

# RCO law

*robison, curphey & o'connell*

Findlay·Hancock County Chamber of Commerce Webinar

## **COVID-19 and Its Impact on**

## **Ohio Employers**

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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 2020-010:
  - Declaring State of Emergency
- March 13, 2020 Executive Order 2020-020:
  - Emergency Changes in Child Care Rules
- March 16, 2020 Executive Order 2020-030:
  - 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

# The Acronyms (So Far)

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)

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”)

## 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 under 18 years of age 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.

## 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 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; or
- (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

Both the FMLEA and EPSLA address benefits for employee parents whose child's school, place of care or care provider is unavailable due to Covid-19 concerns. While they both address the same issue, they mandate different benefits for eligible employees. According to the U.S. Department of Labor, a full-time employee in this situation could reap the benefits of both the FMLEA and the EPSLA. A full-time employee may be eligible for up to 12 weeks of leave (two weeks, meaning up to 80 hours, of paid sick leave under the EPSLA followed by up to 10 additional weeks of partially paid leave pursuant to the FMLEA at two thirds the employee's regular rate of pay).

# 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
- 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
  - 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 at [https://www.eeoc.gov/facts/pandemic\\_flu.html](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.

# 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, and they should be asked to follow CDC guidelines regarding monitoring those symptoms and contacting their health care provider.

See EEOC website at [https://www.eeoc.gov/facts/pandemic\\_flu.html](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, at <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.

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

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 at

<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 the CDC, OSHA, and Stay Home Order rules you are following. Ask them if they have any creative solutions that might work better.**

**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! It's been encouraged by Governor DeWine and in some industries and states may be mandated. The CDC also recommends covering your mouth and nose when around others.

See CDC website at

<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.

**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.

**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 at <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.



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 at <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...

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

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

For additional information, see RCO's  
Resources and Links page, at  
[https://www.rcolaw.com/?t=40&an=1  
07328&format=xml&p=6665](https://www.rcolaw.com/?t=40&an=107328&format=xml&p=6665)





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This presentation provides an update regarding the evolving COVID-19 crisis. The information above is subject to change without notice. These changes may result from new facts related to the virus as well as new legislation and orders from federal, state and local officials and agencies. *Many of the new laws and orders referenced in this memo can be found on the RCO Law website:*  
<https://www.rcolaw.com/?t=40&an=107328&format=xml&p=6665>