

COVID-19 RESOURCES FOR EMPLOYEES AND EMPLOYERS

We are providing the guidance below to assist employees and employers dealing with the COVID-19 pandemic and to summarize laws and policies recently put into place as a result of COVID-19, including the Families First Coronavirus Response Act (“FFCRA”) and the Coronavirus Aid, Relief, Economic Security Act (“CARES Act”). Minnesota-specific information is also included. Part I is intended to provide guidance to employees who are impacted by COVID-19 because they or a family member have been diagnosed with COVID-19, their childrens’ schools or daycares are closed, and/or they have been laid off or furloughed. Part II is intended to provide guidance to employers impacted by COVID-19, including legal requirements regarding employees who require time off work because of a COVID-19 diagnosis or childcare issues, tax credits available related to employees entitled to paid leave under FFCRA, and assistance available through the Small Business Administration (“SBA”).

We will continue to update this resource guide as additional changes in the law are implemented and with new information and guidance as it becomes available.

PART I – EMPLOYEE INFORMATION AND RESOURCES

A. FFCRA Employee Paid Leave Rights.

1. **Overview.** Beginning April 1, 2020, employers with fewer than 500 employees must provide emergency paid sick leave and expanded family and medical leave to employees who are unable to work or telework because of one the following six COVID-19-reasons:
 - (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 related to COVID-19;
 - (3) Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
 - (4) Employee is caring for an individual subject to an order described in (1) or self-quarantined as described in (2);
 - (5) Employee is caring for his/her child whose school or place of child care is closed (or child care is unavailable) due to COVID-19-related reasons; and
 - (6) Employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

Details regarding the amount of required leave and amount of pay are below:

- *Two weeks (up to 80 hours) of paid sick leave at the employee’s regular rate of pay for reasons #1, #2 and #3 above; or*
- *Two weeks (up to 80 hours) of paid sick leave at 2/3 the employee’s regular rate of pay for reasons #4, #5 and #6 above; and*
- *Up to an additional 10 weeks of paid expanded family and medical leave at 2/3 the employee’s regular rate of pay where an employee, who has been employed for at least 30 calendar days, for reason #5 above.*

- A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.
- Paid sick leave is in addition to, and not a substitute for, other sources of leave which an employee has already accrued, is already entitled to, or has already used before FFCRA's paid sick leave became effective on April 1, 2020. Therefore, neither eligibility for, nor use of, paid sick leave may count against an employee's balance or accrual of any other source or type of leave.
- An employer may require you to follow reasonable notice procedures after the first workday or portion of a workday for which you receive paid sick leave in order to continue to receive such leave. Employees should contact their individual employers and not the Fund Office to exercise their leave rights under the FFCRA.
- Employees must provide an employer with documentation in support of the FFCRA paid leave which must include a signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.

2. Resources. The links below provide some additional resources and information regarding the FFCRA.

- Families First Coronavirus Response Act: Question and Answers
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Families First Coronavirus Response Act: Employee Paid Leave Rights
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- COVID-19 and the Fair Labor Standards Act: Questions and Answers
<https://www.dol.gov/agencies/whd/flsa/pandemic>
- COVID-19 and the Family and Medical Leave: Questions and Answers
<https://www.dol.gov/agencies/whd/pandemic>

B. Unemployment.

1. Unemployment Insurance For Employees Impacted by COVID-19.

- Employees who have been laid-off or furloughed related to COVID-19 can apply for unemployment benefits through Minnesota Unemployment Insurance.
- Benefits can last for up to 39 weeks (26 weeks under Minnesota law, plus 13 additional weeks through the CARES Act).
- Benefits are usually about 50% of weekly wage before lay-off, with a maximum weekly rate of \$740.
- Minnesota Executive Order 20-05 suspends the one-week waiting period for COVID-19 lay-offs.

- Minnesota Executive Order 20-05 also suspends the five-week limitation typically applicable to business owners out of work due to COVID-19.

2. Unemployment Insurance Resources.

- Minnesota Unemployment Insurance COVID-19 Information Page
<https://www.umn.org/applicants/needtoknow/news-updates/covid-19.jsp>
- Minnesota Unemployment Insurance Information Handbook
<https://www.umn.org/applicants/howapply/info-handbook/index.jsp>
- Minnesota Unemployment Insurance On-Line Application Page (available Sunday-Friday, 6:00 a.m. to 8:00 p.m., with specific days assigned to applicants based on the last digit of their social security number)
https://www1.umn.org/ui_applicant/applicant/login.do
- Minnesota Unemployment Insurance Customer Service Lines (due to high call volumes, applicants are urged to use the on-line application page when possible)
Greater Minnesota: 1-877-898-9090
Twin Cities: 651-296-3644

C. Maintaining Health Coverage.

1. Maintaining Coverage under the Welfare Fund.

- If you are eligible for FFCRA paid leave, your employer should continue making contributions on your behalf to maintain your coverage as though you had been continuously employed. Your employer is entitled to a tax credit for such contributions.
- An employer must maintain the same group health plan benefits provided to an employee and his or her family members covered under the Welfare Fund prior to taking FFCRA paid leave including, medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, and other benefit coverage.
- Employees who take FFCRA paid leave will remain responsible for paying the same portion of the premium the employee paid prior to taking FFCRA paid leave. Generally, this premium is paid through the Dollar Bank.
- Eligible members who are laid off remain eligible as long as their Dollar Bank balance is sufficient to pay the monthly premium. See Journeymen/Apprentice Booklet at Section 8(C)(1) (p. 18); Helper/Support Worker Booklet at Section 8(C)(1) (p. 13).
- If a member's Dollar Bank balance is greater than zero but less than the monthly premium, the member will receive a "Short Dollars Premium Invoice" and can pay the difference in order to remain covered. See Journeymen/Apprentice Booklet at Section 8(E) (p. 18); Helper/Support Worker Booklet at Section 8(E) (p. 14).
- If a member's eligibility is terminated because the Dollar Bank balance is less than the monthly premium, he/she can obtain an "Application for Extended Eligibility

Through the Supplemental Hour Reserve.” Extended Eligibility is available for journeymen and apprentices only (pre-apprentices and helpers are not eligible for Extended Eligibility). See Journeymen/Apprentice Booklet at Section 8(F) (p. 19). If Plan Criteria is met, a member will be eligible for extended eligibility as follows:

- 3 months extended eligibility if the member had 1,500 hours contributed in the past 12 months
 - 6 months extended eligibility if the member had 3,000 hours contributed in the past 24 months
 - 9 months extended eligibility if the member had 4,500 hours contributed in the past 36 months
- Members who do not have sufficient Dollar Bank balances and are not eligible for Extended Eligibility are entitled to continuing coverage through COBRA for a period of up to 18 months (less any months covered through Extended Eligibility). See Journeymen/Apprentice Booklet at Section 19(D) (pp. 73-74); Helper/Support Worker Booklet at Section 11(D) (pp. 35-36).

2. Coverage Options Outside of the Welfare Fund.

- Obtaining health insurance through a spouse.
- Obtaining health insurance MNsure (Minnesota’s healthcare marketplace)
- Special COVID-19 Enrollment Period
<https://www.mnsure.org/new-customers/enrollment-deadlines/special-enrollment/covid19-sep.jsp>
- Greater Minnesota: 1-855-366-7873
Twin Cities: 651-539-2099
- Medical Assistance (“MA”) (Minnesota’s Medicaid Program) may also be available through MNsure.
- Income Guidelines for MA (Minnesota’s Medicaid Program)
<https://www.mnsure.org/shop-compare/financial-help/income-guidelines/index.jsp>
- MNsure Medical Assistance On-Line Application
<https://www.mnsure.org/new-customers/apply/with-fin-help/index.jsp>

D. Disability Leave under the Welfare Fund.

Eligibility for disability benefits from the Welfare Fund requires “a non-occupational total disability resulting from an Injury or Illness that prevents you from working.” See Journeymen/Apprentice Booklet at Section 14 (p. 62)(disability leave is not available to pre-apprentices and helpers).

- You *will* be eligible for disability benefits if you cannot work because you have been diagnosed with COVID-19 and your doctor is requiring you to quarantine. Disability

benefits could be available on the eighth day of your illness or on the first day of hospitalization.

- You *will not* be eligible for disability benefits if you cannot work because your employment has been terminated, your work site is closed pursuant to a governmental order to shelter-in-place or stay home, you choose to self-quarantine, or if you are not working because your child's school or daycare is closed. You may, however, be eligible for benefits under the FFCRA or unemployment benefits (see Sections A and B above).

You are not eligible for disability benefits if you are receiving other types of compensation or benefits, including but not limited to unemployment compensation or workers' compensation.

E. Hardship Withdrawals from the Pension Supplement Fund.

The CARES Act authorizes retirement plans, like the Pension Supplement Fund, to make "coronavirus-related distributions" to participants:

- Who are diagnosed with COVID-19 or the virus SARS-CoV-2;
- Whose spouse or dependent is diagnosed with COVID-19 or the virus SARS-CoV-2, or
- Who experience adverse financial consequences as a result of a quarantine, furlough, lay-off, or reduced hours.

The Trustees will be addressing this issue at their April 2020 meeting. If you are interested in obtaining a distribution from the Pension Supplement Fund, check the Fund Office's website at the end of April for additional information.

- F. Employee Assistance Program.** Employees who need assistance with stress, financial, or familial issues can contact the HealthPartners Employee Assistance Program at 866-326-7194 or through the HealthPartners EAP Website: www.hpeap.com (password ptsmn).

PART II – EMPLOYER INFORMATION AND RESOURCES

A. FFCRA Paid Leave.

1. Overview. Beginning April 1, 2020, employers with fewer than 500 employees must provide emergency paid sick leave and expanded family and medical leave to employees who are unable to work or telework because of one of the following six COVID-19-reasons:

- (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 related to COVID-19;
- (3) Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
- (4) Employee is caring for an individual subject to an order described in (1) or self-quarantined as described in (2);

- (5) Employee is caring for his/her child whose school or place of child care is closed (or child care is unavailable) due to COVID-19-related reasons; and
- (6) Employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

Details regarding the amount of required leave and amount of pay are below:

- *Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay for reasons #1, #2 and #3 above; or*
- *Two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's regular rate of pay for reasons #4, #5 and #6 above; and*
- *Up to an additional 10 weeks of paid expanded family and medical leave at 2/3 the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, for reason #5 above.*

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Employers should document and retain any information related to FFCRA paid leave for at least four years.

Paid sick leave is in addition to, and not a substitute for, other sources of leave which an employee has already accrued, is already entitled to, or has already used before FFCRA's paid sick leave became effective on April 1, 2020. Therefore, neither eligibility for, nor use of, paid sick leave may count against an employee's balance or accrual of any other source or type of leave.

An employer may require employees to provide notice as soon as practicable after the first workday is missed by the employee, and require that employees provide oral notice and sufficient information for an employer to determine whether the requested leave is covered by FFCRA. It is generally reasonable for the employer to require the employee to comply with the employer's usual notice procedures and requirements. If an employee fails to give proper notice, the employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

Employees must provide an employer with documentation in support of the FFCRA paid leave which must include a signed statement containing the following information: (1) the employee's name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.

2. Fringe Benefits.

- Employees are entitled to FFCRA paid leave based on their "regular rate of pay." Regular rate of pay includes wages, but not amounts payable as fringe benefit contributions.

- If an employee is eligible for FFCRA paid leave, you must continue making contributions on your employee's behalf to maintain the employee's coverage under the Welfare Fund as though the employee had been continuously employed. This requirement is similar to the requirements applicable when an employee takes FMLA leave for other reasons.
- While an employee is taking FFCRA paid leave, the employer must maintain the same group health plan benefits provided to an employee and his or her family members covered under the plan prior to taking leave including, medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, and other benefit coverage.
- Employees who take FFCRA paid leave will remain responsible for paying the same portion of the premium the employee paid prior to taking FFCRA paid leave.
- The amount you pay to maintain your employee's coverage increases the available tax credit (described below).

3. FFCRA Poster / Notice to Employees.

- A poster describing FFCRA rights has been published by the U.S. Department of Labor and must be posted on an employer's premises by April 1, 2020. This requirement can also be satisfied by sending the notice to employees by mail or email, or by posting to an employee information website. The link to the required notice is: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf. A link to the FAQ from the U.S. Department of Labor is provided below.

4. Employer Tax Credits Available Under the FFCRA.

- If an employee is owed 100% of the employee's regular rate of pay, an employer may receive a refundable sick leave credit at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate for a total of 10 days.
- If an employee is owed 2/3 of the employee's regular rate of pay, an employer may claim a credit for 2/3 of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for a total of 10 days.
- If an employee is owed 2/3 of the employee's regular rate of pay for the expanded family and medical leave, employers claim a credit for 2/3 of the employee's regular rate of pay, up to \$200 per day and \$10,000 in the aggregate for up to 10 weeks.
- The amount of the credit allowed is increased by any amounts paid or incurred by an employer to provide and maintain a group health plan.
- Certain self-employed individuals may also be eligible to receive tax credits for FFCRA paid leave.
- Employers paying FFCRA paid leave may retain an amount of the payroll taxes, otherwise submitted to the IRS quarterly on Form 941, equal to the amount of the FFCRA paid leave, rather than depositing the amount with the IRS. Payroll tax

amounts that may be retained include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

- If the retention of payroll taxes is not enough to cover the employer's cost of the FFCRA paid leave, employers will be able to submit an expedited request to the IRS for accelerated payment which is expected to be processed in two weeks or less. Guidance for this process is expected in the near future.

5. Exemption. There is a small business exemption available for certain employers with less than 50 employees where providing FFCRA paid leave would jeopardize the viability of the business as a going concern.

6. Resources.

- COVID-19 Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>
- Treasury, IRS and Labor Announce Implementation of Tax Credits for Small and Midsize Businesses to Recover the Cost of Providing Leave Under the Families First Coronavirus Response Act <https://www.taftlaw.com/news-events/law-bulletins/treasury-irs-and-labor-announce-implementation-of-tax-credits-for-small-and-midsize-businesses-to-recover-the-cost-of-providing-leave-under-the-families-first-coronavirus-response-act>
- DOL Temporary Rule: Paid Leave under the Families First Coronavirus Response Act <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-07237.pdf>
- Families First Coronavirus Response Act: Question and Answers <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Families First Coronavirus Response Act: Employer Paid Leave Requirements <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under the Families First Coronavirus Response Act ("FFCRA") https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Families First Coronavirus Response Act Notice – Frequently Asked Questions <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

B. SBA Disaster Loan and Payroll Protection Programs.

1. Overview. The CARES Act includes \$367 billion for potential loans to small businesses impacted by the COVID-19 pandemic. Businesses can apply for Federal Economic Injury Disaster Loans of up to \$2 million through the U.S. Small Business Administration. In addition, businesses can apply for loans through the Payroll Protection Program ("PPP"),

a program designed to provide a direct incentive for small businesses to keep their employees on payroll through forgiveness of loans if all employees are kept on payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

2. Resources.

- SBA Application
<https://covid19relief.sba.gov/#/>
- PPP Information
<https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>
- PPP Sample Loan Application
https://www.sba.gov/sites/default/files/2020-03/Borrower%20Paycheck%20Protection%20Program%20Application_0.pdf
- SBA COVID-19 Small Business and Loan Resources
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- SBA Part Three: An Update on SBA Loans Under the Senate Passed CARES Act
<https://www.taftlaw.com/news-events/law-bulletins/sba-part-three-an-update-on-sba-loans-under-the-senate-passed-cares-act>
- SBA Part Two: I Need to Apply for an SBA Disaster Loan. What Do I Do Now?
<https://www.taftlaw.com/news-events/law-bulletins/sba-part-two-i-need-to-apply-for-an-sba-disaster-loan-what-do-i-do-now>
- SBA Part One: COVID-19 Guidance: SBA Disaster Loan Program
<https://www.taftlaw.com/news-events/law-bulletins/sba-part-one-covid-19-guidance-sba-disaster-loan-program>

C. Employee Retention Credits. The Treasury Department and the Internal Revenue Service launched the Employee Retention Credit, designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.

- Additional information regarding Employee Retention Credits:
https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19?utm_campaign=Memb_NMI_US_CVR_Daily_Wed%204.1&utm_medium=email&utm_source=Eloqua
- IRS Form 7200 (Advance Payment of Employer Credits Due to COVID-19):
<https://www.irs.gov/forms-pubs/about-form-7200>

D. Additional Resources. Additional resources regarding the SBA and a variety of other topics can be found at the following link: <https://www.taftlaw.com/general/coronavirus-covid-19-resource-toolkit>

DISCLAIMER

This document is resource guide and is not intended to provide legal advice. You should contact the appropriate professionals if you have additional questions. We will continue to update this resource guide as additional changes in the law are implemented and as information and guidance as it becomes available.

12494666v2