

NFIB COVID-19 Webinar Part II: Congressional and Legal Update for Small Businesses

March 20, 2020



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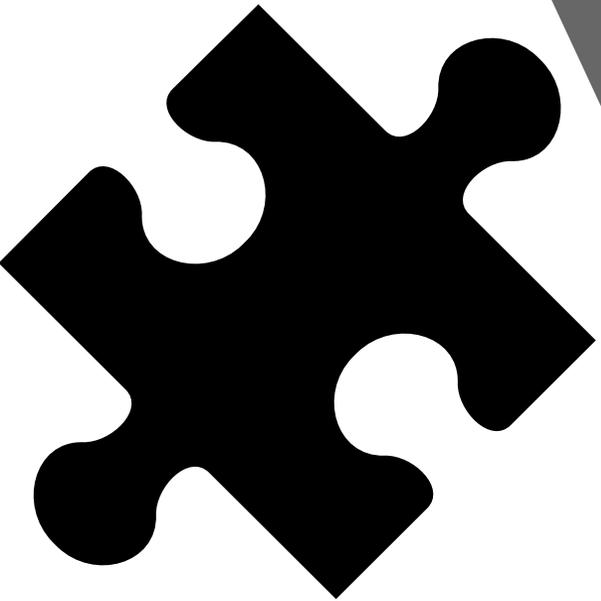


Agenda



- Review background of COVID-19 in the workplace
 - Families First Coronavirus Response Act
 - Leave Available to Employees
 - Coverage and Employer obligations
 - Future Congressional Action
 - FAQs
- * All participants are muted, but may submit questions throughout presentation*

What is COVID-19?



Background on COVID-19

- Coronaviruses are a family of virus that can cause fever, respiratory problems, and sometimes gastrointestinal issues.
- The latest novel coronavirus is being labeled COVID-19.
- The outbreak was first detected in December in Wuhan, the capital of China's Hubei province.
- Spreads through coughs and sneezes like a common cold, but you may acquire the virus after touching a surface containing the virus and touching your face or mouth. A person on average spreads it to 2-3 others.
- Individuals in more than 100 countries have been infected.
 - Declared a pandemic on 3/11 and National Emergency on 3/13.



Covid-19, Different Than the Common Flu

- More contagious
- Symptoms more severe
- Higher mortality rate

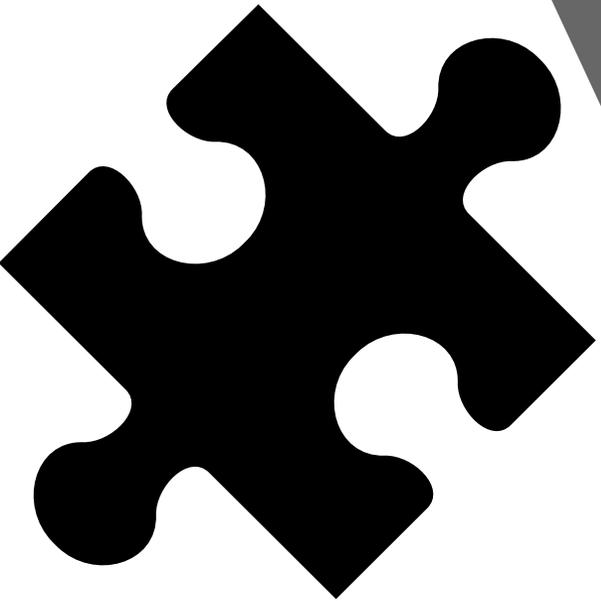


Workplace Mitigation Measures



- Sick employees stay home
- Employees with sick family members stay home
- Send symptomatic employee(s) home
- Maintain social distancing in the workplace (6 feet apart)
- Follow CDC guidance
- Telecommute when possible
- Follow all state and local orders on sheltering-in-place and closing of nonessential business

Families First Coronavirus Response Act

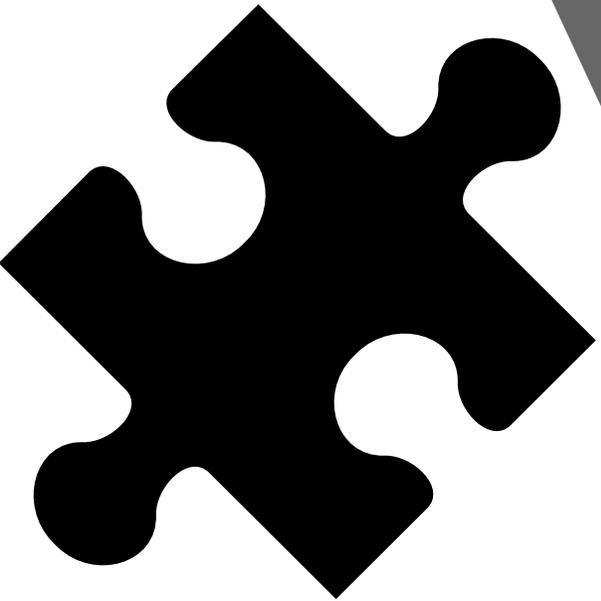


Overview of Families First Coronavirus Response Act

- President signed into law on 3/18/20
- Requires certain employers to provide employees with
 - Two weeks of emergency Paid Sick Leave
 - An additional 10 weeks of Paid Family and Medical Leave Act (Expands FMLA)
- Emergency Unemployment Insurance Stabilization And Access Act of 2020
- Unemployment Insurance Funding
- Reimbursement to Employers for Paid Leave as Tax Credits



Emergency Paid Sick Leave



Emergency Paid Sick Leave

- Applies to employers with 1-499 employees
- Employees are counted if in the United States, the District of Columbia, or any territory or possession of the United States.
- Any employee who works for employer is eligible
- No minimum days/hours of employment
- If the EMPLOYEE is sick, employee is entitled to:
 - Full-time Employees – 80 hours of paid sick leave
 - Part-time Employees – Paid based on the average number of hours the employee worked for the six months prior to taking this paid sick leave
 - Or, if employed for less than 6 months, the average number of hours per week the employee would normally be scheduled



Emergency Paid Sick Leave – Qualifying Reasons

- Must provide paid sick time to the extent the employee is unable to work (or telework) because:
 - (1) The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
 - (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - (4) The employee is caring for an individual who is subject to an order or self-quarantine as described above.
 - (5) The employee is caring for a son or daughter if school or child care is closed/unavailable.
 - (6) The employee is experiencing “any other substantially similar condition” specified by HHS (catch all).



Emergency Paid Sick Leave – Rate of Pay

- At employee's regular rate for qualifying reasons (1), (2) or (3)
 - Compensated at HIGHER of their regular rate, federal minimum wage or local minimum wage
 - At 2/3 the employee's regular rate for qualifying reasons (4), (5) or (6)
- Capped at the following levels:
 - \$511 per day and \$5,110 in the aggregate per person for qualifying reasons (1), (2) and (3).
 - \$200 per day and \$2,000 in the aggregate per person for qualifying reasons (4), (5) and (6).

Emergency Paid Sick Leave - Exemptions

- Exemption: An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this section.
- Secretary of Labor has the authority for good cause to issue regulations:
 - To exclude certain health care providers and emergency responders from the definition of “eligible employee”
 - *To exempt small businesses with fewer than 50 employees from leave to care for a son or daughter if school or child care is closed/unavailable when the imposition of such requirement would jeopardize the viability of the business as a going concern.*

Emergency Paid Sick Leave – Additional Rules

- Sick leave does not carry over.
- Employer may not require employee as a condition of paid leave to find a replacement to cover scheduled hours.
- Employee may first use this paid sick time under this law before other paid leave.
- Employer may not require employee to use other paid leave provided by the employer before using this paid sick leave.

Emergency Paid Sick Leave – Notice & Timing

- Notice: Employers must post a notice regarding the requirements of the law. The Secretary of Labor is required to make a model notice publicly available no later than 7 days after enactment of the new law.
- Employees: After the first workday (or portion thereof) an employee receives paid sick leave, the employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”
- Law goes into effect no later than 15 days after enactment of the Act, until 12/31/2020.
- Businesses have 15 days to comply.

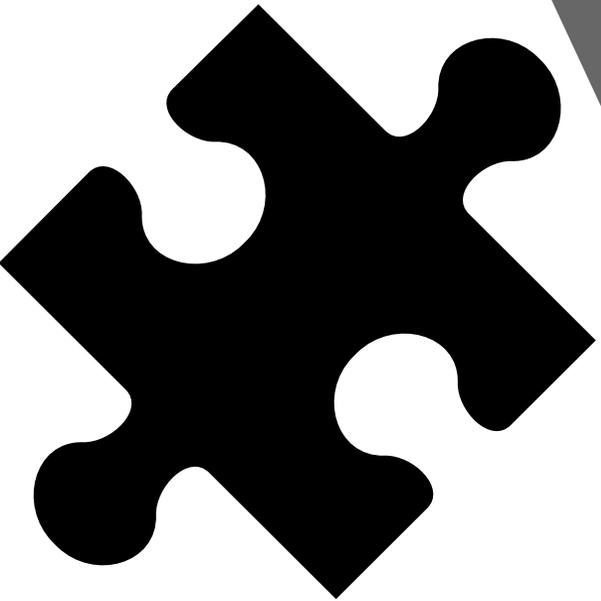


Emergency Paid Sick Leave – Tax Credits

- Employers are entitled to a refundable tax credit equal to the amount of the qualified paid sick leave requirements paid by the employer per quarter.
- The tax credits for qualified paid sick leave wages are capped at
 - \$511 per day per person for qualifying reasons (1), (2) and (3).
 - \$200 per day per person for qualifying reasons (4), (5) and (6).
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe.



Emergency Paid Family & Medical Leave Act



Emergency FMLA

- Employers with 1-499 employees:
 - Employees are counted if in the United States, the District of Columbia, or any territory or possession of the United States.
 - A corporation is a single employer, rather than its separate establishments or divisions.
 - Separate entities will be one employer if they meet either the joint employer or integrated employer tests (as set forth in FMLA regulations).
- Significantly expands FMLA on a temporary basis.
- Any employee who worked for employer for 30 days prior to leave and has a qualifying reason is eligible.
- Provides up to 12 weeks of job-protected leave (paid after the first 10 days).



Emergency FMLA – Qualifying Reasons

12 weeks of job protected leave when:

“The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

Emergency FMLA – Pay Obligations

- First 10 days of EFMLA may be unpaid.
- An employee may elect to substitute accrued PTO, vacation, or sick leave to cover any portion of first 10 days but employer cannot require an employee to substitute accrued paid leave.
- After the first 10 days:
 - Compensated at 2/3 of the regular rate.
 - Part-time employees/irregular schedule entitled to be paid based on average number of hours employee worked in prior 6 months, or if employed less than 6 months, average number of hours employee would normally be scheduled to work.
 - Pay capped at \$200 per day and \$10,000 in aggregate per employee.



Emergency FMLA - Exemptions

- An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this section.
- Secretary of Labor has the authority for good cause to issue regulations:
 - To exclude certain health care providers and emergency responders from the definition of “eligible employee”
 - *To exempt small businesses with fewer than 50 employees from the new law when the imposition of such requirements would jeopardize the viability of the business as a going concern.*



Emergency FMLA – Timing & Overlap w/ PTO

- Law goes into effect no later than 15 days after enactment of the Act and businesses will have 15 days to comply.
- Full-time employees may take Emergency Paid Sick Leave for first 80 hours of FMLA leave so that it is paid.
- Employees may also elect to use other accrued paid leave (e.g. vacation and PTO) during the first 10 days.

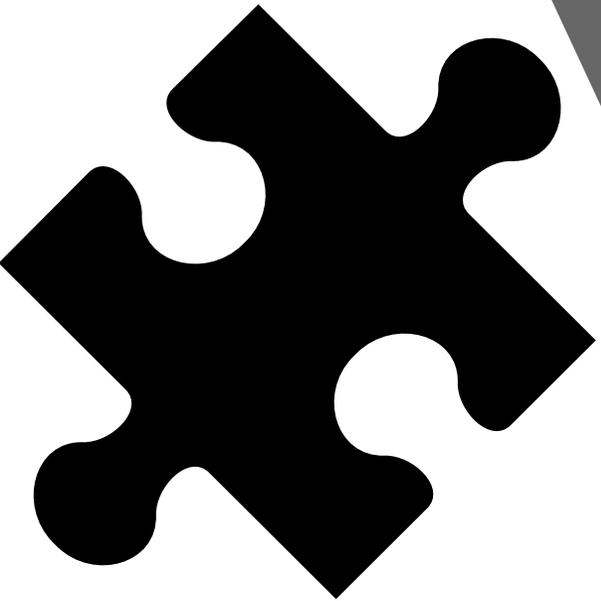
Emergency FMLA – Tax Credits

- Employers subject to the requirements are entitled to a tax credit equal to the amount of the paid FMLA requirements paid by the employer.
- The tax credits for qualified wages are capped at \$200 per day and \$10,000 per calendar quarter per employee.
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe.

Future Federal Action

Congress and Treasury Dept currently negotiating a relief package to help affected businesses and employees.

Frequently Asked Questions



Additional Information



- The CDC has information that employees can access here:
 - <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>
 - <https://www.cdc.gov/coronavirus/about/index.html>
- Sign up for CDC email updates:
 - <https://www.cdc.gov/other/emailupdates/index.html>

Additional Information



- [DOL guidance is available here](https://www.dol.gov/coronavirus)
<https://www.dol.gov/coronavirus>.
- Major employment law firms are providing guidance online, including [Fisher Phillips](#), [Littler Mendelson](#), and [Ogletree Deakins](#).
- If you have additional questions, please reach-out to the NFIB Small Business Legal Center at 800-NFIB-NOW (800-634-2669).

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Thank you!

