

Workforce Status	Compensation Requirements	CARES Act and FFCRA Loan and Tax Savings Options	Considerations
<b>Business remains open and some or all employees work regular or reduced schedules at the business or remotely; business may or may not be experiencing declining revenues or sales due to COVID-19.</b>	<ul style="list-style-type: none"> <li>Pay regular wages to employees who work at the business or remotely.</li> <li>Employees who work reduced schedules may be eligible for unemployment compensation according to state provisions for partial unemployment or, if applicable, Short-Time Compensation programs.</li> </ul>	<ul style="list-style-type: none"> <li>If eligible, obtain forgivable loan under Paycheck Protection Program to cover 8 weeks of wages for employees currently working.</li> <li>If operations must be fully or partially suspended, obtain payroll tax credit for retaining employees during a significant decline in gross receipts.</li> <li>Delay payments of employer payroll taxes.</li> <li>Delay April 15 tax filing/payment.</li> <li>Employers who do not meet the eligibility requirements for a loan under the Paycheck Protection Program may qualify for loan programs for mid-size businesses under the Emergency Relief and Taxpayer Protections provisions of the CARES Act.</li> </ul>	<ul style="list-style-type: none"> <li>One of the criteria for obtaining a forgivable loan under the Paycheck Protection Program is a certification that current economic conditions make the loan necessary to support the ongoing operations of the business. Employers that cannot certify this will not be eligible for a loan.</li> <li>If a forgivable loan under the Paycheck Protection Program is obtained, continue to pay regular wages to all employees for 8 weeks, even if hours are reduced or workers must be furloughed or laid off during the 8-week period.</li> <li>If a loan under the Paycheck Protection Program is obtained and employees have already been furloughed or laid off, transition their status on internal documentation from layoff or furlough to inactive work status and begin paying regular wages. Report wage payments to state unemployment compensation division.</li> <li>Employees who work reduced schedules may be eligible for unemployment under state laws that provide benefits for partial unemployment or under state-approved Short-Time Compensation (shared-work) programs. If eligible, in addition to regular unemployment earnings, employees will receive an extra \$600 per week through July 31.</li> <li>Employer unemployment accounts are subject to being charged for unemployment benefits received under the CARES Act, depending on state provisions.</li> <li>If no work is available at the end of 8 weeks, employees can be furloughed or laid off. They will be eligible for an extra \$600 per week in unemployment benefits through July 31.</li> <li>Employees who work their regular schedule and receive their regular wages cannot collect unemployment.</li> <li>Note that requirements for loans under the Emergency Relief and Taxpayer Protections section of the CARES Act include commitments and risks that may be deemed unfavorable by many employers. Employers are encouraged to seek legal counsel when assessing options for these loans.</li> </ul>
<b>Business has fewer than 500 employees and remains open; on or after April 1 one or more employees actively working qualifies for emergency paid sick leave or paid family leave.</b>	<ul style="list-style-type: none"> <li>For full-time employees who are eligible for emergency paid sick leave under the EPSLA, provide up to 80 hours of sick leave paid at the employee's regular rate or 2/3 the regular rate, depending on the circumstances. Follow DOL procedures for determining amount of paid sick leave for part-time employees.</li> <li>For employees eligible for family leave under the EFMLEA, provide 12 weeks of family leave, including 10 weeks paid at 2/3 the employee's regular rate of pay.</li> </ul>	<ul style="list-style-type: none"> <li>Claim payroll tax credit for qualifying paid sick or family leave at the end of the calendar quarter for amounts available <b>OR</b> obtain advanced payroll tax credits under forthcoming IRS guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>Employees who are laid off or furloughed do not qualify for leaves of absence, including emergency paid sick leave under the EPSLA and paid family leave under the EFMLEA.</li> <li>If a loan under the Paycheck Protection Program is obtained, employers who receive tax credits for emergency paid sick or paid family leave cannot receive loan forgiveness for the same amount.</li> <li>Employers can only receive tax credit for these leaves if they do not claim an employee retention tax credit.</li> <li>Employers cannot require employees to use available paid time off under other company paid time off programs prior to using emergency paid sick leave or family leave under the EPSLA or EFMLEA. Also, time off for these leaves cannot run concurrently with paid sick or family leave required under state or local laws.</li> <li>Employees out of work on a leave of absence due to FMLA or EFMLEA can be laid off or furloughed under certain circumstances, such as when similarly situated employees (e.g., those in the same department or holding the same position) are also laid off or furloughed due to lack of work.</li> <li>To receive the IRS tax credit for time off under EPSLA and EFMLEA, document the time off in accordance with forthcoming IRS guidelines.</li> <li>For leaves outside of the EPSLA and EFMLEA, consult the Seawright &amp; Associates Coronavirus Pandemic Leaves of Absence chart.</li> </ul>

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<b>Government-imposed stay-at-home order for a business deemed non-essential OR business closure due to lack of business; employees are unable to work due to business closure and positions are not eligible for remote work.</b>	<ul style="list-style-type: none"> <li>No requirement to pay employees holding positions classified as nonexempt.</li> <li>No requirement to pay employees holding positions classified as exempt from overtime under the White Collar Outside Sales Exemption.</li> <li>No requirement to pay employees holding positions classified as exempt under the agriculture, automobile dealership, or 7(i) overtime exemptions.</li> <li>Employees paid under the Fluctuating Workweek and those holding positions classified as salaried exempt under the White Collar Administrative, Executive, or Professional exemptions must receive the guaranteed weekly salary in any workweek the employee performs any work, regardless of the quantity.</li> <li>Fluctuating Workweek and White-Collar salaried exempt employees who do not perform any work during an entire workweek need not be paid the weekly salary.</li> <li>If employees are laid off, follow company policies pertaining to payout of unused sick, personal, or vacation time upon separation of employment.</li> <li>If employees are furloughed (laid off temporarily, typically with an intent to return within 8 weeks), consider paying health insurance premiums and, if possible regular or reduced wages. Permit employees to use available sick, vacation, or personal time.</li> <li>If applicable, determine if any payments are owed under state WARN Act requirements (known as “mini-WARN Act” laws).</li> </ul>	<ul style="list-style-type: none"> <li>If eligible, obtain forgivable loan under Paycheck Protection Program to cover 8 weeks of wages for employees who are furloughed or laid off.</li> <li>Obtain payroll tax credit for retaining employees during a significant decline in gross receipts.</li> <li>Delay payments of employer payroll taxes.</li> <li>Delay April 15 tax filing/payment.</li> <li>Employers who do not meet the eligibility requirements for a loan under the Paycheck Protection Program may qualify for loan programs for mid-size businesses under the Emergency Relief and Taxpayer Protections provisions of the CARES Act.</li> </ul>	<ul style="list-style-type: none"> <li>If a forgivable loan under the Paycheck Protection Program is obtained, continue to pay regular wages to all employees for 8 weeks, even if workers are furloughed or laid off during the 8-week period. If the loan is obtained after employees have already been furloughed or laid off, transition their status on internal documentation from layoff or furlough to inactive work status and begin paying regular wages. Report wage payments to state unemployment compensation division.</li> <li>Employees who have been furloughed or laid off and who are not receiving compensation from the employer will be eligible for unemployment according to state unemployment provisions. If eligible, in addition to regular unemployment earnings, employees will receive an extra \$600 per week through July 31. Extended unemployment benefits are available under the CARES Act, up to 39 weeks, depending on the circumstances.</li> <li>Employer unemployment accounts are subject to being charged for unemployment benefits received under the CARES Act, depending on state provisions.</li> <li>The tax credit for retaining employees during a significant decline is not available to employers receiving a forgivable loan under the Paycheck Protection Program.</li> <li>Stay in touch with employees who are furloughed by providing weekly status updates.</li> <li>Recall employees when possible. If an employee who is recalled refuses to return to work without good cause, process his or her separation as a voluntary resignation and report the offer of employment and refusal to return to work to the unemployment agency.</li> <li>Although federal WARN Act provisions are not likely to apply based on the exception for “unforeseen business circumstances,” a mini-WARN Act state law may be applicable. Mini-WARN Act laws exist in more than 20 states. They often cover smaller businesses, apply to layoffs of fewer employees, have lower thresholds for reductions of hours, and offer more protections to workers who are laid off.</li> </ul>

<sup>i</sup> This document was prepared on March 30, 2020, and is subject to change at any time based on regulations issued by or enforcement practices of government agencies. Information in this Client Advisory is not intended to be all-inclusive or to provide legal, tax, or financial advice; nor is it intended to provide recommendations for any specific circumstances. **It is published for use only by Seawright & Associates clients (employers using the HR consulting service).**