

# HUMAN RESOURCES & EMPLOYEE-RELATED LEGAL ISSUES



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**BUSINESS  
STRATEGIES**  
DURING THE PANDEMIC

 TUESDAYS @ 11 AM CT

**MMAC** MILWAUKEE 





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# STATUS OF COVID-19

	Daily Growth Rate	Doubling Time	New Positive Tests	Total Positive Tests
Milwaukee	18.8%	3.680 days	38	663
Wisconsin	17.7%	3.918 days	109	1221

Numbers updated daily at 2:30 p.m.

Daily Growth Rate: The rate at which the number of cases changes, day over day

Doubling Time: The number of days it takes for the number of cases to double



# SCOTT BEIGHTOL

*Partner*  
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## “SAFE” LAYER I: FFCRA (<500 EMPLOYEES)

Pay and leaves available as of April 1 through December 31

### A. Sick Pay

- Employee – COVID-19 Diagnosis/Treatment (or Quarantine or Isolation Order)  
Pay two weeks; \$511/day MAX
- Care for Individual – COVID-19 Diagnosis/Treatment  
Pay two weeks/two-thirds; cap \$200/day
- Childcare – School/day care closed  
Pay two weeks; two-thirds; cap \$200/day
- Eligible Employee - Anyone on payroll

### B. Expanded FMLA

- Childcare – School/day care closed  
Pay two-thirds/cap \$200/day  
Max 12 weeks/first 10 days unpaid, though employees likely to use Sick Pay
- Eligible Employee – On payroll 30 days prior to leave request

### C. Ineligible Employee

- Ineligible Employee – “Health care workers/emergency responders” needed for the front line (DOL Guidance 03/28/2020)

### D. Tax Credits Available Through IRS



## “SAFE” LAYER 2: CARES ACT (ALL EMPLOYERS)

- UI assistance beginning January 27 through December 31
- Unemployment; Partial Unemployment; or Inability to Work caused by COVID-19
- Expands State UI from 26 to 39 weeks
- Eliminates one-week waiting period
- Increases payment (“Federal Pandemic UC”) for 16-week period
- Increased FPUC = State UI + \$600/week
- Help for nonprofits, government agencies and Tribes (Treasury pays states to reimburse one-half of entities’ costs)
- Expansion of Eligible Workers: Self-employed, ICs, gig workers, others

## “SAFE” LAYER 2: CARES ACT (continued)

- Who is eligible for UI?
- Self-Certify: Unemployed; Partially Unemployed; or Unable to Work due to:
  - Diagnosed/symptoms/seeking medical care for COVID-19
  - Household – Diagnosed with COVID-19
  - Care for Family – Diagnosed with COVID-19
  - Primary Caregiver – Child’s school/day care closed
  - Quit job as direct result of COVID-19
  - Other less likely situations
- Employer doesn’t pay for FPUC payouts; TBD on other UI payments



## LAYER 3: CARES ACT (EMPLOYEE RETENTION)

### A. Paycheck Protection

- Loans for businesses <500 employees; up to 1,500 employees based on industry sector
- Amount is lesser of \$10M or 2.5x Annual Payroll
- Loan used to retain workers, maintain payroll, make mortgage/lease payments, and pay utilities
- Loan forgiveness = payroll costs, etc. between February 15, 2020, and June 30, 2020.  
Forgiveness reduced by percentage of reduction of workforce or if salaries/wages reduced by more than 25%
- Self-Certification; streamlined application; within Existing 7(a) SBA program
- Contact your banker now
- More to Come – MMAC Program on April 7, 2020

## **LAYER 3: CARES ACT (continued)**

### **B. Employee Retention Credits**

- Refundable payroll tax credit – 50% of wages that employer paid each calendar quarter (up to \$10,000/employee)
- Available if operations fully or partially suspended (“Business Suspension Eligibility”) or business revenue declined more than 50% compared to same quarter 2019 (“Gross Receipts Eligibility”)
- For wages paid from March 13 to December 31, 2020

### **C. Funds for Short-Term Compensation or Workshare Programs (“Shared Sacrifice”)**

- Reduced hours versus layoffs
- Wisconsin has existing program – Worker can receive prorated UI
- Reimbursed by the Federal Government

### **D. Student Loan Repayment – Up to \$5250**

# BUSINESS PLAYBOOK

- **IMPACTED**
  - Be intentional; Make plan; Stay flexible
  - Voluntary Furlough
  - Rotating Shifts; Reduced Workweek
  - Telecommute (with “reduced” salary and workload expectation)
  - Hygiene/Safety/Social Distancing
  - Complete Furlough
  - Shutdown: Line(s); business
- **DECIMATED**
  - Temporary closure (maintain GP HI and send employees to UI) (could retain “skeleton” or “essential” crew)
  - SBA Loan – Retain Workforce – Assess mid-June
- **ESSENTIAL – BUSIER THAN EVER**
  - All hands on deck
  - Overcommunicate “front lines” and need for workforce
  - Flex up
  - Hygiene /Safety/Social Distancing
  - Telecommuting
  - Need for incentives to attract and retain





# KELLY RENZ

*President & CEO*  
Novo Group

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# EMPLOYMENT IMPACTS OF H.R.6201 – THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

## ■ **Affected Employers:**

- Employers 500 or fewer employees (FT, PT and Temp all count)
- No ruling yet on exemption for employers with fewer than 50 employees – may qualify if paying leave creates business viability jeopardy – more expected to come on this from DOL
- Goes into effect April 1, 2020 through December 31, 2020
- Paid leave prior to April 1st will not count toward benefits
- **Tax credits** against an employer's payroll tax obligations in an amount equal to the amount of paid leave provided in a calendar quarter
- **Tax refund** if an employer pays out more in leave benefits than it owes in payroll taxes

## ■ **Two buckets of leave benefits under FFCRA:**

- Emergency Paid Sick Leave Act – Six Eligible Scenarios
  - Top end cost - 80 hours FT employee pay capped at \$5,110 per employee
- Emergency FMLA and Expansion Act – One Eligible Scenario
  - Top end cost – 12 weeks at 2/3 of pay, capped at \$12,000 per employee
- DOL Guidance found here: [DOL FFCRA Guidance and Info](#)
- **Employees Eligible:** Full-time, Part-time and Temporary
- **Employers must post** the notice for employees and can be found here: [DOL FFCRA Poster](#)

# BUCKET #1 – EMERGENCY SICK LEAVE

## General Guidance

- Paid Sick Leave – maximum of 80 hours or two weeks (10 days)
- All employees of private employers with 500 employees or less, regardless of how long they've been employed, are eligible for up to 10 days of emergency paid sick leave.
- Employees cannot “stack” leaves – it is once only

## Employee Qualifications – 6 Reasons

- Employees will be eligible if they are unable to work (or telework) because (summarized here from DOL):
1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
  2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
  3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  4. The employee is caring for an individual who is subject to paragraphs (1) or (2) above.
  5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
  6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

## Employee Benefits

### For reasons #1, #2, and #3:

- Up to two weeks (80 hours for FT) of paid sick leave based on the higher of their regular pay
- Max \$511 per day or \$5,110 in aggregate per employee

### For reasons #4, #5 and #6:

- 2/3 employee's required compensation and is capped at \$200/day and \$2,000 in aggregate
- To calculate part-time employees amount of leave, use the average number of hours they work over a two-week period
- If an employee's hours vary week to week, use a six-month look back to determine the average daily hours. Must include overtime hours in calculation



# BUCKET #2 – EXPANDED FMLA

General Guidance	Employee Qualifications – 1 Reason Only	Full-time, Part-time and Temporary Employee Benefits
<ul style="list-style-type: none"> <li>• Paid Expanded FMLA – maximum of 12 weeks, first 10 days unpaid (employees will likely use Emergency Sick Leave during this time)</li> <li>• All employees employed at least 30 calendar days by private employers with 500 employees or less</li> <li>• Employers cannot require an employee to exhaust PTO or other sick pay first. However, employees may choose to supplement leave pay with their accrued PTO and/or sick time</li> <li>• Employees cannot “stack” leaves – it is once only; no change to regular FMLA as an unpaid leave</li> <li>• Covered employers must restore employees who take leave to their previous position or an equivalent position upon their return from leave.             <ul style="list-style-type: none"> <li>• However, the FFCRA relaxes this requirement in certain circumstances for employers with fewer than 25 employees.</li> </ul> </li> </ul>	<p>Employees will be eligible if they are unable to work (or telework) because (summarized here):</p> <ol style="list-style-type: none"> <li>I. When an employee “is unable to work (or telework)” due to a need to care for a child (under age 18) if the child’s school or place of care has been closed, or the child’s child care provider is unavailable, due to an emergency with respect to COVID-19 declared by the government.</li> </ol>	<p>This compensation must consist of an amount of pay that is not less than”:</p> <ul style="list-style-type: none"> <li>• 2/3 of an employee’s regular rate of pay (per the FLSA) for the number of hours the employee would otherwise be normally scheduled to work</li> <li>• Capped –No more than \$200 per day per employee, and \$10,000 in the aggregate per employee</li> <li>• If an employee’s hours vary week to week, use a six-month look back to determine the average daily hours. Must include overtime hours in calculation</li> </ul>



# EMPLOYEE WELL-BEING WHILE COPING WITH CORONAVIRUS

- CDC has issues reminders about mental health during this time; provide EAP and other resources for stress management and reduction
  - Ensure they know where to go for questions and help; be timely in responses
- Watch for remote work burn-out. When employees work remote, their offices may be constantly accessible making it hard to “turn work off”
  - Create consistent and predictable communication channels to employee’s multiple times per week.
  - Create ways for remote employees to connect, including video where possible
  - Set remote work standards within reason – hours of operation, responsiveness timelines, availability, etc.
  - However, build in the necessary flexibility for employees to attend to others that are also likely home, such as children. Ideas include providing extended lunch period, later start times to encourage a good start to the school day for families, ensure managers understand each person’s unique needs, provide employees ideas on ways to destress
- In layoffs, if you are not planning to rehire, consider outplacement services to help employees move forward with preparing for the recovery
- If you plan to bring people back from layoffs, ensure you are keeping in touch with them regularly

# RECRUITING DURING AND AFTER CORONAVIRUS

- While many organizations have slowed or stopped hiring, some see this as an opportunity to tap into a more available market of candidates
  - “A” talent is always in demand in any economic environment
- Anticipating the needs for recovery is something to do now. Many employers will need to turn recruiting back on at the same time, creating demand. Ask yourself:
  - What did I learn during this time? Do I need to reorganize my business or am I structured right for a recovery?
  - What skills will I need short and long term? What can I develop in employees myself if I have a hard time finding talent? What does that development plan look like and what do I need to prepare?
- Recruiting for most positions can still continue using technology
  - Key is to be consistent in how your organization uses it
  - Understand applicable laws regarding recording calls or interviews – this can be sticky and needs to be carefully evaluated for each geography. Consider using technology designed just for remote interviewing.
  - Know that in states with stay-at-home orders, candidates may elect to not interview in person; most organizations have stopped in person interviews at this time as a best practice
  - Same interview standards and laws exist – don’t be lax on your organizational policies and practices
  - Prepare interviewers for video interviewing with practice sessions



# Coronavirus-MMAC.org

*Resources for businesses including:*

- **Business loans**
- **Who's hiring in the Milwaukee Region**
- **Best practices for operating safely**
- **Register for upcoming webinar series:**

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