

IN THE KNOW WEBINARS

A McNeese WebiKnowledge series



Coronavirus and Small Business – Next Steps and Best Practices

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Coronavirus – Latest Developments

- **What we will cover:**
 - PA Shut down order and shelter in place orders
 - Federal Legislative Updates- Focus on Employer Obligations/Compliance
 - **Families First Coronavirus Relief Act**
 - **Stimulus Package**



PA Business Shut Down – Governor Wolf

- On March 19, 2020, Governor Wolf ordered all 'Non-Life-Sustaining' Pennsylvania businesses to close their physical locations in an attempt to slow down the COVID-19 outbreak
 - This mandate was a follow-up to the Administration's previous recommendation that all non-essential businesses suspend operations.
 - The order included a list of businesses that would be considered "life sustaining."
 - Potential penalties include citations, fines and license suspensions, as well as potential forfeiture of current or future state grant or disaster relief funding.
- On March 20, 2020, Governor Wolf amended the order to extend the effective date to Monday, March 23rd
 - The new order included an updated list of "life sustaining" businesses, as well as an FAQ document



PA Business Shut Down – Governor Wolf

- **If you have questions about the updated list of “life sustaining” business operations, the appeal process, or continuation of essential operations please contact legal counsel.**
 - Business-specific considerations
- **Order does not prohibit remote working so long as employees practice social distancing and other mitigation measures as recommended by the CDC.**



CORONAVIRUS – Federal Legislative Updates



Families First Coronavirus Response Act (“Response Act”) provides:

- Paid Emergency Sick Leave and FMLA leave.
 - **Only applicable to employers with fewer than 500 employees**
- Provisions for state expansion of unemployment benefits and waiver of waiting period.
- Also:
 - **Free coronavirus testing.**
 - **Protections for health care workers and employees responsible for cleaning at-risk places.**
 - **Additional federal funds for Medicaid.**
- **Signed into law by President Trump on March 18, 2020.**
 - **Sick and FMLA provisions effective April 1, 2020.**
 - **Sunset provision as of December 31, 2020.**



CORONAVIRUS – Federal Response Act

■ Paid Sick Leave

- Available to any employee on your payroll and provides 10 days of paid sick leave benefits for employees unable to work (or telework) the following reasons:
 - The employee is subject to a government quarantine or isolation order
 - The employee has been advised by a health care provider to self-quarantine
 - The employee has symptoms of COVID-19 and is seeking a medical diagnosis
 - The employee is caring for a relative who is in quarantine or isolation
 - The employee is unable to work because their child's school is closed or childcare service is closed or unavailable due to a public health emergency, such as COVID-19
 - Substantially similar conditions to be specified by HHS
- **Tax Refund:** Credit will be for the same amount that you are required to give the employee. Credit is refundable and offsets the employer's portion of the social security tax.
- Some states have also enacted paid sick leave laws due to COVID-19.
 - New York
 - Colorado



CORONAVIRUS – Federal Response Act

- **Paid Sick Leave – Calculation of the Benefit**
 - Leave for employee's own illness or quarantine/isolation
 - **Regular daily pay, up to a cap of \$511**
 - Leave to care for a family member subject to quarantine/isolation or a child due to school or childcare closure
 - **66% of regular daily pay, up to a cap of \$200**
 - Part-Time employees whose schedules vary from week to week such that employer cannot determine the number of hours that would have been worked
 - **Use average hours over the prior 6-month period**
 - **If employee has not worked for 6 months, use reasonable expectation at time of hiring**
- **Sequencing-**
 - Employee may first use available Emergency Paid Sick Leave before other accrued leave
 - Emergency Paid Sick Leave will not be available after COVID-19 crisis and there is no payout or carryover



CORONAVIRUS – Federal Response Act

■ Paid Family Leave

- Provides total of up to 12 weeks of paid leave for employees who cannot work because their minor child's school or childcare service is closed due to COVID-19 precautions.
- Applies to any employee who has been on the payroll for at least 30 days.
- Employee may use Emergency Paid Sick Leave for the first 2 weeks (otherwise unpaid).
 - **Employee may also substitute other available paid leave (Emergency Sick Leave)**
- Leave benefit paid at 66% or regular earnings up to a cap of \$200/day (or \$10,000 total)
 - **Varying hour calculation for part-time employees**
- Covered employer will also receive the tax credit for mandatory Paid Family Leave payments.



CORONAVIRUS – Federal Response Act

■ Large & Small Business Exclusions

- Private businesses with more than 500 employees are not covered by the bill.
 - **Integrated enterprise/single employer concepts will apply**
- Employers with fewer than 50 workers can apply for an exemption from providing paid family and medical leave and paid sick leave if it "would jeopardize the viability of the business."
- Health-care providers and emergency responders could be excluded from the definition of employees who are eligible for the leave
 - **DOL Regulations expected**



CORONAVIRUS – Federal Response Act

■ Large Business Exclusion

- The Act covers private employers with fewer than 500 employees.
- Integrated Employer Analysis
 - **The legal entity which employs the employee is the employer and a corporation is a single employer rather than its separate establishments and divisions. 29 C.F.R. § 825.104(c).**
 - **When one corporation has an ownership interest in another corporation, it is treated as a separate employer unless it meets the joint employer or integrated employer test. 29 C.F.R. § 825.104(c)(1).**
 - **An employer may meet the integrated employer test if there is:**
 - Common management;
 - Interrelation between operations;
 - Central control of labor relations; and
 - A degree of common ownership or financial control.



Coronavirus –Response Act– Tax Credits

■ Tax Credits

- Employers receive 100% reimbursement for paid leave pursuant to the Act.
- Credits would be requested on your quarterly Form 941.
- Health insurance costs will be included in the credit
 - **Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the employee during the leave.**
- Self-employed individuals receive an equivalent credit



Coronavirus –Response Act– Tax Credits

- **Employers should receive prompt credit for the cost of providing the leave**
 - Employers are required to withhold from the employee’s paychecks federal income taxes and the employee’s share of Social Security and Medicare
 - These funds, along with the employer’s share of the Social Security and Medicare taxes, are deposited with the IRS and through quarterly payroll tax returns.
 - Under guidance set to be released next week, eligible employers who pay qualifying sick or childcare leave, will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave the employer paid, rather than deposit the amount with the IRS.
 - **Only employee’s share of Social Security and Medicare taxes will be deposited.**
 - **If there are insufficient payroll taxes to cover the cost of the sick and childcare leave paid, employers can file a request for an accelerated payment from the IRS – these requests are expected to be processed in 2 weeks or less.**



PA Business Shut Down and Emergency Sick Leave

- **Absent clarification from DOL/HHS, Order does not appear to be a “quarantine or isolation order”.**
 - Isolation separates sick people with a contagious disease from people who are not sick.
 - Quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick.
<https://www.cdc.gov/quarantine/index.html>
- **Employees on layoff status as of April 1, 2020 would not be unable to work due to qualifying reasons.**
 - Unemployment benefits cover these circumstances.



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;
- $\frac{2}{3}$ 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 $\frac{2}{3}$ 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:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;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); | <ol style="list-style-type: none">1. 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; or2. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

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.



Coronavirus – Federal Legislative Updates- Stimulus Bill *

- **Pending (Passed in Senate 3/25/2020), includes:**
 - Federal increase to state unemployment compensation of up to \$600 week for up to four months.
 - A 13-week extension of the benefit period
 - **The extension period does not include the federal supplement.**
 - Federal individual stimulus checks up to \$1,200 to individuals (\$2,400 for joint filers), increased by \$500 for every child
 - Subject to income limitations.
 - Reduction for incomes above \$75,000 (\$150,000 jointly)
 - Eliminated for incomes above \$99,000 (\$198,000 jointly)
 - **Also:**
 - **SBA Business Loan program for small businesses (fewer than 500)**
 - **50% refundable payroll tax credit**
 - **Delay in employer-side payroll tax filings**
 - **Changes in tax rules to allow greater use of current losses to offset future profits**

***Highlights only based upon version passed by Senate**



CORONAVIRUS – Unemployment Compensation



Office of Unemployment
Compensation

PA Department of Labor and Industry recently established that employees will be eligible for unemployment benefits under the following circumstances:

- If an employer temporarily closes or goes out of business because of COVID-19;
- If an employer reduces an employee's work hours because of COVID-19;
- If an employee has been told not to come to work because the employer feels the employee might get or spread COVID-19; or
- If an employee has been told to quarantine or self-isolate, or the employee lives/works in an area under government recommended mitigation efforts.

Department of Labor and Industry has suspended the “waiting week” requirement and will allow eligible claimants to receive benefits for the first week they are unemployed.



Action Steps/Issues for Human Resources

- Post Employee Notice of Rights
- Policies/Forms Implementing FFCRA
- Social Distancing Policy (if remaining in operation)
- Teleworking Policies (e.g. track non-exempts)
- Refining Attendance Policies
- Protocol When an Employee May Have Been Exposed
- Notice Requirements Under WARN Act and COBRA
- Duty to Negotiate with any Unions
- Check DOL Guidance: <https://www.dol.gov/agencies/whd/pandemic>



QUESTIONS?

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