

Human Resources Audio Session #1
March 31, 2020 8:45 am – 9:45

****NOTE:** Federal agencies continue to release guidance as it relates to federal legislation, including FFCRA. This is therefore a rapidly evolving situation, and the information contained herein is subject to change based on additional guidance issued by federal agencies.**

Main Topic: Families First Coronavirus Response Act (FFCRA)

FFCRA signed by the President on March 18 and goes into effect April 1, 2020 (through December 31, 2020)

The law generally has two purposes:

- (1) to provide paid leave to employees under certain circumstances related to COVID-19
- (2) to provide new refundable payroll tax credits, designed to immediately and fully reimburse Employers, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees.

The DOL (Department of Labor), will be issuing formal regulations that will provide additional guidance on how the law will be interpreted. Those regulations have not yet been released as of this audio call. However, the DOL *has* issued some guidance geared to both employees and employers via Q&A on its website: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

FFCRA “Employee Rights” Poster:

Link to federal poster on FFCRA:

https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Link to FAQ on federal posting:

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

- Employers must post a Notice of the FFCRA in a conspicuous place on their premises (options: breakroom/kitchen, bulletin board in a central part of the office) by or on April 1, 2020.
- Employers can satisfy this posting requirement by emailing or direct mailing the Notice to employees or posting it on an employee information website.

The DOL has issued a “Stay of Enforcement”:

- The Department will observe a temporary period of non-enforcement for the first 30 days after the enactment of the law (March 18- April 17).
- During that time, the DOL has confirmed that it will not seek enforcement against employers who are acting reasonably and in good faith to comply with the Act, meaning:
 - Employer remedies violations that it is made aware of
 - Employer makes the employee(s) whole as soon as practicable
 - The violations were not willful/intentional

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- The Department receives a written commitment from the employer to comply with the Act in the future.

FFCRA includes both the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLA).

Generally applies to all private sector employers with fewer than 500 employees, except the following, under certain circumstances:

- (1) exclusion for health care providers
- (2) exclusion for emergency responders
- (3) small business exemption (To be discussed in more detail in Audio Session #2)

EPSLA:

- Poster identifies 6 qualifying reasons and paid leave entitlements/caps
- Remember, only applicable if employee is unable to work or tele-work based on one of the 6 reasons. Even if one of the reasons applies (such as child's school is closed), if the employee is still able to work or tele-work, the employee will not be entitled to the leave. (To be discussed further in Audio Session #2)
- This is on top of any other leave provided by employer and must be made available immediately
- Employers cannot require employees to use other PTO before using this leave
- Additional guidance regarding use of leave on an intermittent basis and other specifics to be addressed in Audio Session #2

EFMLA:

- Even if "regular" FMLA does not apply because employer has less than 50 employees, the EFMLA may still apply (unless small business exemption is applied)
- To be eligible, employee must have been employed for 30 days
- ONLY qualifying need is #5 on the poster (caring for child whose school/place of care is closed/ unavailable due to COVID-19 related reasons), and again, only applicable if employee cannot work or tele-work because of that reason (To be discussed further in Audio Session #2)
- First 10 days unpaid (but can use EPSLA or other PTO), then pay at 2/3 rate of pay, with caps

General reminders:

- Do not interfere with an employee's rights under the Act
- Do not retaliate against an employee for exercising rights under the Act (so consider this when making your employment decisions)

Small Business Exemption: To be Discussed In Audio Session #2

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FAQ

Questions Relating to Strategy:

Q1: We need to manage our payroll expense, what are my options and how do I approach this for at-will employees?

A1: See also March 17 Communication on Arch website, and consider your own individual operational needs, including the following:

- Define necessary positions and tasks/duties/service, and time associated with the same
 - Are some positions still needed at “regular” hours or at reduced hours?
 - Are duties of some positions simply not needed based on current operational status?
 - Can/should necessary duties be combined and/or re-distributed?
 - Consider potential new needs based on current situation (such as outreach to parishioners who are no longer physically coming to Mass?)

- Consider options for each employee based on overall organizational needs and plan, and financial consideration: (NOTE: New CARES Act, which will not be the subject of Audio calls, but employers should be aware of it)
 - Reduce hours and/or pay
 - Change exempt employees to non-exempt status (See Communication with Sample Letter/Handout)
 - Allowing employees to use existing PTO
 - Layoff
 - Termination/RIF
 - Remember to make decisions based on legitimate, non-discriminatory reasons

CUPP: Refer to CUPP Communication and note provisions regarding termination and re-hire

Q2: What do I need to consider when reducing exempt to non-exempt?

A2: See Communication on this issue and remember:

- Employee must be paid hourly for ALL hours worked, and would be entitled to OT
- Employee must record **and** report time worked, so internal process must be established and communicated to Employee
- DO NOT make change retroactive. When considering effective date, consider practical issues such as payroll schedule and finances.
- Not required, but best practice to discuss the change in status with the employee before providing the confirming letter.
- DO NOT change status back and forth, unless you have consulted with an attorney.

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- Remember the human piece of this: Employee may view this as a negative, demotion, etc.

Q3: What do I need to consider when reducing exempt employees hours and wages?

A3: See previous 03/17/2020 Communication and remember:

- If reducing salary, ensure wages do not go below FSLA salary threshold (for most exemptions, of \$35,568/year)
- Absent specific exceptions (See 03/17 Communication), employees must be paid salary for any week in which they perform any work.

Contract Employees

Q4: Can I cut the pay of teachers, even though they are teaching?

A4: To avoid a breach of contract claim: for any employee with a contract, you must follow the terms of the contract (and addendum, if any) and cannot change salary mid-contract, unless contract language or addendum allows for you to do so.

Q5: Can I RIF teachers who are not involved in fulfilling their job description and/or contract, e.g., gym, art, music teacher, who has no virtual learning?

A5: Maybe, depending on the specific language in the contract. This would likely be considered a RIF. Look at your contract, local policy and Arch policy.

Policy and Procedure

Q6: If we change an employee from exempt to non-exempt, can they use sick or vacation time to make them whole in wages?

A6: Probably. Look at your policy on PTO. And note that many employers are relaxing and changing PTO and other policies in light of the pandemic. If you decide to relax/change some policies, notify employees and make sure that you are being fair, consistent and non-discriminatory.

Q7: What if an employer has work for an employee and the employee does not want to work due to:

- Does not want to work for fear of catching Covid-19
- Their own illness
- Family member is sick

A7: This question implicates several different laws/directives, including:

- Remember that the “Safer at Home” order addresses tele-work, and tele-work should be considered for all situations, even essential businesses and/or positions. See Safer at Home Communication.

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- OSHA requires that employers provide a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm employees.
- Consider CDC directives.
- ADA: if employee has a disability, reasonable accommodations may be necessary
- Consider whether you want to allow employees not to work; if you allow this, make sure you are fair in how you allow this, and make sure it is done in a reasonable, non-discriminatory manner.

Q8: If a non-exempt employee is not working because there is not enough work for the employee, can the EE take personal, sick, vacation time, PTO?

A8: See Q6 above

Q 9: Do I complete a timecard for an employee who is on unpaid leave?

A9: An employee's timecard should reflect what the time actually is: if their work is time worked, vacation, sick, and/or Covid-19 paid or unpaid time. Call it what it is. Don't complete a timecard indicating they worked when they did not work.

Q10: Can we terminate an employee so they can collect UC?

A10: Refer back to CUPP Communication. Note: Terminated employee could not be rehired for over 1 yr.

Q11: We have limited cash funds. Can we delay paying parish staff beyond the next payroll if they are working?

A11: Employees must be paid for work performed. If you do not pay your employee, you may subject the entity to a wage and hour suit. Note: If the employer has a financial crisis, contact Chris Brown in the Archdiocese of Milwaukee finance dept.

Q12: Do we have to create work for employees where there is no work to do?

A12: A non-exempt employee must be paid all hours actually worked, but you do NOT need to create work for a non-exempt employee. If an exempt employee is working, you may identify additional tasks, projects, assignments, etc.

Q13: What do we do if we receive a UCB-16 Separation Notice from the State of Wisconsin Unemployment Insurance Division?

A13: Steps include:

1. Note the response deadline at the top of the form. The parish/school must return the form by that date.

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2. In the text box under question 3.

_____ (name of your parish/school as it appears on the form) is a Catholic religious not-for-profit organization. As a Church employer, we are exempt from the requirement to participate in the state unemployment insurance program. Therefore, no unemployment benefits are due to our employees.

3. The contact information at the bottom of the form should be completed and FAX the form into the state using the fax number at the top left of the form. **Do not return the form via email** because there is not an account number associated with your parish/school.

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