



20/20 Vision

A Look Into COVID-19 Employment Issues



Families First Coronavirus Response Act ("FFCRA")





Emergency Paid Sick Leave ("EPSLA")

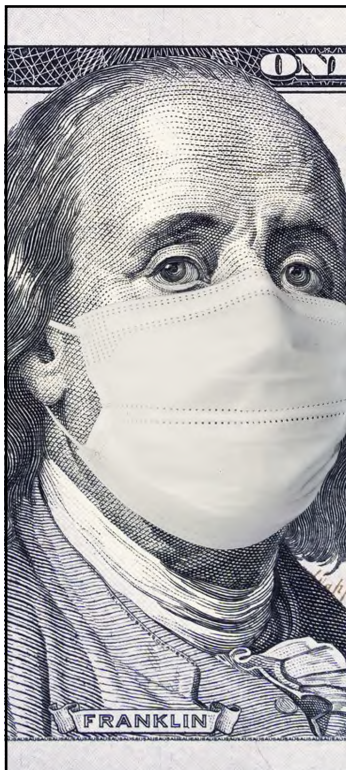
1. Employee is subject to federal, state, or local quarantine order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Employee is unable to work because of a need to care for an individual subject to a federal, state, or local quarantine order or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. Employee needs to care for employee's son or daughter whose school or place of childcare or whose regular childcare provider is unavailable due to COVID-19; or
6. Because an employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.



EPSLA - How much leave and at what rate of pay?

- Covered employers must provide eligible employee up to 2 weeks (80 hours) of paid leave because the employee is unable to work or telework because one of the foregoing reasons.
- Reasons (1), (2), and (3), the employee is entitled to receive up to the regular rate of pay up to \$511/day for a maximum of \$5,110.
- Reasons (4), (5), and (6), the employee is entitled to receive up to 2/3 the regular rate of pay up to \$200/day for a maximum of \$2,000.
- CARES Act provides that employers can choose to pay more.





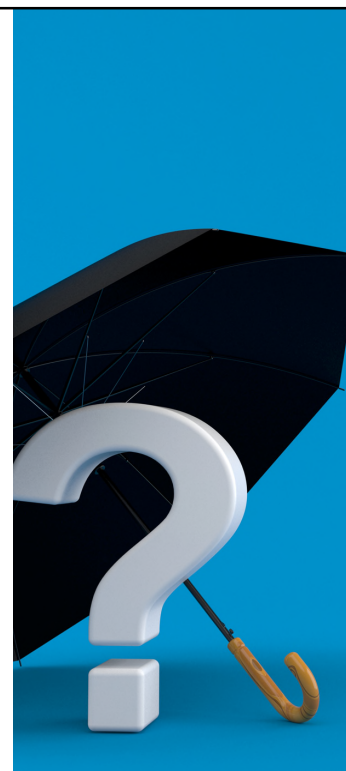
Emergency Family and Medical Leave Expansion Act ("EFMLEA")

1. Covered employers must provide up to 12 weeks of expanded family and medical leave (up to 10 weeks of which must be paid at 2/3 the employees regular rate (up to \$200/day) if:
2. Employee is unable to work or telework because: Employee needs to care for employee's son or daughter whose school or place of childcare or whose regular childcare provider is unavailable due to COVID-19.
3. First 2 weeks are unpaid, but an employee can use EPSLA leave during that time.
4. Maximum entitlement is \$10,000 or \$12,000 when combined with leave under EPSLA.
5. Employee must have been employed for 30 days prior to first day of leave.
6. Job restoration required; although employers <25 employees may be exempt.



Who is a Covered Employer under EPSLA and EFMLEA?

- Private employer with <500 employees and certain public employers.
- Small employers with <50 employees may qualify for an exemption from the requirement to pay the leave due to an employee being unavailable unable to work or telework because, the employee needs to care for employee's son or daughter whose school or place of childcare or whose regular childcare provider is unavailable due to COVID-19, IF the payment of leave would jeopardize the viability of the business as a going concern.
- Excluded from coverage are employees of healthcare providers and emergency responders.





Relief for Employers

- Under FFCRA covered private employers bear the up-front costs of payments for paid sick leave and paid FMLA leave, but they qualify for a dollar-for-dollar reimbursement from the IRS in the form of tax credits and for allocable costs related to maintenance of health care coverage under any group health plan while the employee is on leave under FFCRA.
- CARES Act provides that employers can request an advance of anticipated tax-credits and refunds.



EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 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); | |

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20





CARES Act – What it Means for Small Businesses and Their Employees



Keeping American Workers Paid and Employed

- PPP (Paycheck Protection Program) loans – \$349 billion ... and that will not be enough
 - Who is eligible –
 - 500 employees or less...
 - There are exceptions – specifically SBA's affiliation standards for small business in the hotel and food services industries... (NAICS code 72) – two companies are affiliated when the same person or company controls or has the power to control both.
 - Also, qualifying tax-exempt nonprofit organizations (501(c)(3)); and tax-exempt veterans organizations (501(c)(19))





How much can I borrow? Lesser of 2.5 times average monthly payroll plus existing EIDL which is qualified for refinancing or \$10M, whichever is less.



Payroll costs include salary, wage, commissions (up to \$100k per year per individual); payments of cash tips or equivalent; payment for vacation, parental, family, medical or sick leave (other than payments for which credit allowed under FFCRA); allowance for dismissal or separation; payment required for the provision of group health benefits, including premiums; payment of any retirement benefits; payment of state or local tax assessed on the compensation of employees.



For an independent contractor or sole proprietor: "Payroll costs" consist of wage, commissions, income, or net earnings from self-employment or similar compensation.



Application verifications are the employer's responsibility. This is very important – OIG has already made it clear that it will be investigating and prosecuting fraudulent activity connected with PPP loans.



- Current SBA guidance requires loan disbursement within 10 days of approval. **Your 8 week period for use of funds begins to run on date of loan disbursement.**
- Deposit loan proceeds in a separate account and pay eligible expenses out of this account –
 - Payroll costs (same as above)
 - Interest portion of covered mortgage on real and personal property
 - Covered Rent
 - Covered Utilities (electricity, gas, water, transportation, telephone, internet)
 - All agreements with mortgages, rent, utilities in place prior to February 15, 2020





- Not more than 25% of amount forgiven may be for non-payroll expenses.
- Forgiven amount will be reduced where the number of employees employed (on a full time equivalent (FTE) basis) during the loan period is less than the number of employees that were employed February 15, 2019 - June 30, 2019 OR January 1, 2020 - February 29, 2020. The choice of which time period is the borrower's to make.
- The loan forgiveness amount is also going to be reduced by the amount of any reduction in total salary or wages of any employee during the Covered Period, that is more than 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the loan was received.



EXCEPTION - If the borrower reduced its staff or their wages between February 15, 2020 and April 26, 2020, the amount of loan forgiveness will not be reduced if the borrower eliminates the reduction in employees or salaries and wages by June 30, 2020.



Example

A business borrows \$120,000, and of that, \$20,000 is spent on documented utility and rent costs and \$100,000 is paid towards payroll costs during the 8 week period.

The business has 10 employees on payroll during the 8 weeks following the date loan proceeds were received, but had 15 employees on payroll between February 15, 2019 - June 30, 2019.

Employer does not restore staffing to 15 employees by June 30, 2020 and no employee received less than 75% of his or her regularly paid wage during the Covered Period.



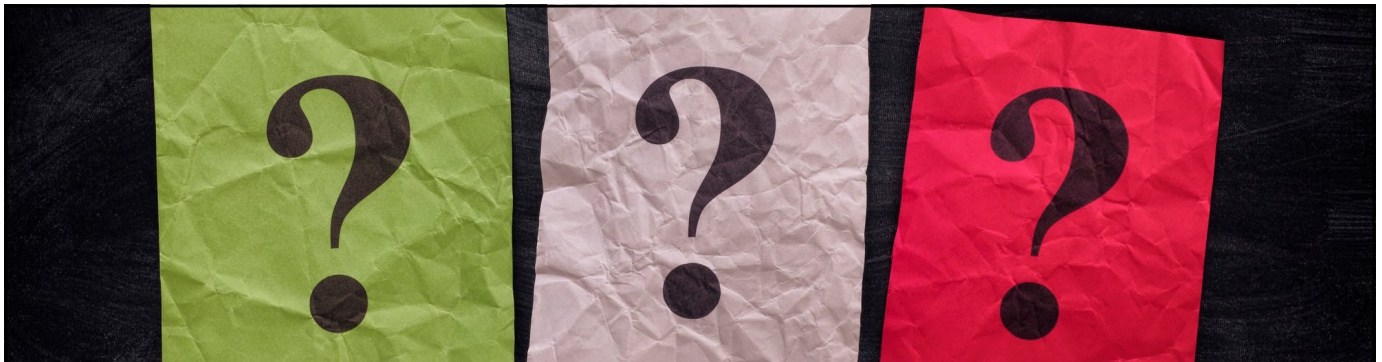
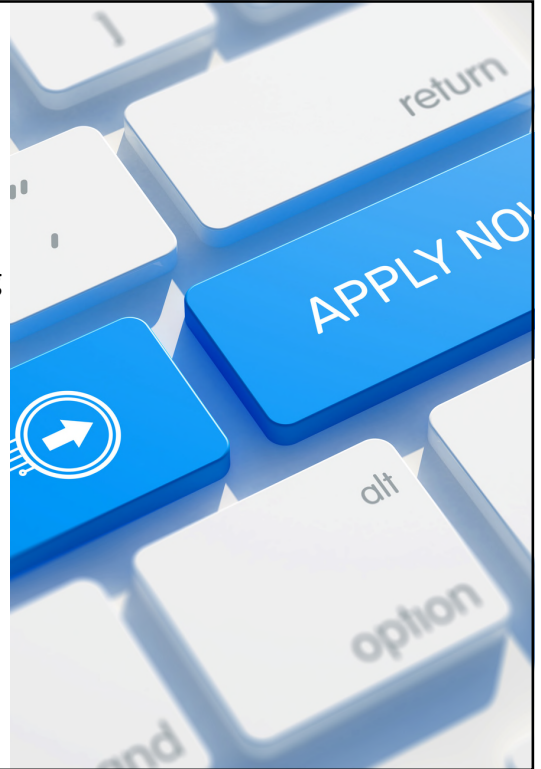
In this case: $(\$100,000 \text{ expended on payroll}) \times (1 - 10/15) = \$33,333$

\$86,667 is the total forgiven amount. The \$66,667 (\$100,000 - \$33,333) of the amount used towards payroll costs will be forgiven, along with the \$20,000 used for non-payroll costs, because it does not exceed 25% of the total \$86,667 that is forgiven.

\$33,333 is the amount of the loan that is not forgiven. That \$33,333 will be payable in monthly payments of Principal and Interest over a 2 year period, at 1.0% interest, with payments starting 6 months after the loan proceeds were received. Monthly payment equals \$1,389.37!



- Forgiveness is NOT automatic. You must apply for forgiveness... and you have the burden of establishing a basis for forgiveness... what does this mean and what will I need to show? We are not certain – we expect SBA will release additional guidance on these points... We expect at least the following: payroll records, bank account statements, cancelled checks, etc.



Your Questions



It states that the PPP loan is forgivable if we pay per employee at least 75% of loan proceeds compared to previous hours from the two timelines listed in the Cares Act. Since we are not in office, we are looking at paying them at 75-80% of normal hours to assure they are forgivable. Assuming we do that, that is still technically a reduction in hours due to coronavirus.

Would the employees be able to still file for unemployment due to "reduction in hours" in NC?



As an employed optometrist, can your employer take all your PTO (previously earned and to be earned this year) to fund continuing payment of doctor salaries even though they continue working from home talking with patients, answering emails, go in and seeing patients who have urgent needs, participating in live training webinars about our new EMR system among many other duties? We get company emails even on weekends that we are expected to read and be prepared to respond appropriately.



How are the unemployment rules different for regular employees and 1099 employees?



Can I apply for unemployment if my hours are cut back significantly but I have not been let go entirely?



Are we to assume FTE is based on 40 hours/wk?

And once we receive the PPP loan and consider our first payroll, when should we alert DES (unemployment) they have been rehired?



I have a sole proprietorship optometric practice. I own my office building (no mortgage or rent). I have 2 employees, besides myself. During the Covid 19-mandated closure of my office, these 2 employees have already signed up for NC Unemployment Benefits under Division of Employment Security (DES). Do the 2 employees have to come off DES benefits in order for me to apply for a Payroll Protection Program (PPP) loan, or can I apply for salary benefits for me, only, along with payments for office utilities? The employees say that they will receive more money from the DES benefits, than from PPP, since DES gives them an additional \$600 added to their salary benefits. Is this correct? How may I best handle this?

To summarize, is the PPP loan necessarily for all employees, or can the 2 employees be eliminated from the loan request?



Are practice owners eligible to apply for unemployment? My practice has had zero income since March 13, and I have not been paying myself my salary for the past month.

Are there unemployment benefits available for the owner/employer of a business (professional association)?



My understanding is that with the recent FFCRA legislation, small businesses (fewer than 500 employees) are now required to provide up to 2 weeks of "paid sick leave" for employees that have been laid-off due to COVID-19.

- If we do not have the cash or lines of credit to pay, what are the penalties?
- If we're waiting for a Paycheck Protection Plan loan (my bank has not processed my Payroll Protection Plan application yet), is there a penalty for a delay in providing paid sick leave?



Regarding the Paycheck Protection Plan, and following up [the previous] question...

- If our staff is already receiving unemployment benefits, can we wait to use those PPP funds (if we eventually get them) when we reopen the practice and staff return to work, or do we have to pay the "regular" payroll amount immediately?
- Does paying staff from PPP loan funds count toward the employer's obligation from FFCRA to provide paid sick leave?



Some of my part-time staff has been able to start working from home, but with significantly reduced hours, after already getting unemployment benefits. However, they have to report their pay to the NC Unemployment Office. One employee has called me complaining that unemployment benefits covered her bills, but since her return to work (from home) she is no longer eligible for unemployment, and the paycheck from the reduced hours is not enough for her monthly expenses. She is in a Catch-22, and wants to keep working, but has asked me to defer her pay so that she can still get unemployment benefits.

- Can I withhold pay at the request of this part-time worker so that she can continue to get unemployment and pay her bills? (Perhaps re-classify her as a volunteer, and pay her a bonus or a higher wage when we get back to normal?)



All of my employees have filed for unemployment. I've received the Request for Separation Information for each. However I am unable to sign in to my account/portal to respond to these requests. Upon sign in I get this message:

! Your account has not yet been approved for access to DES services. Please contact the Employer Call Center at 919-707-1150.

I've called this number throughout the day for 2 weeks and have not yet been able to speak with anyone. Also have sent emails with no response.

Will my employees not get their claims processed until this is resolved? Any ideas?



What liability, if any, would the employer, O.D. practice (P.A), incur as a result of an employee contracting the COVID-19 virus possibly in the workplace?

Would it be advisable to have the employee sign a waiver that would relinquish the employer of any liability for such an occurrence?



PPP loan funded and bringing employees back initially in 2 separate teams or shifts which would reduce hours but plan to pay them normal full time hours while under PPP 8 week period.

How to handle an employee who might not come back citing FMLA reasons (kid at home being most likely)?



Is a "re-start" bonus prohibited under PPP loan forgiveness conditions?



Is a "hazard pay" bonus or wage increase prohibited under PPP loan forgiveness conditions? Some opinions I have seen indicate to not go below 75% of one's previous wages or over 125%, is there an official guidance on this?



I have furloughed most of our staff and they are drawing unemployment. Once we open back up and request staff to return to work, if someone decides not to come back to work and continue to draw unemployment but there is work available for them how do we handle that?

Currently we are not receiving any weekly information of people drawing unemployment, just the initial declaration. Do we report to DES that we have full work hours again?



At what point can you require employees to return to work if they don't want to return or say they are afraid to work in direct patient care?



Under what circumstances can you discipline / fire an employee for refusing to come back to work?



If I am paying employees (with or without a PPP or EIDL loan) can I require them to come in and perform office clerical tasks other than direct patient care while we are closed to routine patient care?



What are the safety precautions a practice needs to institute (facemasks, gloves, etc.) to provide a safe working environment if we come in to see emergencies or when we are allowed to return to regular patient care?





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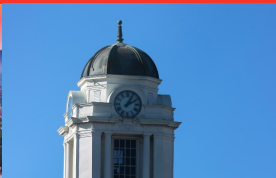


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