



COVID-19: employer requirements and considerations



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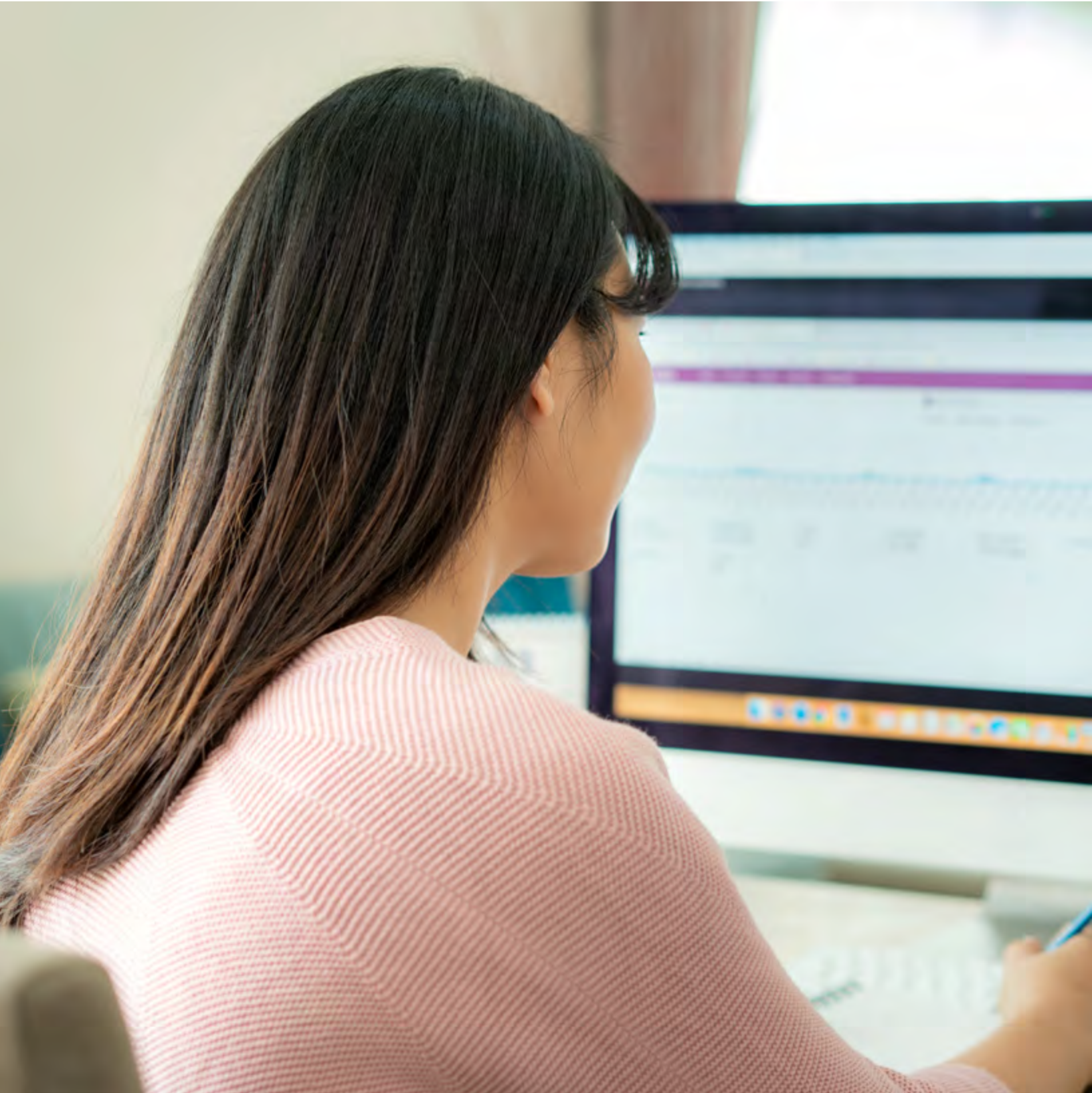
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Introduction



To contain the outbreak of COVID-19 in the US, numerous states and local governments have temporarily closed nonessential businesses and issued “stay-at-home” orders, creating a historic disruption to the US workforce. In March 2020 alone, the U.S. Bureau of Labor Statistics reported that total nonfarm payroll employment fell by 701,000. Unlike most major disasters that affect only a segment of the US population, the adverse effects of COVID-19 are nationwide (and global).

In response to COVID-19’s impact on US businesses and its employees, federal legislation was enacted to extend paid leave to certain employees, expand unemployment insurance (UI) benefits and provide cash flow to employers through tax credits, tax payment deferrals and forgivable loans. Some states and localities have also responded by expanding their paid leave mandates, waiving certain reporting requirements and providing extensions on the due date of payroll tax returns, tax payments or both.

COVID-19 has also dramatically increased the number of employees working from home, an arrangement that is new for many employers. Telecommuting raises numerous questions, from the tax treatment of equipment and supplies to the payroll tax rules that apply.

In this publication, we provide an explanation of the federal COVID-19 provisions applicable to employers and some of the state and local considerations that apply.

The governmental response to COVID-19 continues to evolve. This publication is current as of April 1, 2020.

Download a slide deck summary of this report [here](#).

Part 1

FFCRA: requirement for paid leave

The Families First Coronavirus Response Act (FFCRA), signed by President Trump on March 18, 2020, requires covered employers to provide their employees with paid sick leave (Emergency Paid Sick Leave Act or EPSLA) or expanded family and medical leave (Emergency Family and Medical Leave Expansion Act or Expanded FMLA) for specific reasons related to COVID-19. The U.S. Department of Labor (DOL), Wage and Hour Division (WHD) administers and enforces these new paid leave requirements. These provisions apply April 1, 2020, through December 31, 2020. ([DOL, Fact Sheet for Employers.](#))

Generally, the FFCRA states that covered employers must provide the following paid leave to all employees (employers of health care providers or emergency responders may elect to exclude employees from eligibility):

1.1. Emergency paid sick leave (EPSLA)

The following applies to all employees of covered employers:

- ▶ Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay if the employee is unable to work because the employee is quarantined (pursuant to a federal, state or local government order or advice of a health care provider), and/or is experiencing COVID-19 symptoms and seeking a medical diagnosis.

Or

- ▶ Two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to federal, state or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

1.2. Paid expanded family and medical leave (Expanded FMLA)

A covered employer must provide the following paid leave to employees who are employed for at least 30 days (employers of health care providers or emergency responders may elect to exclude employees from eligibility):

- ▶ Up to an additional 10 weeks of paid expanded family and medical leave at 2/3 the employee's regular rate of pay if an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

1.3. Covered employers

The paid sick leave and expanded family and medical leave provisions apply to certain public employers, private employers and tax-exempt organizations with fewer than 500 employees (exceptions apply to federal employees).

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern. (*See Department FFCRA regulations expected in late April 2020*).

For more information on how employers determine if they are covered, see the DOL's [frequently asked questions](#).



1.4. Qualifying reasons for paid leave

An employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. Is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. Has been advised by a health care provider to self-quarantine related to COVID-19.
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
4. Is caring for an individual subject to an order described in (1) above or is self-quarantined.
5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Or

6. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

An employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

1.5. Duration of leave

For reasons 1-4 and 6, a full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a 2-week period.

For reason 5, a full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for up to 12 weeks of leave at the number of hours the employee is normally scheduled to work over that period.



1.6. Calculation of leave pay

For reasons 1, 2 or 3, employees taking leave must be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For reasons 4 or 6, employees taking leave must be paid 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For reason 5, employees taking leave must be paid 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave). Note that an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave.

Paid sick time under the FFCRA does not carry over from one year to the next and employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement or other separation from employment.

1.7. Employer notice requirements

All covered employers are required to post a [notice](#) of the FFCRA paid leave requirements in a conspicuous place on its premises.

1.8. Employee protections

Employers are prohibited from discharging, disciplining or otherwise discriminating against any employee who takes paid sick leave under the FFCRA and who files a complaint or institutes a proceeding under or related to the FFCRA's paid leave requirements.

1.9. Penalties and enforcement

Employers in violation of the requirement of the first two weeks of paid sick time or that unlawfully terminate employees will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act.

The DOL will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the FFCRA. For purposes of this non-enforcement position, "good faith" exists when violations are corrected and the employee is made whole as soon as practicable by the employer, the violations were not willful and the DOL receives a written commitment from the employer to comply with the FFCRA in the future.



Figure 1: Summary of FFCRA paid leave requirements

	Reason for leave	Duration of leave	Calculation of leave pay
1	Subject to federal, state or local quarantine or isolation related to COVID-19	A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a 2-week period.	Employees taking leave must be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
2	Advised by health care provider to self-quarantine related to COVID-19	A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a 2-week period.	Employees taking leave must be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period)
3	Is experiencing COVID-19 symptoms and is seeking a medical diagnosis	A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.	Employees taking leave must be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
4	Is caring for an individual subject to an order described in reason 1 above or self-quarantine	A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a 2-week period.	Employees taking leave must be paid 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
5	Is caring for a child whose school or place of work is closed (or child care provider is unavailable) related to COVID-19	A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for up to 12 weeks of leave at the number of hours the employee is normally scheduled to work over that period.	Employees taking leave must be paid 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period – 2 weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave). Note that an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave.
6	Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury	A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a 2-week period.	Employees taking leave must be paid 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

Notes:

- ▶ See U.S. Department of Labor [Fact Sheet for Employers](#).
- ▶ Paid sick time under the FFCRA does not carry over from one year to the next and employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement or other separation from employment.
- ▶ An employee qualifies for expanded family and medical leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.
- ▶ Some states (e.g., [Colorado](#) and [New York](#)) and localities are imposing their own COVID-19 paid leave requirements. You must comply with the law that is more favorable to the employee.
- ▶ Consult with your labor law attorney for more information.

Part 2

FFCRA: paid sick and family and medical leave tax credits

As explained in [Part 1](#), the FFCRA requires employers to provide paid leave through two separate provisions – the EPSLA or the Expanded FMLA (collectively, “qualified leave wages”). The FFCRA also stipulates that employers subject to these requirements, and that comply, are entitled to fully refundable tax credits to cover the cost of the leave required to be paid from April 1, 2020, through December 31, 2020. (*IRS website, [COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs](#).*)

2.1. Eligible employers

Private sector and tax-exempt organizations that are subject to, and that have complied with the FFCRA paid leave requirements, are entitled to the paid leave tax credits. Public sector (governmental) employers are subject to the FFCRA paid leave requirements but are not eligible to claim the paid leave tax credits.

Certain self-employed persons in similar circumstances are also entitled to similar tax credits. (*See the IRS webpage, [Specific Provisions Related to Self-Employed Individuals](#).*)

2.2. Qualified leave wages

Qualified leave wages include those payments made pursuant to the reasons stipulated under the FFCRA (See [Figure 1](#), items 1-6.)

2.3. Exemption from the employer-portion of Social Security and Medicare tax

Qualified leave wages (see [2.2](#)) paid by all eligible employers (see [2.1](#)) except those subject to the Railroad Retirement Tax Act (RRTA) are exempt from the employer portion of Social Security tax (6.2% on covered wages up to \$137,700 for 2020). Qualified leave wages paid by eligible employers subject to the RRTA are exempt from Social Security and Medicare tax (1.45% of all covered wages).

2.4. Computing the amount eligible for recovery through the FFCRA tax credits (“recoverable amount”)

When computing the amount that is eligible for refund through the FFCRA tax credits, employers include the following:

- ▶ Qualified leave wages (see [2.2](#))
- ▶ The employer portion of Medicare tax (at 1.45%) imposed on the qualified leave wages. Note, however, that employers subject to RRTA are not allowed a refund of Medicare tax because they are not required to pay Social Security or Medicare tax on those wages (see [2.3](#)).
- ▶ The cost of maintaining health insurance coverage for eligible employees (see [Figure 1](#)) during the paid sick leave or paid family leave period (“qualified health plan expenses”)

2.5. Receiving payment of the paid sick and family leave credit

Eligible employers (see [2.1](#)) may receive payment of the recoverable amount (see [2.4](#)) for leave paid during the period beginning April 1, 2020, and ending December 31, 2020. The recoverable amount is claimed against the employer portion of Social Security (6.2% of wages up to \$137,700 for 2020), and for employers subject to the RRTA, against the employer portion of Social Security and Medicare tax (1.45% of all covered wages), owed on all wages and compensation paid to all employees.

See Part 5, [Claiming FFCRA and CARES Act tax credits](#) for information on how to obtain payment of these tax credits.

Part 3

CARES Act: employee retention tax credit

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) signed into law by President Trump on March 27, 2020, creates a new employee retention tax credit (“retention tax credit”) for qualified wages paid from March 13, 2020, to December 31, 2020, by employers that are subject to closure or significant economic downturn due to COVID-19. The retention credit amount takes into account up to 50% of qualified wages, up to \$10,000. Thus, the maximum retention credit amount is \$5,000 per employee. (*IRS website, [FAQs: Employee Retention Credit under the CARES Act.](#)*)

3.1. Covered employers

All private-sector and non-governmental tax-exempt organizations meeting the qualification requirements (see [3.2](#)) are eligible for the retention tax credit. Governmental employers and any employer that receives a Paycheck Protection Program loan (see [Part 7](#)) are not eligible for the retention credit.

3.2. Qualification requirements

To be eligible for the retention credit, an employer must carry on a trade or business in 2020 that experiences one of the two following COVID-19-related occurrences:

- ▶ Operations were fully or partially suspended on orders from a governmental authority due to COVID-19 (COVID-19 shutdown).
- Or
- ▶ The business experienced a 50% reduction in gross receipts for a calendar quarter as compared to the same calendar quarter in the prior year (gross receipts decline).

The gross receipts test is governed by IRC §448(c), which evaluates gross receipts on an aggregated basis, combining parents and subsidiaries, brother and sister entities, combined groups, and affiliated service groups, under the rules of IRC §52(a) and (b), and IRC §414(m) and (o).



3.3. Qualified wages

For employers of more than 100 employees, qualified wages are wages (as defined under the Federal Insurance Contributions Act) paid for services an employee is not providing due to a COVID-19 shutdown or gross receipts decline. The wages taken into account for such employers are limited to the amount the employee would have been paid for an equivalent amount of work in the 30 days immediately preceding the period for which the employee is paid.

For employers of 100 or fewer employees, qualified wages are wages paid to any employee during a COVID-19 shutdown or during a calendar quarter of gross receipts decline, without regard to whether the employee is providing services. In determining how many employees are employed, the average number of full-time employees during 2019, as determined under IRC §4980H, applies.

In either case, qualified wages include qualified health plan expenses paid or incurred by the employer for health coverage excludable under IRC §106(a). These expenses are allocated to qualified wages as prescribed by the Treasury Secretary, but absent a contrary provision by the Secretary, a pro rata allocation among employees is permitted.

The retention credit is subject to numerous rules to prevent double-dipping.

3.4. Limitations

An employer's deduction for wages must be reduced by the amount of the retention credit. In addition, an employer may not take into account the following:

- ▶ Wages taken into account under sections 7001 and 7003 of the Families First Act, which provides payroll tax credits for paid leave required to be provided by small employers
- ▶ Wages taken into account under IRC §45S (income tax credit for paid family and medical leave)
- ▶ Wages paid to certain related individuals specified in IRC §51(i)(1)
- ▶ Wages of an employee for whom a work opportunity tax credit is claimed

3.5. Receiving payment of the retention credit

The retention credit is claimed against:

- ▶ The employer portion of Social Security taxes under IRC §3111(a)
- ▶ The portion of RRTA taxes imposed under IRC §3221(a) that corresponds to the employer portion of Social Security taxes under IRC §3111(a)

If the retention credit exceeds the employer's Social Security or RRTA tax liability for the quarter, the excess may be refunded to the employer.

In the case of an employer for whom wages are paid by a certified professional employer organization (CPEO), the retention credit belongs to the customer, not the CPEO.

See Part 5: [Claiming FFCRA and CARES Act tax credits](#) for information on how to obtain payment of the retention credit.

Part 4

Social Security payment deferral

The CARES Act delays the timing of required federal tax deposits for certain employer payroll taxes and self-employment taxes incurred between March 27, 2020 (the date of enactment) and December 31, 2020. Amounts will be considered timely paid if 50% of the deferred amount is paid by December 31, 2021, and the remainder by December 31, 2022. *(For more information see EY Tax Alert 2020-0944)*

All employers and self-employed individuals may avail themselves of the payroll tax deposit deferral. There is no need-based eligibility and this provision alone should provide positive cash flow to businesses on an interest-free basis, as there is no interest charge for the deferral.

Applicable employment taxes include:

- ▶ The employer's share of Old-Age, Survivors, and Disability Insurance Tax (Social Security) under IRC §3111(a), which is 6.2% of wages up to the wage base (\$137,700 in 2020)
- ▶ The portion of the employer's and the employee representative's share of Tier 1 RRTA tax under IRC §3211(a) and §3221(a) that corresponds to the 6.2% Social Security tax rate due
- ▶ For self-employed individuals, the equivalent amount of Self-Employment Contributions Act (SECA) tax due on net earnings from self-employment under IRC §1401(a) (i.e., 50% of the 12.4% tax), which would similarly be exempt from estimated tax payments

Deferral is available for employers remitting payroll taxes through an agent under IRC §3504 or a CPEO. In these cases, the employer can direct the agent or CPEO to defer the applicable tax payments. Employers will be solely liable for making the deposits timely under the deferred deadlines, including with respect to worksite employees performing services for a CPEO customer.

There is no dollar cap on the wages that are counted in calculating the taxes that may be deferred.

The payroll tax deferral does not apply to federal income tax withholding, the Hospital Insurance (Medicare) tax or the employee's portion of Social Security tax.

In addition, the payroll tax deferral is not available to a taxpayer that obtains a Small Business Act loan under the Paycheck Protection Program (see [Part 7](#)) established by the CARES Act if the loan is later forgiven.



Part 5

Claiming the FFCRA and CARES Act tax credits

Employers can retain federal employment taxes equal to the tax credits that apply rather than depositing these amounts with IRS. The federal employment taxes that are available for retention by eligible employers include federal income taxes withheld from employees, the employees' share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes with respect to all employees.

If the employer's federal employment tax deposits are not enough to recover their FFCRA or CARES Act tax credits, employers are instructed to reduce their remaining federal employment tax deposits in the same quarter to zero. If the permitted reduction in deposits does not equal the tax credits owed, the employer can file [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), to claim an advance credit for the remaining amounts owed.

Example: An employer paid \$10,000 in qualified leave wages (and allocable qualified health plan expenses and the eligible employer's share of Medicare tax on the qualified leave wages) and is otherwise required to deposit \$8,000 in federal employment taxes, including taxes withheld from all employees, on wage payments made during the same quarter. The employer can keep the entire \$8,000 of taxes that it was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on the Form 941. The employer may file a request for an advance credit for the remaining \$2,000 by completing [Form 7200](#).

5.1. Reducing employment tax deposits for COVID-19 tax credits

In [Notice 2020-22](#) the IRS provides penalty relief under [IRC §6656](#) to employers that choose to defer their Social Security tax payments under Section 2302 of the CARES Act and to employers that opt to reduce their federal employment tax deposits in anticipation of tax credits that are available for qualified leave wages, qualified health plan expenses and the employee retention tax credit rather than request an advance payment using [Form 7200](#).

The IRS is granting this relief because these tax credits are claimed on Form 941 that is filed quarterly (or other returns, such as Forms 943, 944 and CT-1, that are filed annually) while employers' federal employment tax deposits may be due daily, semiweekly or monthly. By waiving the penalties under [IRC §6656](#), employers can receive payment of their anticipated federal tax credits much sooner.

Limitations on penalty relief

Paid leave tax credits

An employer will not be subject to a penalty under [IRC §6656](#) if:

- ▶ The employer paid qualified leave wages to its employees in the calendar quarter prior to the time of the required deposit.
- ▶ The federal employment taxes the employer does not timely deposit is less than or equal to the amount of the employer's anticipated credits under sections 7001 and 7003 of the Families First Act for the calendar quarter as of the time of the required deposit.
- ▶ The employer did not seek payment of an advance credit by filing [Form 7200](#) for the anticipated credits it relied upon to reduce its deposits. Thus, an employer may reduce, without a penalty under [IRC §6656](#) the federal employment taxes by the amount of qualified leave wages and qualified health plan expenses paid by the employer in the calendar quarter prior to the required deposit, plus the amount of the employer's share of Medicare tax on such qualified leave wages, as long as the employer does not also seek an advance credit with regard to the same amount.

For purposes of the COVID-19 paid leave tax credits, the total amount of any reduction in any required deposit may not exceed the total amount of qualified leave wages and qualified health plan expenses and the employer's share of Medicare tax on the Qualified leave wages in the calendar quarter, minus any amount of Qualified leave wages, Qualified health plan expenses and employer's share of Medicare tax that had been previously used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this IRS notice or (2) to seek payment of an advance credit.

Employee retention tax credit

An eligible employer will not be subject to a penalty under IRC §6656 for failing to deposit federal employment taxes in connection with the employee retention tax credit if:

- ▶ The employer paid Qualified Retention Wages to its employees in the calendar quarter prior to the time of the required deposit.
- ▶ The federal employment taxes the employer does not timely deposit, reduced by the amount of federal employment tax not deposited in anticipation of the credits claimed for Qualified leave wages, Qualified health plan expenses and the employer's share of Medicare tax on the Qualified leave wages under sections 7001 and 7003 is less than or equal to the amount of the employer's anticipated employee retention credit for the calendar quarter as of the time of the required deposit.
- ▶ The employer did not seek payment of an advance credit by filing [Form 7200](#) with respect to the anticipated credits it relied upon to reduce its deposits. Thus, after a reduction, if any, of a deposit of employment taxes by the amount of credits anticipated for Qualified leave wages, an employer may further reduce, without a penalty under IRC §6656, the amount of the federal employment tax deposit by the amount of the employee retention credit anticipated by the employer in the calendar quarter prior to the required deposit, as long as the employer does not also seek an advance credit with regard to the same amount.

For purposes of this retention tax credit, the total amount of any reduction in any required deposit may not exceed the total amount of the employee retention tax credit in the calendar quarter, minus any amount of employee retention tax credit that had been previously used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

5.2. Form 7200, Advance Payment of Employer Credits Due to COVID-19

The IRS has issued new [Form 7200](#) to request advance payment of the three COVID-19 employment tax credits for qualified sick leave wages, qualified family leave wages and the employee retention credit.

Form 7200 is used to request an advance payment of tax credits on the Form 941 series of forms, including:

- ▶ Form 941, *Employer's QUARTERLY Federal Tax Return*
- ▶ Form 941-PR, *Planilla para la Declaración Federal TRIMESTRAL del Patrono*
- ▶ Form 941-SS, *Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)*
- ▶ Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
- ▶ Form 943-PR, *Planilla para la Declaración Anual de la Contribución Federal del Patrono de Empleados Agrícolas*
- ▶ Form 944, *Employer's ANNUAL Federal Tax Return*
- ▶ Form 944(SP), *Declaración Federal ANUAL de Impuestos del Patrono o Empleador*
- ▶ Form CT-1, *Employer's Annual Railroad Retirement Tax Return*

Note that the IRS has not yet modified the above forms to accommodate the COVID-19 employment tax credits; however, the revised Form 941 was expected in time for filing of the second quarter 2020 Form 941. It is expected that the revised Form 941 will also include the fields necessary for taking advantage of the COVID-19 employment tax credits and the Social Security tax deferral.

When to file Form 7200

The employer can file the form for advance credits anticipated for a quarter at any time before the end of the month following the quarter in which it paid the qualified wages. If necessary, the employer can file Form 7200 several times during each quarter.

Employers are instructed that they should not file Form 7200 after they file Form 941 for the fourth quarter of 2020, or the annual Forms 943, 944, or CT-1 for 2020. Additionally, employers should not file Form 7200 to request advance credits for any anticipated credit for which they already reduced their federal employment tax deposits.

Part 6

COVID-19 tax credit recordkeeping requirements

All records of employment tax (including the Forms 941 series of returns) and employment tax credits must be retained for at least four years for IRS review, including the following ([Form 7200 instructions](#)):

- ▶ Documentation to show how you figured the amount of qualified sick and family leave wages eligible for the credit
- ▶ Documentation to show how you figured the amount of the employee retention credit
- ▶ Documentation to show how you figured the amount of qualified health plan expenses that you allocated to wages
- ▶ Documentation to show how you determined that employees were qualified to receive sick and family leave wages, including any additional information set out in [Frequently asked questions](#) or other guidance on the IRS website
- ▶ Documentation to show your eligibility for the employee retention credit based on suspension of operations or significant decline in gross receipts
- ▶ Copies of completed Form(s) 7200 you filed with the IRS



Part 7

CARES Act: Paycheck Protection Program

The Paycheck Protection Program under the CARES Act provides economic relief to small businesses impacted by COVID-19 by making loans available through the Small Business Administration (SBA). Under the Act, the full principal amount of these loans will be forgiven by the SBA if all employees of the borrower are kept on the payroll for eight weeks and the loan is used for payroll, rent, mortgage interest or utilities. The application window for loans under the program opened April 3, 2020, and remains available through June 30, 2020, or until the federal funds made available for this purpose are exhausted ([13 CFR Part 120 - Interim Final Rule](#).)

7.1. Eligibility

Loans under the Paycheck Protection Program are available to:

- ▶ Any small business with fewer than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organizations or IRC §501(c)(19) veterans organizations affected by COVID-19.
- ▶ Small businesses in the hospitality and food industry with more than one location could also be eligible if their individual locations employ less than 500 workers.

Note that businesses in certain industries may have more than 500 employees if they meet the [SBA's size standards](#) for those industries.

7.2. Loan forgiveness

Loans under the Paycheck Protection Program are fully forgiven if the funds are used for payroll costs, interest on mortgages, rent and utilities. At least 75% of the forgiven amount must have been used for payroll. Loan payments are deferred for six months, and no collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. The amount of the loan that is forgiven is reduced if full-time headcount declines, or if salaries and wages decrease.

For more information, see the SBA's [website](#).



Part 8

CARES Act: employee benefits and executive compensation

The CARES Act includes numerous provisions that modify the rules pertaining to employee fringe benefits and executive compensation in consideration of the COVID-19 emergency.

8.1. Student loans – expansion of employer-provided education assistance

IRC §127 excludes up to \$5,250 per year of employer-provided educational assistance from an employee's income. CARES Act Section 2206 amends IRC §127 to temporarily treat an employer's payment of principal or interest on an employee's student loan as excludable employer-provided educational assistance. To be excluded, the payments must be made after March 27, 2020, and before January 1, 2021. The income exclusion, including the loan payments, remains capped at \$5,250 per year.

For many years, employers have sought ways to help their employees repay their student loans in a tax-favored manner. Despite the CARES Act's very limited scope, some employers may view this as a stepping stone for future legislative expansion.

See also Part 14: [Temporary halt in garnishments for student loans](#).

8.2. Retirement plan distributions and funding

The CARES Act provides for a one-year waiver of required minimum distributions (RMDs) from individual retirement accounts (IRAs or individual retirement annuities) and tax-qualified plans (including 403(b) plans and governmental 457(b) plans) for calendar year 2020.

In addition, the CARES Act creates a new category of "coronavirus-related distributions" and loans from retirement plans of up to \$100,000 that are not subject to early distribution taxes under IRC Section 72(t). The CARES Act mirrors prior qualified disaster relief provisions that were enacted to respond to natural disasters from 2017 to 2019 (e.g., flooding and wildfires). For coronavirus-related distributions, the CARES Act allows income to be spread ratably over a three-year period and allows repayment to another eligible retirement plan within the same three-year period. If a loan, rather than a withdrawal, is taken, dollar limits under existing law are increased to \$100,000 and repayments are not required to begin for one year.



RMD relief

CARES Act Section 2203 eliminates the requirement for a 2020 RMD. In addition, individuals who attained age 70½ or retired in 2019 and are required to take their 2019 RMDs from an IRA or a tax-qualified plan in 2020 (by April 1), are not required to take such a distribution in 2020. Note that the change in the reference age for the required beginning date to age 72, which was enacted in the SECURE Act, is effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after December 31, 2019 (see Tax Alert 2020-0018).

Definition of coronavirus-related distribution

CARES Act Section 2202 allows a coronavirus-related distribution to be made to an individual who (i) is diagnosed with SARS-CoV-2 or COVID-19 (using a test approved by the Centers for Disease Control and Prevention); (ii) has a spouse or dependent who is so diagnosed; (iii) experiences adverse financial consequences as a result of quarantine, furlough, layoff, reduction in work hours or inability to work due to childcare; or (iv) is a business owner who must close or reduce hours of operation due to the virus or other factors determined by the Secretary. In all cases, the maximum amount that may be distributed from an eligible retirement plan is \$100,000 and includes distributions made in all of calendar year 2020 (retroactive to January 1). There is no statutory requirement that an individual demonstrate that the financial losses equal the amounts withdrawn in a coronavirus-related distribution, only that the virus or disease was diagnosed or that the events resulting in adverse financial consequences occurred. In the case of a tax-qualified plan (e.g., 401(k) plan), the plan administrator may rely on the employee's attestation of diagnosis or financial adverse consequences.

Eligible retirement plans

A coronavirus-related distribution may be taken from an IRA or a tax-qualified plan. In most cases, the tax-qualified plan would be a defined contribution plan, such as a 401(k) plan. In that case, the distribution will not cause the plan to fail plan qualification requirements that otherwise limit distributions to separations from service or other specified events. The rule also appears to apply to a defined benefit plan, but the effect on plan funding and other considerations likely make it undesirable for employers to allow coronavirus-related distributions from these plans.

Taxation of coronavirus-related distributions

A coronavirus-related distribution is not subject to the 10% additional tax under IRC §72(t), which typically applies when an individual receives a distribution before age 59½ (or age 55 and separation from service). A coronavirus-related distribution is, however, subject to federal income tax if pre-tax amounts are distributed. Note that because distributions may be made from a Roth IRA or a Roth 401(k), it is possible that the \$100,000 distribution could be made from non-taxable accounts. If a coronavirus-related distribution is made from pre-tax accounts in an employer plan (e.g., 401(k)), the normal withholding (e.g., mandatory 20%) and eligible rollover distribution rules do not apply.

The individual generally must include the distribution in income ratably over a three-year period but may instead elect to include the full amount of the distribution in income in the year it is received. In addition, the individual may choose to repay all or some of the coronavirus-related distributions into an eligible retirement plan (an IRA or tax-qualified plan.) Under existing IRS procedures for prior qualified disaster distributions, an individual would be entitled to a refund of tax to the extent that a coronavirus-related distribution is repaid to another eligible retirement plan within the three-year period. For example, in year 2 or 3 after tax has been paid in year 1, the individual would be entitled to file an amended return for year 1 and receive a refund of the federal income tax already paid.



Loans

In lieu of a distribution, plan loans may be made up to \$100,000 (increased from \$50,000) without regard to the normal 50% of account balance limit under IRC §72(p).¹ These special rules apply for any loans made during the 180 days following the date of enactment, March 27, 2020, and are also limited to individuals who meet the definitions for a coronavirus-related distribution. In addition to the increase in loan amounts, no repayments of the loan are required to begin for at least one year and the normal repayment periods (e.g., five years) are adjusted to begin after the lapse of the one-year grace period.

Pension funding holiday

CARES Act Section 3608 provides a pension funding holiday for contributions to a single-employer defined benefit pension plan that otherwise would be required to be paid in calendar year 2020. Specifically, no minimum required contributions under IRC Section 430(j) that would be due in 2020 must be paid. The due date of delayed contributions is January 1, 2021, and interest accrues from the original due date until the contribution is made. In addition, the plan may elect to treat the plan's adjusted funding target attainment percentage (AFTAP) as equal to the AFTAP for the last plan year that ended before January 1, 2020. This substitution could defer the time at which the plan may become subject to limitations on forms of benefit payments, limits on benefit accruals or plan amendments.

Implications

The coronavirus-related distributions and loan provisions are voluntary, which means that employer-sponsored plans are not required to allow these new distributions or loans, although many will presumably do so to assist their employees. In addition, the CARES Act allows delayed plan amendments so that employers and IRA custodians and trustees may operationally allow coronavirus-related distributions (and loans in the case of employer plans) prior to amending the plan or contract terms.

It is expected that the IRS will administer coronavirus-related distributions in a manner similar to other qualified disaster distributions. For example, the IRS created Form 8915 for individuals to report prior disaster-related distributions and repayments. Because there is no mandatory income tax withholding on coronavirus-related distributions, individuals who take such distributions will need to plan for the federal income tax payments that are due ratably over the three-year period unless they make a qualifying recontribution before such taxes are due.

Sponsors of single-employer defined benefit pension plans subject to minimum required contributions will benefit temporarily from the CARES Act's funding relief provision. Additional funding relief may be granted in future legislation as this will be an important issue for some employers.

8.3. Group health plans

Telehealth services

CARES Act Section 3701 creates temporary rules for health savings accounts (HSAs) to facilitate telehealth services and other remote care. Effective from March 27, 2020, for plan years beginning on or before December 31, 2021, telehealth coverage is ignored for purposes of the rule prohibiting an HSA-eligible individual from being covered by another health plan that is not a high deductible health plan (HDHP). In addition, an HDHP is not required to impose any deductible for telehealth services or other remote care.

Certain over-the-counter products treated as qualified medical expenses

Effective for amounts paid in 2020 or later, CARES Act Section 3702 contains a permanent change to the rules for HSAs, Archer MSAs, health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs), adding menstrual care products to the list of qualified medical expenses and repealing the requirement (added by the Affordable Care Act in 2010) that a prescription be obtained for over-the-counter drugs.

Group health plans

The Families First Act requires group health plans to cover FDA-approved COVID-19 testing without cost-sharing if the testing has been approved, cleared or authorized under the Food, Drug, and Cosmetic Act. CARES Act Section 3201 expands this coverage requirement to include COVID-19 testing even if the test is not yet approved, cleared or authorized if (1) the developer has requested or intends to request emergency use authorization and the request has not been denied; (2) the test is authorized by a state that has notified the HHS Secretary of its intent to review COVID-19 testing; or (3) the test is determined appropriate by the HHS Secretary.

CARES Act Section 3202 requires group health plans to reimburse a COVID-19 test provider at its previously negotiated rate (as of January 31, 2020). If no rate was previously negotiated, reimbursement must be at the provider's publicly listed price (unless a lower price is negotiated). Additionally, CARES Act Section 3203 requires group health plans to cover any item, service or immunization intended to prevent COVID-19 without cost-sharing within 15 business days of it being rated as "A" or "B" by the US Preventive Services Task Force or recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Implications

The health plan modifications made by the CARES Act generally ease consumer access to certain medical care needs unique to COVID-19.

The temporary HSA rules allowing telehealth services and other remote care are optional – group health plans are not required to provide these benefits. Similarly, the permanent changes to the over-the-counter prescription drug rules are not mandatory. Given that all these amendments have been the subject of lobbying efforts for many years, they are likely to be popular with employers.

While the permitted changes concerning telehealth and remote care are not required, the coverage requirements imposed on group health plans are. As a result, group health plan sponsors may want to consider whether required coverage is provided.

8.4. Executive compensation limitations related to the CARES Act's business loans

Title IV of the CARES Act provides for economic stabilization for distressed businesses and the passenger airline and air cargo industries. The Federal Reserve also may provide support to other eligible businesses. Businesses receiving such support must meet specific criteria, such as a prohibition on dividends, capital buy-backs and employee reductions. Two specific provisions under CARES Act Sections 4004 and 4116 require limitations on employee compensation for businesses that avail themselves of loans or financial support.

Under these limitations, no officer or employee whose total compensation exceeded \$425,000 in 2019 may receive:

- ▶ Total compensation in any 12 months during the applicable limitation period that exceeds the total compensation received by the officer or employee in 2019
- ▶ Severance pay or other benefits upon termination of employment more than twice the total compensation received by the officer or employee in 2019

Further, no officer or employee whose total compensation exceeded \$3 million in 2019 may receive total compensation in any 12 consecutive months during the applicable limitation period of more than \$3 million, plus 50% of the excess over \$3 million of total compensation received by the officer or employee in 2019. For example, if an employee received \$4 million in total compensation in 2019, the employee may not receive more than \$3.5 million during any 12 consecutive months during the limitation period (\$3 million + (50% * \$1 million).

For the purposes of both CARES Sections 4004 and 4116, total compensation is defined to include salary, bonuses, awards of stock and other financial benefits provided by an eligible business to an officer or employee of the eligible business. The provisions generally do not apply to employees whose compensation is determined through an existing collective bargaining agreement.

The limitation period during which the compensation restrictions apply depends upon which loan or support program is used. Loans under subtitle A (for air carriers and other distressed businesses) require limits on compensation

payments during the period the loan is outstanding plus one year after the loan is no longer outstanding. Financial support under subtitle B (e.g., air carrier worker support) limits compensation payments during the two-year period beginning March 24, 2020, and ending March 24, 2022.

Implications

The compensation limitations are reminiscent of the limitations that were imposed on banks and other financial services organizations participating in the Troubled Assets Relief Program (TARP), which imposed certain tax deduction limits on compensation in excess of \$500,000. In contrast, the CARES Act prohibits the actual payment of compensation during the limitation period.

Businesses may need to modify existing employment agreements, severance and deferred compensation arrangements in order to participate in the CARES Act's loan and financial support provisions, which may raise other questions, including the operation of the IRC Section 409A deferred compensation rules.

8.5. Extension of Department of Labor deadlines for employee benefit plans

Under prescribed circumstances, Employee Retirement Income Security Act (ERISA) §518 authorizes the Secretary of Labor to postpone deadlines under ERISA (such as deadlines affecting COBRA continuation coverage, special enrollment, claims for benefits and appeals of denied claims) for up to one year. CARES Act Section 3607 expands the list of prescribed circumstances under ERISA §518 to include a public health emergency declared by the Secretary of Health and Human Services (HHS) pursuant to §319 of the Public Health Service Act. Because the HHS Secretary declared a public health emergency in response to COVID-19 on January 31, 2020, employers should expect guidance from the Department of Labor identifying postponed ERISA deadlines.

Implications

The grant of authority for the Department of Labor to postpone deadlines may affect both employers and employees by postponing deadlines that apply to employee benefit plans, plan sponsors and plan participants and beneficiaries.

Part 9

Employee disaster relief payments

IRC §139(a) permits individuals to exclude a “qualifying disaster relief payment” from income. IRC §139 applies when, among other factors, the president declares a “disaster” within the meaning of IRC §165(i), which references a presidentially declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).

Revenue Ruling 2003-29 states that a disaster includes, for purposes of IRC §165(i), an event declared a major disaster or an emergency under the Stafford Act.

On March 13, 2020, President Trump made an emergency declaration, so these provisions apply.

An employer that provides a qualifying disaster relief payment is not required to include those amounts as wages (or as self-employment earnings) under IRC §139(d). Thus, these amounts are exempt from federal income tax (FIT), federal income tax withholding (FITW), Social Security/Medicare (FICA) and federal unemployment insurance (FUTA).

The relevant question pursuant to the COVID-19 pandemic is what constitutes a “qualified disaster relief payment.” The category that is likely most relevant to COVID-19 is a payment “to reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred as a result of a qualified disaster,” provided that such amount is not reimbursed by insurance or otherwise.

The key analysis is whether an expense is “incurred as a result of” the COVID-19 pandemic. Whether any particular payment is a qualifying disaster relief payment will be a factual determination. Under current guidance, voluntarily continuing wages when a retail establishment is closed (by order or otherwise) would not appear to satisfy the statutory standard. While that fact pattern undoubtedly results in hardships, the standard is whether expenses are incurred as a result of the disaster. In contrast, if an employee is teleworking and must incur new expenses, such as child care, due to school closures, such expense likely does meet the qualifying disaster relief definition.



Background

IRC §139, added to the Code by the Victims of Terrorism Tax Relief Act of 2001, provides that gross income does not include any amount received by an individual as a “qualified disaster relief payment.” IRC §139(d) further specifies that a qualified disaster relief payment also will not be treated as wages for employment tax purposes or as net earnings from self-employment for self-employment tax purposes.

The term “qualified disaster relief payment” means any amount paid to or for the benefit of an individual:

- ▶ To reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred in connection with a qualified disaster
- ▶ To reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent such need is attributable to a qualified disaster

Or

- ▶ By a federal, state, or local government, or agency or instrumentality thereof, in connection with a qualified disaster to promote the general welfare

However, qualified disaster relief payments do not include payments for any expenses compensated by insurance or otherwise.

A “qualified disaster” means, among other things, a presidentially declared disaster as defined in IRC §165(h)(3)(C)(i) (i.e., any disaster determined by the president to warrant assistance by the Federal Government under the Stafford Act.)

The legislative history to IRC §139 indicates that a qualified disaster relief payment may be from any source, including an employer. The legislative history further provides that “in light of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the exclusion, provided that the amount of payments can be reasonably expected to be commensurate with the expenses incurred.”

In *Revenue Ruling 2003-12* the IRS cited this legislative history and ruled that employer grants to employees to cover medical, temporary housing and transportation expenses incurred as a result of a presidentially declared disaster (which were not reimbursed through insurance or otherwise) were excludable from income, even though the employees were not required to provide proof of actual expenses to receive a grant.

However, the IRS indicated that the employer program at issue contained requirements to ensure that the grant amounts were reasonably expected to be commensurate with the amount of unreimbursed reasonable and necessary medical, temporary housing and transportation expenses incurred in connection with the disaster.

Deductibility of relief payments

The legislative history to IRC §139 states that no change from prior law was intended as to the deductibility of qualified disaster relief payments made by an employer merely because the payments are excludable by recipients. Thus, it is intended that payments excludable from income under the provision are deductible to the same extent they would be if they were includable in income.

Implications

Payments made by an employer to employees due to COVID-19 will be excludable from income if they are intended to cover reasonable and necessary personal, family, living or funeral expenses incurred in connection with COVID-19.

Such qualified disaster relief payment also will not be treated as wages for employment tax purpose or as net earnings from self-employment for self-employment tax purposes.

Employers do not need to require employees to document their actual expenses, provided that the amount of the relief payments are reasonably expected to be commensurate with the expenses incurred.

Importantly, although not required, employers should secure IRC §139 signed statements from employees affirming that their claims arise in connection with COVID-19, that they have incurred qualified expenses, and that their expenses will not also be covered through an insurance policy.

Part 10

Taxation of teleworker equipment and tools

Due to public safety measures in response to the COVID-19 pandemic, the number of employees working from home has dramatically increased, raising the question about the tax treatment of laptops, monitors, printers and other equipment that employers provide to employees in support of telework arrangements.

Thanks to the Tax Cuts and Jobs Act of 2017 (TCJA), computers and peripherals like printers, monitors and fax machines were removed from the definition of listed property under IRC §280F(d)(4). (*TCJA, §13302(b).*)

Because of the change under the TCJA, computers and related equipment are placed on the same footing as cell phone usage, in particular, the heightened substantiation requirements applicable to listed property no longer applies.

Accordingly, the IRS guidance issued pursuant to cell phone usage in IRS [Notice 2011-72](#) now applies to computer equipment provided to teleworkers. Notice 2011-72 states in relevant part that the IRS will treat the employee's use of employer-provided cell phones for reasons related to the employer's trade or business as a working condition fringe benefit, the value of which is excludable from the taxable wages subject to FIT, FITW, FICA and FUTA provided the cell phone usage is provided primarily for noncompensatory business reasons.

For purposes of determining whether the working condition fringe benefit provision in IRC §132(d) applies, the substantiation requirements that must be satisfied by the employee for an allowable deduction under IRC §162 are deemed to be satisfied. Additionally, any personal use of the employer-provided cell phone will be treated as a de minimis fringe benefit, excludable from the employee's taxable wages under IRC §132(e).

Policy considerations

To support the presumption that the property is provided to employees for use in the trade or business of the employer, it should be clear that the property must be returned to the employer when no longer used by the employee for primarily business purposes. Further, the policy should state that allowable personal use is limited.



Part 11

Teleworker state and local payroll tax considerations

To prevent the spread of contagious illnesses such as COVID-19, workers may be asked to quarantine, requiring that they work remotely where telework is possible. The reassignment of work locations and/or the displacement of workers due to health safety precautions raises many employer concerns, some of which may be addressed by upcoming state or local tax policies. (See [Figure 3](#).)

11.1. Income tax withholding when employee lives and works in two different states

It is frequently the case that the employee's work and resident locations are in two different taxing jurisdictions. For instance, an employee may work in New York but live in New Jersey, or work in one Ohio local tax jurisdiction but live in another Ohio local tax jurisdiction. For this reason, when employees temporarily work from home, consideration must be given to the resident and nonresident income tax withholding rules that apply.

State nonresident (work location) income tax withholding

Figure 2: States with the convenience of the employer rule

Connecticut

([Public Act 18-49, Sec. 20\(2\)\(C\)](#))

Delaware

([2017 Delaware Schedule W](#))

Nebraska

([Neb. Admin. R. & Regs. § 003.01C](#))

New York

([Technical Memorandum TSB-M-06\(5\)I](#))



For the nonresident state, income tax withholding is generally required only on those wages earned in the nonresident state.

An exception to this rule applies in states (see [Figure 2](#)) that enforce the "convenience of the employer" rule. Under New York's convenience of the employer rule, the employer is required to withhold New York state income tax from all wages paid to the employee if (1) the employee spent at least one day in the year in New York and (2) the reason the employee is working from home outside of the state is for the employee's own convenience. If the reason the employee is working from home is for the convenience of the employer, work from home is excluded from the nonresident income tax withholding requirement. ([TSB-M-06\(5\)I](#).)

The challenge is that states imposing the convenience of the employer rule generally apply a stringent definition of what constitutes work from home for the employer's convenience. Absent specific guidance that work from home due to health concerns (e.g., COVID-19) is for the employer's convenience, the exception from nonresident income tax withholding does not apply to these telework arrangements.

Will states that enforce the convenience of the employer adopt a favorable policy for COVID-19? It may take some time for states to reach a decision. However, In the past, New York offered nonresident income tax exemptions for Hurricane Sandy but did not concede that work outside of New York due to Hurricane Sandy was for the employer's convenience. ([New York Department of Taxation and Finance, Hurricane Sandy](#), November 20, 2012.)

State resident income tax withholding

Assuming the employer has business operations in the resident state, income tax withholding is generally required on all wages earned within and outside of the resident state. This requirement is clear if the employer has business offices, retail operations, warehouses, etc., in the resident state.

The challenge arises, however, when the only work activity within the resident state is work from an employee's home. Arkansas recently ruled that work performed out of an employee's home for an out-of-state contractor is subject to Arkansas income tax but not income tax withholding. (*Arkansas Revenue Legal Counsel Opinion No. 20190514, February 3, 2020.*) Most other states contend that when work is primarily performed from an employee's home, the employee's home is a regular place of business. Accordingly, state resident income tax withholding and other employment and business taxes (e.g., unemployment insurance and sales/use tax) apply in the state of the employee's home. (New Jersey: *Telebright Corp., Inc. v. Director of Taxation*; Virginia: *Ruling of the Virginia Tax Commissioner, Document No. 14-158, August 28, 2014.*)

It is doubtful a state would consider an employee's home office a regular place of business if the employee worked from home for a few days; however, states can have unique definitions of what constitutes work that is primarily performed within the state.

Because the home office can trigger nexus for other employment and business taxes, it is essential that employers confirm the resident income tax rules in each state where a teleworker will provide services.

Local payroll tax considerations

As with state income tax, work from home may trigger local payroll taxes in the employee's resident location that would otherwise not have applied. For this reason, a careful review of the resident (and nonresident) local tax rules that apply to teleworkers is also necessary.

See [Figure 3](#) for a sample of the special provisions issued by states and localities pursuant to teleworker income tax withholding and COVID-19.

11.2. State unemployment insurance

Unlike state income tax, where sourcing rules can vary by state, state unemployment insurance is subject to federal uniform standards (*DOL, Unemployment Insurance Program Letter No. 20.04.*) Under the federal "Localization of Work Provisions" unemployment insurance applies only in one state and is generally paid where the employee's work is localized. An employee's work is localized in the state if (1) the services are performed entirely within such state, or (2) the service is performed both within and outside of the state but the service performed outside of the state is incidental to the individual's service within the state (e.g., is temporary or transitory in nature or consists of isolated transactions).

Accordingly, for most employees temporarily working from home in connection with COVID-19, employers continue to pay unemployment insurance to the state where the employee normally works rather than to the resident state. This can change if the telework arrangement lasts for several months, such that work for the year is primarily performed from the employee's home.

Implications

Given the state and local tax consequences of telework arrangements, it is vital that employers seek the assistance of qualified employment tax professionals who can confirm the applicable state and local withholding and payroll tax requirements that apply to each teleworker based on the specific facts and circumstances.

It is also important that employers closely monitor federal, state and local policies as they relate to payroll tax changes in connection with COVID-19. These policies may include tax filing extensions, tax cuts, withholding exemptions, tax credits and special unemployment insurance provisions for displaced workers.

See [Figure 3](#) for a sample of guidance taxing authorities have issued in connection with COVID-19.

Figure 3: Sample of taxing authorities' guidance for COVID-19 teleworker income tax*

Taxing authority	Work-from-home income tax and withholding guidance
Michigan (City income tax)	<p>On April 1, 2020, the Michigan Department of Treasury published telecommuting frequently asked questions to address questions about the applicability of Michigan city income tax when employees are temporarily working from home outside of their normal work location.</p> <p>The Department confirms that if employees are temporarily working from home outside of the Michigan city where they normally perform services, nonresident income tax does not apply in the Michigan city where those employees normally work.</p>
Mississippi	<p>The Mississippi Department of Revenue announced on March 26, 2020, that during the COVID-19 national emergency it will not impose nexus or alter apportionment of income for any business while its employees are temporarily on telework assignments within the state.</p> <p>Mississippi does require that income tax be withheld from wages paid to all Mississippi residents regardless of where they work if the employer has business operations (nexus) within the state. Pursuant to the Department's announcement, the state will not assert nexus merely because an employee is temporarily on a telework assignment within the state due to COVID-19.</p>
New Jersey	<p>The New Jersey Division of Taxation announced on March 30, 2020, that during the COVID-19 national emergency it will temporarily waive the impact of the legal threshold within N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.9(a) that treats employee work from within New Jersey as sufficient nexus for out-of-state corporations.</p> <p>The announcement states that if employees are working from home solely as a result of closures due to COVID-19 and/or the employer's social distancing policy, no nexus threshold will be considered to have been met.</p>
Pennsylvania (Philadelphia)	<p>The city of Philadelphia uses a "requirement of employment" standard that applies to all nonresidents whose base of operation is the employer's location within Philadelphia. Under this standard, nonresident employees are exempt from the wage tax when the employer requires they perform their jobs outside of Philadelphia (i.e., their home).</p> <p>Nonresidents who work from home for their own convenience (rather than the need of the employer) are not exempt from the wage tax, even with their employers' authorization. If Philadelphia employers require nonresidents to perform duties outside the city, they are exempt from the wage tax for the days spent fulfilling that work.</p> <p>Nonresident employees who mistakenly had wage tax withheld during the time they were required to perform their duties from home in 2020 will have the opportunity to file for a refund with a wage tax reconciliation form in 2021.</p>

* Contact an Ernst & Young LLP Employment Tax Advisory Service's professional for more information about special state and local income tax withholding provisions that may apply to temporary telework assignments connected with COVID-19.

Part 12

Expanded unemployment insurance benefits

On March 13, 2020, and effective retroactively to March 1, 2020, President Trump [declared](#) a major disaster due to the widespread occurrence of COVID-19 in the US. Subsequently, numerous states and localities have issued stay-at-home orders and temporarily closed nonessential businesses to contain the spread of the virus.

The impact on the US jobless rate has been significant. The U.S. Bureau of Labor Statistics [reported](#) that total nonfarm payroll employment fell by 701,000 in March 2020, and the unemployment rate rose to 4.4%.

In response to the significant increase in the unemployed, the DOL, under the direction of the Trump Administration, and Congress acted quickly to expand on the existing state unemployment insurance (UI) programs for lost wages related to COVID-19. The result is a dramatic increase in the number of persons eligible for UI benefits and the weekly amount that will be paid to them.

Because COVID-19 benefits are not paid under the existing Disaster Unemployment Assistance (DUA) program, states will not be able to begin making payments automatically. Instead, states must sign an agreement with the DOL agreeing to provisions making them eligible to receive federal funds for the UI benefit payouts. To comply with the requirements for federal funding, states will have to make any needed changes to their programs, systems, laws and policies to begin making the necessary payments. Accordingly, state requirements and procedures could vary, and states will not come online at the same time. This means that employers must track state developments as they occur.



12.1. The usual Disaster Unemployment Assistance programs do not apply

Typically, when the president declares a major disaster that is eligible for public and individual assistance, it is usually in response to a request by a state's governor because a major disaster occurred within the state. When this occurs, the DUA program, authorized under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended](#), becomes available to affected workers within the state who are ineligible to collect UI benefits through the normal state UI benefit process.

The value of the DUA program is, that once triggered, it is uniformly administered and implemented by all US states and territories. Unfortunately, DUA is not clearly appropriate for the COVID-19 health emergency because the president's declaration does not meet the definition of a "major disaster" under the Stafford Act, as follows:

"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood or explosion, in any part of the United States, which in the determination of the president causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of states, local governments and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby." (*United States Code, Title 42. The Public Health and Welfare, Chapter 68. Disaster Relief, §102(2).*)

Accordingly, in addition to DOL state workforce agency guidance to adopt flexibility in their UI laws, legislation was enacted under the FFCRA and the CARES Act that provides funding to those states that expand their UI programs according to policies issued by the DOL to accommodate the special needs that the COVID-19 national emergency creates.

12.2. DOL urges states to adopt flexibility in their UI laws

The DOL [announced](#) that federal law has the flexibility to allow states to pass legislation or amend regulations that would allow workers affected by the COVID-19 to collect state UI benefits under certain circumstances.

The announcement specifies that federal law allows states to pay UI benefits in connection with COVID-19 where:

- ▶ An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work.
- ▶ An individual is quarantined with the expectation of returning to work after the quarantine is over.
- ▶ An individual leaves employment due to a risk of exposure or infection or to care for a family member. In addition, federal law does not require that an employee quit to be eligible to receive UI benefits in connection with COVID-19.

The announcement notes, however, that a worker receiving paid sick leave or paid family leave is not eligible for UI benefits because the worker is still receiving pay and is not considered to be unemployed.

The Department issued Unemployment Insurance Program Letter [No. 10-20](#) to assist state workforce agencies in implementing UI benefit law and regulation changes due to COVID-19.



12.3. FFCRA UI benefit provisions

The Emergency Unemployment Insurance Stabilization and Access Act of 2020 enacted under the FFCRA provides federal grants to states that comply with requirements to ease their UI benefit requirements, allowing workers not eligible for regular state UI benefits to collect UI benefits during the COVID-crisis.

The Act provides as much as \$1 billion for emergency transfers to states in fiscal 2020 to process and pay UI benefits. Individuals in states with rising unemployment can qualify for an additional 13 weeks (20 in some states) of UI benefits.

States must meet certain stringent criteria to be eligible for federal grants, including the requirement that the benefits not be chargeable to employer accounts. As previously mentioned, these federal funds do not constitute [DUA](#) that is funded directly by the federal government (and also not charged to employer accounts) in the event of a qualifying major disaster declaration.

Under the Act, to be eligible for federal funds, states must change their UI laws and/or regulations as follows.

- ▶ Employers must be required to provide notification of the availability of UI benefits to employees at the time of separation from employment. Such notification may be based on model notification language issued by the DOL.
- ▶ The state must ensure that applications for UI benefits and assistance with the application process are accessible in at least two of the following ways: in person, by phone or online.
- ▶ Applicants must be notified when a UI benefit application is received and is being processed, and in any case in which an application is unable to be processed, provide information about steps the applicant can take to ensure the successful processing of the application.
- ▶ The state must demonstrate steps it has taken or will take to ease eligibility requirements and access to UI benefits for claimants, including waiving work search requirements and the waiting week, and noncharge employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.
- ▶ The state must express its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.



12.4. CARES Act UI benefit provisions

The CARES Act provides additional funding of \$250 billion to states that further expand their UI benefits in connection with COVID-19 by increasing the weekly benefit amount, increasing the number of weeks of benefits and extending coverage to additional categories of individuals.

Following is a summary of the CARES Act UI benefit provisions of interest to employers as contained in the DOL's program letter to the state workforce agencies. ([DOL UIPL 14-20](#)).

- ▶ **Additional weeks of UI benefits.** Provides an additional 13 weeks of UI benefits beyond what states typically allow starting with weeks of unemployment beginning on or after January 27, 2020, and ending on or before December 31, 2020.
- ▶ **Extend UI benefits to more individuals.** Extend UI benefits to individuals who are self-employed, seeking part-time employment or whom otherwise would not qualify for regular unemployment compensation (UC) or extended benefits (EB) under state or federal law. Coverage also includes individuals who have exhausted all rights to regular UC or EB under state or federal law.

To qualify for these benefits, individuals must demonstrate that they are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19-related reasons.

- ▶ **Emergency unemployment relief for governmental entities and non-profit organizations (reimbursing employers).** The DOL is authorized to issue guidance to allow states to interpret their state laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payments in lieu of contributions and assessment of penalties and interest.

This section of the CARES Act also provides for transfers to a state's account in the unemployment trust fund from the Federal Unemployment Account to provide partial reimbursements (generally 50% of the amount of payments in lieu of contributions) to state and local governmental entities, certain nonprofit organizations, and federally

recognized Indian tribes for weeks of unemployment between March 13, 2020, and December 31, 2020. These partial reimbursements apply to all payments made during this time period, even if the unemployed individual is not unemployed as a result of COVID-19.

- ▶ **Additional weekly cash benefit.** Additional UI benefits of \$600 per week are extended to individuals who are collecting regular UC. This provision is available for weeks of unemployment beginning after the date on which the state enters into an agreement with the DOL and ending with weeks of unemployment ending on or before July 31, 2020.

States are prohibited from changing the computation method governing regular UI law in a manner that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable.

- ▶ **Short-term compensation (STC), also known as shared work or work share.** States may be reimbursed for 100% of STC benefits costs up to a maximum of 26 weeks of STC per individual. These reimbursements are available starting with weeks of unemployment beginning on or after March 27, 2020, and ending with weeks of unemployment ending on or before December 31, 2020.

If a state enacts a new law providing for the payment of STC after March 27, 2020, reimbursements are available starting with the effective date of the state law enactment and ending with weeks of unemployment ending on or before December 31, 2020.

States without an existing STC program in the state's UI law may provide STC benefits under an agreement with the DOL and be reimbursed for 50% of STC benefit costs, with the employer paying the other half, up to a maximum of 26 weeks of STC per individual. This federal STC program is available for weeks of unemployment beginning on or after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before December 31, 2020.

A \$100 million grant is to be shared across states for implementation or improved administration, and promotion and enrollment of a state's STC program.

Figure 4: Summary of unemployment benefit provisions under the CARES Act*

CARES Act provision	Effective date	Explanation
Expansion of individuals eligible for UI benefits (CARES Act § 2102)	Weeks of unemployment beginning on or after January 27, 2020, through December 31, 2020	Provides for up to 39 weeks of benefits to individuals who are self-employed, seeking part-time employment or otherwise would not qualify for regular unemployment compensation (UC) or extended benefits under state or federal law or CARES Act §2107.
Emergency unemployment relief for governmental entities and non-profit organizations (CARES Act §2103)	Weeks of unemployment from March 13, 2020, through December 31, 2020	<p>Authorizes the DOL to issue guidance to allow states to interpret their state UI laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest.</p> <p>Also provides for transfers to a state's account in the UI trust fund from the Federal Unemployment Account to allow partial reimbursements (generally 50% of the amount of payments in lieu of contributions) to state and local governmental entities, certain nonprofit organizations and federally recognized Indian tribes.</p>
Waiver of waiting week (CARES Act, §2105)	Weeks of unemployment beginning after the date of signed agreement through December 31, 2020	For states without a waiting week, provides 100% federal funding for the total amount of regular UC paid to individuals for their first week of regular UI benefits.
Federal funding for increasing state workforce agency staff (CARES Act, §2106)	March 27, 2020, through December 31, 2020	Provides state agencies with emergency flexibility for personnel standards on a merit basis limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.
Additional 13 weeks of UI benefits, waives requirement to be actively seeking work (CARES Act, §2107)	Weeks of unemployment beginning after the date of signed agreement through December 31, 2020	Provides for up to 13 weeks of benefits to individuals who have exhausted regular UI benefits under state or federal law, have no rights to regular UI under any other state or federal law, are not receiving compensation under the UI laws of Canada, and are able to work, available for work and actively seeking work. However, states must offer flexibility in meeting the "actively seeking work" requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine or movement restriction.
Reimbursement for short-term compensation (STC or workshare programs) (CARES Act, § 2108)	March 27, 2020, through December 31, 2020	Provides that states with an existing STC program may be reimbursed for 100% of STC benefit costs, up to a maximum of 26 weeks of STC per individual.
Provides funding to states without an STC program (CARES Act §2109)	Weeks of unemployment beginning after the date of signed agreement through December 31, 2020	Provides that states without an existing STC program may provide STC benefits under an agreement with the DOL to be reimbursed for 50% of STC benefit costs, up to a maximum of 26 weeks of STC per person.

Figure 4: Summary of unemployment benefit provisions under the CARES Act* *(continued)*

CARES Act provision	Effective date	Explanation
Grants to implement, administer and promote an STC program (CARES Act §2110)	Grant applications must be submitted by December 31, 2020	Provides for a \$100 million grant to be shared across states for implementation or improved administration, and promotion and enrollment of the state's STC program.
Assistance and guidance to administer STC programs (CARES Act, §2111)	Effective March 27, 2020	Provides that the DOL will develop model legislative language or disseminate existing model language, which may be used by states in developing and enacting STC programs. The DOL will also develop reporting requirements for states and provide technical assistance.

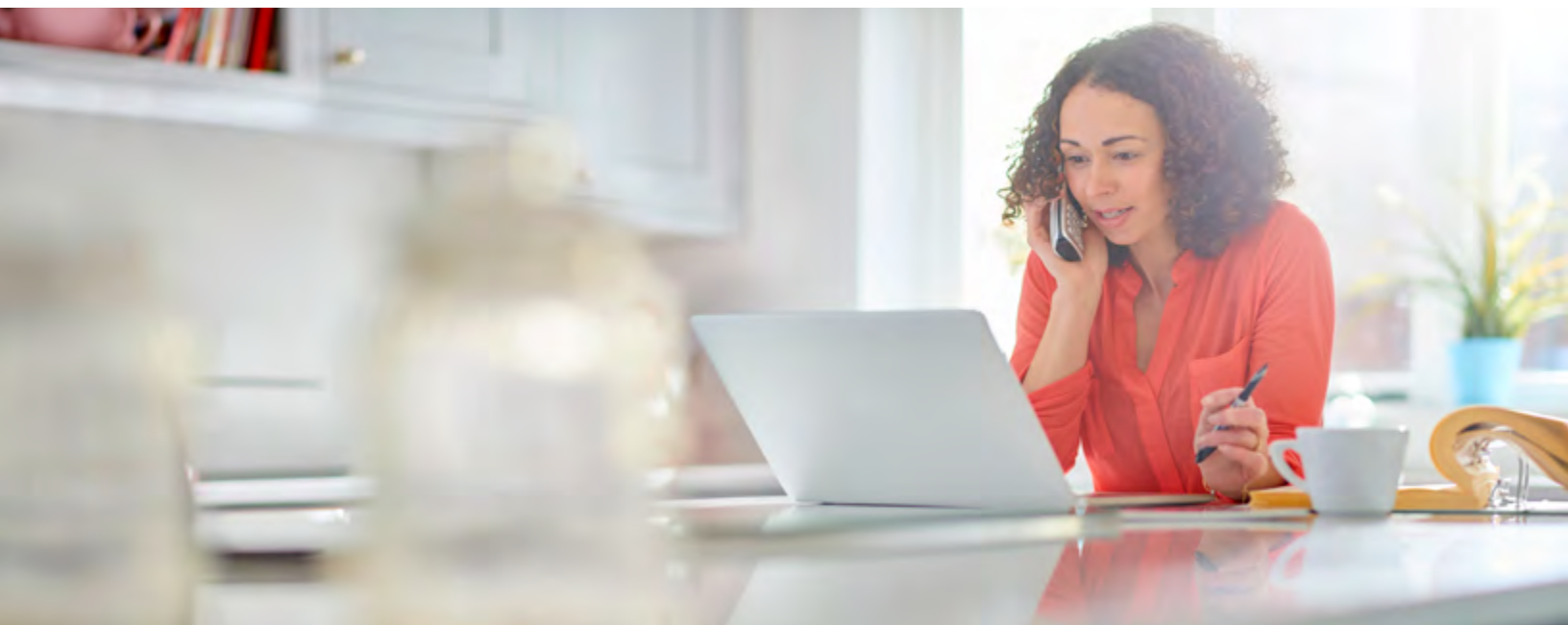
* Source U.S. Department of Labor program letter [14-20](#). Guidance to the state workforce agencies continues to evolve and interpretation in some cases is complex. Contact an Ernst & Young LLP Employment Tax Advisory Service's professional for more information.

Implications

Unlike the DUA program, availability of the expanded UI benefit provisions under the FFCRA and CARES Act is dependent on each state and territory meeting the requirements for federal funding. The result is that the speed and manner that the expanded UI benefits are adopted and implemented will vary by jurisdiction.

Employers and employees will be challenged to deal with the inconsistencies in the COVID-19 UI benefit procedures and policies across the states and territories.

Finally, because most states and territories paid COVID-19 UI benefits before they had the appropriate programs and policies in place, employers will need to be diligent in identifying employees eligible for UI benefits due to COVID-19 and to confirm that their accounts were not incorrectly charged for those benefits.



Part 13

State extensions on the due date for payroll tax returns and payments

In response to COVID-19's impact on US businesses and its employees, some states and localities have responded by waiving certain employer reporting requirements and providing extensions on the due date of payroll tax returns and/or tax payments or waiving penalties for late return filings or tax payments. Some states are also offering small business loans similar to the federal Paycheck Protection Program (see [Part 7](#)).

These provisions provide essential administrative relief to businesses that are short on staff and temporary cash flow to remain in operation during the COVID-19 emergency.

[Figure 5](#) shows a sample of the payroll tax relief that states and localities have provided to employers in connection with COVID-19 as of April 1, 2020.

Figure 5: State extensions for COVID-19 for state income tax withholding and unemployment insurance

Jurisdiction	Extension on due date for unemployment insurance returns and payments	Extension on due date for income tax withholding returns and payments
California	Governor Gavin Newsom's Executive Order N-25-20 requires the California Employment Development Department (EDD) to delay the deadline for state tax filing by 60 days for individuals and businesses unable to file on time based on compliance with public health requirements related to COVID-19 filings.	Governor Newsom's Executive Order N-25-20 requires the California Employment Development Department (EDD) to delay the deadline for state tax filing by 60 days for individuals and businesses unable to file on time based on compliance with public health requirements related to COVID-19 filings.
California (San Francisco)		The city of San Francisco has announced that consistent with the Mayor's February 25, 2020, Emergency Proclamation , it is canceling the employer requirement to submit the 2019 Annual Reporting Form pursuant to the Health Care Security Ordinance and the Fair Chance Ordinance. The city emphasizes that the cancellation means only that the <i>2019 Annual Reporting Form</i> need not be submitted. Employers must continue to make health care expenditures on behalf of their covered employees by making city option payments and/or paying for health insurance.
District of Columbia	The District of Columbia Department of Employment Security updated its frequently asked questions for employers to add that employers affected by COVID-19 and late in filing state unemployment insurance (SUI) tax returns, paying taxes and responding to requests for information regarding UI claims may receive a waiver of penalties.	

Jurisdiction	Extension on due date for unemployment insurance returns and payments	Extension on due date for income tax withholding returns and payments
Indiana	<p>The Indiana Department of Workforce Development (DWD) announced that employers unable to timely file their first-quarter 2020 state unemployment insurance (UI) contribution and wage report and pay the corresponding payment have until May 31, 2020, to file and pay without interest and penalty. (<i>DWD frequently asked questions (FAQs) for employers.</i>)</p>	
Iowa	<p>The Iowa Department of Revenue announced that the March 15, 2020, deposit due date for employers that remit income tax withholding on a semi-monthly basis is extended to April 10, 2020 for employers that were unable to make the deposit due to COVID-19. (<i>News release, Iowa Department of Revenue, March 2020.</i>)</p> <p>No late filing or underpayment penalties or interest will be charged if the deposit is made by the extended deadline.</p>	<p>The Iowa Department of Revenue announced that it is extending one income tax withholding deposit due date for certain taxpayers. The extension is designed to provide flexibility to disrupted businesses in connection with COVID-19. The order extends the income tax withholding deposit due date for the period ending March 15, 2020, from March 25, 2020, to the new deposit due date April 10, 2020. It applies to Iowa residents or other taxpayers doing business in Iowa that remit income tax withholding on a semi-monthly basis. No late-filing or underpayment penalties shall be due for qualifying taxpayers who comply with the extended filing and payment deadlines in this order. Interest on unpaid taxes covered by this order shall be due beginning on April 11, 2020.</p>
Louisiana	<p>The Louisiana Workforce Commission has announced that due to challenges arising from COVID-19, it will allow for the deferment of payment of Louisiana unemployment insurance taxes for the first quarter of 2020 to June 1-30, 2020. While the payment deadline is deferred, employers continue to be required to file the first quarter 2020 <i>Wage and Tax Report</i> by the April 1-30, 2020 deadline. If employers choose to defer payment of quarterly unemployment taxes, no penalty or interest will be assessed provided payment is made in full by June 30, 2020.</p>	

Jurisdiction	Extension on due date for unemployment insurance returns and payments	Extension on due date for income tax withholding returns and payments
Maryland		<p>The Maryland Comptroller announced several tax deadline extensions in consideration of the hardship caused by the COVID-19 emergency. The extension will apply to income tax withholding returns and payments due in March, April and May 2020, for which the deadline is extended to June 1, 2020. Business taxpayers that file and pay by June 1, 2020, will receive an automatic waiver of interest and penalties.</p>
Massachusetts	<p>The Massachusetts Department of Unemployment Assistance announced that employers impacted by COVID-19 may request an up to 60-day grace period to file quarterly state unemployment insurance (SUI) tax and wage reports and pay SUI contributions. (<i>Massachusetts COVID-19 guidance and directives website.</i>)</p>	
Michigan		<p>The Michigan Department of Treasury announced that due to the State of Emergency issued in Executive Order 2020-04 in connection with COVID-19, it is waiving penalties and interest for late payment of tax or late filing of the return due on March 20, 2020. The waiver will be effective for a period of 30 days; therefore, any return or payment currently due on March 20, 2020, may be submitted to the Department without penalty or interest through April 20, 2020. The waiver is limited to sales, use and withholding payments and returns due March 20, 2020. Any payment or return otherwise due after that date will not be eligible for the current waiver. The waiver is not available for accelerated sales, use or withholding tax filers. Those taxpayers should continue to file returns and remit any tax due as of the original due dates.</p>

Jurisdiction	Extension on due date for unemployment insurance returns and payments	Extension on due date for income tax withholding returns and payments
Mississippi		<p>In Notice 2020-01 the Mississippi Department of Revenue announced that it is extending the due date of income tax withholding payments for April through May 15, 2020. The decision to offer this relief was made in consultation with Governor Tate Reeves and the Wisconsin legislative leadership. The Department also announced that the deadline to file and pay the 2019 individual income tax, corporate income tax and estimated tax payments is extended until May 15, 2020. Penalty and interest will not accrue on the extension period through May 15, 2020. The extension also does not apply to payments on prior liabilities; however, the Department will consider an extension of time to file and pay on a case-by-case basis.</p>
Missouri	<p>The Missouri Department of Revenue announced that due to the ongoing COVID-19 situation, the first-quarter employer Contribution and Wage payment due date has been extended until June 1, 2020. Contribution and Wage reports are still due by April 30, 2020.</p>	
New Mexico		<p>New Mexico Governor Michelle Grisham and the Taxation and Revenue Department announced that withholding taxes normally due on the 25th of March, April, May and June 2020 will now be due on July 25, 2020. The extension is intended to ease the cash flow problems many businesses face as a result of closures or reduced customer traffic and may prevent some businesses from laying off employees. The state will waive any penalties for withholding taxes not remitted during the grace period. However, under state law, interest will accrue from the original due date. The governor expressed support for waiving or refunding any interest owed by taxpayers taking advantage of the extensions.</p>

Jurisdiction	Extension on due date for unemployment insurance returns and payments	Extension on due date for income tax withholding returns and payments
North Carolina		<p>North Carolina Department of Revenue released a notice announcing a further extension to the waiver of the penalties for failure to file or pay state taxes governed by the Department, including income tax withholding, if the failure is the result of COVID-19. The extension deadline, previously April 15, 2020, is now July 15, 2020. The waiver applies to the failure to timely obtain a license, file a return or pay a tax that is due between March 15, 2020, and July 15, 2020, if the license is obtained, the return or extension application is filed, or the tax is paid by July 15, 2020. The extension applies to the February-June 2020 withholding tax deadlines for monthly and semiweekly filers with withholding payments due until July 15, 2020 (see the Department's tax calendar). State law prevents the Department from waiving any interest, including interest assessed for the underpayment of estimated tax, except in the limited case of interest on taxes imposed prior to or during a period for which a taxpayer has declared bankruptcy under Chapter 7 or Chapter 13 of Title 11 of the United State Code. Taxpayers do not need to request a penalty waiver to qualify for the extended relief. However, if a taxpayer receives a proposed assessment of a penalty covered by the relief granted in this notice, the taxpayer should contact the Department by phone at +1 1 877 252 3052.</p>
Ohio	<p>Employers unable to file their first-quarter 2020 state unemployment insurance (UI) return and pay the corresponding payment due to COVID-19 reasons will not be penalized under an emergency order recently issued by Ohio Governor Mike DeWine. (<i>Executive Order 2020-03D</i>.) Employers affected by the COVID-19 pandemic will need to request a penalty waiver if filing the first-quarter 2020 UI report and payment late. The governor's order and the Department's announcement do not mention a waiver of interest for the late payment of first-quarter 2020 UI taxes. According to a Department representative, interest will accrue on the tax balance for employers unable to pay the quarterly tax due timely. However, the form does provide the ability to also request a waiver of interest.</p>	

Jurisdiction	Extension on due date for unemployment insurance returns and payments	Extension on due date for income tax withholding returns and payments
South Carolina	<p>Under an executive order, the Department is authorized to grant SUI tax filing and payment relief as follows: I hereby authorize DEW, to the extent allowed by state and federal law, to exercise any statutory or regulatory authority to extend the deadline for employers to pay unemployment insurance taxes on first quarter (Q1) 2020 wages until June 1, 2020, without interest. Notwithstanding any such extension of the deadline to remit payment of unemployment insurances taxes, DEW shall still require employers to file any applicable wage reports by April 30, 2020, to ensure that the State has sufficient data to evaluate current workforce conditions and needs.</p>	<p>The South Carolina Department of Revenue announced that the various deadlines for filing and paying state taxes administered by the agency are extended, as a way to assist taxpayers during the COVID-19 outbreak.</p> <p>This includes, but is not limited to, South Carolina withholding tax, individual income taxes, corporate income taxes, sales and use tax, and admissions tax.</p>
South Dakota	<p>Recently enacted SB 187 exempts South Dakota employers from penalties if unable to file state unemployment insurance (SUI) tax returns or timely pay the associated contributions due to a temporary business shutdown or reduction in force as a result of COVID-19. The legislation waives the \$25 per month penalty assessed for both a late payment and a late return filing. The legislation, however, does not relieve the employer of interest on the late payment. (<i>South Dakota Department of Labor and Regulations, COVID-19 webpage, April 2020.</i>)</p>	<p>No state income tax withholding.</p>
Texas	<p>The Texas Workforce Commission (TWC) announced that the deadline for filing the first quarter 2020 state unemployment insurance (UI) contribution and wage report and pay the corresponding payment is extended to May 15, 2020. According to a TWC representative, the extension waives any penalties or interest for late filing and payment. In fact, employers are asked to not start filing their first-quarter returns until after April 15, 2020, to allow uninterrupted Internet access for individuals filing for UI benefits and to help ensure that employers have access to their online accounts.</p>	<p>No state income tax withholding.</p>

Part 14

Temporary halt in garnishments for student loans

U.S. Secretary of Education Betsy DeVos [announced](#) that due to the COVID-19 national emergency, the Department will cease collection actions, including wage garnishments, effective March 13, 2020, and for at least 60 days. The Department will monitor employers' compliance with the request to stop wage garnishment. Borrowers whose wages continue to be garnished after March 13, 2020, are instructed to contact their employers' human resources department.

The Department has also ceased all requests to the U.S. Department of Treasury to withhold money from defaulted borrowers' federal income tax refunds, Social Security payments and other federal payments.

Private collection agencies are instructed to halt all proactive collection activities, including making phone calls to borrowers and issuing collection letters and billing statements.

The Secretary directed the Department to refund approximately \$1.8 billion in offsets to more than 830,000 borrowers. The refunds represent offsets that were in the process of being withheld on March 13, 2020, the date President Trump declared a national emergency and announced emergency executive actions related to COVID-19.

Borrowers with defaulted student loans, a current relationship with a private collection agency, and an interest in continuing a prior payment arrangement, consolidating their loans or beginning a loan rehabilitation arrangement with their private collection agency should contact the Department's Default Resolution Group at +1 800 621 3115 (TTY for the deaf or hearing-impaired +1 877 825 9923). Private collection agencies are permitted to provide assistance upon the borrower's request.

Visit studentaid.gov/coronavirus for more information.

See also Section 8, [Expansion of employer-provided education assistance for student loans](#).



Summary



Federal, state and local governments are responding quickly to craft legislation, regulations and policies to address the unique workforce challenges created by the global COVID-19 crisis. The resulting framework is complex and confusing, and in many cases, guidance is still forthcoming.

Employers will be challenged in the months ahead to comply with the requirements governing employee protections while at the same time properly taking advantage of COVID-19 relief measures that can bring them administrative and financial relief.

Ernst & Young LLP can assist you throughout the COVID-19 workforce life cycle

Federal and state paid leave requirements	Federal law imposes paid leave for employees impacted by COVID-19 under the Families First Coronavirus Response Act. Some states (e.g., Colorado and New York) have also adopted COVID-19 leave provisions.
Employee work-from-home considerations	Telework arrangements raise numerous tax-related questions, including the income tax withholding and unemployment insurance rules that apply and the tax treatment of tools and equipment provided to work-from-home employees.
Employee disaster relief benefits	Employers are providing their affected employees with disaster assistance payments, additional day care, loans, advances and other disaster-related benefits. The federal, state and local tax treatment can vary depending on the facts.
State unemployment insurance management	State rules governing the charging of COVID-19-related unemployment insurance (UI) vary and there are various options available to avoid layoffs during a temporary shutdown. UI cost-containment measures are vital to decreasing employer costs.
Social Security payment deferrals	The employer portion of Social Security tax (6.2% up to \$137,700) can be deferred with 50% of the amount paid by December 31, 2021, and the remainder by December 31, 2022. Form 941 reconciliation issues could occur, resulting in subsequent IRS notices/audits.
Federal tax credits	For employers with fewer than 500 employees, two tax credits are available –the paid sick leave credit and the child care leave credit. For all employers regardless of size, a federal retention tax credit applies for wages paid from March 13, 2020, to December 31, 2020, by employers that are subject to closure or significant economic downturn due to COVID-19.
Tax filing and payment extensions	Whether the issue is staffing shortages to meet deadlines or deferring tax payments to assist with temporary cash flow issues, state provisions for delaying income tax withholding and UI tax returns and payments can be very helpful.
Paycheck Protection Program	Small businesses with fewer than 500 employees are eligible for loans that can be fully forgiven if the borrower keeps its employees on the payroll for 8 weeks and the loan is used for payroll, rent, mortgage interest or utilities.

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