

COVID-19 EMPLOYERS' GUIDE TO FREQUENTLY ASKED QUESTIONS

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THREE THINGS TO REMEMBER:

- **We don't know what we don't know.**
- **What we do know changes every day.**
- **Nothing is more important than health and safety.**

CAN WE WORK?

- **State of California “Stay Home” order; www.gov.ca.gov**
 - **References the Department of Public Health recommendations**
 - **Over 65, pre-existing health conditions**
- **Local city and county orders**
 - **<https://covid19.ca.gov/state-local-resources/>**

IS MY BUSINESS ESSENTIAL?

- **U.S. Dept. of Homeland Security “Essential Critical Infrastructure Workers”**
<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>
- **Check city and county orders for further restrictions on essential businesses**
- **If my business is essential, are all my employees essential as well?**
- **Do my employees need documentation of essential status?**
- **If I close the doors, can I still allow take out, pick up or delivery?**

FURLOUGH OR LAYOFF?

- **Layoffs**
- **Furloughs**
 - **Length**
 - **Benefits**
- **Final pay and vacation benefits?**

REDUCTION IN PAY

- **Exempt employees**
 - **Temporary reduction in pay/schedule acceptable**
 - **Minimum salary basis**
- **Non-exempt employees**
 - **Minimum wage**
 - **Time records, meal/rest periods, overtime**

WARN ACT

- **California: 75 or more employees; no “natural disaster” exception**
- **Layoffs of 50 or more in a 30-day period; shut down of single site of employment**
- **60-day notice waived (must be given as soon as possible)**
- **All other notice requirements remain effective**

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (“FFCRA”)

- **Applies to businesses with less than 500 employees**
- **Effective April 1, 2020 – December 31, 2020**
- **Emergency Paid Sick Leave (“EPSL”) and Extended Family Medical Leave Act (“EFMLA”)**

FFCRA: EMERGENCY PAID SICK LEAVE

- **When the employee:**

- (1) Is subject to a federal, state or local quarantine or isolation order**

- (2) Has been advised by a health care professional to self-quarantine**

- (3) Is experiencing COVID-19 symptoms and seeking a medical diagnosis**

- **The employee receives:**

- **100% of pay for up to 80 hours**

- **Capped at \$511 daily and \$5110 in total**

FFCRA: EMERGENCY PAID SICK LEAVE

- **When the employee is:**

- (4) Caring for an individual who qualifies under (1) and (2) above**

- (5) Caring for a son or daughter where the school has been closed or the child care provider is unavailable for COVID-19 reasons**

- (6) Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services**

- **The employee receives:**

- **2/3 of pay for up to 80 hours**

- **Capped at \$200 daily and \$2000 in total**

FFCRA: EXTENDED FAMILY MEDICAL LEAVE

- **When the employee (who has worked for the employer for at least 30 days) is:**

(5) Caring for a son or daughter where the school has been closed or the child care provider is unavailable for COVID-19 reasons

- **The employee receives:**

- **12 weeks of total leave (first two weeks unpaid; may overlap with EPSL)**
- **2/3 of pay for 10 weeks**
- **Capped at \$200 daily and \$12,000 in total**

FFCRA: COMPENSATION ISSUES

- **The "regular rate of pay" is calculated as an average rate paid over the prior six months**
- **Part-time employees (less than 40 hours of work) receive a prorated benefit based upon their normally-scheduled hours of work**
- **Employees with fluctuating compensation receive benefits based upon their total compensation earned over the prior six months, divided by the number of hours worked over that six-month period**

FFCRA: DOL NOTICE & GUIDANCE

- **Employers must post or distribute the DOL Model Notice as of April 1:**
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- **Create a policy (but not in the handbook)**
- **Tax credits and relief available:** <https://www.irs.gov/coronavirus>
- **DOL FFCRA Questions and Answers (continuously updated):**
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

FFCRA: DOL GUIDANCE

- **Leave can be divided among various qualifying reasons or used intermittently, but can't exceed the total available benefits**
- **EPSL and EFMLA may overlap for school closure/child care purposes; will not exceed 12 weeks total**
- **EPSL and EFMLA is separate from and supersedes state or company-provided time (state/company time may be used to supplement FFCRA benefits at the employee's election)**

FFCRA: DOL GUIDANCE

- **Benefits (and tax credits) are available only as of April 1, 2020**
- **Benefits are not available if there is no work available, whether due to a federal, state or local order or because of a lack of work (including during a furlough)**
- **Health insurance benefits and premium payments continue during FFCRA leave**
- **Prior use of FMLA offsets available EFMLA time (use a rolling lookback)**

FFCRA: DOL GUIDANCE

- **Joint employers are each responsible for providing leave (confirm with your temporary/staffing agency or PEO regarding the provision benefits)**
- **Child care provider/school leave is available only when the employee must care for a son or daughter under 18 years of age (including legal wards or adult disabled children 18 or more years of age)**
- **“Child care providers” include professionals, neighbors, relatives (paid or unpaid)**

FFCRA: DOL GUIDANCE

- **Qualifying health care workers and emergency responders may not be entitled to leave (FFCRA still applies to the business)**
- **Small businesses under 50 employees may apply for a hardship exemption (DOL will release further information about how to apply)**
- **The DOL will not bring enforcement actions within the first 30 days (but compliance is still required; the DOL can bring retroactive actions later)**

DFEH: GUIDANCE

- **California Department of Fair Employment & Housing:**
https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf
- **Discrimination**
- **Taking temperatures**
- **Sending employees home**
- **Disclosing potential exposure or diagnosis**
- **Asking for documentation**

CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT (“CARES”)

- **Authorizes \$2 trillion in emergency spending to support the economy:**
 - **Payroll Protection Program (“PPP”): provides forgivable loans to employers who maintain their payroll**
 - **Expands the SBA disaster loan program to provide relief for COVID-19 business disruption**
Apply at: <https://covid19relief.Sba.Gov/#/>
 - **Provides business tax benefits to give relief to eligible employers, including a payroll tax credit on wages paid to employees during a shutdown or disruption related to COVID-19**
 - **Expanded unemployment insurance benefits**

FOR MORE INFORMATION

- **Join LightGabler's mailing list to receive legal updates via email (email kgabler@lightgablerlaw.com or sign up on our website at www.lightgablerlaw.com)**
- **Review LightGabler's website to find our firm's COVID-19 updates (among others) <https://www.lightgablerlaw.com/legal-updates/>**