

CORONAVIRUS EMPLOYMENT LAW UPDATE FOR CONTRACTORS

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MEET THE PRESENTERS



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TODAY'S AGENDA

- Families First Coronavirus Response Act (FFCRA)
- Virus-related unemployment compensation and workers compensation claims
- WARN Act compliance
- Paycheck Protection Loans (federal stimulus)
- Other FAQs



Families First Coronavirus Response Act (FFCRA)

GENERAL SCOPE OF FFCRA

- Signed into law March 18, 2020
- Requires small businesses to provide paid sick leave and paid family leave
- Effective April 1, 2020 through December 31, 2020



APPLICABLE BUSINESSES

- FFCRA only applies to “small businesses”
- **Small Businesses:** Businesses of 500 or less employees
- Exemptions: Small businesses of less than 50 whose operations would be jeopardized by paid leave provisions



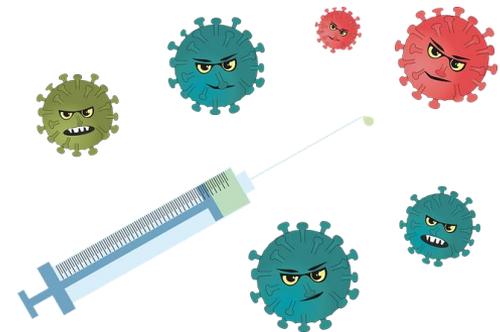
TAX CREDITS

- FFCRA provides covered businesses with dollar-for-dollar tax credit for benefits paid to employees
- Stimulus bill provides clarification on taking credit



SICK LEAVE AND FAMILY LEAVE

- Two parts to FFCRA:
 1. Paid Sick Leave
 2. Paid Family Leave
- Salary and fringe benefits



PAID SICK LEAVE

- 80 hours (two weeks) of paid sick leave
- Cannot “diminish” PTO or other paid time off
- Amount of pay depends on employee’s reason for requested leave



PAID SICK LEAVE

Paid sick leave at full salary (\$511 per day max):

- The employee is subject to a federal, state, or local quarantine or isolation order
- The employee has been advised by a health care provider to self-quarantine
- The employee is experiencing coronavirus symptoms and is seeking a medical diagnosis

PAID SICK LEAVE

Paid sick leave at two thirds salary (\$200 per day max):

- The employee is caring for an individual who is quarantined by order of the government or a doctor
- The employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to coronavirus
- The employee is experiencing any other substantially similar condition, as specified by the Secretary of Health and Human Services

PAID FAMILY LEAVE

- 12 week entitlement
- First two weeks paid at **employee's** option
- Two thirds salary (\$200 per day max)



PAID FAMILY LEAVE

Eligible Employees:

- Employed for at least 30 days
- Caring for a son or daughter (18 or under) whose school has been closed due to coronavirus
- Only for active employees (not employees receiving unemployment compensation)



DOL'S 30-DAY GRACE PERIOD

- DOL will not commence enforcement actions against employers who make a “good faith” effort to comply with FFCRA for a 30-day period



Unemployment Compensation

WHAT'S NEW WITH UNEMPLOYMENT COMPENSATION IN WASHINGTON, DC

- Employees will be eligible for separations caused by layoff or shutdown
- No seven-day waiting period
- No increase to employer's UC tax rate
- Stimulus package provides for an additional 13 weeks and up to \$600 per week

WHAT'S NEW WITH UNEMPLOYMENT COMPENSATION IN WASHINGTON, DC?

- Will an employee be deemed eligible if he/she refused to work because he/she is afraid?
- “Necessitous and compelling” standard
- “Imminent threat” under OSHA



WHAT'S NEW WITH WORKERS' COMPENSATION IN WASHINGTON, DC?

- DOL has issued guidance that coronavirus-related claims must be job-related to be covered by workers compensation

The CARES Act

GENERAL SCOPE

- Authorizes disbursements of “paycheck protection” loans to small businesses to maintain operations, with forgiveness incentives, and broadens unemployment compensation benefits



SMALL BUSINESS LOAN AMOUNTS/APPLICABILITY

- \$349 billion earmarked for small business loans
- Only “small businesses” (businesses w/ less than 500 employees) are eligible
- Required certification to obtain loan stating that such loan is required to maintain business operations as a result of COVID-19 impact
- Usage of loan is limited to specific areas



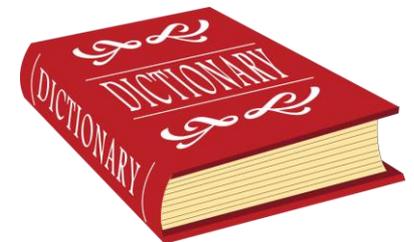
DEFINITIONS

- **Covered Loans**

- Loans made pursuant to this legislation between February 15, 2020 and June 30, 2020

- **Payroll Costs**

- Paid Salaries or wages of employees capped at \$100K annually, as well as health insurance, 401k contributions, and other fringe benefits.



CALCULATION FOR LOAN AMOUNT

- Small businesses may apply for a loan capped at the value of the lesser of:
 - ((Average of monthly Payroll costs*) x (2.5) + (outstanding amount of any business loans under Title V of the Consolidated Appropriations Act made between January 31, 2020 and the date on which covered loans can be refinanced))
 - or*
 - \$10 Million



LOAN USAGE

Covered loan sums may be used for:

1. Payroll Costs
2. Costs related to the continuation of group healthcare benefits during periods of paid sick, medical, or family leave, and insurance premiums
3. Employee salaries, commissions, or similar compensations
4. Interest payments on mortgage obligations
5. Rent
6. Utilities
7. Interest on any other debt obligations incurred before the covered period

LOAN FORGIVENESS

- Loan sums utilized for payroll costs, interest on mortgage, rent, and utilities during an eight week “covered period” are eligible for forgiveness (cancellation of debt)
- Percentage of the eligible loan sums to be forgiven (up to 100%) is calculated by dividing:
 - The average number of full-time equivalent employees per month employed by a business during the covered period *by either:*
 1. The average number of employees from February 15, 2019 to June 30, 2019; *or*
 2. The average number of employees in January and February of 2020.

ADDITIONAL LOAN FORGIVENESS LIMITATIONS

- Loan Forgiveness will also be limited by reduction of applicable employee salaries in whole or in part by more than 25% of employee's earnings during the most recent full quarter
- **Exception:** For employee salaries reduced as above between February 15, 2020 and 30 days after enactment, such salaries shall not reduce forgiveness amount *if* the business eliminates the reduction in the number of full-time employees and eliminates reduction in salary of such employees

EXPANDED UNEMPLOYMENT COMPENSATION

- CARES Act creates the Pandemic Emergency Unemployment Compensation Program (PEUC)
- Under PEUC, individuals who have exhausted rights to UC for a benefit year or have no rights to regular compensation are granted an additional 13 weeks of UC eligibility
- Through July 31, 2020, any individuals currently receiving or eligible under applicable requirements to receive UC (including under below legislation) shall receive a supplementary \$600 per week in addition to each state's currently authorized UC benefits

EXPANDED UNEMPLOYMENT COMPENSATION

- CARES Act creates additional eligibility for UC for a maximum of 39 weeks for individuals that have exhausted UC eligibility, including under PEUC
 - However, this additional eligibility is limited to unemployment directly contributable to COVID-19
- Eligibility includes amounts that would normally be allotted under state law plus the CARES Act supplementary \$600 through July 31, 2020

APPROVED

DECLINED

General Information Regarding Operations and Coronavirus

LAYOFFS

Important Considerations for businesses considering layoffs:

- Coronavirus implications do not necessarily close off discrimination claims
 - Consider Seniority
- Enforcement of Noncompetition Agreements
- Potential limitation of loan forgiveness under the stimulus package

LAYOFFS

Federally Required Notice under WARN Act

- Under WARN, a covered layoff means that a layoff that impacts at least: (a) 500 employees at a given site; or (b) 50 employees at a given site, provided those employees make-up at least 1/3 of the total workforce at the site.
- Only layoffs lasting at least six months are covered by the WARN Act.
 - It remains to be seen how the DOL and courts are going to apply “natural disaster” and “unforeseen business circumstances” to pandemic-related layoffs.

- Washington DC and Virginia follow the federal WARN Act and do not have any similar laws of their own.
- Maryland does have a “mini” WARN Act called the Economic Stabilization Act, which applies solely to employers in the industrial, commercial, and business industries with 50 or more employees.
- Maryland’s “mini” WARN Act encourages, but does not require, employers who have been in business for more than one year to provide 90 days’ advance notice, severance, and benefits continuation.

ADDITIONAL INFORMATION

- Requiring disclosure of Coronavirus positive tests/exposure
- Sending home employees that exhibit symptoms such as shortness of breath, fever, or coughing, or employees that have been exposed to individuals carrying coronavirus
- Taking temperatures
- Disclosures to CDC, Dept. of Health, employees and others*
 - *When disclosing, attempt to limit names of such employees where possible



QUESTIONS?



THANK YOU FOR ATTENDING!



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