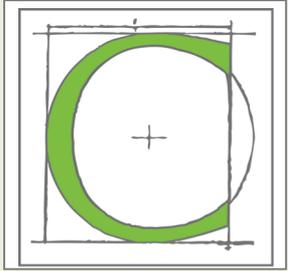




COVID-19



FEDERAL ENACTMENTS:
CARES ACT, E-FMLA, E-PSLA

Presented By:

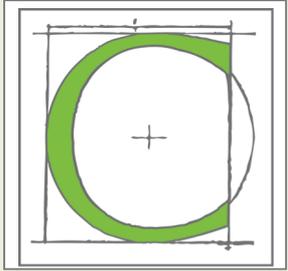
Paul A. Capua, Esq.
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April 7th, 2020





FEDERAL ENACTMENTS: CARES ACT



Presented By:
Paul A. Capua, Esq.
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April 7th, 2020



CARES Act Assistance

- Paycheck Protection Program Loans
- Economic Injury Disaster Loan (“EIDL”)
- Payroll Tax Relief
- Income Tax Delay
- SBA Loan Subsidy

Paycheck Protection Programs Loans

Overview:

- Designed to keep workers on payroll.
- Loans are forgivable if all employees are kept on the payroll for 8 weeks and money used for payroll, rent, mortgage interest, or utilities
- Apply through your bank
- Loan applications started on April 3 for payroll; April 10 for self-employed.

Paycheck Protection Programs Loans

Who can Apply?

- Small business – under 500 employees
- Meet size guidelines for your industry: [click here](#)

Paycheck Protection Programs Loans

Loan or Grant?

- Loan forgiven if funds are used for forgivable costs.
- If not forgiven, repayment will be deferred for six months.
- No collateral or guarantees
- No fees from lenders or government.
- Unforgiven loans have a maturity of 2 years and an interest rate of 1%.

Paycheck Protection Programs Loans

Self-Employed?

- Sole proprietors and independent contractors can apply for PPP for of any payments of compensation he or she has received, be it a wage, commission, or net earnings from self-employment
- Cannot apply until April 10.

Paycheck Protection Programs Loans

Information required:

- Fill out loan application. Will need to provide payroll information.
- [PPP Info Sheet](#)

Paycheck Protection Programs Loans

How much can I borrow

- Average monthly “payroll costs” multiplied by 2.5 (some different calculations for seasonal or businesses without a full year of payroll history); or
- \$10 million
- \$100,000 per employee cap on compensation
- [PPP Loan Amount Calculator](#)

Paycheck Protection Programs Loans

Where can I apply?

- Find a lender:

<https://www.sba.gov/paycheckprotection/find>

Paycheck Protection Programs Loans

PPP and EIDL

- Borrowers may apply for Paycheck Protecting loans and other SBA financial assistance, including EIDLs, however they cannot use the same loans for the same purpose

Economic Injury Disaster Loan “EIDL”

Overview:

- Allow small businesses, tribal businesses, cooperatives, ESOPs, non-profits, sole proprietors and contractors with fewer than 500 employees to receive loans up to \$2mm to pay debts, make payroll and meet other expenses.
- Addition CARES created Emergency Grants of up to \$10k available to EIDL applicants that are disbursed within 3 days and are not require to be repaid.

Economic Injury Disaster Loan “EIDL”

Who can apply?

- Businesses with less than 500 employees or, if more lenient, meeting the SBA small business definition outlined in the prior PPP section, operating since January 31st, 2020.
- Do not need to demonstrate that credit is otherwise unavailable to the borrower

Economic Injury Disaster Loan “EIDL”

Where can I apply

- You apply for the EIDL loan on the SBA website www.sba.gov/disaster

Economic Injury Disaster Loan “EIDL”

Secured Loan?

- Guarantees are required for loans greater than \$200,000
- Collateral is required for loans greater than \$25,000
- Any available collateral will be taken, subordinate to any existing loans

Economic Injury Disaster Loan “EIDL”

Emergency Grants

- You can request a **\$10,000 grant** for working capital – check the box.
 - receive this grant within **three days** of the application filing, whether or not you ultimately qualify for a loan
 - does not need to be paid back

Economic Injury Disaster Loan “EIDL”

How much?

- Loan amount is determined by the SBA based on economic injury / need up to \$2mm

Economic Injury Disaster Loan “EIDL”

Loan terms

- 3.75% for small businesses and 2.75% for non-profits
- Maximum term of loan is 30 years
- an automatic one-year deferment on repayment

Payroll Tax Relief

- Overview: The CARES Act allows businesses to postpone paying the employer portion of Social Security payroll taxes that would otherwise be required to be paid between the enactment of the bill and January 1st, 2021
- Deferred amounts are payable over the next two years, with 50% due December 31st, 2021 and the remaining 50% due December 31st, 2022
- Note that businesses receiving loan forgiveness under the Paycheck Protection Program or other Treasury programs are not eligible for Payroll Tax Deferment

Tax Delays

- The IRS has postponed the due date for payment of federal income taxes and the filing of federal income tax returns otherwise due on April 15th, 2020 until July 15th, 2020
- The due date for the employer share of employment taxes on OASDI wages (6.2% of wages up to \$137,700 for 2020) due on or after March 27, 2020, and before January 1, 2021, is delayed. One half of these taxes will be due in 2021 and the other half will be due in 2022.
- Other interesting tax relief- ask your accountant!

SBA Loan Subsidy

CARES Act requires the SBA to pay on behalf of borrowers all principal, interest and fees related to eligible SBA loans for six months

- Note the mechanism for effecting this rule has not yet been determined by the SBA

SBA Loan Subsidy

What Loans are Eligible

- All outstanding loans or loans made within 6 months of passage of CARES under:
 - The SBA Business Loan Program
 - Title 5 of the Small Business Act
 - SBA's Microloan Program
 - *Note: PPP loans are not covered for payments subsidy*

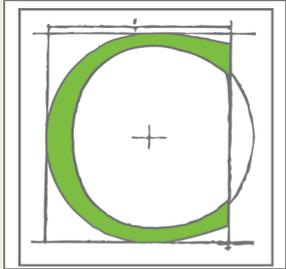
SBA Loan Subsidy

What types of payments

- The principal, interest, and any associated fees that are owed on the covered loans for a six month period starting on the next payment due date
- For loans already on deferment, SBA will make six months of payment beginning with the first payment after the deferral
- For loans made within 6 months of the passage of the CARES Act, SBA will make first six months payment following disbursement of loan



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)



Presented By:
Paul A. Capua, Esq.

April 7th, 2020



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- Signed into law [March 18, 2020](#)
 - Emergency Paid Sick Leave Act (E-PSLA)
 - Emergency Family and Medical Leave Expansion Act (E-FMLEA)
- Regulations issued by Department of Labor [April 6, 2020](#)
 - Provide more detail on E-PSLA and E-FMLEA
- Effective **April 1, 2020**
 - Expires **December 31, 2020**
 - Enforced by the U.S. Department of Labor Wage and Hour Division (WHD)

FFCRA – Overview

- Coverage
- Employee Eligibility
- Qualifying Reasons for Leave
- Number of Weeks and Hours of Leave Available
- Calculation of Pay

FFCRA – Employer Coverage

To whom does the act apply?:

Private Sector Employers:

- Employers of fewer than 500 employees
- Including not for profit employers
- Full-time AND part-time employees are counted
- Day laborers supplied by a temporary agency are counted

Public Agencies

- Regardless of number of employees

FFCRA – Qualifying Reasons for Leave

Employee entitled to take leave if the employee is unable to work or telework because the employee:

- Is subject to a federal, state, or local quarantine or isolation order related to COVID-19,
- Has been advised by a health care provider to self-quarantine related to COVID-19,
- Is experiencing COVID-19 symptoms and is seeking a medical diagnosis,
- Is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19,
- 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
- Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services

FFCRA – Small Business Exemption

Applies to:

- Small businesses with fewer than 50 employees, AND
- Employee's leave is to care for his or her child whose school or place of care is closed (or child care provider is unavailable), but only if
- Requirements of the FFCRA jeopardize business viability

No application process - exemption applies if employer determines:

- Leave would result in expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
- Employee's absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee's specialized skills, knowledge of the business, or responsibilities; OR
- Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.
- *See 29 C.F.R. Part 825 s. III(D) p. 19336. [here](#)*

FFCRA – Notice Requirements

What are the Notice Requirements?

- Employer's must post a DOL-issued notice,
- Poster must be conspicuously posted, may be distributed online, posted on employer website, directly mailed or e-mailed to employees
- Does *not* have to be visible to job applicants
- DOL Spanish and English FFCRA posters available online at www.dol.gov/agencies/whd
- Translation *not* required

FFCRA – Employee Layoffs

What are the job protection requirements?

- FFCRA requirements are *not* applicable prior to **April 1, 2020**
- If a business closes after April 1, but before an employee takes leave, FFCRA requirements do not apply except to the days from April 1 to the date employees are laid off
- If a business is open but lays off part of its workforce, employees who are laid off or furloughed are not entitled to leave under the FFCRA (burden on employer to prove layoff is not related to leave)

EMERGENCY PAID SICK LEAVE (E-PSLA)

Benefit Basics:

- Six qualifying COVID-19 related reasons for job-protected leave
- During leave, continuation of health insurance
- Entitlement to paid sick leave over a 2-week period
 - *Full-time employees*, based on their schedule, up to 80 hours
 - *Part-time employees*, hours based on their schedule
- All employees who work for covered employers are eligible

E-PSLA – Qualifying Reasons

The employee is unable to work or telework because the employee:

- 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 due to concerns related to COVID-19,
- 3) Is experiencing COVID-19 symptoms and seeking a medical diagnosis,
- 4) Is caring for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self quarantine due to concerns related to COVID-19,
- 5) Is caring for his or her child whose school or place of care is closed (or child provider is unavailable) due to COVID-19 precautions, or**
- 6) Is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services

E-PSLA – Duration & Amount

Two-week period:

- Full-time employees may use up to 80 hours
- Part-time employees may use a number of hours equal to the number of hours they work, on average, over a 2-week period

The payout amount varies depending on what an employee is using it for.

- **Reasons 1-3**: If the employee is using that time because he or she (1) is subject to a state, local or federal quarantine; (2) has been advised by a health care provider to self-quarantine; or (3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis:
 - **employee is entitled to a maximum amount of \$511 per day and \$5,110 total.**
- **Reasons 4-6**: If, however, the employee is taking the paid sick time to (4) care for an individual subject to a federal, state or local quarantine or isolation; (5) care for a child whose school/place of care is closed or whose care provider is unavailable; or (6) deal with a "substantially similar condition,"
 - **that employee is entitled to a maximum amount of \$200 per day and \$2,000 total.**

EMERGENCY FAMILY & MEDICAL LEAVE (E-FMLEA)

Benefit Basics:

- Employee can only use E-FMLEA leave to care for his or her son or daughter whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons (Reasons #5 above).
- That is the *only* qualifying reason for E-FMLEA Leave
- This is a new leave reason under the FMLEA, *not more weeks*
- An employee who has already used 12 weeks of leave under the FMLA is not able to use E-FMLEA leave
- Up to 12 workweeks of job-protected leave, with continuation of health insurance
- All employees, including full-time and part-time employees, of covered employers are eligible for EFMLEA if they have been employed by their employer **for at least 30 calendar days**

E-FMLEA – Unpaid and Paid Leave Periods

Leave Basics:

- Initial 2 weeks unpaid (E-PLSA covers this)
- Remaining 10 weeks paid at two-thirds the employee's regular rate of pay

Initial two weeks of E-FMLEA leave is “unpaid”

- Employee may choose to use paid sick leave under the EPSLA, or accrued paid time under their employer benefits package, at the same time as unpaid EFMLA leave

Up to 10 weeks paid leave available

- Hours of leave are paid at two-thirds the employee's regular rate of pay
- Employer does not have to pay more than \$200 a day or \$10,000 total under E-FMLEA

E-FMLEA – Enforcement Basics / Grace Period

- There is no private right of action under the E-FMLEA
- Enforceable by the Department of Labor (DOL)
- The DOL will not bring enforcement actions against public or private employer for violations occurring within 30 days of the enactment of the FFCRA
 - March 18 thru April 17, 2020
- Provided an employer found to have violated the FFCRA acts “reasonably” and “in good faith”
 - Remedies any violations
 - Violations were not “willful”
 - DOL receive a written communication from the employer to comply with the Act in the future

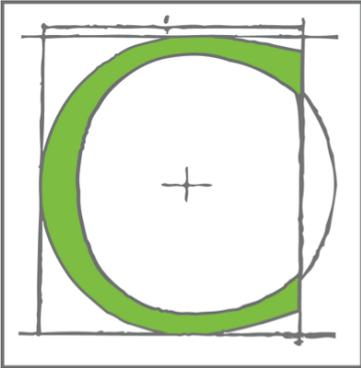
E-FMLEA – Summary

- 1) Unless exemption applies, E-FMLEA will apply to all employers with less than 500 employees
 - 2) The E-FMLEA is effective for a limited period (4/1/20 thru 12/31/20)
 - 3) It is limited to an employees need to care for a minor child due to a PHE –i.e. unable to work or telework because of need to care for child due to school or child-care closing
 - 4) After first 10 days, the leave must be paid at a rate not less than 2/3 of regular rate of pay and not more than \$200/day and \$10,000 total for the entire period
 - 5) The first 10 days (two weeks) is covered by the E-PSLA
-
- 1) No private right of action, but enforceable by the DOL after April 17, 2020.

FFCRA – Resources

- [Families First Coronavirus Response Act: Employee Paid Leave Rights](#) - *Also available in Spanish*
- [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#) - *Also available in Spanish*
- [Families First Coronavirus Response Act: Questions and Answers](#)
- [Field Assistance Bulletin \(FAB\) No. 2020-1](#)
- [\(Poster\) Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#) - *Also available in Spanish*
- [Families First Coronavirus Response Act Notice - Frequently Asked Questions](#)
- info@capualaw.com - *Email address for questions and information*

Thank You!



Thank you very much for joining us today
from all of us at the Asheville Home
Builder's Association and Capua Law!

We hope to see you at another seminar in
the future!

For more information, please visit
www.capualaw.com