



CUPA-HR Quarterly Washington Update

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cupa·hr™ Webinar

Our Government Relations Team Presenters



Josh Ulman



Basil Thomson

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Agenda

COVID-19 Update:

- COVID-19 Stimulus Relief
- COVID-19 FFCRA
- COVID-19 CARES Act
- COVID-19 and Immigration



COVID-19 Stimulus Relief





COVID-19 Stimulus Relief

There have been three stimulus bills signed into law that address COVID-19 relief:

- **Phase 1 – The Coronavirus Preparedness and Response Supplemental Appropriations Act (Became law 3/6/20)**
 - \$8.3 billion emergency funding bill designed to treat and prevent the spread of COVID-19
- **Phase 2 – The Families First Coronavirus Response Act (FFCRA) (Became law 3/18/20)**
 - Emergency Paid Leave (Sick and FMLA), free coronavirus testing, expanded food assistance
- **Phase 3 – The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Became law 3/27/20)**
 - \$2 trillion stimulus funding through SBA loans, industry-specific loans, and expanded unemployment insurance benefits
- **Phase 3.5 and Phase 4 still to come.....**

FFCRA—What HR needs to know



Families First Coronavirus Response Act (FFCRA)

1. Paid Leave Requirements for Private Employers with Less than 500 Employees and All Public Employers

- Emergency Family and Medical Leave Expansion Act (EFMLEA)
 - allow eligible employees of covered employers to use up to 12 workweeks of FMLA-protected leave to care for the employee's minor child whose school or care provider is unavailable due to a COVID-19 public health emergency
 - First 10 days may be unpaid, remainder paid at two-thirds of employee regular rate of pay (capped at \$200 per day per employee up to \$10,000 total per employee).
- Emergency Paid Sick Leave Act (EPSLA)
 - up to 80 hours (pro-rated for part-time workers) of **paid sick leave**
 - » at the employee's regular rate of pay for leave taken for the employee's quarantine, self-isolation, or medical diagnosis (capped at \$511 per day and \$5,110 total per employee),
 - » at two-thirds the employee's regular rate of pay because the employee is unable to work because of caregiving and other needs (capped at \$200 per day and \$2,000 total per employee)

Families First Coronavirus Response Act (FFCRA)

- Exemptions

- Employers with fewer than 50 employees that show leave poses threat to viability

- Emergency Responders

- » national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and **persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency**, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. Bolded section defined by state orders.

- Health Care Provider – broadly defined.

Families First Coronavirus Response Act (FFCRA)

2. Tax Credit Provisions For Private Employers with Less than 500 Employees

- Paid Sick Leave Credit Against Payroll Taxes
 - For leave taken for the employee's quarantine, self-isolation, or medical diagnosis, credit up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days
 - For leave taken for caregiving and other needs, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days.
- Child Care Leave Credit
 - Credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate.
 - Up to 10 weeks of qualifying leave can be counted towards the child-care leave credit.

Families First Coronavirus Response Act (FFCRA)

3. Answers to your most pressing questions can be at CUPA's Emergency Leave Q&A for Higher Education

1. 500-EMPLOYEE THRESHOLD -

Can you address how a college or university determines if it meets the fewer-than-500-employees threshold for the FFCRA leave mandates? Is there a definition of "employee" under the FFCRA?

2. ADJUNCT, STUDENT, PART-TIME, AND TEMPORARY EMPLOYEES -

Do the FFCRA leave mandates apply to adjunct renewals, student employees, part-time employees, temporary employees, temporary employees hired and paid by third-party contractors?

5. PAYROLL TAX CREDIT -

I understand the FFCRA specifically excludes governmental entities from qualifying for the payroll tax credit provided for by the statute. Have you seen anything that would allow governmental entities, including public universities, to take advantage of the payroll tax credit?

No.

11. FMLA EXTENSIONS APPLY TO ALL PUBLIC EMPLOYERS -

Where can we find the exact language that the FFCRA's FMLA extensions apply to all public employers?

16. USING EMAIL TO SATISFY FEDERAL POSTING REQUIREMENTS -

Is there an argument that you can satisfy federal-law posting requirements by sending to all employees via email?

Yes, you can make the argument to satisfy federal-law posting requirements by sending email to

18. REQUIRING EMPLOYEES TO CONCURRENTLY USE ACCRUED LEAVE -

For the various leave provisions, when can you require the employee to concurrently use accrued leave and when not?

In some cases, you can allow employees to supplement their leave with accrued leave benefits. See DOL's FAQ answers to #5, #9, #10, #11, #20, #21, and #28 [here](#).

Poll Question

Are the FFCRA's Leave Provisions Applicable to your Institution of Higher Education?

- a) Yes
- b) No
- c) Unsure
- d) Unsure (do student workers count?)

CARES Act—What HR Needs To Know



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

1. Federally funded income support to unemployed individuals

- a) **Federal Pandemic Unemployment Compensation (FPUC):** Augmenting all weekly UI benefit payments by \$600/week FPUC augments all weekly UI benefits, including UC, EB, and PUA (discussed below) through July 31.
- b) **Pandemic Unemployment Assistance (PUA):** Expanding UI benefit eligibility available to unemployed who are ineligible for any other state or federal UI benefit including self-employed, independent contractors, or gig economy workers. 39 week max.
- c) **Pandemic Emergency Unemployment Compensation (PEUC):** Providing an additional 13 weeks of benefits to regular Unemployment Compensation (UC)

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

2. Higher Ed Provisions

I. Student Aid Provisions

a) Federal Work Study

- I. permits IHEs to continue paying students who participated in the FWS program

II. Institutional Aid Provisions

a) Higher Education Emergency Relief Fund

- I. provides for the distribution of approximately \$14 billion to IHEs to address needs directly related to coronavirus

Emergency Relief Legislation

WHAT DO I NEED TO KNOW ABOUT THE FFCRA?



WHAT DO I NEED TO KNOW ABOUT THE CARES ACT?



- [Summary](#)
- [Higher Ed Provisions](#)

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

3. Employee Retention Tax Credit

- Available to businesses and nonprofits, including private nonprofit institutions
- Refundable payroll tax credit of up to \$5,000 for wages paid by employers to employees during COVID-19 emergency
- Eligible employers: Businesses whose operations were fully or partially suspended due to a COVID-19 related shut-down order.
- Student workers do not appear to be covered—students exempt under payroll taxes (FICA)

Poll Question

Is your Institution of Higher Education Taking Advantage of the Employee Retention Credit?

- a) Yes
- b) No
- c) No, we are a public institution

COVID-19 Immigration Considerations



Immigration Considerations During Pandemic

1. Employee Furloughs/Terminations

- a) Unfortunately neither DHS nor DOL have issued any "new" guidance for employers as it relates to many of the questions associated with furloughs/terminations of nonimmigrant employees.
- b) Decision will need the advice of counsel

2. Maintaining Valid Visa Status

- a) USCIS is granting an additional 60 days to respond to requests for further evidence and notices of intent to deny issued between March 1 and May 1, 2020
- b) USCIS suspension of premium processing is a compliance challenge for employers who must ensure their employee does not fall out of valid visa status

3. I-9 Requirements

- a) DHS guidance allows document examination "over video link, fax or email"—only applies to employers and workplaces that are operating remotely

Immigration Considerations During Pandemic

4. Immigration-related eligibility requirements for federally funded UI benefits

- a) Work Authorization Requirement and the Potential “Qualified Alien” Restriction
 - a) Under the baseline requirements established in the Federal Unemployment Tax Act (FUTA), aliens typically qualify for regular UI benefits if they are authorized to work (both at the time they perform qualifying work and when they apply for and receive benefits). States may establish stricter rules.
 - b) Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), limits eligibility for “federal public benefits” to “qualified aliens”—a restrictive term that only covers certain groups enumerated in statute, such as LPRs, asylees, and refugees.
- b) Nonimmigrant Issues
 - a) Many nonimmigrant workers do not qualify under the case law in some states because they’re not considered “able and available to work” when they are unemployed
 - b) The facts of the situation are changing frequently and vary from location to location
 - c) All are encouraged to consult counsel

Poll Question

Is your Institution of Higher Education Experiencing Issues Related to Employment-Based Immigration?

- a) Yes
- b) No

Thank You!

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