

Governmental Relief for Small Businesses Impacted by COVID-19

March 27, 2020

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Overview

- ▶ Families First Coronavirus Response Act
 - ▶ Emergency Family and Medical Leave Expansion Act (EFMLEA)
 - ▶ Emergency Paid Sick Leave Act (EPSLA)
- ▶ Small Business Administration Disaster Loans
- ▶ State/Municipality Small Business Relief
- ▶ Coronavirus Aid, Relief and Economic Security (“CARES”) Act



Families First Coronavirus Response Act ("FFCRA")

- ▶ On 3/18/20, the FFCRA was passed and signed into law. (96-0 in Senate)
- ▶ The act contains two important laws to provide relief to employees (paid leave) and employers (tax credits and exemptions)
 - ▶ Emergency Family and Medical Leave Expansion Act (EFMLEA)
 - ▶ Emergency Paid Sick Leave Act (EPSLA)

Emergency Family and Medical Leave Expansion Act (EFMLEA)

- ▶ EFMLEA applies to employers with fewer than 500 employees
- ▶ Regulations are expected as soon as April 2020 specifying that certain provisions may not apply to certain employers with fewer than 50 employees
- ▶ Small businesses with fewer than 50 employees may qualify for an exemption from the requirement to provide leave if the leave requirements would jeopardize business viability as a going concern

Who Qualifies for EFMLEA?

- ▶ Eligible employees (employed at least 30 days) can apply for extended leave for *qualifying* circumstances:
 - ▶ Related to a public health emergency (COVID-19); and
 - ▶ Are unable to work (or telework) due to a need to care for a son or daughter (only) under 18 years of age if the school or place of care has been closed; or
 - ▶ The child care provider of a son or daughter is unavailable due to a public health emergency (COVID-19)

Benefits of EFMLEA?

- ▶ The first ten days of any leave under EFMLEA are unpaid, BUT an employee can choose to use the expanded sick leave discussed later for these ten days
- ▶ After the first ten days of EFMLEA, the employee is entitled to PAID leave of the lesser of:
 - ▶ (a) two-thirds of his or her regular rate of pay, or
 - ▶ (b) \$200/day, not to exceed an aggregate amount of \$10,000



Emergency Paid Sick Leave Act ("EPSLA")

- ▶ The Emergency Paid Sick Leave Act entitles employees who are unable to work (or telework) due to one of six circumstances to paid sick time of:
 - ▶ (a) 80 hours for full-time employees; or
 - ▶ (b) the average number of hours worked over a two-week period for part-time employees

Emergency Paid Sick Leave Act Qualifying Circumstances (6)

1. Employee is subject to a Federal, State, or Local quarantine or isolation 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 caring for an individual who is quarantined, isolated or has been advised to self-quarantine
5. The employee is caring for a son or daughter if the school or place of care for the son or daughter has been closed, or the child care provider is unavailable due to COVID-19
6. Employee is experiencing substantially-similar condition specified by Secretary of Health and Human Services in consultation with the Secretary of Treasury and Labor

Emergency Paid Sick Leave Act Benefits (Effective 4/1/20)

- ▶ Sick pay will be limited to a maximum of \$511/day (\$5,110 total per employee) for leave required for employee **personally impacted by COVID-19 symptoms**
- ▶ Sick pay will be limited to a maximum of \$200/day (and 2,000 total per employee) for leave required for employee caring for another person who is **personally impacted by COVID-19 symptoms**
- ▶ EPSLA sick days do not carry over to 2021
- ▶ Employees entitled to sick days under the EPSLA can use these sick days before using their own PTO days



Notice and Communication

- ▶ Inform employees that they must notify HR as soon as they see the need for leave under EFMLEA or EPSLA
- ▶ After the first workday of expanded family and medical leave, employer may require employees to follow reasonable notice procedures to continue receiving expanded family and medical leave
- ▶ FFCRA requirements must be conspicuously posted on the premises. You can find a copy of it here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf (or Google “FFCRA Notice Poster”). It should be the first result



Restoration to Position

- ▶ Employees who take leave under these new laws are entitled to be restored to their position or equivalent position unless an exception applies
- ▶ Employer may not discharge, discipline, or otherwise discriminate against any employee who takes leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA
 - ▶ **Exceptions that apply to employers with fewer than 25 employees:**
 - ▶ An employee takes leave and their position no longer exists due to economic conditions or other changes in the employer's operating conditions that affect employment and are caused by COVID-19 during the leave; **and**
 - ▶ Employer has made reasonable efforts to restore the employee to an equivalent position, **and**
 - ▶ If reasonable efforts fail, Employer has made reasonable efforts to contact Employee about an equivalent position for one year following the end of the COVID-19 emergency or the end of Employee's 12-week leave



Tax Credits

- ▶ **Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA**
- ▶ Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps
- ▶ **Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage**

Retention of Payroll Taxes

- ▶ Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of payroll taxes equal to the amount of qualifying leave that they paid, rather than deposit the funds with the IRS
 - ▶ **Includes Federal Income Tax, and the employee and employer share of Social Security and Medicare taxes, with respect to all employees**
- ▶ If withheld amounts are insufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form. The IRS “expects” to process these requests in two weeks or less

Payroll Examples

- ▶ **Example 1: Eligible employer pays \$6,000 in sick leave, and is otherwise required to deposit \$10,000 in payroll taxes, including taxes withheld from all its employees.**
 - ▶ Employer could use up to \$6,000 of the \$10,000 of taxes it was going to deposit for making qualified leave payments
 - ▶ Employer would only be required to deposit the remaining \$4,000 on its next regular deposit date
- ▶ **Example 2: Eligible employer pays \$10,000 in sick leave, and is otherwise required to deposit \$6,000 in taxes withheld from all employees.**
 - ▶ Employer could use the entire \$6,000 of taxes to make qualified leave payments, and could file a request for an accelerated credit for the remaining \$4,000

Small Business Administration Disaster Relief Loans

- ▶ **SBA provides low-interest disaster loans to help small businesses meet working capital needs or normal business operating expenses during recovery period from a declared disaster, such as COVID-19**
 - ▶ Loans can be long-term, and carry a 3.75% interest rate
- ▶ **SBA Section 7(b) Economic Injury Disaster Loans**
 - ▶ Provide up to \$2,000,000 to help small businesses with fewer than 500 employees to pay fixed debts, payroll, accounts payable, and operating expenses
 - ▶ Businesses are eligible for EIDL if they have suffered economic injury from COVID-19, provided they were able to meet financial obligations **before** COVID-19
 - ▶ (If business was insolvent prior to COVID-19, ineligible)
 - ▶ Available in all COVID-19 disaster areas, including every state, District of Columbia, and U.S. Territories
- ▶ Apply at disasterloan.sba.gov/ela and select “economic injury” as reason seeking assistance
- ▶ Application requires supporting documentation, including business’s most recent tax returns, personal financial statement, and schedule of liabilities
- ▶ Processing time expected to take 30 days. For help, call: (800) 659-2955

State & Municipality Assistance

- ▶ **Various states and municipalities have offered various grants, funds, and loans for businesses in need:**
 - ▶ San Francisco (businesses up to five employees can apply for up to \$10,000)
 - ▶ Florida Small Business Bridge Program (businesses with 2-50 employees can apply for up to \$100,000)
 - ▶ Chicago Small Business Resiliency Fund
 - ▶ Michigan Small Business Relief Program
 - ▶ New York City Employee Retention Grant Program
 - ▶ New York City Small Business Continuity Fund
 - ▶ Beaverton, Oregon Emergency Business Assistance Program
 - ▶ This is a dynamic list, and subject to change. Some applications are not yet available.

“CARES Act” – Coronavirus Aid, Relief, and Economic Security Act (HR 748)

Law passed by House of Representatives on 3/27/20

- ▶ Employee Retention Credit
 - ▶ 50% refundable payroll tax credit on wages paid up to \$10,000 during the pandemic
- ▶ Paycheck Protection Program
 - ▶ Intended to help small businesses make payroll and cover other expenses, including rent, utilities, mortgage interest, and interest on other debt obligations from 2/15/20 – 6/30/20. Eligible entities can borrow up to \$10,000,000 on a formula tied to 2.5 times average monthly payroll, covering employees up to \$100,000/year
 - ▶ Deferral of principal and interest payments for 6-12 months
 - ▶ Loan forgiven up to an amount used to pay payroll, rent, utilities, and mortgage interest during the eight weeks following loan disbursement, unless reduction in the workforce or wages is more than 25% (or are restored by 6/30/20)
- ▶ Employer Social Security Tax Payment Deadline – deadline for payment of employer portion is delayed with 50% owed due on 12/31/21 and other 50% owed on 12/31/22
- ▶ Expanded Eligibility for Unemployment Compensation
 - ▶ Significant expansion – now covers self-employed, gig workers, independent contractors, and freelancers, as well as part-time workers, furloughed employees, and anyone who cannot physically go to their jobs
 - ▶ **People who in the past didn't qualify will receive 50% of their state's average benefits payout plus \$600/week!**

Questions?

Call Bill Frazier at Bangerter Frazier & Graff at (435) 628-7004 to schedule a consultation to discuss the effects of FFCRA and other legislation on your business.

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