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COVID-19 and its Impact on Ohio Employers

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Waterville Chamber of Commerce

No Legal Advice Intended: This information is not intended, and should not be taken, as legal advice on any particular set of facts or circumstances about the topic.

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Critical Federal Laws & Timeline

- **Coronavirus Preparedness and Response Supplemental Appropriations Act (CPRSAA)**
Passed March 6, 2020; Effective: March 6, 2020
- **Families First Coronavirus Response Act (FFCRA)**
Passed March 18, 2020; Effective: April 1, 2020; Sunset: December 31, 2020
- **Coronavirus Aid, Relief, and Economic Security (CARES Act)**
Passed March 27, 2020; Effective Dates Vary by Section

Critical Ohio Orders

- March 9, 2020 Executive Order 2020-01D:
 - Declaring State of Emergency
- March 13, 2020 Executive Order 2020-02D:
 - Emergency Changes in Child Care Rules
- March 16, 2020 Executive Order 2020-03D:
 - Lifting Certain Unemployment Restrictions
- 13 Executive Orders have been issued by Governor DeWine so far
- March 20, 2020 Ohio Department of Health Director's Stay at Home Order
- April 2, 2020 Ohio Department of Health Director's Amended Stay at Home Order

Acronyms – Old & New

CARES	Coronavirus Aid, Relief, and Economic Security (Federal Law)
CDC	Centers for Disease Control (Federal Agency)
CISA	Cybersecurity and Infrastructure Security Agency (Federal Agency)
CPRSAA	Coronavirus Preparedness and Response Supplemental Appropriations Act
DOL	Department of Labor (Federal Agency)
E.O.	Executive Order
EEOC	Equal Employment Opportunity Commission (Federal Agency)
EIDL	Economic Injury Disaster Loan (Part of the CARES Act)
EPSLA	Emergency Paid Sick Leave Act (Part of the FFCRA Act)
FFCRA	Family First Coronavirus Response Act (Federal Law)
FLSA	Fair Labor Standards Act (Federal Law)
FMLA	Family and Medical Leave Act (Federal Law)

Acronyms – Old & New

FMLEA	Family and Medical Leave Expansion Act (Part of the FFCRA Act)
HHS	Health and Human Services Department (Federal Agency)
IRS	Internal Revenue Service (Federal Agency)
ODJFS	Ohio Department of Job and Family Services (Ohio Agency)
OSHA	Occupational Safety and Health Administration (Federal Agency)
PPP	Paycheck Protection Program (Part of the CARES Act)
SBA	Small Business Administration (Federal Agency)

Phase 1 – H.R. 6074

Coronavirus Preparedness and Response Supplemental Appropriations Act (CPRSAA)

- This bill provides \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak.
- This was signed into law by President Trump on March 6, 2020.

Phase 2 – H.R. 6201

Families First Coronavirus Response Act (FFCRA)

Most Relevant Divisions (“Acts”)

- **Division C** – The Emergency Family and Medical Leave Expansion Act (“FMLEA”)
- **Division E** – The Emergency Paid Sick Leave Act (“EPSLA”)

FMLEA

Amount of Leave

- 12 weeks of job-protected paid (FMLA) leave – of which the first 10 days may be unpaid.

Eligibility

- The leave benefit covers all employees (full-time and part-time) who have been working for at least 30 calendar days.

Reasons for Leave

- Eligible employees are those unable to work (or telework) due to a need for leave to care for the son or daughter of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

FMLEA

Amount of Pay

- After the first 10 days, employer must compensate employee in an amount that is not less than **two-thirds** of the employee's regular rate of pay and the amount should reflect the number of hours the employee would otherwise be normally scheduled to work.
- The amount of paid leave cannot exceed **\$200 per day** and **\$10,000 in the aggregate**.

Employer Threshold

- Only applies to employers with fewer than 500 employees

Amount of Leave

- Employers will be required to provide full-time employees 80 hours of paid sick leave.
- “Full-time” is not defined for purposes of the bill.
- Employers will be required to provide part-time employees a number of hours of paid sick leave equal to the number of hours that employee works, on average, over a 2-week period.

Eligibility

- Eligible employees do not have to be employed for a certain length of time in order to be eligible for the paid leave provision.

Reasons for Leave

- (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 is seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (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 child care 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.

Amount of Pay

- Pay is at an employee's regular rate if the employee takes leave to treat his or her own health issues related to COVID-19 or if the employee is subject to a quarantine or isolation order. (Uses (1), (2), and (3) listed on the previous slide). For any other qualifying leave reason, the bill mandates paid leave at two-thirds of an employee's regular rate (Uses (4), (5), and (6) listed on the previous slide).
- In no event shall such paid sick time exceed:
 - **\$511 per day** and **\$5,100** in the aggregate for uses (1), (2), or (3): and
 - **\$200 per day** and **\$2,000** in the aggregate for uses (4), (5), or (6).

Employer Threshold

- Only applies to employers with fewer than 500 employees

The Intersection of the FMLEA and the EPSLA

- Benefit for employee parents whose child's school or place of care is unavailable due to COVID-19
- Different benefits for eligible employees
- Full-time employee could be eligible for both benefits

EPSLA: 2 weeks (80 hours) of paid sick leave

+

FMLEA: 10 additional weeks of partially paid leave

Phase 3 – H.R. 748

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

Division A -

Keeping Workers Paid and Employed, Healthcare System Enhancements, and Economic Stabilization

- **Title I** – Keeping American Workers Paid and Employed Act
 - Section 1102. Paycheck Protection Program
- **Title II** - Assistance for American Workers, Families, and Businesses
 - Subtitle A - Unemployment Insurance Provisions
 - Subtitle B – Rebates and Other Individual Provisions
 - Subtitle C – Business Provisions
- **Title III** - Supporting America's Health Care System in the Fight Against the Coronavirus
 - Subtitle C – Labor Provisions
- **Title IV** – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy
- **Title V** – Coronavirus Relief Funds
- **Title VI** – Miscellaneous Provisions

CARES Act

Title I – Paycheck Protection Program

- Maximum loan is \$10 million
- Use the loan for payroll costs, interest on mortgages, rent, utilities, interest on other existing debt
- Forgiveness is available if used to maintain payroll during the covered period
- Amount forgiven will be reduced where employer reduces its workforce or reduces salary and wages more than 25% during the eight-week period
- Unforgiven portion will be a loan with maximum term of 10 years and 4% interest rate

CARES Act

Title I - Paycheck Protection Program

Document and be forgiven.

Provide lender with documents that...

- Verify number of employees on payroll and pay rates;
- Verify rent, mortgage, lease and utility obligations; and
- Certify by business representative.

Title II

Subtitle A – Unemployment Insurance Provisions

- Expands eligibility for those out of work because of COVID-19:
 - Includes self-employed;
 - Gig workers; and
 - Those who exhausted existing state or federal unemployment benefits.
- Increases benefits:
 - Additional **\$600 per week** in benefits;
 - Applies to unemployment payments made from the date of the law's enactment through July 31, 2020.

Title II

Subtitle B – Rebates and Other Individual Provisions

- Eligible taxpayers can receive up to **\$1,200** tax credit for individuals or **\$2,400** for joint filers.
- Additional **\$500** tax credit per qualifying child
- Tax credits are phased out by 5% of every dollar the taxpayer's adjusted gross income exceeds **\$150,000** for joint filers, **\$112,500** for heads of households, and **\$75,000** for all other filers.

Top Ten Employer Questions and Answers

Top Ten Employer Questions

1. In light of the COVID-19 pandemic, what health-related information can employers ask employees to provide?

Top Ten Employer Answers

1. In light of the COVID-19 pandemic, what health-related information can employers ask employees to provide?

Employers can ask whether employees are experiencing any of the known symptoms of COVID-19, including fever, chills, shortness of breath, cough, and sore throat.

See EEOC website:

https://www.eeoc.gov/facts/pandemic_flu.html, #6.

Top Ten Employer Questions

2. May an employer take employees' temperatures before allowing them to enter the workplace?

Top Ten Employer Answers

2. May an employer take employees' temperatures before allowing them to enter the workplace?

- Yes, but watch out for other symptoms, too; some people with COVID-19 do not have a fever.
- Employers must maintain records of employees' temperatures just as you would confidential medical records, keeping them separate from personnel files.

See EEOC website: https://www.eeoc.gov/facts/pandemic_flu.html,

#7.

Top Ten Employer Questions

3. Can I send an employee home if they exhibit symptoms of COVID-19?

Top Ten Employer Answers

3. Can I send an employee home if they exhibit symptoms of COVID-19?

Yes, employees exhibiting COVID-19 symptoms can be sent home.

They should be asked to follow CDC guidelines regarding monitoring those symptoms and contact their health care provider.

See EEOC website:

https://www.eeoc.gov/facts/pandemic_flu.html, #5, and

CDC website at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

Top Ten Employer Questions

4. Are employers required to allow employees to work remotely?

Top Ten Employer Answers

4. Are employers required to allow employees to work remotely?

According to Ohio's Stay Home Order, non-essential businesses may still operate if they can do so remotely and safely. For essential businesses, you are encouraged to allow employees to work remotely where possible, and if not possible, then to modify the workplace according to CDC and OSHA COVID-19 guidelines.

See Ohio's Amended Stay Home Order:

<https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-At-Home-Order-Amended-04-02-20.pdf>.

Top Ten Employer Questions

5. If an employee reports being diagnosed with COVID-19, may I alert the rest of the workforce?

Top Ten Employer Answers

5. If an employee reports being diagnosed with COVID-19, may I alert the rest of the workforce?

Yes, with some limitations. You can and should notify employees of a co-worker's diagnosis and their potential exposure.

Rather than identifying the individual by name, you should provide information about the shift they worked, the location they worked, and what areas of the work facility may be affected.

You can also disclose your plan for cleaning those affected areas.

Top Ten Employer Answers #5 Continued

For employees who may have been in direct contact with the employee who was diagnosed with COVID-19, you can ask them if they've experienced any symptoms, take their temperature, and possibly ask them to self-quarantine.

They should also be advised to follow CDC guidelines to monitor their own symptoms and notify their health care provider.

See CDC website:

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> and <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

Top Ten Employer Questions

6. My employees would rather stay home and collect unemployment, but we are an essential business and have work for them. What should I do?

Top Ten Employer Answers

6. My employees would rather stay home and collect unemployment, but we are an essential business and have work for them. What should I do?

First, talk to your employees about your efforts to keep them safe. Tell them about the CDC, OSHA, and Stay Home Order rules you are following. Ask them if they have any creative solutions that might work better.

Top Ten Employer Answers #6 continued

Next, explain they are needed. Ohio and many neighboring states have restricted businesses, but if yours is essential, then it is needed to support the supply chain.

Finally, discuss expectations. If they leave on their own accord but are otherwise able to do work that you have available for them, they are leaving voluntarily. That may leave them ineligible for unemployment. In an unemployment claim, you expect them to be honest about why they are home, and you must be honest in responding to employment claims.

Top Ten Employer Questions

7. What should an employer do if an employee wants to wear a face mask in the workplace?

Top Ten Employer Answers

7. What should an employer do if an employee wants to wear a face mask in the workplace?

Let them – unless it would cause a workplace hazard. It's been encouraged by Ohio Governor Mike DeWine. In some industries and states, it may be mandated.

The CDC also recommends covering your mouth and nose when around others.

See CDC website: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

Top Ten Employer Questions

8. What documentation do I need from employees who request Emergency Paid Sick Leave or Expanded Family Medical Leave?

Top Ten Employer Answers

8. What documentation do I need from employees who request Emergency Paid Sick Leave or Expanded Family Medical Leave?

For every employee requesting leave:

Name of employee requesting leave,

- Date(s) for which leave is requested,
- Reason for leave, and
- Statement from the employee that he or she is unable to work and why.

Top Ten Employee Answers #8 Continued

For employees requesting leave because he or she is subject to a quarantine or isolation order or to care for an individual subject to that order:

- Name of the government entity that issued the order

For employees requesting leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice:

- Name of the health care provider who gave the advice.

Top Ten Employee Answers

#8 continued

For employees requesting leave to care for his or her child whose school or place of care is closed, or childcare provider is unavailable:

- Name of the child being cared for;
- Name of the school, place of care, or childcare provider that has closed or become available; and
- Statement from the employee that no other suitable person is available to care for the child.

See DOL website Q&A ## 15-16:

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

Top Ten Employer Questions

9. Does Ohio's Stay Home Orders count as a qualified reason under (1) in the Paid Sick Leave Act?

Top Ten Employer Answers

9. Does Ohio's Stay Home Orders count as a qualified reason under (1) in the Paid Sick Leave Act?

Possibly. If the Stay Home Order caused you to be unable to work or telework, you are still employed and your employer has work you could perform but for the order, you could qualify for paid sick leave.

Top Ten Employer Answers #9 Continued

However, if your employer does not have work for you as a result of the Stay Home Order and has shut down operations, you likely need to file for unemployment.

In addition, the Ohio Stay Home Order does not cause essential workers to be unable to work. The Stay Home Order allows essential work.

See DOL website Q&A ## 23-27, 60:

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

Top Ten Employer Questions

**10. I employ fewer than 50 employees.
Does the FFCRA apply to me?**

Top Ten Employer Answers

10. I employ fewer than 50 employees. Does the FFCRA apply to me?

The FFCRA applies to all employers with fewer than 500 employees, including employers who usually are not subject to the FMLA because they have fewer than 50 employees.

But there is an exception...

Top Ten Employer Answers

#10 Continued

Exception exists if an “authorized officer of the business” determines one of the following:

- 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

Top Ten Employer Answers #10 Continued

Exception exists if an “authorized officer of the business” determines one of the following:

- **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 services are needed for the small business to operate at a minimal capacity.**

See DOL website Q&A ## 4, 58-59:

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

For Additional Information

RCO Law Website

COVID-19 Resources and Links

Current Articles on Best Practices

<https://www.rcolaw.com/?t=40&an=107328&format=xml&p=6665>



Thank You

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