

How to Manage the Impact of the COVID-19 on the Construction Industry

March 31, 2020 2:00 PM – 3:30 PM

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Agenda

- Status of Construction Jobs Now
- Operational Financial Matters with a Focus on Liquidity
- Governmental Programs and Assistance
- Contractual/Notice Matters
- Labor & Unemployment Matters
- Q&A

Status of Construction Jobs Now

- Open until Friday to safeguard jobs and complete some work
- Then only “essential and emergency” jobs allowed- this includes:
 - public and private utilities including but not limited to power generation, fuel supply and transmission
 - public water and wastewater
 - telecommunications and data centers
 - airports/airlines
 - commercial shipping vessels/ports and seaports
 - transportation infrastructure such as bus, rail, for-hire vehicles, garages
 - hotels, and places of accommodation

Status of Construction Jobs Now



Essential Construction overview:

Local governments, including municipalities and school districts, are allowed to continue construction projects at this time as government entities are exempt from the essential business restrictions. However, to the greatest extent possible, local governments should postpone any non-essential projects and only proceed with essential projects when they can implement appropriate social distancing and cleaning/disinfecting protocols. Essential projects are those that have a nexus to health and safety of the building occupants or to support the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis.

Status of Construction Jobs Now

- Construction companies are caught in the middle of this- some still have substantial work, some with decent work, some with little or no work- discuss ways to help manage.
- Additional emphasis on collections:
 - Public versus Private.
 - GC/CM versus subcontractor factors for collections.

Operational Financial Matters with a Focus on Liquidity

- Liquidity
- Reassure bank relationships
 - Consider borrowing now on existing availability to provide a cushion.
 - Discuss borrowing base – renegotiate terms like cross-aging, increase total base.

Operational Financial Matters with a Focus on Liquidity

- **Budgeting/Forecasting**

- Payroll budgeting
- Abstract open contracts and related contract terms-
- Supply constraints
- Discussions with L&E attorney
- Admin % payroll rate cuts
- Union layoff implications – may not penalize for temp layoff.
- Evaluation of critical operations needs

Operational Financial Matters with a Focus on Liquidity

- Review open contracts
 - Determine potential change orders/claims for- delays, extensions of time, labor and materials price increases, et al.
 - Evaluate contracts for force majeure language
 - Evaluate your invoice coverages with your broker
 - Documentation on when you left the site, what activity was taking place at that time, equipment on site, etc.
 - With changing environment, definition of covered claim may change
 - Shift management team focus from operations to claim documentation

Governmental Programs and Assistance

- Employers/Business Owners
 - SBA Loan program (up to \$2MM)
 - Other state and local programs
 - Tax credits for employees on paid/sick leave
 - Stafford Act - Disaster Unemployment –
 - No unemployment experience rating adjustments – end is unknown (NYS Only?)
 - Income tax delays (NYS only)
- Employees
 - No 5-day delay for request unemployment claims

CARES Act – Paycheck Protection Program

Overview

- Section 1102 of the CARES Act (the “Act”) provides for \$350 billion to help small businesses keep workers employed and cover certain expenses while dealing with the impact of COVID-19
- This is called the Paycheck Protection Program (“PPP”)

Paycheck Protection Program

- The PPP provides small businesses with loans up to a maximum of \$10 million
- PPP loans are available through June 30, 2020
- The SBA is currently developing an application process and expanding its list of authorized lenders

Paycheck Protection Program

- Loans will be provided by SBA 7(a) lenders
- Loans will be backed by a 100% guaranty from the SBA
- Borrower and lender fees are waived

PPP Eligibility

- Businesses in operation on February 15, 2020 with 500 or fewer employees, or
- A business that meets the SBA's size standard for small businesses
- Exception for businesses with an NAICS code starting with 72: The business must have 500 or fewer employees per location

PPP Eligibility

- Sole proprietorships and independent contractors
- Section 501(c)(3) nonprofit organizations
- Tribal business concerns
- 501(c)(19) Veterans organizations that meet the size standard

PPP Eligibility

- Unlike SBA Economic Injury Disaster Loans (EIDLs), lenders will not require:
 1. Borrower to demonstrate that credit is unavailable elsewhere;
 2. Borrower to demonstrate the ability to repay;
 3. Personal guarantee from the borrower; and
 4. Collateral

Affiliation Rules

- Affiliation rules are waived for PPP loans for:
 - Any business with an NAICS code starting with 72
 - Any business operating as a franchise that is assigned a franchise identifier code by the SBA; and
 - Any business that receives financial assistance from a company licensed under section 301 of the SBIA

Borrower Certification

- Borrowers must provide a good faith certification stating:
 1. The loan request is necessary to support ongoing operations due to the uncertainty of current economic conditions;
 2. The borrower will use the loan proceeds to retain workers and maintain payroll and/or make mortgage interest, lease, and utility payments;
 3. The borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here; and
 4. From February 15, 2020 to December 31, 2020, the borrower has not received a loan that is duplicative of the purpose and amounts applied here.

Other PPP Loan Terms

- Loans will have a maximum maturity of 10 years
- Interest will not exceed 4%
- Borrowers receiving an EIDL between January 31, 2020 and the date they receive a PPP loan may refinance the EIDL into the PPP loan, provided they do not exceed the \$10 million maximum
- No recourse to owners of borrowers for non-repayment except to the extent proceeds were used for an unauthorized purpose

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Determining the Maximum Loan Amount

- No recourse to owners of borrowers for non-repayment except to the extent proceeds were used for an unauthorized purpose
- The SBA will require lenders to provide payment deferment relief for a period of not less than 6 months and not more than 1 year

Payroll Costs

- Under the Act “**Payroll Costs**” are comprised of the following payments:
 - wages, commissions, salary, or similar compensation to an employee or independent contractor;
 - cash tip or equivalent;
 - vacation, parental, family, medical or sick leave;
 - allowance for dismissal or separation;
 - group health care benefits, including insurance premiums;
 - any retirement benefits; and
 - state or local tax assessed on the compensation of employees

Payroll Costs

- Under the Act “**Payroll Costs**” do **not** include the following:
 - compensation of any individual employee in **excess** of an annual salary of \$100,000 as prorated for the period February 15 to June 30, 2020;
Note: this limitation also applies to sole proprietors, independent contractors and self-employed individuals.
 - Federal payroll taxes, railroad retirement taxes, and income taxes;
 - any compensation of an employee whose principal place of residence is outside the U.S.;
 - Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (“FFCRA”); or
 - Qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA. The FFCRA was passed on March 18, 2020.

Determining Average Monthly Payroll Costs

- Non-seasonal employer: the average total monthly payroll costs incurred during the 1-year period before the date on which the loan is made
- Seasonal employer: the average total monthly payroll costs incurred for the 12-week period beginning on February 15, 2019 and ending June 30, 2019
 - Note: the borrower also has the option of using the period from March 1 through June 30, 2019

Determining Average Monthly Payroll Costs

- For a borrower not in business during the period of February 15 through June 30, 2019, they may use the average total monthly payroll costs incurred from January 1 through February 29, 2020

Allowable Uses of PPP Loan Proceeds

- Under the Act, allowable uses of PPP loan proceeds include:
 - Payroll Costs;
 - Payments of interest on any mortgage obligation;
 - Rent (including rent under a lease agreement);
 - Utilities;
 - Interest on any other debt obligations that were incurred before the covered period (prior to February 15, 2020); and
 - Allowable uses of loans under section 7(a).
 - **Note: this list includes uses beyond what will qualify for loan forgiveness**


Loan Forgiveness

- PPP loans will be forgiven to the extent the borrower uses the funds, within 8 weeks of the loan origination, on the following costs:
 - Payroll Costs (as defined earlier);
 - Payments of interest on any “covered mortgage obligation” (which shall not include any prepayment or payment of principal);
 - Payments on any “covered rent obligation”; and
 - “Covered utility” payments

Loan Forgiveness – Defined Terms

- A covered mortgage obligation is defined as any indebtedness or debt instrument incurred in the ordinary course of business that:
 - Is a liability of the borrower;
 - Is a mortgage on real or personal property; and
 - Was incurred before February 15, 2020.
- A covered rent obligation is rent obligated under a leasing agreement in force before February 15, 2020

Loan Forgiveness – Defined Terms



- A covered utility payment is payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2019

Reduction of Loan Forgiveness

- The amount of loan forgiveness will be reduced if the borrower does not maintain certain employment levels.
- There are two types of reductions in loan forgiveness:
 - Based on a reduction in number of employees; and
 - Based on a reduction relating to salaries and wages

Reduction of Loan Forgiveness

Reduction Based on Reduced # of Employees

Option 1:

Payroll Costs x FTEs ÷ Avg. FTEs per month from
February 15 to June 30, 2019

Option 2:

Payroll Costs x FTEs ÷ Avg. FTEs per month from
January 1 to February 29, 2020

Option 3 (for seasonal employers):

Payroll Costs x FTEs ÷ Avg. FTEs per month from
February 15 to June 30, 2019

Note: FTE has not been defined in this section of the Act

Reduction of Loan Forgiveness

Reduction Based on Reduction of Salaries

Payroll Costs *minus*

- For each employee that did not earn annualized wages during 2019 of more than \$100,000, the amount of any reduction in annualized wages that is greater than 25% compared to their most recent full quarter they were employed before the covered period.
- *Note: Reductions in wages that occurred between February 15, 2020 and 30 days after the enactment of the Act can be cured by June 30, 2020 to avoid a reduction in the loan forgiveness amount*

Applying for Loan Forgiveness

- The SBA has 30 days from the enactment of the Act to issue guidance and regulations to implement this section (1106) of the Act.
- Applicants will be required to submit documentation verifying the number of FTEs on payroll and their pay rates, which would include:
 - Payroll tax filings to the IRS and state tax authorities
 - Unemployment insurance filings

Applying for Loan Forgiveness

- Documentation will also be required to substantiate payments of qualified expenses, including:
 - Cancelled checks, receipts, etc.
- An authorized representative will be required to provide a certification that:
 - The documentation presented is true and correct; and
 - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments

Applying for Loan Forgiveness

- The SBA has authority to require additional documentation that they deem necessary
- The lender is required to render a decision on loan forgiveness within 60 days of receiving an application
- Amounts forgiven for PPP loans are not considered taxable for Federal purposes. It is not yet clear how state and local tax authorities will treat this.

Employee retention credit for employers subject to closure due to COVID-19

- This credit can be applied against the quarterly payroll tax (Social Security and Railroad Retirement) liability for those employers who either:
 - have suspended business operations partially or fully due to orders from a government authority limiting commerce, travel or group meetings due to COVID-19
 - or
 - suffered a significant decline in gross receipts for a period beginning with the calendar quarter that shows gross receipts with less than 50 percent of the receipts for the same quarter in the prior year and ending with the calendar quarter which shows gross receipts that are greater than 80 percent of the gross receipts for the same calendar quarter in the prior year.
- For employers that have less than 100 employees, the credit is based on 50% of qualified wages up to \$10,000 per employee paid during the quarter.
- For employers that have more than 100 employees, the credit is limited to 50% of qualified wages up to \$10,000 per employee paid during the quarter, of only those employees who have not provided services due to COVID – 19 causes.

Employee retention credit for employers subject to closure due to COVID-19 (continued)

- The credit is refundable if it exceeds the quarterly payroll tax.
- There is a \$ 10,000 wage cap per employee for all employers.
- This credit is not available to those employers who choose to receive the Small Business Administration loans available to them, notably the Paycheck Protection Program loan which may be forgiven.
- Only wages paid after March 12, 2020 and before January 1, 2021 are eligible for this credit.
- Employers cannot base the credit on the same wages used for the credit available under the Family and Medical Leave Act of 2017 (IRC 45S).
- Employers cannot take this credit if the employer is allowed a credit under the Work Opportunity tax credit (IRC 51).
- Qualified wages cannot include wages taken into account under the credits available under the Families First Coronavirus Response Act.

Delay of Payment of Employer Payroll Taxes

- Payment of certain payroll taxes can be postponed as follows:
 - 50% due as of December 31, 2021 and
 - 50% due as of December 31, 2022.
- This applies to the employer's portion of Social Security but not Medicare taxes attributable to wages paid from 3/27/2020 through December 31, 2020.
- 50% of the Social Security portion of Self Employment tax also qualifies
- If the employer is a recipient of a loan under the Small Business Act and has had the loans forgiven under the CARES Act, then the employer cannot utilize this benefit.

Rapidly Changing Environment

- 13 Executive Orders issued already
- ESD guidance changing
- Local authorities engaging
- Potential fines
- Lack of clarity regarding projects and practices permitted
- Questions about legal authority
- Payment, insurance and audits for emergency projects

Recognize We Are Dealing With A New Reality

- Avoid knee-jerk reactions – “What we always do” might not be the optimal thing to do in these unique, changing circumstances
- Think through the situation as it is today and may be tomorrow
- Know the contract and identify all notice/documentation requirements
- Wide range and unusual application of contract provisions (Pat will discuss)

Preserve Your Options & Rights

- Give notice as required, maybe even repeatedly
- Preserve “neutral” in positions being taken
- Advise and seek direction
- Provide direction when you have clear guidance, instead of making decisions for others
- Be careful with your choice of words (“default”, “breach”, etc.)

Prepare for the next phase:

- Document impacts – time and dollars
- Identify and comply with provisions regarding documentation (periodic cost reports, schedule analyses, etc.)
- Document mitigation and thought process
- Document guidance received and given (Executive Orders)

Usual Contract Requirements for *Force Majeure* (always check *your* contract)

Force majeure is a Contract-Based Remedy (outside of France and other Civil Law jurisdictions)

- French for the “greater force”
- Concept can be captured in other clauses with different names (delay, extension of time)
- Effect is to excuse timely performance for unexpected events and circumstances
- Contract language can work both ways – also excusing Owner performance
- As to goods, the concept is captured in provisions related to “commercial impracticability”

Other Contract Provisions to Look For



- Emergency Clauses
- Suspension of Work Clause
- Changes and Extra Work Clauses
- Differing Site Conditions/Concealed or Unknown Conditions Clauses

Emergency Clauses

- Standard Provision in AIA and ConsensusDoc forms
- May be present in others
- Require the contractor to take action during emergencies to protect workers and the work
- Implicitly provide for compensation
- Arguably contemplate job specific emergency but are very broadly worded

Suspension of Work

- Applies where the owner suspends the work
- Generally provides compensation (at least for “unreasonably” long suspensions)
- To take advantage, the contractor must seek specific direction from the owner
- Some suspension clauses allow the contractor to terminate the contract if the suspension extends beyond a specific duration

Changes and Extras

- Present in Virtually all contracts
- Provide compensation and time where the contractor performs changed or extra work *directed by the owner*
- Arguably apply to additional work complying with social distancing and other additional work the contractor is performing to comply with CDC, OSHA, EEOC, etc. guidelines
- Arguably apply to the cost of disruption
- To take full advantage request direction from the owner

Differing Site Conditions

- Provides compensation and time when conditions differ from:
1) conditions represented in the contract documents, or 2)
conditions that reasonably could have been anticipated
- Until recently, no one could have anticipated the presence of Covid-19 at the job site or its effects
- Long shot argument – clause has been interpreted to deal with the condition of the site *at the time of contracting*

Employment & Labor Issues



ACTION PLAN CHECKLIST

1. Create a team to manage COVID-19-related issues.
2. Comply with OSHA and CDC guidelines.
3. Consult with health & safety experts regarding industrial hygiene/safety “best practices” for your workplace.
4. Reduce on-site exposure risks.
5. Maintain confidentiality, but report exposure appropriately.
6. Provide leave.

ACTION PLAN CHECKLIST (cont.)

7. Require subcontractors or staffing agencies to create an action plan.
8. Consider whether Federal WARN or other equivalent state or local laws apply.
9. Union workforce: bargain with union regarding any action not covered by the collective bargaining agreement.
10. Consult with workers compensation and other insurance or risk management specialists.

- Avoid large gatherings and maintain distance of at least 6 feet from others.
- Permit workplace flexibility
 - Telecommuting.
 - Flexible work hours (i.e. staggered shifts) to increase the physical distance among employees.

- Promote frequent and thorough hand washing -including customers and visitors. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to stay home if they are sick.
- Encourage respiratory etiquette, including covering coughs and sneezes.
- Provide customers, staff, and the public with tissues and trash receptacles.

- Increase ventilation rates and percentage of outdoor air that circulates.
- Routine cleaning of high-touch surfaces with EPA-registered disinfectants; provision of disposable wipes.
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.

Enhanced cleaning/disinfecting should be undertaken after suspected/confirmed cases:

- Close off area to other staff.
- Increase air circulation.
- Wait 24 hours, if possible, to disinfect to decrease risk of infection.
- More information available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

Summary of OSHA Guidance

Create Plans/Procedures:

- Infections Preparedness Response Plan.
- Develop Policies and Procedures for Prompt Identification and Isolation of Sick People.
- Develop and Implement Workplace Flexibilities and Protections.
- Implement Administrative Controls.
- Implement Engineering Controls.

WHAT IF AN EMPLOYEE IS SYMPTOMATIC OR MAY HAVE BEEN EXPOSED?

- Send the person or medical determination as to fitness/health or safety risk to self or others. Follow up with employee.
- Provide reasonable period of leave for a medical determination to be made.
- Follow applicable laws and policies regarding paid or unpaid leave due to illness.
- Engage in “interactive process” for determining need for “accommodation”.
- CDC: Notify employees, customers, health officials (get advice), and others that had contact with employee or is Coronavirus positive. CDC provides no further specific guidance.
- Maintain confidentiality of medical information as required by ADA and similar local laws.

NOTE: OSHA and CDC urge that employers not require medical clearance to avoid overwhelming health care services. Be flexible.

CDC RETURN TO WORK GUIDANCE: NON-TEST BASED STRATEGY

For confirmed cases, there is limited definitive guidance. The CDC recommends exclusion from work until the employee is no longer under home isolation:

- At least 3 days (72 hours) after recovery, defined as resolution of fever without the use of fever-reducing medications,
- Improvement in respiratory symptoms (e.g., cough, shortness of breath), and
- At least 7 days have passed **since symptoms first appeared.**

CDC RETURN TO WORK GUIDANCE: TEST BASED STRATEGY

As an alternative, the employee may discontinue home isolation upon:

- Resolution of fever without the use of fever-reducing medications,
- Improvement in respiratory symptoms (e.g., cough, shortness of breath), **and**
- Negative results for COVID-19 from at least two consecutive tests collected ≥ 24 hours apart.

Employee Screening for Infections

The EEOC recently issued guidance regarding employer-conducted screening.

Ask questions to determine exposure:

- Any travel in the last 14 days?
- Have they or their household members been within 6 feet of someone with a suspected or confirmed case in the last 14 days?
- Have they or their household members had symptoms in the last 14 days (fever, cough, shortness of breath)?

If the answer is yes, the employee should be sent home.

Employee Screening (cont.)

Employers may take body temperature.

Who should conduct the body temperature screening?

- Ideally, a certified health professional (ask insurance provider or others), or a trained person provided with adequate protections under CDC and OSHA guidelines for medical professionals.
 - Conduct screening in a private area to the extent practicable.
 - Practice the highest-level of hygiene.
 - Use a no-contact thermometer certified for accuracy and use on humans.
 - Fever of 100.4 degrees or higher (per CDC guidance), send home.
 - Ask who they have had contact with on the job site. If possible, this area should be isolated and subsequently cleaned per CDC guidance.
 - The employee should be advised that they should speak with a health professional immediately for further screening (and they may be asked about any other COVID-19 symptoms).

Employee Screening (cont.)

If an employee is confirmed positive:

- inform fellow employees/those who have had close contact with the individual.
- No more specific guidance is provided by OSHA or CDC. Fourteen day incubation period serves as a guide.
- Case by case consideration.
- Employee's health care provider may have more specific directions as may local Health Officials.

Employee Screening (cont.)

COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19;
2. The case is work-related; and
3. The case involves one or more of the general recording criteria (e.g. medical treatment beyond first-aid, days away from work, etc...). Additional information is available at: <https://www.osha.gov/SLTC/covid-19/standards.html>

LIABILITY?

- Workers Comp
- Other

Families First Coronavirus Response Act (“FFCRA”)

- COVID-19 Related Leave taken 4/1/2020-12/31/2020
- Emergency Paid Sick Leave (“EPSL”): Capped at up to 80 hours paid leave for non-child-care COVID-19-related reasons.
- Expanded Family and Medical Leave (“EFMLA”): Additional ten weeks (12 total) paid leave for child-care.
- EFMLA counts against “normal” FMLA.
- Applies to all private employers with less than 500 employees.

Eligibility for EPSL Under the FFCRA

Up to 80 hours of paid leave if unable to work because the employee is:

1. Subject to federal, state, or local isolation or quarantine order;
2. Advised by health care provider to self-quarantine;
3. Symptomatic and seeking a medical diagnosis;
4. Caring for an individual [**undefined**] subject to a quarantine order or been advised to quarantine by a health care provider;
5. Caring for a child whose school or place of care has been closed due to COVID-19 (**additional 10-week EFMLA benefit if employed 30 days**)

Amount of Pay for EPSL under FFCRA

1. Regular Rate of Pay (Full-Time)- Own Illness/Symptoms/Quarantine Order

Capped at an amount of \$511 per day and \$5,110 in the aggregate.

2. Two-Thirds Rate of Pay (Full-Time)- All Other Reasons (Child-Care/Care for Others/TBD by Gov't)

Capped at \$200 per day and \$2,000 in the aggregate.

For EFMLA, capped at \$200 per day and \$10,000 aggregate.

3. Part-time Employees

Average hours over two week period.

EFMLA under the FFCRA (Child-Care)

- FMLA expanded to provide leave if unable to work (or telecommute) if the child's school or place of care has been closed because of a declared emergency by a federal, state, or local government authority.
- Up to 12 weeks of leave. The first 10 days are unpaid leave under EFMLA, but would be covered under EPSL.
- The next 10 weeks at a two-thirds of "regular rate" at regular hours.
- Counts against normal FMLA leave.
- Employee may elect to use accrued leave/PTO to supplement payments upon mutual agreement.

What Does Unable to Work/Telecommute Mean?

- Employer has work and FFCRA covered reason prevents employee from working.
- No leave necessary if employee and employer can agree to adjust scheduled hours or work remotely unless unable to perform because of FFCRA reasons.
- If unable to telework or work required hours because of child care needs, entitled to take EFMLA.

FMLA Existing

FFCRA (EPSL and EFMLA)

- Employers with 50 employees within a 75 mile radius.
 - Employees must work 12 months and 1,250 hours in the last 12 months.
 - Up to 12 weeks of unpaid leave (continuously or intermittently) for:
 - (1) employee's serious health condition;
 - (2) care for a child, spouse or parent with a serious health condition;
 - (3) the birth of a child and to care for the child after birth; or
 - (4) the placement of a child with the employee for adoption or foster care.
- Employers with fewer than 500 employees [***Existing DOL regs apply to lump related businesses; no 75 mile radius limit***].
 - Full-time (40+ hours) or Part-time (less than 40 hours) employees get immediate EPSL and EFMLA after employed at least 30 days.

Other Provisions of FFCRA (EPSL & EFMLA)

- Doesn't apply to employers who have closed.
- May be used intermittently while teleworking or for child care.
- In addition to any other accrued leave provided by employer.
 - Can't require employees to use or exhaust their accrued leave.
 - By mutual agreement, employee may supplement with existing leave; will not receive tax credit for this amount.

Job Protection

- No retaliation and job restoration (same/substantially similar position).
- Does not prevent employer from closing/layoff that would have occurred in any event.
- Highly compensated “key” employee under FMLA-exempt.
- Certain employers may apply for hardship exemption.

Track Payments! You are Eligible for Tax Credits!

- Dollar-for-dollar refundable tax credit on FICA taxes for payments up to the caps of EPSL and EFMLA.
- May be able to obtain credit for employer-paid medical coverage.

What About Employers in Collective Bargaining Agreements?

- Equivalent benefits may be provided through multi-employer collective bargaining agreement.
- This requires bargaining with the Union regarding contributions.

Provisions of NY COVID-19 Paid Sick Leave

- **10 or less employees & net income less under \$1 million:**
 - **Employer pays no leave.**
 - Immediate access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.
- **11-99 employees or 10 or less employees & net income over \$1 million:**
 - **Employer pays 5 days of leave.**
 - After exhausted, access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.
- **100 or more employees, and all public employers:**
 - **Employer pays 14 days of leave.**
- **All Employers: If minor dependent child is subject to an order of mandatory or precautionary quarantine or isolation, must provide job protection; and employee may apply for New York Paid Family Leave benefits.**

NYS Paid Family Leave (Existing)

NYS Short Term Disability (Existing)

- Eligible if regularly scheduled to work 20+ hours/week after 26 consecutive weeks of employment OR if less than 20 hours/ week, after working 175 days.
- Payroll deduction.
- Can receive up to 60% of wages to cap for 10 weeks.
- Eligible reasons:
 - bonding with a child during the first 12 months;
 - care for a family member w/ a serious health condition; or
 - immediate family member on active or impending military duty abroad.
- Maximum of 26 weeks during any 52 week period.
- Typically cannot collect STD and PFL benefits at the same time.
- Usually 7 day waiting period.
- Payroll deduction.
- 50% of wages up to \$170 per week.
- For employees who:
 - have become disabled from injuries or illness away from work; and
 - disabilities from pregnancies.

New York City Earned Safe and Sick Time Act (Unchanged)

Employees can use sick leave for absence from work due to employee's:

- Mental or physical illness, injury, or health condition.
- Need for care.
- Need for preventive medical care.
- Elective surgery, including organ donations.
- Care of a family member who needs care.
- Care of a family member who has elective surgery, including organ donations.
- Closure of employee's workplace due to a public health emergency.
- Need to care for a child whose school or child care provider is closed due to a public health emergency.

Who May Take NYC Paid Sick Leave and How Much?

- Up to 40 hours of paid sick time.
- 1 hour for every 30 hours worked.
- Existing PTO policies can be used to fulfill this requirement.
- Can use 120 days after hire.
- Begin accruing right away.

Coordination with FFCRA and Other NY Accruals

- Fed, State, Local

FMLA (Before FFCRA)	Unpaid, up to 12 weeks, paid if company provides.
Caring for self, if ill	Covered
Caring for Sick Family Member	Covered
Child Care Unavailable	Not Covered
Quarantine	No Provision

FFCRA (EPSL and EFMLA)	Paid, or 2/3 pay Up to Cap
Employee Ill or Quarantined	Full pay up to 80 hours
Caring for Quarantined Person	2/3 Pay up to 80 hours
Child Care Unavailable	2/3 Pay for 80 hours (PSL) and 10 Additional weeks

NYS COVID-19 Paid Sick Leave	Full Pay with high cap
Employee Quarantined	Full pay for Quarantine Period, high cap
Caring for Child Who is Quarantined	Already Covered by NYSPFL, cap
Child Care Unavailable	Not Covered

NYSPFL (Existing)	Reduced Pay to a Cap
Caring for self, if ill	Not Covered
Caring for Sick Family Member	2/3 Pay up to 80 hours
Child Care Unavailable	No Provision

NYC Earned Sick Leave	Full Pay up to Accrued Leave Amount
Caring for self, if ill	Covered
Caring for Sick Family Member	Covered
Ordered closure of Employer	Covered
Closure of Child Care	Covered

NJ Earned Sick Leave (Unchanged)

One hour for every 30 hours worked, up to 40 hours. Sick leave may be taken for specific reasons, including the following which might relate to the pandemic:

- Own mental or physical illness, injury, or health condition;
- Health condition of the employee's family member;
- Own or family member's doctor's appointment, including preventative care;
- Employee's workplace or child's school or place of care closed due to a public health emergency; or
- If public health authority determined presence of employee or their family member would jeopardize the health of others.

NJ Earned Sick Leave and COVID-19

- Employee tests positive or has symptoms.
- Employee or relative employee cares for on self-quarantine.
- Child's school ordered closed by public health official.
- Place of business ordered closed.
- At risk due to pre-existing condition.

Questions?



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Thank you!