



Families First Coronavirus Response Act & Navigating COVID-19



Presented by

Ken Spencer & Rhonda Hollier
HR Service, Inc.



April 2020

This compliance corner is sponsored by the LPRT Committee

**The View from the Top is Great....So
are the benefits of being there!
Find out more on NAHU's website,
search "LPRT"**



Encouraging excellence in health and benefits insurance professionals since 1942

Sponsored by LPRT

What's the BIG deal?

- Profound Testimonial about YOU
- Distinguished
- Knowledgeable
- Successful
- The ELITE in your profession
- Motivation ...



NAHU Leading Producers Round Table



QUESTIONS?

You may ask your question in the questions box at any time. Any questions that we do not answer during the webinar will be posted on the compliance corner webpage in the coming weeks.

Disclaimer

The information herein should not be construed as legal or tax advice in any way. Regulations, guidance and legal opinions continue to change. The preparer has gathered public information and has attempted to present it in an easily readable and understandable format. Situations vary, technical corrections and future guidance may vary from what is discussed in the presentation.

This is meant for informational content only. The presenter makes no warranty of any kind concerning this information. You should seek the advice of your attorney or tax consultant for additional or specific information.

This presentation is not to be duplicated or distributed.

TODAY'S PRESENTER

Ken Spencer, SPHR



- President & CEO for HR Service, Inc.
 - **ERISA Solutions:** Web-based SPD Wraps, Automated EE Notices, 125 POPs, ACA Reporting, 5500 Reporting & Compliance Assessment/Dashboard
 - **HR Solutions:** HR Support, Help Desk, Handbooks, HR Audits, Training, Etc.
 - **Benefit Administration:** COBRA, HSAs, FSAs, HRAs & Nondiscrimination Testing
- 30 year's experience in benefit compliance, HR and employment law
- Taught benefits and HR for 8 years at Westminster and 1 year for U of Phoenix
- Masters in Human Resource Management
- SPHR certified

TODAY'S PRESENTERS



Rhonda Hollier, SPHR & SHRM-SCP
HR Business Consultant, HR Service, Inc.

- 25+ years HR & Employment Law
- Bachelor Degree
- Professional Services Consultant from start-ups to Fortune 500 Companies



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

April 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25

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 child care 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.

WHY an Employee Could Qualify

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.

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*

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.

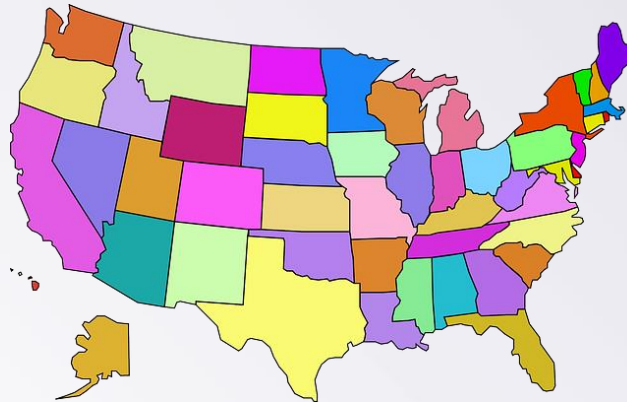


Tax Credits

- 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:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
Federal Employees:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Federal.pdf
- 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



Challenging Times for Employers

- Compliance with FFCRA – 4/1/20 Effective
- Business downturn and weakening economy
- Many employees forced to work remotely or temporarily shutdown
- Faced with furloughs or reductions in force



Downturned Market Conditions



Working Remote

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

- 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
- Allow or request reduced, temporary work hours
- Consider short-term non-matching retirement plans
- Salary reduction – short term
- 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)



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
- 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
- FFCRA Policy Sample
- Furloughs & RIF
- COVID-19 Solutions
- More

Questions or Need help with HR, Compliance or Administration Solutions

www.HRServiceInc.com

Solutions@hrserviceinc.com

(833) 685-8400 x 1



QUESTIONS?

You may ask your question
in the questions box at any time.
Any questions that we do not answer
during the webinar will be posted on the
compliance corner webpage in the
coming weeks.