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CAPUTO

GROUP

PART TWO – EMPLOYER
RESPONSIBILITIES AMID COVID-19

Department of Labor guidelines for small businesses during Phase III of the FFCRA “Families First Coronavirus Response Act” & a brief overview of the CARES Act released on March 27

ABOUT THE CAPUTO GROUP

The Caputo Group offers complete support services for small to mid-sized businesses so you can focus on your craft.

We take on your Human Resources, Compliance and Liability, giving your small business big business expertise.

All information updated as of April 1, 2020

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LAST WEEK'S EDITION:

- Business closures, exemptions and mandatory social distancing policies as prescribed by Oregon Governor Kate Brown in Executive Order 20-12
- Overview of HR 6201, the “Families First Coronavirus Response Act”, or FFCRA
- Explanations of “Emergency Paid Sick Leave” and “Emergency Paid Family Medical Leave” – both temporarily expanded until December 31, 2020

INTERIM UPDATES: ON FRIDAY, MARCH 28:

- CARES Act signed into law
- Department of Labor issued preliminary guidelines for Employers and Employees.

All information updated as of April 1, 2020

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INTERACTIVITY BETWEEN PAID SICK LEAVE & EXPANDED PAID FAMILY MEDICAL LEAVE:

- First 10 days may be PSL, or accrued PTO (Q. 7 of the DoL FFCRA Q&A):
- (“You may take paid sick leave for the first ten days of that leave period, or you may substitute any accrued vacation leave, personal leave, or medical or sick leave you have under your employer’s policy.”)
- Subsequent 10 weeks EPML
- (“For the following ten weeks, you will be paid for your leave at an amount no less than 2/3 of your regular rate of pay for the hours you would be normally scheduled to work.)
- Can run concurrently but not consecutively for a full 12 weeks of paid leave

DOCUMENTATION & RECORDS OF EMPLOYEE LEAVE

- Name
- Statement that employee is unable to work, including telework
- Dates for which leave is requested
- Documentations for reasons for leave include Federal or State quarantine orders
- Name & contact of health care provider who advised the quarantine
- Qualifying reason for the leave
- *(Please read paragraph 15 of the DoL's Q & A carefully, as it goes into greater detail on the question of paid sick leave documentation)*

MANDATORY EMPLOYEE RIGHTS NOTICE POSTINGS

- Must be posted or distributed to employees electronically (via email or online portal) by April 1
- LINK TO ENGLISH POSTER:
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- LINK TO SPANISH POSTER:
 - <https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/1422-spanish.pdf>
- Links also available on website

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ 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:

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| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;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); | <ol style="list-style-type: none">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; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
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► 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.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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



WH1422 REV 03/20

DERECHOS DEL EMPLEADO

LICENCIA POR ENFERMEDAD PAGADA Y EXPANSION DE LICENCIA FAMILIAR Y POR ENFERMEDAD BAJO LEY FAMILIAS PRIMERO DE RESPUESTA AL CORONAVIRUS

La **Ley Familias Primero de Respuesta al Coronavirus (FFCRA o Ley)** requiere que ciertos empleadores den a empleados licencias laboral pagadas o expansión de licencia familiar y por enfermedad por razones relativas al COVID-19. Estas provisiones aplicarán desde abril 1 hasta diciembre 31 del 2020.

► DERECHOS A LICENCIA LABORAL PAGADA

En general, los empleadores cubiertos bajo la Ley deben proveer a empleados:

Hasta 2 semanas (80 horas, o el equivalente de dos semanas de un empleado a tiempo parcial) de licencia por enfermedad pagada en base a su mayor tasa regular de pago, o el salario mínimo estatal o federal aplicable, de la siguiente manera:

- 100% para razones calificables #1-3 (ver abajo), hasta \$511 por día y \$5,110 total;
- $\frac{2}{3}$ para razones calificables #4 and 6, hasta \$200 por día y \$2,000 total; y
- Hasta 12 semanas de licencia por enfermedad pagada y expansión de licencia familiar y por enfermedad pagada a $\frac{2}{3}$ para razones calificables #5 de hasta \$200 por día y \$12,000 total.

Un empleado a tiempo parcial es elegible a licencia por las horas que trabajaría durante ese periodo.

► EMPLEADOS ELEGIBLES

En general, empleados de empleadores del sector privado con menos de 500 trabajadores, y de ciertos empleadores del sector público, son elegibles a hasta dos semanas de licencia pagada total o parcialmente por enfermedad por razones de COVID-19 (ver abajo). *Empleados que hayan estado en nómina al menos 30 días anteriores a su solicitud de licencia podrán ser elegibles a hasta 10 semanas adicionales de expansión pagada parcialmente de licencia familiar y por enfermedad por razón #5.*

► RAZONES CALIFICABLES A LICENCIA RELACIONADA A COVID-19

Un empleado tiene derecho a tomar licencia laboral relacionada a COVID-19 si no le es posible trabajar, incluyendo imposibilidad de hacer **teletrabajo**, porque el empleado:

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| <ol style="list-style-type: none">1. está sujeto a orden de cuarentena o aislamiento Federal, Estatal, o local relacionada al COVID-19;2. ha sido instruido por un proveedor de salud que se ponga en auto-cuarentena por COVID-19;3. está experimentando síntomas de COVID-19 y está solicitando diagnóstico médico;4. está cuidando a una persona sujeta a una orden descrita en (1) o en auto-cuarentena descrita en (2); | <ol style="list-style-type: none">5. está cuidando a un hijo cuya escuela o lugar de cuidados está cerrado (o cuidados infantiles no están disponibles) por razones de COVID-19; o6. está experimentando otras condiciones sustancialmente similares a las especificadas por el Secretario de Salud y Servicios Humanos. |
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► CUMPLIMIENTO

La División de Horas y Salarios (WHD) del Departamento de Trabajo de EE.UU. tiene la autoridad de investigar y hacer que se cumpla la FFCRA. Los empleadores no podrán expulsar, disciplinar, o discriminar de ningún modo a un empleado que legalmente hace uso de su derecho a licencia laboral pagada o a extensión de licencia familiar y por enfermedad bajo FFCRA, presenta una queja, o inicia un procedimiento bajo o relativo a esta Ley. Los empleadores que violen las provisiones de la FFCRA serán objeto de multas y medidas de cumplimiento por la WHD.



DIVISION DE HORAS Y SALARIOS
DEPARTAMENTO DE TRABAJO DE ESTADOS UNIDOS

Para información adicional
o para presentar una queja:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



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GRACE PERIOD FOR COMPLIANCE

- Originally April 1, then extended to April 17, now April 30
- Check DoL website daily
- Document all measures taken to comply as well as any reasons for non-compliance. Must be able to demonstrate “acting reasonably and in good faith to comply with the Act.”

EXEMPTION FOR BUSINESSES UNDER 50 EMPLOYEES

- When providing childcare-related PSL would “jeopardize the viability of the business as an ongoing concern”
- Employer must document why the business meets the criteria
- Waiting on further guidance from DoL

500-EMPLOYEE THRESHOLD

- Paragraph 2 of the DoL Q & A contains expanded guidelines and links
- Fewer than 500 full and part-time employees within the U.S. or U.S. territories
- Includes temporary, on leave or jointly-employed employees

CARES ACT OVERVIEW

- Passed on 3/27 – “Coronavirus Aid, Relief, and Economic Security” Act
- PPPL – “Paycheck Protection Program” – fully forgivable loans
- EIDL – “Economic Injury Disaster Loan” Program
- Unemployment Insurance expansion

PPPL OVERVIEW

- Used for payroll costs, interest on mortgages, rent, utilities
- Must keep employees on payroll
- Enrollment starts April 3
- Loan payments deferred 6 months
- Fully forgivable

EIDL OVERVIEW

- SBA Loan based on applicant's credit score
- Working capital loans of up to \$2 million
- All who apply are eligible for fully-forgivable \$10k emergency grant

EXPANDED UNEMPLOYMENT

- States will receive emergency unemployment grants
- States will ease requirements
- eliminate work search
- waiting week
- expand definition of “good cause”
- In case of separation, employer must provide notification of rights to benefits

RESOURCES

- DoL Website: www.dol.gov
- IRS Website: www.irs.gov/coronavirus
- NFIB (National Federation of Independent Business)
www.nfib.com
- SBA (Small Business Administration)
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- www.coronavirus.gov

LINKS

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WHAT WE CAN DO FOR YOU

For a free consultation about how your business could potentially manage the burden of HR 6201 mandatory employee sick leave, visit us at: <http://www.caputo-group.com/covid-19-free-consult/>

For additional resources, including a copy of this presentation visit: <http://www.caputo-group.com/covid-19-resources/>

