

IMPACT TO YOUR BUSINESS:

Family First Coronavirus Response Act & CARES Act

Implications for Employers Webinar Series
April 15, 2020



ABOUT THE CHAMBER

The **Aurora Regional Chamber of Commerce** is the catalyst for business success. We unite businesses with the community by creating economic prosperity and facilitating community leaders.

- **Reach:** Serving the greater Aurora region across 4 counties
- **Members:** Representing nearly 600 businesses
- **History:** 110 year Chamber history
- **Accreditation:** 5 star accreditation from the U.S. Chamber of Commerce

FEATURED SPEAKERS



JULIE A. PROSCIA

Partner, SmithAmundsen

Julie provides labor and employment counsel that is outcome based. Julie represents many public sector/municipal employers in traditional labor and employment issues. Most commonly, Julie represents municipalities in labor disputes, including negotiations, grievances, ULP defense, and arbitration.



REBECCA DOBBS BUSH

Partner, SmithAmundsen

Rebecca thoughtfully and skillfully provides management with advice and counsel in human resource matters, wage and hour issues, employee benefit compliance and employment litigation. When Rebecca advises on difficult matters relating to compliance with ERISA and the tax code, she is able to consolidate the complexities of compliance into understandable and practical advice and guidance.

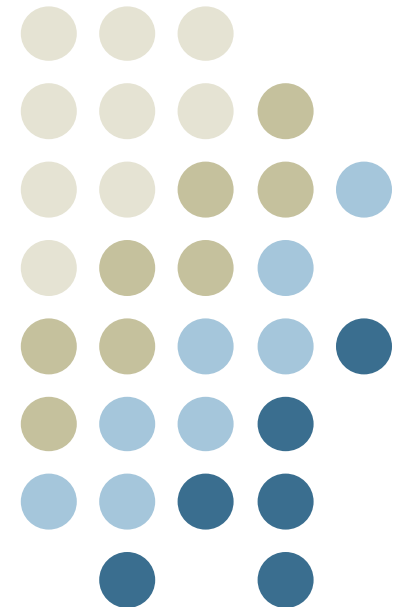
COVID-19 UPDATE: HOW FFCRA AND CARES IMPACT YOUR BUSINESS

APRIL 15, 2020

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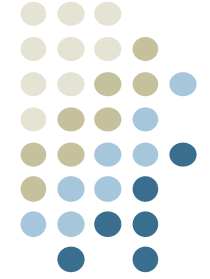
AGENDA



Latest on key provisions of new federal laws:

- FFCRA
- Paycheck Protection Program
- Payroll Tax Credit
- Additional Loan Programs
- Unemployment Benefits
- 401(k)/403(b) Hardship and Loan options
- Section 139 – Qualified Disaster Payments

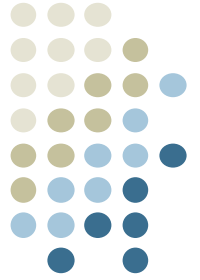
FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)



Focuses on:

- Paid Leave
- Expansion of FMLA
- Expansion of Unemployment Benefits

PAID SICK LEAVE – FFCRA



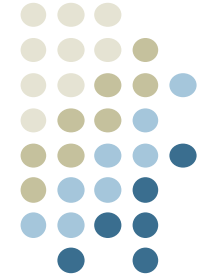
Which Employers are Subject the FFCRA?

- < 500 Employees and Government Employers
- Exemptions for Health Care Providers and First Responders
- Potential Exemption for businesses under 50 employees for economic viability

What is it?

- Maximum 80 Hours for FT Employees/Avg. of Hrs. Over Standard 2 Week Period for PT Workers (1 time usage)
- Leave added to any paid leave required by State/Local Law; Can be added to available under other leave entitlements if employer agrees
- May be used intermittently with employer agreement

PAID SICK LEAVE – FFCRA



Who is Eligible?

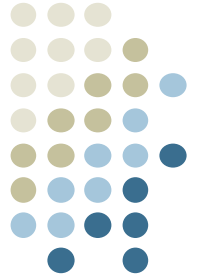
Employees unable to work at home or remotely because:

- Subject to a Governmental Directive to Quarantine or isolation order, this includes “Stay At Home”
- Been advised by a medical care provider to self-quarantine due to COVID-19 symptoms
- Experiencing COVID-19 symptoms and seeking a diagnosis
- Caring for family or household member subject to Quarantine Order
- Caring for children with closed schools or no caregiver due to Medical Emergency
- Other reasons as directed by HHS

*****Eligible Immediately Upon Hire***

PAID SICK LEAVE – FFCRA

HOW MUCH LEAVE IS AVAILABLE?



How do you determine the pay?

- Regular Rate = Average Pay, including OT/Tips/Commissions for the last 6 months

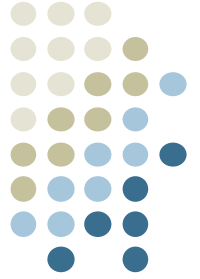
How much do employees get paid?

- Maximum for #1, 2 or 3 is regular rate of pay, up to \$511/Day and \$5,110 total
- Maximum #4, 5 of 6 is 2/3 regular rate of pay, up to \$200/Day and \$2,000 total

What documents do you collect?

- Written request with signature identifying the reason for the request, and the name and contact information of the medical provider for #2, 3 & 4, or the name of the care provider and/or school closure order for #5

FFCRA – EXPANDED FMLA



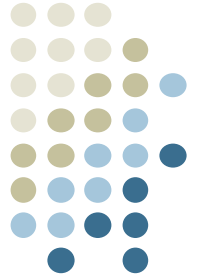
Which Employers are Subject the FFCRA?

- < 500 Employees and Government Employers
- Exemptions for Health Care Providers and First Responders
- Potential exemption for businesses under 50 employees for economic viability

Which Employees are eligible?

- Employees that have been employed for at least 30 calendar days

FFCRA – EXPANDED FMLA



What is it?

- Up to 12 weeks of leave (including the 2 weeks under the FFCRA Paid Sick Leave provisions) to care of children under 18 if schools are closed or the childcare provider is unavailable due to COVID-19

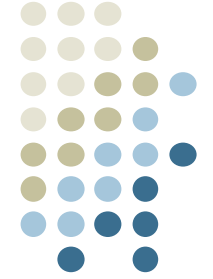
How much?

- 2/3 regular rate of pay, up to \$200/Day and \$2,000 total

How is this different from regular FMLA?

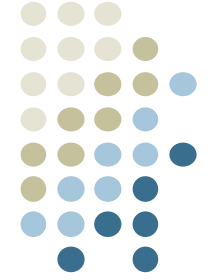
- FFCRA is limited to COVID-19 vs. other serious health conditions, and regular FMLA does not have government reimbursement

FFRCA – BOTH PAID LEAVE AND EXPANDED FMLA



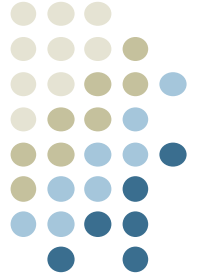
- Notice must be given to all Employees
- No retaliation for requesting the leave
- Recoupment:
 - 100% through Tax Credit – quarterly

FFRCA – UNEMPLOYMENT COMPENSATION



- Effective Dates: 1/27/2020 – 12/31/2020
- Eligibility:
 - Same as Paid Sick Leave
 - Scheduled to start but can't due COVID-19
 - Became head of household due to head of households death
 - Resignation the direct result of COVID-19
 - Fear of contracting COVID-19 does not count BUT use caution when contesting. Find out why!

FFRCA – UNEMPLOYMENT COMPENSATION (CONT'D)



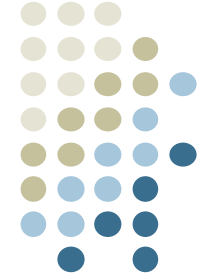
Expansion:

- Additional 13 weeks at \$600 per week – total 39 weeks
- No waiting period for the additional weeks
- Non-traditional individuals covered including independent contractors, self employed, gig workers, employees who have not worked the requisite hours
- Extending benefits to furloughed, reduced hour works, temporary layoffs
- Recoupment:
- Tax credits

State Based Programs:

- Many states have broader and different programs in addition to traditional unemployment, e.g. Arizona, Washington and others have Shared Work programs and Washington has a Standby program

PENALTIES

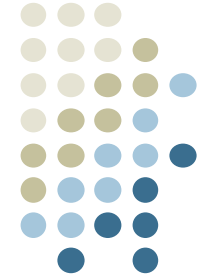


Can be avoided if:

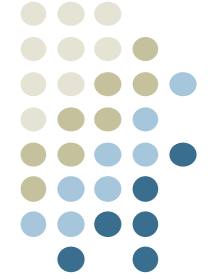
- Errors made between March 18 and April 18, 2020
- Violations not willful
- Acting reasonably and in good faith
- Remedy violations ASAP
- Promise DOL in writing to comply in the future

CARES – PAYCHECK PROTECTION PROGRAM (PPP)

TALK.TO.YOUR.BANK.PERIOD.



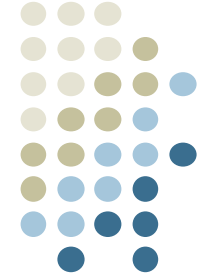
CARES – PPP LOANS



Eligibility:

- Business with less than 500 employees
 - SBA Affiliation rules apply
 - Count is in regards to those employees that are permanent residents of the U.S.
- OR, business under employee limit as set by NAICS code/SBA table
- OR, sole proprietors, independent contractors
- OR, 501(c)(3) nonprofits

CARES – PPP LOANS

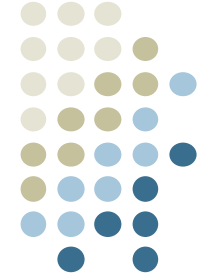


How much can I get?

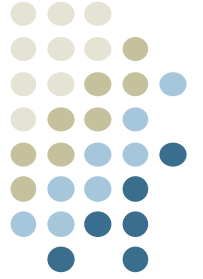
- **Limited to lesser of:**
 - \$10 million dollars OR
 - Average monthly payroll costs x 2.5
- **“Payroll costs” =**
 - ALL cash compensation paid to employees (not in excess of \$100k/annualized)
 - Employer contributions to retirement
 - Employer share of group health costs including premiums
 - Employer share of state and local taxes on employee compensation

CARES – PPP LOANS

- Other terms
- NO personal guarantee
- NO collateral required
- No requirement to show you can't get “credit elsewhere”
- Good faith certification of the following:
 - Necessity of loan
 - Will use the funds on permissible expenses

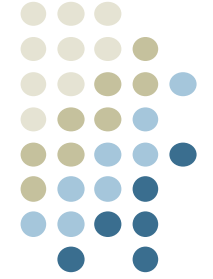


CARES – PPP LOANS



- 100% Forgiveness if you spend it the way the government wants you to
 - Forgiveness is not all or nothing – decided in 60 days
 - If not forgiven, remains loan
 - 2-year repayment term
 - 1 percent interest
 - No prepayment penalties
- What can you spend it on?
 - Minimum of 75% of loan proceeds need to be spent on payroll costs
 - Can use up to 25% for interest on business loans or mortgage, rent and utilities

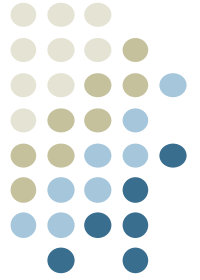
SBA LOAN – ECONOMIC INJURY DISASTER LOANS (EIDL)



Economic Injury Disaster Loans:

- Up to \$2,000,000
- CARES expanded eligibility to business with less than 500 employees
- Uses: pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact.
- Interest Rates: 3.75% for small businesses, non-profits is 2.75%
- \$10,000 emergency grant
- Gets factored into PPP Loan calculations

EMPLOYEE RETENTION TAX CREDIT



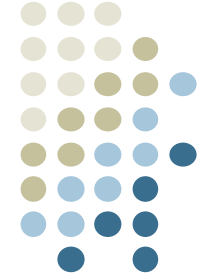
Eligible Employers:

- Business fully or partially suspended due to government shutdown order relating to COVID19
- OR, gross receipts for the quarter are less than 50% as compared to same quarter in prior year
- Can't also be receiving PPP Loan money

Amount Available:

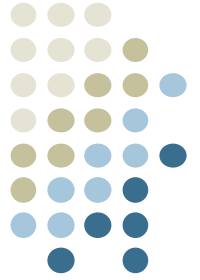
- Payroll tax credit is equal to 50% of qualified wages per employee for the quarter
- Up to \$10k per employee/quarter
- Wages paid after 3/12/20 and before 1/1/21
- If more than 100 FTE – credit is only for wages paid to employee that is not providing services
- If less than 100 FTE – credit is for any wages paid to any employee

CARES – PAYROLL TAX DEFERRAL



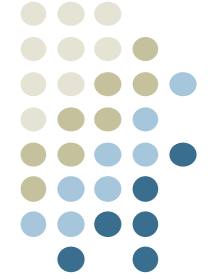
- Deferral of payment of employer's share of certain payroll taxes for remainder of 2020
 - Cannot also be recipient of PPP Loan money
 - Option to defer tax obligations over next 2 years:
 - 50% due by December 31, 2021
 - And remaining 50% due by December 31, 2022

CARES – ASSISTANCE FOR MID-SIZED BUSINESS



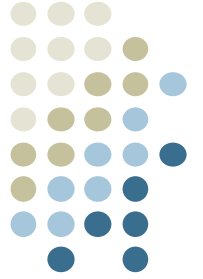
- Must have between 500 to 10,000 employees
- Can't be insolvent or in bankruptcy proceedings
- Annualized interest not higher than 2% with no payments due for the first 6 months
- NO LOAN FORGIVENESS
- Business has to commit to remaining neutral in any union organizing effort for the term of the loan (and not abrogate existing CBA for term of loan and 2 years after)
- Miscellaneous additional commitments to various employment practices (such as no off-shoring of jobs, etc.)

CARES – UNEMPLOYMENT



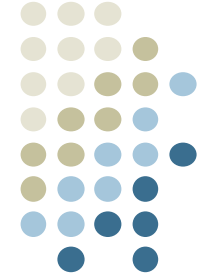
- State unemployment doesn't cover everyone
 - For example, if you are sick with COVID19, you're not otherwise available to work and don't qualify for unemployment
 - Or, if you're an independent contractor, you don't qualify for unemployment
- CARES enacted \$600/week for up to 39 weeks for individuals with qualifying reasons
 - Pandemic supplement available through CARES covers individuals that might not otherwise get unemployment
 - If you DO QUALIFY for state benefits, you get the \$600 on top of your state benefits
 - In IL for example, individuals with dependents can get up to a maximum benefit in excess of \$500/week AND \$600 as a pandemic supplement = approximately \$1,100 in weekly benefits

EXPANDED 401(K) PROVISIONS



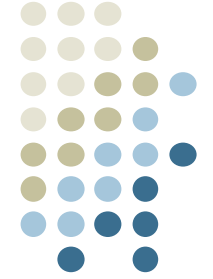
- Disaster related Distributions allowed up to \$100,000 for 403(b), 401(k) and IRAs
 - No 10% excise tax imposed
 - Includable in taxable income over 3 years (with possibility of repayment during 3 years also)
- Available Loan Amounts increased
 - Max of \$50k increased up to \$100k
 - Can defer payments up to 1 year (including those otherwise due in 2020)

EXPANDED 401(K) PROVISIONS (CONT'D)



- Also, temporary waiver of required minimum distributions from 401(k), 403(b), IRAs and certain 457(b) plans
- Can start operating with these provisions right away
- Plan amendments can be retroactive and implemented as late as December 31, 2022. (must be adopted by end of Plan year beginning on or after 1/1/22)

QUALIFIED DISASTER PAYMENTS UNDER 139



- Must be 3 things:
 - “Reasonable and necessary” as a result of qualified disaster
 - Can’t simply be income replacement (such as sick, vacation, etc.)
 - Can’t be used for expenses that are otherwise reimbursable or covered by insurance
- No documentation required
- No formal plan document requirement

THANK YOU!

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<https://www.salawus.com/practices-covid19-task-force.html>

Q&A



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