee per day, up to a maximum aggregate amount of \$10,000 per employee.
- For emergency paid sick leave, the amount of tax credit is capped at \$511 per employee per day if the employee takes leave for reasons of quarantine, self-quarantine or symptoms/diagnosis, and at \$200 per employee per day if the employee takes leave to care for a quarantined individual, for qualifying child care reasons or to care for an employee’s own substantially similar condition

Will employers
be
reimbursed?

Cooperatives Only

- A **private** employer may choose to pay a greater amount of sick leave than required under FFCRA, but it will not be allowed a tax credit for the excess.
- A **private** employer would not be entitled to a credit if it voluntarily pays amounts to its employees who do not satisfy any of the criteria listed for either sick or family leave.

Will employers
be
reimbursed?

What if an employee does not technically qualify, but employer voluntarily provides paid leave?

- payroll tax offset only permissible if 80 hours is used within 10 consecutive days
- Example:
 - Employee & employee's spouse alternate weeks staying at home watching the kids. Can utilize 80 hours of sick leave over more than a 10 day period. But only those hours paid during the 10 day window are eligible for the tax offset.

Sick Leave

Tax Differences under
FFCRA

- The tax credit allowed to an employer is treated as income to the employer. This is to avoid a double tax benefit, because the employer is allowed to deduct the sick leave payments to its employees. By requiring the employer to include the tax credit in income, the total after-tax cost would be reflected as \$0 rather than a net after-tax savings.

Tax Credit:
treated as
income to
Cooperative

Cooperatives Only

- Stay tuned for the CARES Act
- Some relief, but minimal

FICA Deferment

What about the PPDs and
NRDs?

CARES ACT

- Payroll Tax Deferment
- Unemployment insurance
- Small business loans
- Individual check payments

- provides up to 39 weeks of combined federal and state unemployment assistance between January 27, 2020, and December 31, 2020, to individuals, including independent contractors, who are otherwise not eligible for, or have exhausted, other state or federal benefits.
 - the federal government will fund an additional 13 weeks of unemployment benefits through December 31, 2020 after workers have run out of state unemployment benefits.
- \$600 weekly federally funded payment, in addition to state benefits, for up to four months to individuals.
- federal funding to states to cover the cost of the first week of unemployment benefits to eliminate the typical one-week waiting period

Unemployment

- Currently, governmental entities do not pay per-worker unemployment taxes to the State of Nebraska.
 - have “reimbursable arrangements” with state unemployment program, which require them to reimburse the state for 100 percent of the cost of unemployment compensation paid to their furloughed or laid off workers.
- Under the CARES Act, the federal government will pay 50% of the reimbursement for unemployment compensation paid from March 13, 2020 (when the President first declared the pandemic to be a national emergency), through December 31, 2020.

Unemployment

Fund Compensation

- **Small Businesses (as defined by the SBA) & 501(c)(3) are eligible for loans to pay a number of bills**, including:
 - electricity,
 - gas,
 - water,
 - transportation, and
 - phone and Internet access for service incurred in the ordinary course of business
- The portion of the loan used for utility payments will be forgivable.
- NRDs—small business customers/members of rural water districts will be able to pay with loan proceeds
- Accelerated depreciation

Small Business Loans

Our customers may be eligible.

- Another section of the CARES Act provides \$150 billion to be distributed by the Secretary of Health and Human Services (HHS) to states and local governments.
- only larger “units of local governments” are allowed to make a direct request for aid. Specifically, only a “county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000
- HHS regulations expected on this topic any day

Government Loans

PPDs & NRDs qualify in
limited situations

- On March 20, 2020, USDA extended for 60 days the deadline for Telecommunications and Electric Program borrowers and grantees to submit their annual CPA audit.
- USDA is waiving borrower covenant requirements for loan agreement financial ratios for the period from Jan. 1, 2020, through Dec. 31, 2020. Additionally, USDA is waiving all financial reporting requirements associated with existing Rural Utilities Service (RUS) loan and grant covenants beginning Jan. 1, 2020 through June 30, 2020.

USDA Actions

RUS Flexibility

- **\$4 billion toward helping people experiencing or at risk of homelessness. These funds can increase shelter capacity, allow communities to reconfigure shelter space to adhere to physical distancing guidelines, deliver medical care to people who acquire the virus or may be at higher risk, and provide short-term rental or utility payment assistance so that people who have lost jobs or income don't also lose their housing or access to public services like electricity and water**

Low-Income Assistance

- The act permits all employers to defer payment of the employer portion of payroll taxes owed on wages paid for employees who are retained but not currently working.
- For paid emergency family leave, the amount of the credit is equal to 100% of the “qualified family leave wages” that the employer is required to pay. This dollar-for-dollar credit is capped at \$200 per employee per day, up to a maximum aggregate amount of \$10,000 per employee
- A private employer is eligible for the payroll tax credit if, during any calendar quarter of 2020, it:
 - has operations fully or partially suspended due to a governmental order related to COVID-19, or
 - it has a decline in gross receipts of more than 50% compared to the same quarter of the prior year.

Payroll Tax Credit

Who does it apply to?
Cooperatives Only

- the CARES Act allows employers, including governmental employers, to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. The delay applies to payments due after the date of enactment and before January 1, 2021.

Payroll Tax

Social Security Deferment

Questions?

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