



FFCRA and CARES Act

What Small Businesses Need to Know

April 2020

Before we get started....

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- Be sure your sound is turned on
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Ask your questions

- Feel free to submit content related questions to the speakers in the chat window
- We will answer as many questions as possible in the allotted time
- We will also publish a Q&A following this presentation



SPEAKER PANEL

Summary of the Families First Act payroll provisions

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Summary of the SBA Loan and application process

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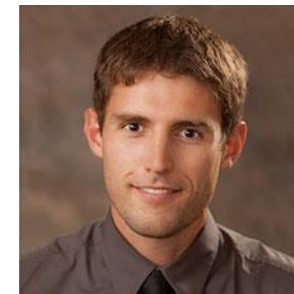


Summary of tax provisions affecting businesses

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Website for current articles, news and copies of today's slides:

www.jccscpa.com/news



FAMILIES FIRST
CORONAVIRUS
RESPONSE ACT
(FFCRA)



Families First Coronavirus Response Act

General Information

The Families First Coronavirus Response Act was passed by the Senate and signed by President Trump on March 19, 2020. The Act provides for two paid leaves that employers across the United States must provide to employees who are directly affected by COVID-19, whether they are caring for themselves or others. The Act is effective as of April 1, 2020 and applies to employers with 1 to 499 employees. Large employers with 500 or more employees do not have to comply with this law. It expires on December 31, 2020. The Act provides for two sources of paid leave: Emergency Paid Sick Leave (EPSL) Act and the Emergency Family and Medical Leave Expansion (EFMLA) Act.



Families First Coronavirus Response Act

General Information

Employers may claim 100 percent of COVID-19-related leave wages as a refundable credit against federal payroll taxes (including social security, Medicare, and federal income taxes) withheld from the employee and the employer's portion of Medicare. In the case that those credits do not fully reimburse the cost of the leave, employers can seek an expedited advance from the IRS through a forthcoming claims process.

In general, employers are required to provide 10 days of paid sick leave (EPSL) and 10 weeks of paid family leave (EFMLA).



Families First Coronavirus Response Act

Emergency Paid Sick Leave

- Covered Employees: all employees, including seasonal and part-time workers
- Covered Employers: employers with fewer than 500 employees
- Amount of Leave:
 - Full-time employees: 80 hours of paid leave calculated at their regular rate of pay or the minimum wage, whichever is greater.
 - Part-time employees: average hours worked over a two-week period.
 - If an employee works a variable schedule, it is the average number of hours they worked per day over the previous six months. If the employee has not worked this long, it is the reasonable expectation of the employee at the time of hire or average number of hours per day the employee would have been scheduled.



Families First Coronavirus Response Act

Emergency Paid Sick Leave

<u>Covered Reason For Leave</u>	<u>Rate of Pay</u>	<u>Cap on Payments</u>
(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).	\$511 per day and \$5,110 in the aggregate
(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate
(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$2,000 in the aggregate



Families First Coronavirus Response Act

Expanded FMLA

- Covered Employees: all employees who have been employed for at least 30 calendar days (based on hire date)
- Covered Employers: employers with fewer than 500 employees
- Amount of Leave:
 - 12 weeks: the first 2 weeks are unpaid leave and the remaining 10 weeks are paid leave with reinstatement rights.
 - First 10 days may be unpaid, but employees may use other paid leaves during this time – most employees will qualify for EPSL.

<u>Covered Reason For Leave</u>	<u>Rate of Pay</u>	<u>Cap on Payments</u>
The employee is caring for a son or daughter of the employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.	Two-thirds of the employee's regular rate of pay.	\$200 per day and \$10,000 in the aggregate



Families First Coronavirus Response Act

Unemployment Insurance

Montana Unemployment

- If employee is filing for unemployment benefits in relation to COVID-19 pandemic, the 1-week waiting period has been waived, and the claim will not affect the employer's UI rate.

Federal Pandemic Unemployment Compensation

- Additional \$600 per week for individuals with claims related to COVID-19.
- The states can choose whether to combine this with the active claims or pay them in a separate check.
- We expect to see these amounts in approximately 2-3 weeks.



Families First Coronavirus Response Act

BIGGEST QUESTION!

Does Governor Steve Bullock's directive count towards the qualified reason for requesting leave (i.e., is the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19)?

Based on our research and statements made by the DOL, worksite closures due to lack of work or the requirement to close pursuant to a Federal, State, or local directive does NOT count as a qualified reason for requesting leave (source: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> – questions #23 and #24).



**CORONAVIRUS AID,
RELIEF, AND ECONOMIC
SECURITY (CARES) ACT**



Paycheck Protection Program

- Enacted under the CARES Act on March 27, 2020
- Small businesses with fewer than 500 employees are eligible to receive an SBA loan between February 15, 2020 and June 30, 2020
- Loan amount is based on the average monthly payroll costs for the one year period ending on the date of the loan



Paycheck Protection Loans

Eligibility

- Small business with fewer than 500 employees (or meets SBA size standard)
- A 501(c)(3) with fewer than 500 employees
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed and carries on a regular business
- A Tribal business or a 501(c)(19) Veterans Organization that meets the SBA size standard



Application Process

- Two page simplified application available through the SBA website or through a SBA approved lender
- All loans are processed directly through SBA approved lenders (banks, credit unions, other)
- Businesses will need to support the payroll calculation and answer several eligibility questions



Paycheck Protection Loans

Payroll Calculations

- “Average Monthly Payroll” is defined as the monthly payroll from 2019, excluding costs over \$100,000 on an annualized basis
- Seasonal businesses may elect to use average payroll from February 15, 2019 to June 30, 2019, which mirror the “covered period”
- New businesses may use January 1, 2020 to February 29, 2020



Paycheck Protection Loans

Employer Payroll Costs

- Salary, wages, commission, or similar
- Payments of cash tips
- Vacation, sick or similar leave benefits
- Employee separation allowance
- Group health insurance
- Retirement benefits
- State and local tax assesses on wages

Sole Proprietor, Independent Contractor and Self-Employed

- The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in one year, as pro-rated for the covered period (1099-MISC)



Payroll Calculation – Exclusions

- Compensation in excess of \$100,000 for any one individual on an annual basis
- Payroll taxes and income taxes
- Compensation of any individual primarily residing outside the U.S.
- Qualified sick leave wages for which a credit is allowed under section 7001 of the FFCRA or qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA



Paycheck Protection Loans

A portion of the loan is eligible to be forgiven on a tax-free basis.

The amount of the forgiveness is the sum of payments made for eligible costs made during the initial 8 week period, beginning on the date of the loan.

Eligible costs:

- Payroll and other payroll related costs (wages, health insurance, state and local tax assessed on wages, other)
- Mortgage interest
- Rent
- Certain utility payments



Paycheck Protection Loans

Forgiveness Reduction

The amount of the forgiveness is reduced if there is a reduction in the number of employees or reduction of greater than 25% in wages paid to employees

Payroll Cost \times Average FTE \div Average FTE (prior year)

$$\$100,000 \times 9.2 / 10 = \$92,000$$

Payroll Cost $-$ Reduction greater than 25%

$$\$100,000 - \$8,000 = \$92,000$$

(2 employees with 1st quarter wages of \$10,000 each were paid \$6,000 each during the covered period)



Paycheck Protection Loans

Other Provisions

- Employers can bring back employees previously laid off (by June 30 to avoid reduction in forgiveness.)
- Receipt of Paycheck Protection Loan restricts employer ability to claim a payroll tax credit
- Double dipping is prohibited (duplicate PPP or EIDL Loans)
- Repayment period of the portion not forgiven shall not exceed 10 years at 4% interest (borrowers guidelines currently list a two year payback and 1% interest, but that may change)
- Payments are deferred for a period of six months
- No recourse against the borrower unless the loan is used for some purpose other than covered costs



Economic Injury Disaster Loan (EIDL)

- Emergency grants are available through the EIDL loan program with the SBA
- \$10,000 advance can be requested at the time of application and must be used for specific costs, as defined
- Grant would not be required to be repaid, even if the applicant is subsequently denied the loan
- Who should consider? Self rentals?



**TAX IMPLICATIONS
AFFECTING
BUSINESSES AND
INDIVIDUALS**



Business Provisions

Employee Retention Credit

- Fully refundable tax credit on 50% of qualified wages
- Wages paid from March 13, 2020 through December 31, 2020
- Limited to first \$10,000 of wages per employee (\$5,000 max credit per employee)
- Eligible Employers:
 - Operations must have been fully or partially suspended due to orders from a governmental authority that limits commerce, travel, or group meetings due to COVID-19, OR
 - Experienced a “significant” decline in gross receipts during the calendar quarter
- Credit is reconciled on Form 941
 - Reduce amount due with Form 941
 - Any excess is refunded to employer



Employee Retention Credit (Cont'd)

- Accelerated payers are allowed to reduce payment by entitled credit
- Request for advance of credit is available – IRS Form 7200
- NOT available to self-employed individuals
- NOT available to employers who receive PPPs
- CAN claim in conjunction with qualified leave wages under the FFCRA, but NOT for the same wages
- Special rules for employers with more than 100 full-time employees



Business Provisions

Employee Retention Credit (Cont'd)

EXAMPLE: “Significant” decline in gross receipts

	2019	2020	% of '19
Sales – Q1	210,000	100,000	48%
Sales – Q2	230,000	190,000	83%
Sales – Q3	250,000	230,000	92%
Sales – Q4	270,000	265,000	98%

Eligible for credit in
Q1 and Q2 only

	2019	2020	% of '19
Sales – Q1	210,000	100,000	48%
Sales – Q2	230,000	175,000	76%
Sales – Q3	250,000	230,000	92%
Sales – Q4	270,000	265,000	98%

Eligible for credit in
Q1, Q2, and Q3



Delay of Payment of Payroll Tax

- Employer portion of the social security tax (6.2%)
- Wages paid from March 27, 2020 through December 31, 2020
- Deferred amount must get paid in two installments:
 - 50% must be paid by December 31, 2021
 - Remainder must be paid by December 31, 2022
- ALL employers qualify – regardless of size
- Self-employed individuals DO qualify
- NOT available to employers who receive SBA loans that are forgiven under the CARES Act (i.e., PPPs)



NOL Modifications

- Net operating losses (NOLs) arising in 2018, 2019, and 2020 shall be carried back five years with no 80% taxable limitation (effectively repealing the TCJA rules)
- Must make election to forego carryback (just like pre-TCJA rules)
 - For NOLs in 2018 and 2019, election to forego must be made by the 2020 tax year due date (including extension)
- Forms 1139 and 1045



Business Provisions

Miscellaneous

- Increase to section 163(j) interest limitation from 30% to 50%
- Qualified improvement property (QIP) technical correction officially made – 100% bonus eligible
- Limit on excess business loss deductions suspended
- Single-employer defined-benefit pension plan funding rule changes
- Taxable income limit increased for corporate charitable deductions from 10% to 25%



Rebates and Other Individual Provisions

2020 Recovery Rebates

- “Stimulus Checks”
- Immediate cash payments of \$1,200 to each individual, with additional \$500 for each qualifying child
- Adjusted Gross Income (AGI) thresholds:
 - \$150,000 – married filing joint
 - \$112,500 – head of households
 - \$75,000 – individuals
 - Phased out at rate of \$5 per \$100 above thresholds (\$99,000 and \$198,000)
- Qualifying child = under the age of 17 (in 2019)
- Based on 2019 tax return (or 2018 if taxpayers have not filed 2019 yet)
- IRS letters will be mailed out and will include details of payment amount, etc.



Rebates and Other Individual Provisions

Retirement Funds

- 10% penalty on early distribution waived on up to \$100,000
- Must be coronavirus-related reason for distribution:
 - Taxpayer is diagnosed with COVID-19
 - Spouse or dependent is diagnosed with COVID-19
 - Taxpayer suffered “adverse financial consequences” due to being quarantined, furloughed, laid off, having work hours reduced, or was unable to work due to lack of child care
- Distributions are still taxable; special provision allows payment of tax over 3 years
- Tax can potentially be avoided if entire distribution is re-contributed within 3 years
- Loan limits are increased to \$100,000 (from \$50,000)



Rebates and Other Individual Provisions

Temporary Waiver of RMD Rules

- Required Minimum Distribution (RMD) rules are suspended for 2020
- This could include a first-time RMD from 2019, that was allowed until April 1, 2020 to be distributed
- If RMD was already taken in 2020, there is no provision in the new bill that allows for reversal of that distribution (potentially look to 60-day rollover rule if RMD was recently distributed)
- Suspension of RMD applies to defined contributions plans [401(k)s, 403(b)s, etc.], IRAs, and inherited IRAs
- Non-designated beneficiaries of IRAs subjected to five-year rule will get extended to make it a six-year rule



Rebates and Other Individual Provisions

Charitable Contributions

- Special “above-the-line” deduction of up to \$300
- Must be cash (non-cash, stock, etc. do NOT qualify)
- For taxpayers who do NOT itemize their deductions
- Effective for 2020 and beyond
- Charity must be a qualifying section 501(c)(3) public charity (excludes private foundations and donor-advised funds)



Rebates and Other Individual Provisions

Charitable Contributions (Cont'd)

- For individuals who do itemize their deductions:
 - 60% AGI limitation increased to 100% (effectively suspended)
 - Applicable to cash contributions only
 - Charity must be a qualifying section 501(c)(3) public charity (excludes private foundations and donor-advised funds)
- For Corporations:
 - 10% taxable income limitation increased to 25%
 - Applicable to cash contributions only
 - Charity must be a qualifying section 501(c)(3) public charity (excludes private foundations and donor-advised funds)
- Charitable contribution of food:
 - 15% taxable income limitation increased to 25%
- All changes above apply to 2020 tax year only



Rebates and Other Individual Provisions

Student Loans

- Employer Payment:
 - Employers can contribute up to \$5,250 toward an employee's student loan and entire amount would be excluded from employee's income
 - Valid through December 31, 2020
 - Includes student loans and/or other educational assistance (tuition, books, fees, etc.)
- Federal student loan payments are suspended through September 30, 2020:
 - No action necessary
 - No late fees or penalties apply
 - No interest will accrue
 - Does NOT apply to private student loans



QUESTIONS?



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