

FFCRA & CARES Act:

Ag Employer
Responses to COVID

April 1, 2020



GT Lake LLC

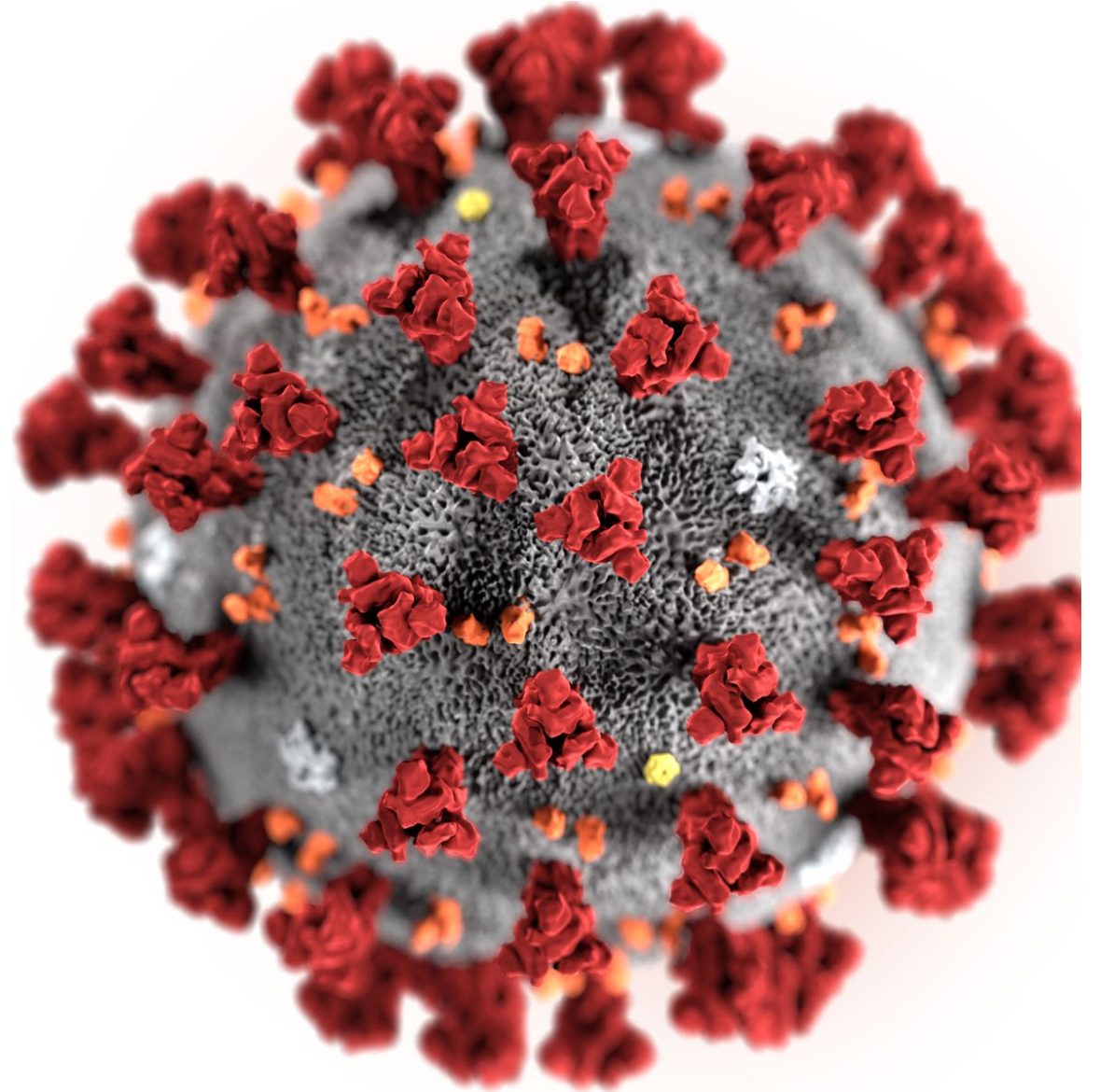
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Families First Coronavirus Response Act (FFCRA)

- Signed by the President: 3/18/20
- Effective 15 days after enactment:
April 1, 2020

Coronavirus Aid, Relief, and Economic Security Act (CARES)

- Signed by the President 3/27/20
- \$2,000,000,000,000 in relief
- SBA and USDA loans



Key Provisions for Employers



PAID SICK LEAVE
REQUIREMENT



PAID FAMILY LEAVE
REQUIREMENT



NOTICE
REQUIREMENT



LOANS AND
GRANTS

Which Employers Are Covered?

- Fewer than 500 employees
 - At the time the leave is taken - snapshot
 - Anywhere in the United States – U.S. or H-2A/H-2B
 - No exceptions for seasonal employers/employees
 - “Integrated employer” test under FMLA
 - Common management
 - Interrelated operations
 - Centralized control of labor relations
 - Degree of common ownership/financial control
 - Joint-employer test - combined # workers between employer and staffing company

Small Business Exception (Partial)

- Employers with fewer than 50 employees can be exempted **from the closed-school long-term leave requirements** if:
 - Providing the leave will cause expenses to exceed revenues and the business to cease operating
 - The absence of the workers would entail a “substantial risk to the financial health or operational capabilities” of the business
 - There are not enough able, willing, qualified workers to cover for the worker seeking leave and their work is needed for the business to “operate at a minimal capacity”



Events that trigger paid leave:

Employee is unable to work/telework because:

1. Subject to government “quarantine” or “isolation” order (not the same as a state/local stay-at-home order – CDC terms-of-art for infected/suspected);
2. Doctor orders to self-quarantine;
3. Experiencing COVID-19 symptoms and seeking diagnosis;
4. Caring for quarantined “individual” (not necessarily limited to family member);
5. Caring for child whose school/daycare is closed; or
6. Experiencing other substantially-similar conditions as specified by the Secretary of HHS, in consultation with DOL and Treasury (undefined)

What must
be provided
to covered
employees?

Sick Leave

- **Two weeks** (up to 80 hrs) at the employee's **regular rate of pay** *if* the worker is quarantined (by local gov't or doctor's order) or has COVID-19 symptoms and is seeking a medical diagnosis; **\$511/day max; \$5110 max/worker**

Family Leave

- **Two weeks** (up to 80 hrs) at **two-thirds** regular rate of pay *if* the worker needs to care for "individual" under quarantine; \$200/day max or \$2k overall max
- Up to **10 additional weeks** to care for son/daughter under 18 whose school or daycare has closed *if* the employee has been on payroll for 30+ days; same daily max, \$10k overall max; worker can use employer-provided paid leave for first two weeks at 100% pay, at their choice

Part-Time Workers

Leave is provided for his or her average number of hours over a two-week period

If schedule varies, use a six-month average to calculate daily hours

If employee has not been there for 6 months yet, use the scheduled hours agreed to at time-of-hire

Applies for paid sick leave or paid family/medical leave

Calculating Pay

Actual scheduled hours

- Including hours >40 if scheduled
- Still subject to 80-hr max
- Example: 50 hours in Week 1; remaining 30 hours in Week 2
- Still subject to daily \$511 cap or \$200 cap
- No time-and-a-half for hours >40/wk; straight-time payment

“Regular rate of pay”

- Average of regular rate over last six months
- Does not include discretionary bonuses, perks, etc.

Other Paid Leave Rules

- FFCRA covers leave taken between 4/1/20 and 12/31/20 – no retroactivity
- No paid leave if company is closed or workers are furloughed – either lack of business or stay-at-home government-ordered shutdown – UI coverage
- Employer with <25 employees are not required to rehire someone coming back from FML if position no longer exists b/c of economic downturn
- Max 12-week total if employee is both sick and child's school is closed (2 weeks full-pay sick leave; then 10 weeks 2/3 pay family leave)
- Intermittent / variable-shift / telework rules – paid leave only when worker would have physically been at work but for the qualifying event

Other Provisions



Doesn't make regular FMLA leave paid leave



In addition to state leave requirements
(no federal preemption)



Prohibition against terminating worker for using
leave or making complaint



DOL civil money penalties violations;
30-day "nonenforcement" window



Uncle Sam Covers Paid Leave

- The Federal Government will cover the cost of the paid leave, dollar-for-dollar
- Employers keep what would have been paid in FICA taxes (6.2%), across the workforce, not specific to workers taking leave
- If FICA credits do not cover cost of paid leave, IRS will issue payments to employers – aiming to make payments to employers within 1-2 weeks
- All “employees” covered

CARES Act – Paycheck Protection Program

Business in operation on 2/15/20 & SBA size standards

Available through private lenders

250% of average monthly payroll for same period 2019

Must be used to cover payroll (including PTO, but not comp >\$100k), utilities, rent/mortgage, or interest on other loans

Loan forgiveness to the extent that retained, current payroll matches prior payroll over 8-week period

Unforgiven amounts payable over time, with deferments possible, at 4% interest

CARES Act – more loans and grants

Small Business Debt Relief Program

- Section 7(a) Loans - \$5m max - SBA-backed private loans
- 504 Loans - \$5.5m max – long-term, fixed-rate loans
- Microloans – average \$13,000, max \$50,000

Economic Injury Disaster Loans & Emergency Economic Injury Grants

- EIDL – low-interest loans up to \$2m, with deferred interest/principle
- EEIG – advance of up to \$10,000 within 3 days of applying for EIDL

USDA funding for ag businesses

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