



# Housekeeping Notes

**Thank you for joining our webinar today.**

**We will begin at 2:00 p.m.**

- You have been muted upon entry to maintain quality of sound.
- We ask that you please do not put your phone on hold as any hold music will interrupt the webinar.
- We will do our best to address questions at the end of the webinar today. If we are not able to get through all of them, we will follow up with you individually.
- The presentation, recording and CE credits will be sent out via email by Friday, April 3.



# FFCRA Update and CARES Act Overview

April 1, 2020

Presented by Greg Stancil ChHC, REBC, RHU

Senior Account Executive, Director of Legislative Affairs

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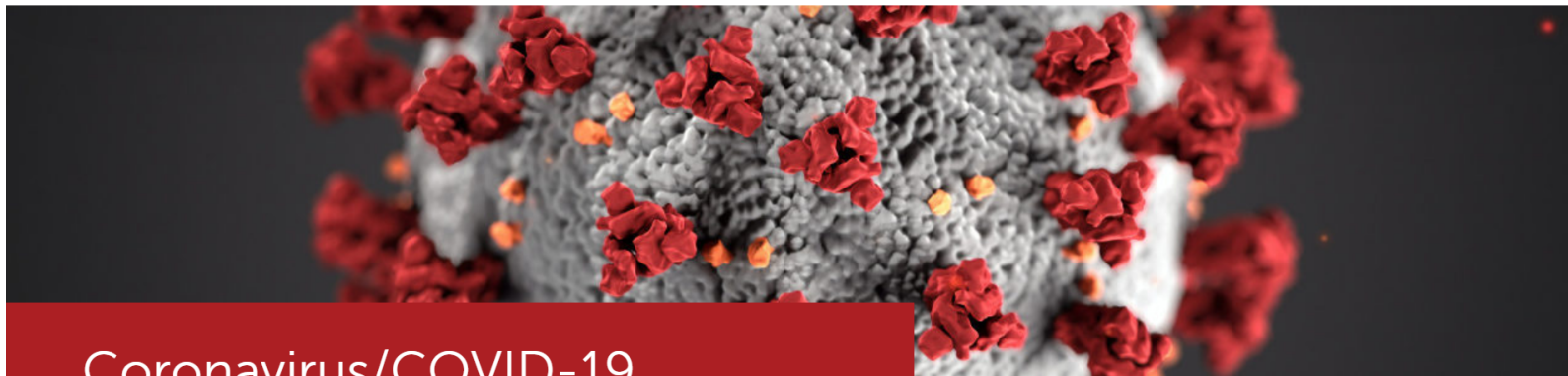
# Scott COVID – 19 Resource Page

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# Agenda

- Legislation Overview
- COVID – 19 Testing
- Paid Sick Leave Requirements
- Expanded FMLA Requirements
- Tax Credits in the FFCRA
- FFCRA FAQ
- CARES Act Overview

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# Legislation Overview

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>6</sup>

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# FFCRA Overview

- Phase 1
  - 8.3 Billion
  - CDC, vaccine development, other public health measures
- Phase 2
  - Families First Coronavirus Response Act (FFCRA)
    - COVID – 19 Testing Requirements
    - Paid Sick Leave
    - Expanded FMLA
    - Tax Credits
    - Funding for federal programs and unemployment compensation
- Phase 3
  - Coronavirus Aid, Relief, and Economic Security Act (CARES)
    - Direct cash payments to Americans
    - Forgivable loans to small businesses to cover payroll, rent, etc.
    - Relief for companies in hard hit sectors of the economy
    - Expanded unemployment insurance with waivers of ordinary requirements
    - Funding hospitals and health care providers

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# Polling Question #1



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# COVID – 19 Testing

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>9</sup>



# COVID-19 Testing

- Group health plans and health insurance issuers must cover COVID-19 testing:
  - Plans must provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center and emergency room visits in order to receive testing (including telehealth).
  - The IRS advised that HDHP plans can cover testing and treatment for COVID – 19 without jeopardizing their status
  - At this point no mention of “treatment” in non HDHP plans, however some carriers are covering with no cost share
- Plans and issuers may not impose:
  - Cost sharing (such as deductibles, copayments or coinsurance)
  - Prior authorization or other medical management requirements
- Applies to all group and individual plans or policies

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# Emergency Paid Sick Leave

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>11</sup>



# Emergency Paid Sick Leave

- The Act requires two weeks (80 hours) of paid sick leave for full time government workers and employees of companies with fewer than 500 employees.
- Part time employees must be given the number of hours that they work on average in a two-week period.
- Leave must be made available immediately to workers who are unable to work (or telework) due to a need for leave for a number of reasons.
- No minimum length of employment requirement



# Emergency Paid Sick Leave

- On March 24th DOL advised that the FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020; they also advise it is not retroactive.
- The DOL will issue a 30-day non-enforcement period for employers acting "reasonably and in good faith".

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# Reasons for Paid Sick Leave (1-3)

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.



# Reasons for Paid Sick Leave (4-6)

4. The employee is caring for an individual who is subject to an order as described in (1) or has been advised as described in (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.



# Required Compensation

- Based on regular rate of pay, federal minimum wage or state/local minimum wage (whichever is higher)
  - 100% of pay if employee is experiencing reasons 1, 2, or 3 (up to \$511/day and \$5,110 aggregate)
  - 2/3 of pay if employee is experiencing 4, 5, or 6 (up to \$200/day and \$2,000 aggregate)



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# Expanded FMLA Requirements

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>17</sup>



# Expanded FMLA

- The Act provides FMLA rights for some employees of companies with fewer than 500 employees, requiring partially paid leave after 10 days when an employee who has worked at least 30 calendar days for the employer and is unable to work or telework due to school or child care closures related to the coronavirus.
- This benefit would be paid for 10 weeks following the first 2 unpaid weeks, (which would be typically paid under the Paid Sick Leave provision described previously) for a total of 12 weeks of leave.
- Effective Date same as EPL – 4/1/20



# Expanded FMLA - Paid Leave

- The first 10 days of expanded FMLA leave may be unpaid
  - An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave
  - While the laws states the above the paid sick leave provision should cover these 10 days in most instances
- Paid leave must be provided after 10 days
  - At least 2/3 of the employee's regular rate based on normally scheduled hours
  - Pay capped at \$200/day and \$10,000 overall

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# Polling Question #2

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# Tax Credits in the FFCRA

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>21</sup>

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# Tax Credits in the FFCRA

- Credit against payroll taxes for each calendar quarter in an amount equal to 100% of the “qualified sick leave wages” or “qualified family leave wages” paid by the employer during the calendar quarter
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS.
- The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

# Tax Credits for Health Insurance Coverage



- Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period
- This additional credit can be applied to both the paid sick leave and the expanded FMLA leave

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# FFCRA FAQ

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>24</sup>





# FFCRA FAQ

Q – Where can I access the guidance provided by the DOL on March 24<sup>th</sup>?

A-

Families First Response Act: Questions and Answers:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Fact Sheet for Employers:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Fact Sheet for Employees:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

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# FFCRA FAQ

**Q- Can we require that employees first use PTO or other accrued leave before taking the leave required in the FFCRA?**

**A- No, the law specifically prevents employers from requiring this, but employees may choose to apply other accrued leave first if they would like.**

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# FFCRA FAQ

**Q- Does our Short Term Disability (STD) insurance policy pay for the two weeks of Emergency Paid Sick Leave, or must we pay it via payroll?**

A- In most cases, you will need to pay it via payroll. The law specifies that employers may recoup the leave cost via tax credits, so the intent seems to be that employers pay employees via payroll during the required leave.

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# FFCRA FAQ

**Q- What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**

A -You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information. (Add'l documentation can be required for reason #5)

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA.

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# FFCRA FAQ

**Q- When must we begin offering this leave?**

A- On March 24th DOL advised that the FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020; they also advise it is not retroactive.

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# FFCRA FAQ

**Q- What is the calculation methodology for determining if we meet the threshold of minimum 500 employees?**

**A- Joint employer test under FLSA and the integrated employer test under FMLA**

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# FFCRA FAQ

**Q- How do we determine an employee's regular compensation for purposes of calculating the amount owed in paid sick leave or paid family medical leave?**

A- For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your [regular rate](#) over a period of up to six months prior to the date on which you take leave. The regular rate of pay calculation under FLSA should be your guide.

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# FFCRA FAQ

**Q - May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?**

**A - Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act.**



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# FFCRA FAQ

**Q - May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

A- It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.



# FFCRA FAQ

**Q May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?**

**A -Yes, but only with your employer's permission.**

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

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# FFCRA FAQ

**Q - If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?**

**A - No.** If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave.

See questions #23 - #28 in DOL Q & A for variations of this question.

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# FFCRA FAQ

**Q - If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?**

**A -No.** If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits.

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# FFCRA FAQ

**Q -As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?**

**A-** No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take.

For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.

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# FFCRA FAQ

**Q - Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**

A - For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is defined in the guidance at anyone employed at a variety of different medical facilities.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.



# FFCRA FAQ

**Q -When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?**

A - An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt ...when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provisions would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees would result in a risk to financial health
- There are not sufficient workers to perform the labor

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# FFCRA FAQ

**Q -Does a shelter at home order qualify as a leave condition for EPSL and EFML?**

**A-** Neither the law nor the guidance makes this crystal clear. There are legal opinions on both sides. Some interpret question #27 in the DOL FAQs to say that it would qualify. If considering this for your employer we suggest seeking council.



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# FFCRA FAQ

**Q -Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?**

**A -If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.**

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period.

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# CARES Act Overview

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU <sup>42</sup>



# Agenda

- CARES Act Overview
- Impacts to Employee Benefits
- Impacts to Businesses
- Impacts to Individuals
- PPP Loan Details and Loan Forgiveness
- Unemployment Details
- Tax Credit Details



# CARES Act Overview

- Passed by Senate March 25<sup>th</sup> (96 – 0)
- Passed in House via voice vote on March 27<sup>th</sup>
- Signed by President Trump March 27<sup>th</sup>
- \$2 Trillion+ price tag
  - Immediate cash relief for individual citizens
  - Broad lending program for small businesses
  - Significant public health spending
  - Targeted relief for hard hit industries



# Significant Impacts Affecting Employee Benefits

- **Health Savings Accounts for Telehealth Services**  
The act allows a high-deductible health plan (HDHP) with a health savings account (HSA) to cover telehealth services prior to a patient reaching the deductible, increasing access for patients who may have the COVID-19 virus and protecting other patients from potential exposure.
- **Over-the-Counter Medical Products without Prescription**  
The act allows patients to use funds in HSAs and Flexible Spending Accounts for the purchase of over-the-counter medical products, including those needed in quarantine and social distancing, without a prescription from a physician.

# Significant Impacts Affecting Businesses



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- \$367 billion will be made available in loans for small businesses and \$150 billion for state and local governments. The loans will be forgiven so long as businesses pledge not to lay off their workers.
- Businesses forced to suspend operations or that have seen gross receipts fall by 50% from the previous year will be eligible for a tax credit worth up to 50% of wages paid during the crisis, so long as they keep their workers employed throughout.
- The Treasury Department will distribute \$500 billion in loans to struggling industries (e.g., passenger airlines and businesses critical to maintaining national security). Additionally, an oversight board and inspector general will be created to oversee loans to large companies.

# Significant Impacts Affecting Businesses



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- Health care providers will receive \$100 billion in grants to help fight the coronavirus and make up for revenue lost by delaying elective surgeries and other procedures.
- \$200 million will be carved out for the Federal Communications Commission to provide health care providers with connected devices to facilitate telemedicine services, with the goal of freeing up hospital beds. Another \$25 million will go to a grant program that helps rural communities purchase broadband equipment for telemedicine.
- The Commodity Credit Corporation, an institution that USDA uses to stabilize the farm economy, would see its spending authority increased to \$14 billion. The package also sets up a \$9.5 billion emergency fund for producers, including fresh fruit and vegetable growers, dairy farmers and cattle ranchers, along with local food systems like farmers markets.



# Significant Impacts Affecting Businesses

- Colleges and universities, as well as school districts, will receive more than \$30 billion.
- State and local governments will receive \$150 billion, with \$8 billion set aside for local governments.
- The package will provide the U.S. Postal Service with a \$10 billion Treasury loan to stave off insolvency. Retailers, restaurateurs and hotels will be able to immediately deduct from their taxes what they spend on property improvements.
- Employers can defer the 6.2% tax they pay on wages used to fund Social Security.



# Significant Impacts Affecting Individuals



- Single Americans will receive \$1,200, married couples will get \$2,400 and parents will receive \$500 for each child (with income phase out limits).
  - <https://www.forbes.com/advisor/personal-finance/stimulus-check-calculator/>
- Unemployed individuals, including freelancers and furloughed employees, will get an extra \$600 per week for up to four months, on top of state unemployment benefits.
- The package also calls for a new pandemic unemployment assistance program, which will provide jobless benefits to those who are unemployed, partially unemployed or unable to work because of COVID-19 and don't qualify for traditional benefits.



# Significant Impacts Affecting Individuals

- The Department of Education will suspend payments for student loan borrowers without penalty through September 30.
- There will be housing protections against foreclosures on mortgages and evictions for renters.

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# PPP Loan Details

- <https://www.uschamber.com/co/run/business-financing/coronavirus-emergency-loans>
- <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>
- You are eligible if you are:
  - A small business with fewer than 500 employees
  - A small business that otherwise meets the SBA's size standard
  - A 501(c)(3) with fewer than 500 employees
  - An individual who operates as a sole proprietor
  - An individual who operates as an independent contractor
  - An individual who is self-employed who regularly carries on any trade or business
  - A Tribal business concern that meets the SBA size standard
  - A 501(c)(19) Veterans Organization that meets the SBA size standard



# PPP Loan Details

- In addition, some special rules may make you eligible:
  - If you are in the accommodation and food services sector (NAICS 72), the 500-employee rule is applied on a per physical location basis
  - If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company the normal affiliation rules do not apply

**REMEMBER:** The 500-employee threshold includes all employees: full-time, part-time, and any other status.

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# PPP Loan Details

The maximum loan amount is the lesser of:

- 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019);
- PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR

Upon request, for businesses that were not in existence during the period from February 15, 2019 to June 30, 2019 –

- 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020;
- PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR

- (C) \$10 million.



# PPP Loan Details

- There are very few borrower requirements to obtain a loan under the new program. Those requirements include a good-faith certification that:
  - The loan is needed to continue operations during the COVID-19 emergency;
  - Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
  - The applicant does not have any other application pending under this program for the same purpose; and
  - From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.

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# PPP Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages:
  - Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation **+** and any covered utility payment



# PPP Loan Forgiveness

- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.





# PPP Loan Forgiveness

- Specifically, in the following circumstances, the forgiveness reduction rules above will not apply to an employer between February 15, 2020 and 30 days following enactment of the CARES Act –
  - The employer reduces the number of FTEEs in this period and, not later than June 30, 2020, the employer has eliminated the reduction in FTEEs; or
  - There is a salary reduction, as compared to February 15, 2020, during this period for one or more employees and that reduction is eliminated by June 30, 2020 (it is unclear whether this is also intended to be limited to employees who made under \$100,000 in 2019).

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# Polling Question #3

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# Unemployment Details

- **Pandemic Unemployment Assistance** - creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
- **Emergency Increase in Unemployment Compensation Benefits** - provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- **Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week** - provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.



# Unemployment Details

- **Pandemic Emergency Unemployment Compensation** - provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.
- **Temporary Financing of Short-Time Compensation Payments in States with Programs in Law** - provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

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# Tax Credit Details

- **Employee retention credit for employers subject to closure due to COVID-19 (either / or relative to Paycheck Protection Loan)**
  - The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.
  - The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
  - For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.
  - The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>



# Tax Details

- **Delay of payment of employer payroll taxes (cannot use if taking advantage of PPP loan protection)**
  - The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
  - Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

# Additional Business Finance Considerations



- Section 2303. Modifications for net operating losses
- Section 2304. Modification of limitation on losses for taxpayers other than corporations
- Section 2305. Modification of credit for prior year minimum tax liability of corporations
- Section 2306. Modification of limitation on business interest
- Section 2307. Technical amendment regarding qualified improvement property



# Thank You!

- Please use your Scott Advisor as a resource for any challenges that you encounter during this time, whether benefits related or not.
- Our COVID - 19 Task Force is here to help, send all questions through your Scott Advisor.
- If your employees are facing COVID – 19 related challenges you can direct them to [www.findhelp.org](http://www.findhelp.org) for help with paying bills and other free or reduced cost programs to help individuals impacted by COVID – 19.



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# Appendix

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU



# Appendix Summary

- FFCRA FAQ Detailed Slides
- SBA Loan Detailed Slides
- SBA Loan Forgiveness Detailed Slides

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# FFCRA FAQ (Full Answers Copied from DOL Q &A)

**FFCRA Update and CARES Act Overview**

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# FFCRA FAQ

Q – Where can I access the guidance provided by the DOL on March 24<sup>th</sup>?

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Fact Sheet for Employers:

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Fact Sheet for Employees:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>



# FFCRA FAQ

**Q- Can we require that employees first use PTO or other accrued leave before taking the leave required in the FFCRA?**

**A- No, the law specifically prevents employers from requiring this, but employees may choose to apply other accrued leave first if they would like.**

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# FFCRA FAQ

**Q- Does our Short Term Disability (STD) insurance policy pay for the two weeks of Emergency Paid Sick Leave, or must we pay it via payroll?**

A- In most cases, you will need to pay it via payroll. First, several of the leave criteria in the FFCRA do not constitute a disability as defined by disability contracts. Most disability contracts have an elimination period from the date of disability before which a benefit applies. Even if your elimination period is shorter than the two weeks of paid leave required by the FFCRA and the reason for leave does constitute a disability, most disability contracts specifically offset benefit payments by amounts of other pay sources. The law specifies that employers may recoup the leave cost via tax credits, so the intent seems to be that employers pay employees via payroll during the required leave.

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# FFCRA FAQ

**Q- What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?**

A -You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information.

Your employer may also require you to provide additional in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons. For example, this may include a notice of closure or unavailability from your child's school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider. Your employer must retain this notice or documentation in support of expanded family and medical leave, including while you may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.

Please also note that all existing certification requirements under the FMLA remain in effect if you are taking leave for one of the existing qualifying reasons under the FMLA. For example, if you are taking leave beyond the two weeks of emergency paid sick leave because your medical condition for COVID-19-related reasons rises to the level of a serious health condition, you must continue to [provide medical certifications](#) under the FMLA if required by your employer.



# FFCRA FAQ

**Q- When must we begin offering this leave?**

A- On March 24th DOL advised that the FFCRA's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, and December 31, 2020; they also advise it is not retroactive.



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# FFCRA FAQ

**Q- What is the calculation methodology for determining if we meet the threshold of minimum 500 employees?**

A- You have fewer than 500 employees if, at the time your employee's leave is to be taken, you employ fewer than 500 full-time and part-time employees within the United States, which includes any State of the United States, the District of Columbia, or any Territory or possession of the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the [jointly-employed employees](#) are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than [employees](#), are not considered employees for purposes of the 500-employee threshold.

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are [joint employers under the FLSA](#) with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the [integrated employer test](#) under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act

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# FFCRA FAQ

**Q- How do we determine an employee's regular compensation for purposes of calculating the amount owed in paid sick leave or paid family medical leave?**

A- For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of your [regular rate](#) over a period of up to six months prior to the date on which you take leave. If you have not worked for your current employer for six months, the regular rate used to calculate your paid leave is the average of your regular rate of pay for each week you have worked for your current employer.

If you are paid with commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.

You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

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# FFCRA FAQ

**Q - May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?**

A - Yes, if your employer allows it and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

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# FFCRA FAQ

## **Q - May I take my paid sick leave intermittently while working at my usual worksite (as opposed to teleworking)?**

A- It depends on why you are taking paid sick leave and whether your employer agrees. Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments. It cannot be taken intermittently if the leave is being taken because:

You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;  
You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;  
You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;

You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or

You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking paid sick leave for one or more of these qualifying reasons, you must continue to take paid sick leave each day until you either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave. This limit is imposed because if you are sick or possibly sick with COVID-19, or caring for an individual who is sick or possibly sick with COVID-19, the intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others.

If you no longer have a qualifying reason for taking paid sick leave before you exhaust your paid sick leave, you may take any remaining paid sick leave at a later time, until December 31, 2020, if another qualifying reason occurs.

In contrast, if you and your employer agree, you may take paid sick leave intermittently if you are taking paid sick leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take paid sick leave on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

The Department encourages employers and employees to collaborate to achieve maximum flexibility. Therefore, if employers and employees agree to intermittent leave on less than a full work day for employees taking paid sick leave to care for their child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19-related reasons, the Department is supportive of such voluntary arrangements.

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# FFCRA FAQ

**Q** May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?

**A** -Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

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# FFCRA FAQ

**Q - If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?**

A - No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

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# FFCRA FAQ

**Q - If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but before I go out on leave, can I still get paid sick leave and/or expanded family and medical leave?**

A - No. If your employer closes after the FFCRA's effective date (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.



# FFCRA FAQ

**Q -As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?**

**A-** No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take. You may not simultaneously take both, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave or expanded family and medical leave under the FFCRA, up to your normal earnings, with preexisting leave. For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.



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# FFCRA FAQ

**Q - Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**

A - For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA

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# FFCRA FAQ

## **Q -When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?**

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;

The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or

There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

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# FFCRA FAQ

**Q -Does a shelter at home order qualify as a leave condition for EPSL and EFML?**

**A-** Neither the law or the guidance make this crystal clear. There are legal opinions on both sides. Some interpret question #27 in the DOL FAQs to say that it wouldn't qualify. If considering this for your employer we suggest seeking counsel.

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# FFCRA FAQ

**Q -Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?**

**A** -If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA.

However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current [12-month period determined by your employer](#), you may take the remaining portion of leave available. If you have already taken 12 workweeks of [FMLA](#) leave during this 12-month period, you may not take additional expanded family and medical leave.

For example, assume you are eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 to undergo and recover from a surgical procedure. You therefore have 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, you would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave you take would count against your entitlement to preexisting FMLA leave.

If your employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

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# **CARES Act Details (Loan provisions, Forgiveness Details, Tax Credits, Etc.)**

**FFCRA Update and CARES Act Overview**

Presented by Greg Stancil ChHC, REBC, RHU



# PPP Loan Details

- In addition to “small business concerns” as currently defined under the SBA, eligible businesses for the new program include any business concern, nonprofit organization, veterans’ organization, or Tribal business if it employs not more than the greater of—
  - 500 employees (includes full-time, part-time, and those employed on other bases); or
  - If applicable, the size standard in number of employees established by the Administration for the industry in which the entity operates.

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# PPP Loan Details

- You are eligible if you are:
  - A small business with fewer than 500 employees
  - A small business that otherwise meets the SBA's size standard
  - A 501(c)(3) with fewer than 500 employees
  - An individual who operates as a sole proprietor
  - An individual who operates as an independent contractor
  - An individual who is self-employed who regularly carries on any trade or business
  - A Tribal business concern that meets the SBA size standard
  - A 501(c)(19) Veterans Organization that meets the SBA size standard



# PPP Loan Details

- In addition, some special rules may make you eligible:
  - If you are in the accommodation and food services sector (NAICS 72), the 500-employee rule is applied on a per physical location basis
  - If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company the normal affiliation rules do not apply

**REMEMBER:** The 500-employee threshold includes all employees: full-time, part-time, and any other status.





# PPP Loan Details

- The Act waives some SBA regulations on entity affiliations for the covered period
- Sole proprietors, independent contractors, and eligible self-employed individuals (as defined in FFCRA) are eligible for loan recipients, subject to some documentation requirements to substantiate eligibility.

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# PPP Loan Details

The maximum loan amount is the lesser of:

- 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019);
- PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR

Upon request, for businesses that were not in existence during the period from February 15, 2019 to June 30, 2019 –

- 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020;
- PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR

- (C) \$10 million.



# PPP Loan Details

- There are very few borrower requirements to obtain a loan under the new program. Those requirements include a good-faith certification that:
  - The loan is needed to continue operations during the COVID-19 emergency;
  - Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
  - The applicant does not have any other application pending under this program for the same purpose; and
  - From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.



# PPP Loan Details

Businesses may, in addition to uses already allowed under the SBA's Business Loan Program, use the loans for:

- Payroll costs:
  - Includes: compensation to employees, such as salary, wage, commissions, cash, etc.; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) up to \$100,000 in 1 year, prorated for the covered period;
  - Excludes: individual employee compensation above \$100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal place of residence is outside of the US; and sick and family leave wages for which credit is allowed under the Families First Act;
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Salaries, commissions, or similar compensations;
- Payments of interest on mortgage obligations;
- Rent/lease agreement payments;
- Utilities; and
- Interest on any other debt obligations incurred before the covered period.

In evaluating eligibility of borrowers, a lender must consider whether the borrower was operating on February 15, 2020 and had employees or independent contractors for whom the borrower paid.

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# PPP Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages:
  - Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation **+** and any covered utility payment

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# PPP Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages:
  - Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation **+** and any covered utility payment



# PPP Loan Forgiveness

- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.



# PPP Loan Forgiveness

- Specifically, in the following circumstances, the forgiveness reduction rules above will not apply to an employer between February 15, 2020 and 30 days following enactment of the CARES Act –
  - The employer reduces the number of FTEEs in this period and, not later than June 30, 2020, the employer has eliminated the reduction in FTEEs; or
  - There is a salary reduction, as compared to February 15, 2020, during this period for one or more employees and that reduction is eliminated by June 30, 2020 (it is unclear whether this is also intended to be limited to employees who made under \$100,000 in 2019).





# PPP Loan Forgiveness

- Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses. Required documentation includes:
  - Documentation verifying FTEE on payroll and their pay rates;
  - Documentation on covered costs/payments (e.g., documents verifying mortgage, rent, and utility payments);
  - Certification from a business representative that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments; and
  - Any other documentation the Administrator may require.

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# Unemployment Details

- **Pandemic Unemployment Assistance** - creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
- **Emergency Increase in Unemployment Compensation Benefits** - provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- **Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week** - provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.



# Unemployment Details

- **Pandemic Emergency Unemployment Compensation** - provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.
- **Temporary Financing of Short-Time Compensation Payments in States with Programs in Law** - provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.



# Tax Credit Details

- **Employee retention credit for employers subject to closure due to COVID-19**

The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

- The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

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# Tax Details

- **Delay of payment of employer payroll taxes**  
The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
- Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.