



HUSCH BLACKWELL

Update for Employers on Families First Coronavirus Response Act

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Presenters



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Lorinda is the Office Managing Partner for the Firm's Austin office and currently serves as General Counsel to the Austin Chamber. She is an experienced healthcare and education focused attorney who guides clients successfully through the stress of litigation. Her practice includes work with medical boards, the False Claims Act, the Texas Medicaid Fraud Prevention Act, healthcare business disputes and litigation against providers. [Full Bio](#)



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A fierce advocate for labor and employment clients, Tyler aims to protect clients – inside and outside the courtroom. Tyler has a decade of experience defending clients against administrative complaints and investigations issued by government enforcement agencies, such as the EEOC, NLRB, OSHA, and Department of Labor. He also routinely conducts workplace investigations on behalf of clients. [Full Bio](#)



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Alan devotes his practice to helping clients design, maintain and defend employee benefit and executive compensation plans that align with business goals. Alan counsels a wide variety of clients – publicly traded, privately held, tax-exempt and governmental – as they navigate the highly regulated space of Employee Benefits and Executive Compensation. He works closely with clients to design and draft durable and strategic benefit plans that meet compliance benchmarks while aligning with business goals. [Full Bio](#)



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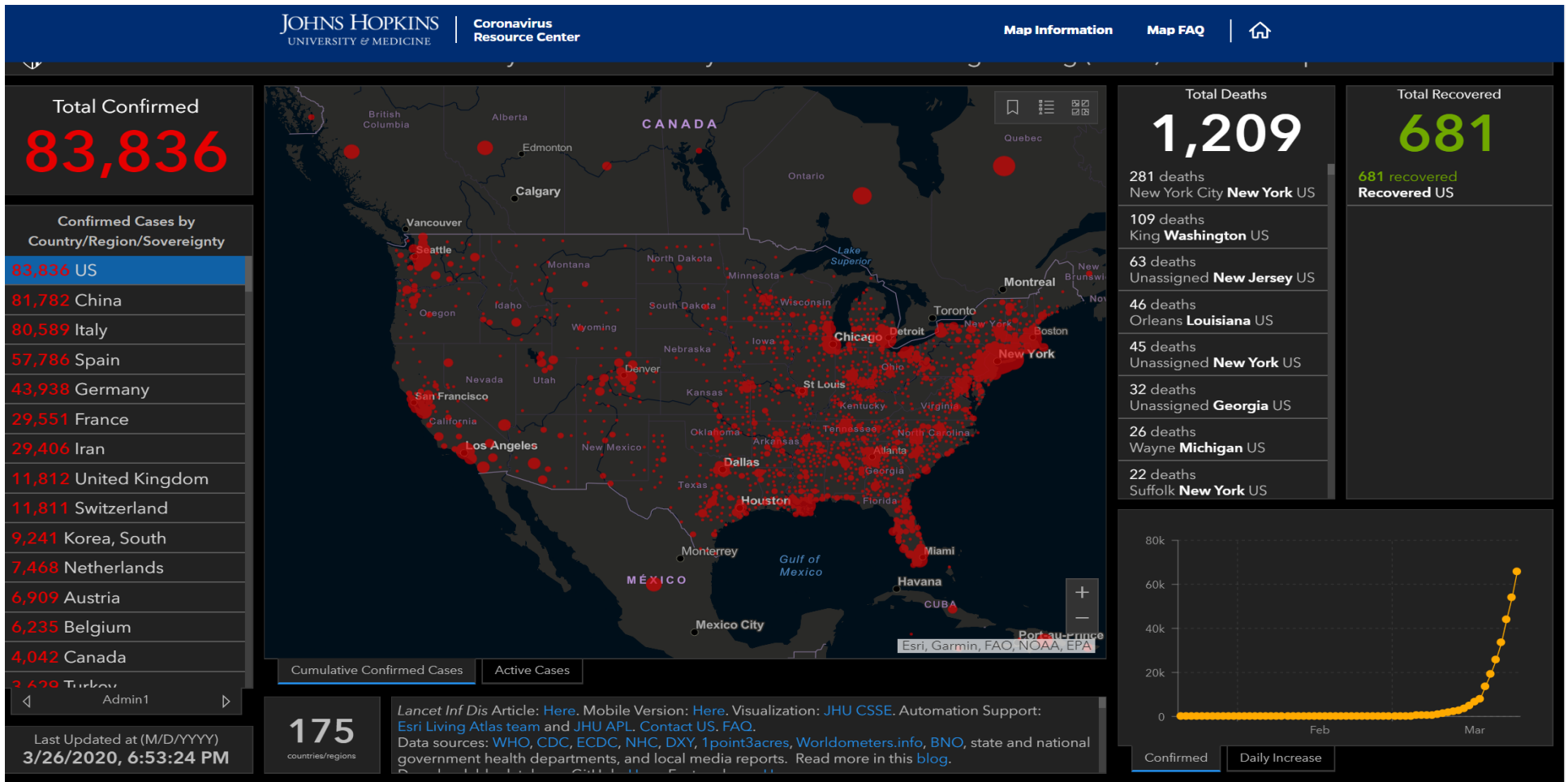
Kevin focuses his practice on labor and employment and is passionate about practicing in a field where the law has a strong personal element. Kevin advises and defends employers on a wide range of issues, including high level investigations, leave and accommodation concerns, discrimination and harassment matters, non-competition agreements, reductions in force and sensitive terminations. [Full Bio](#)



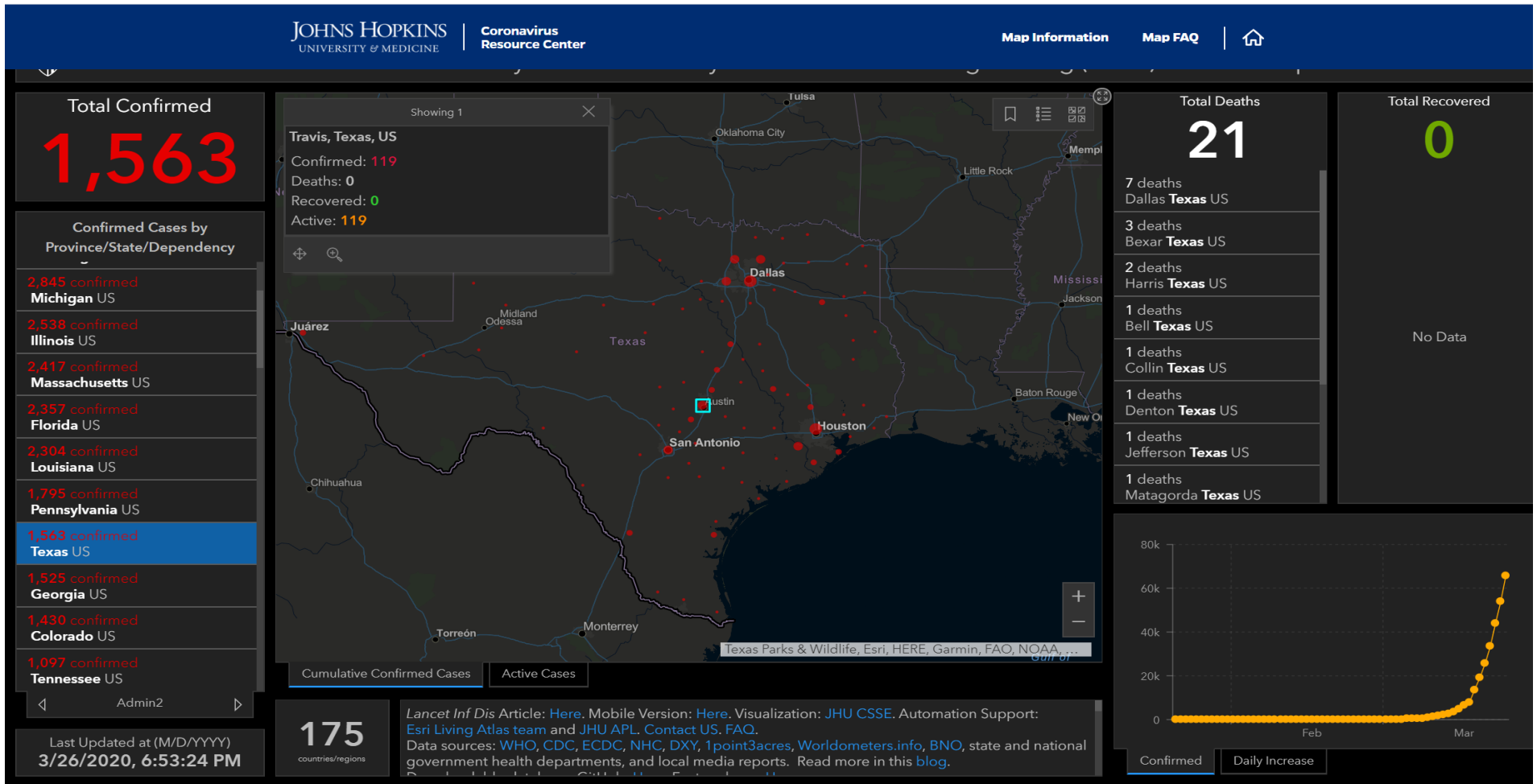
Key Considerations

- The information provided is based upon our current understanding of the COVID-19 pandemic, and employers should remember that guidance is likely to change.
- Employers need to prepare for extended business interruption.
 - When asked when life might go back to normal by ABC News on March 15, Dr. Anthony Fauci, the nation's leading expert on infectious diseases, stated that it will likely be several weeks to a few months.
- Due to the fluidity surrounding COVID-19 and the response, it is strongly recommended that companies seek legal counsel on key decisions.

Current Spread of the Virus



Current Spread of the Virus





Emergency Orders

- On March 11, 2020, the World Health Organization declared COVID-19 to be a pandemic.
- National
 - President Trump declared a National Emergency on March 13, 2020.
 - On March 16, 2020 the CDC issued recommendations to avoid gathering in groups of 10 or more people and to avoid all non-essential travel.
- State
 - As of March 17, 2020, all 50 states have declared a state of emergency.
 - Texas has not yet issued a statewide, mandatory Stay-At-Home Order.
- Local
 - March 23, 2020 Stay Home Work Safe Order issued by City of Austin
 - Numerous cities and counties have ordered residents to shelter-in-place.



Recent Legislative Actions

- Families First Coronavirus Response Act
 - Emergency Family and Medical Leave Expansion Act
 - Allows employees affected by school closures to be eligible for protected leave.
 - Emergency Paid Sick Leave Act
 - Allows employees two weeks of paid sick leave, regardless of how long the employee has been employed.
 - The Act will now go into effect on April 1, 2020.
- Several other states have begun considering similar laws to assist affected employees.
 - Consider local paid sick leave ordinances. Austin's remains in legal limbo.



Families First Coronavirus Response Act

- Emergency Family and Medical Leave Expansion Act
 - Provides 12 weeks of leave if an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
 - Employee must have worked for the employer for at least 30 calendar days.
 - Applies to employers with fewer than 500 employees.
 - The first 10 days of the leave may be unpaid.
 - Employee is generally entitled to 2/3 of their regular rate for days off after the first 10, not to exceed \$200 per day and \$10,000 in the aggregate.
 - Employee is entitled to return to the same or an equivalent position.
 - Unless the employer has fewer than 25 employees, then the employer is not required to reinstate the employee.



Families First Coronavirus Response Act

- Emergency Paid Sick Leave Act
 - Applies to employers with fewer than 500 employees.
 - Unlike EFMLA, no minimum tenure of employment for an employee to be eligible.
 - Must provide employees with two weeks (10 days) of emergency paid sick leave benefits to be used for COVID-19 related absences.
 - Full-time employees, this means 80 hours.
 - Employees who work a part-time or irregular schedule are entitled to the average number of hours per week the employee worked for the six months prior to taking paid sick leave.
 - This leave is immediately available for use by the employee.
 - An employer cannot require employees to exhaust other forms of paid leave before using this new COVID-19 paid leave.
 - The COVID-19 paid leave is in addition to any paid leave the employer already provides.
 - Employers are not permitted to discriminate or retaliate against any individual taking leave under the Act.



Families First Coronavirus Response Act

- Emergency Paid Sick Leave Act
 - An employee may use paid sick leave if the employee is unable to work for any of the following reasons:
 1. The employee is subject to a federal, state, or local quarantine or isolation order for Coronavirus;
 2. The employee is advised by a health care provider to self-quarantine due to Coronavirus concerns;
 3. The employee is experiencing symptoms of Coronavirus and seeking a medical diagnosis;
 4. The employee is caring for an individual who is under a quarantine or isolation order or has been advised to self-quarantine;
 5. The employee is caring for a child whose school or child care has been closed due to Coronavirus; or
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.



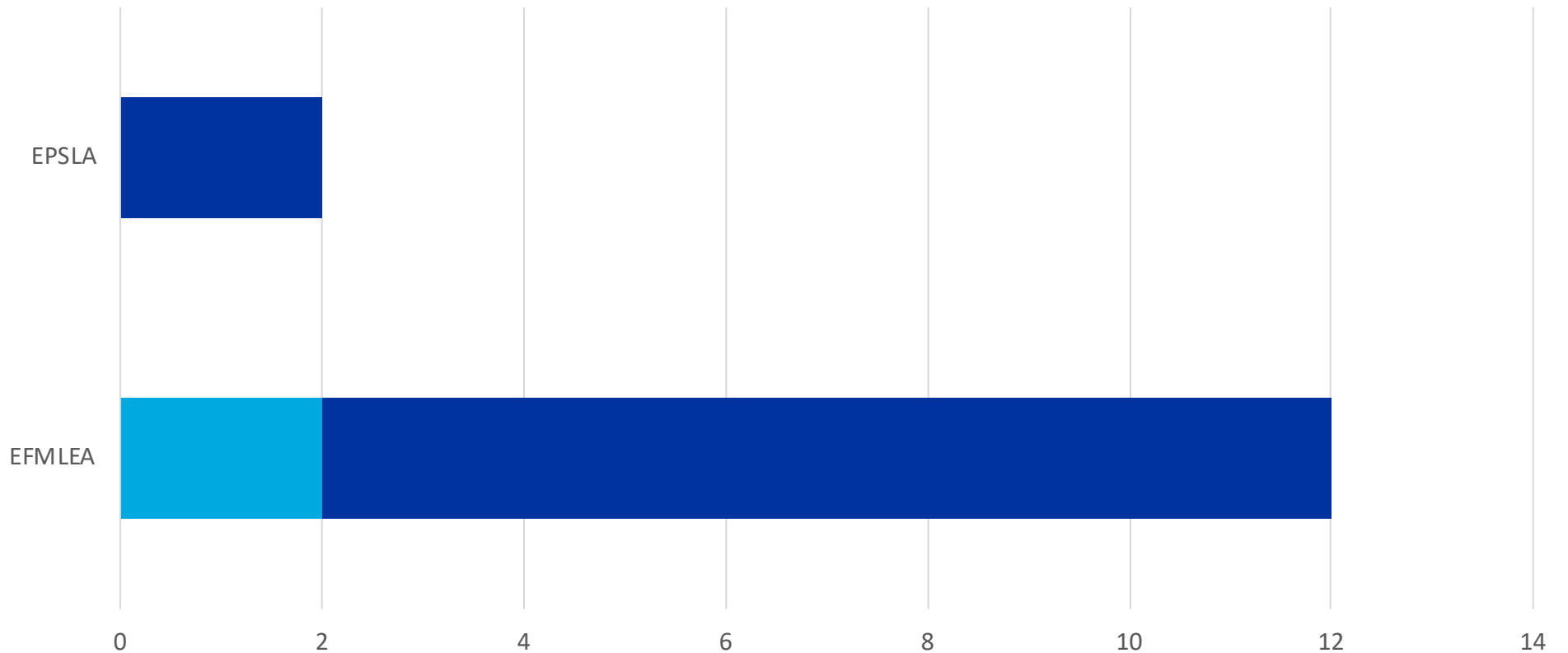
Families First Coronavirus Response Act

REASON FOR LEAVE	RATE OF PAY	DAILY AND AGGREGATE CAP
Federal, State, or Local Quarantine or Isolation Order For Coronavirus	Regular Rate of Pay	\$511 Per Day and \$5,110 In The Aggregate
Advised By A Health Care Provider To Self-Quarantine Due To Coronavirus Concerns	Regular Rate of Pay	\$511 Per Day and \$5,110 In The Aggregate
Experiencing Symptoms of Coronavirus and Seeking A Medical Diagnosis	Regular Rate of Pay	\$511 Per Day and \$5,110 In The Aggregate
Caring For An Individual Who Is Under A Quarantine or Isolation Order or Has Been Advised To Self-Quarantine	2/3 of Regular Rate of Pay	\$200 Per Day and \$2,000 In The Aggregate
Caring For A Child Whose School or Child Care Has Been Closed Due To Coronavirus	2/3 of Regular Rate of Pay	\$200 Per Day and \$2,000 In The Aggregate
Experiencing Any Other Substantially Similar Condition Specified By The Secretary of Health and Human Services	2/3 of Regular Rate of Pay	\$200 Per Day and \$2,000 In The Aggregate



Families First Coronavirus Response Act

PAID LEAVE BENEFITS





Families First Coronavirus Response Act

- Emergency Paid Sick Leave Act
 - Employee's ability to use paid sick leave for these purposes ceases upon the termination of the qualifying event.
 - Paid leave provided under this law does not carry over year to year and any unused leave does not need to be paid out on termination of employment.
 - Employers are required to post a notice in the workplace of paid sick leave rights under the new law. The Secretary of Labor is to publish this notice within 7 days.
 - Failure to comply with the new paid sick leave law will be deemed a failure to pay minimum wages under the FLSA.



Tax Benefits and Credits under Families First Coronavirus Response Act

- March 20 – IRS and DOL issue joint press release stating small and medium-sized employers that provide sick and child-care leave under FFCRA will be fully reimbursed through tax credits and, in certain cases, refunds for the amount of leave paid to their employees.
- Tax Benefit for Employers:
 - Tax credits are available for sick and child-care qualifying leave payments.
 - Employers are entitled to a refundable tax credit equal to 100% of the qualified leave wages paid for each calendar quarter in adherence with the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.
 - Eligible employer tax credits will fully reimburse employers for all qualifying sick and child-care leave payments mandated under the Families First Coronavirus Response Act by reducing payroll taxes owed to the IRS.
 - Eligible employers will be entitled to an additional credit for the cost of maintaining health insurance coverage.



Tax Benefits and Credits under Families First Coronavirus Response Act

- Tax Benefit for Employers:
 - Employers will be able to file for accelerated payments to refund employers for qualifying leave payments in excess of federal payroll taxes owed.
 - Small businesses will be eligible for an exemption to the mandated sick and leave payments if they demonstrate that payment of child-care leave under the Act threatens the viability of their business.
 - Enforcement actions will be delayed by thirty days for employers that act reasonably and in good faith to comply with the Act.
 - The IRS press release is inconsistent with the Act in some respects, so we expect further clarification.
 - Large employers should remember that Code section 45S provides a tax credit for paid FMLA leave.



Tax Benefits and Credits under Families First Coronavirus Response Act

- As of now, the tax credit applies to payments for sick and child-care qualifying leave payments provided by employers between April 2, 2020 and December 31, 2020.
- Eligible employers are defined as businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under FFCRA.



Tax Benefits and Credits under Families First Coronavirus Response Act

EPLSA refundable sick leave tax credit is determined as follows:

- Employees are eligible for two weeks of paid sick leave at 100% of “employee’s pay” if the employee is unable to work because of a COVID-19 quarantine or a self-quarantine, or has COVID-19 symptoms and is seeking a medical diagnosis. Eligible employers are provided a refundable sick leave tax credit for sick leave payments at the employee’s “regular rate of pay” up to a maximum amount of \$511/day and \$5,110 in the aggregate, for a total of 10 days.
- Employees are eligible for two weeks of paid sick leave at 2/3 of the “employee’s pay” if the employee is caring for an individual who is subject to quarantine, caring for a child whose school is closed or child-care provider is unavailable for reasons related to COVID-19. Eligible employers may claim a refundable tax credit of 2/3 of the employee’s “regular rate of pay” up to a maximum amount of \$200/day and \$2000 in the aggregate for up to 10 days.
- In addition, eligible employers are entitled to an additional tax credit based on the cost of maintaining health insurance coverage for eligible employees during the leave period.



Tax Benefits and Credits under Families First Coronavirus Response Act

EFMLA tax credit for payment of qualifying child-care leave is determined as follows:

- Employees of eligible employers may receive up to an additional 10 weeks of expanded paid family and medical leave at 2/3 of the “employee’s pay” if the employees are unable to work due to a need to care for a child whose school is closed or whose child care provider is unavailable for reasons related to COVID-19. In addition to the sick leave credit, eligible employers are entitled to a refundable child-care tax credit for the payment of expanded paid family and medical leave equal to 2/3 of the employee’s “regular pay,” up to a maximum amount of \$200/day or \$10,000 in the aggregate.
- An additional tax credit is available to employers for the cost of maintaining the health insurance coverage for eligible employees during the leave period.



Tax Benefits and Credits under Families First Coronavirus Response Act

Retention of payroll taxes to pay for leave

- According to the IRS, eligible employers that pay qualifying sick and/or child-care leave will be able to retain an amount of federal payroll taxes equal to the amount of qualifying sick and child-care leave payments rather than depositing the federal payroll taxes with their quarterly payroll tax returns to the IRS. Per the IRS release, the payroll taxes available for retention are 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.”
- In the event that the amount of payroll taxes retained is insufficient to cover qualifying sick and child-care leave payments made by an employer, an employer will be able to file a request for an accelerated payment from the IRS, which the IRS expects to process within 2 weeks or less.
- Under the examples provided in the announcement, the amount of qualifying leave credit is deducted from the amount of payroll taxes withheld and payable to the IRS.



Benefits Changes Under CARES Act

- In-service withdrawals up to \$100,000
 - Not subject to 10% penalty on distribution before age 59½
 - Waives age 59½ requirement for 401(k) plan in-service withdrawal
 - Can be taxed over 3 years
 - Can be paid back to the plan within 3 years
- Plan loans
 - Up to \$100,000 or 100% of vested balance
 - Payments due in 2020 after enactment extended for 1 year
- No required minimum distributions for 2020
- Single employer defined benefit plan moratorium on required contributions through 2020



Recent Guidance from DOL

Department of Labor's first set of guidance includes a [Fact Sheet for Employees](#), a [Fact Sheet for Employers](#) and a [Q&A document](#).

QUESTIONS & ANSWERS

- 1. What is the effective date of the Families First Coronavirus Response Act (FFCRA), which includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act?**

The FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020.

“With so many workers and so many employers struggling to find their way in these trying conditions, providing guidance on a rolling basis will allow workers and businesses to prepare for the law to go into effect on April 1,” said DOL Wage and Hour Administrator Cheryl Stanton. “We remain committed and are working around the clock to provide the information and tools for employees and employers alike.”



Recent Guidance from DOL

QUESTIONS & ANSWERS

2. **As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?**

You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the [jointly-employed employees](#) are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than [employees](#), are not considered employees for purposes of the 500-employee threshold.

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are [joint employers under the FLSA](#) with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the [integrated employer test](#) under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.



Recent Guidance from DOL

Employer Qualification – Counting to 500

- Apply traditional FMLA and FLSA standards to count the number of employees
- Do not count foreign workers toward the total number of employees.
- Potential inconsistent result in employee coverage under EFMLA and EPSLA?
 - Complex. If you have questions about how these tests may apply to your specific situation, contact your employment lawyer.

Emergency Family and Medical Leave Expansion Act:

“Integrated Employer” test under FMLA considers the following factors in determining whether two or more entities are an integrated employer: (1) common management; (2) interrelation between operations; (3) centralized control of labor relations; and (4) degree of common ownership/financial control.

Emergency Paid Sick Leave Act:

“Joint Employer” test under FLSA: where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under FMLA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities.



Recent Guidance from DOL

QUESTIONS & ANSWERS

4. If providing child care-related paid sick leave and expanded family and medical leave at my business with fewer than 50 employees would jeopardize the viability of my business as a going concern, how do I take advantage of the small business exemption?

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.

You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

- Smaller employers “document why your business ... meets the criteria set forth by the Department,” which have not yet been published, but will presumably require some showing of viability.
- Open question as to whether you will ever be required to send materials to DOL. Retain relevant materials.



Recent Guidance from DOL

QUESTIONS & ANSWERS

6. When calculating pay due to employees, must overtime hours be included?

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

If the employee's schedule varies from week to week, please see the answer to Question 5, because the calculation of hours for a full-time employee with a varying schedule is the same as that for a part-time employee.

9. May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.



Recent Guidance from DOL

QUESTIONS & ANSWERS

8. What is my regular rate of pay for purposes of the FFCRA?

For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your [regular rate](#) over a period of up to six months prior to the date on which you take leave.^[2] If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these wages will be incorporated into the above calculation.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

12. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.



Recent Guidance from DOL

QUESTIONS & ANSWERS

10. If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your [regular rate of pay](#) for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.



Recent Guidance from DOL

QUESTIONS & ANSWERS

11. Can my employer deny me paid sick leave if my employer gave me paid leave for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

31. As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?

No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take. You may not simultaneously take both, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave or expanded family and medical leave under the FFCRA, up to your normal earnings, with preexisting leave. For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.



Recent Guidance from DOL

QUESTIONS & ANSWERS

32. If I am an employer, may I supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

If your employee chooses to use existing leave you have provided, yes; otherwise, no. Paid sick leave and expanded family medical leave under the FFCRA is in addition to employees' preexisting leave entitlements, including Federal employees. Under the FFCRA, the employee may choose to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave, up to the employee's normal earnings.

However, you are not required to permit an employee to use existing paid leave to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. Further, you may not claim, and will not receive tax credit, for such supplemental amounts.

33. If I am an employer, may I require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?

No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded

34. If I want to pay my employees more than they are entitled to receive for paid sick leave or expanded family and medical leave, can I do so and claim a tax credit for the entire amount paid to them?

You may pay your employees in excess of FFCRA requirements. But you cannot claim, and will not receive tax credit for, those amounts in excess of the FFCRA's statutory limits.



Recent Guidance from DOL

— QUESTIONS & ANSWERS

Impact on Timing of Closings and Furloughs

23. **If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?**
24. **If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?**
25. **If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?**
26. **If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?**
27. **If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?**
28. **If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?**



Recent Guidance from DOL

QUESTIONS & ANSWERS

15. **What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?**

19. **If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?**

20. **May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?**

Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking.

21. **May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

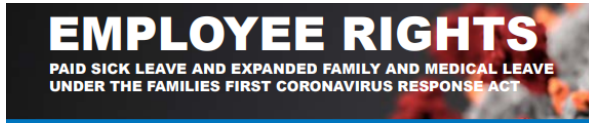
It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.



Workplace Posters are Required

https://www.dol.gov/agencies/whd/posters?fbclid=IwAR2Vq3H1grj3eke5kSWmb2eTn784YNSizP_YylJnT6la9te09RqtCu-4Rww



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;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅓ 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:

- | | |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. 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; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 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); | |

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.



For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



- DOL FAQ on posters: <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
- Required to post on premises, but emailing or mailing this notice to employees, or posting this notice on an employee information internal or external website is sufficient.
- Don't give notice to laid off employees. FFCRA requirements explained on this notice apply only to current employees.



March 24 Field Assistance Bulletin: Temporary Non-Enforcement Period

Enforcement Guidance

The Department will not bring enforcement actions against any public or private employer for violations of the Act occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the Act. For purposes of this non-enforcement position, an employer who is found to have violated the FFCRA acts “reasonably” and “in good faith” when all of the following facts are present:

1. The employer remedies any violations, including by making all affected employees whole as soon as practicable. As explained in a Joint Statement by the Department, the Treasury Department and the Internal Revenue Service (IRS) issued on March 20, 2020, [\[2\]](#) this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages.[\[3\]](#)
2. The violations of the Act were not “willful” based on the criteria set forth in *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988) (the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited...”).
3. The Department receives a written commitment from the employer to comply with the Act in the future.

If the public or private employer either (i) violates the Act willfully, (ii) fails to provide a written commitment to future compliance with the Act, or (iii) fails to remedy the violation upon notification by Department, the employee seeking payment, or a representative of that employee, including by making all affected employees whole as soon as practicable, the Department reserves its right to exercise its enforcement authority.



The 30,000-Foot View

- This is unprecedented. Facts and guidance change daily.
- Additional guidance and regulation promised to be released soon.
- The best we can all do is try to follow DOL, CDC and OSHA guidance.
- Maintain calm and spread calm.
- For health, it's always the right time to do the right thing.





Important Resources

- [OSHA](#), [DOL](#) and [CDC](#) guidance and updates
- Husch Blackwell COVID-19 Question Email Address
 - COVID19response@huschblackwell.com.
- Husch Blackwell Coronavirus Toolkit
 - <https://www.huschblackwell.com/coronavirus>
- Husch Blackwell – Workplace Issues and COVID-19
 - <https://www.huschblackwell.com/newsandinsights/workplace-issues-and-the-covid-19-virus>
- CDC - Information about COVID-19 in the United States
 - <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>
- World Health Organization
 - <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>



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Questions?

