

Compliance and Legislation Update

April 2, 2020

Herein, we provide a snapshot of the two recent laws passed that are directly affecting you and your company.

[Families First Coronavirus Response Act \(FFCRA\) – \(effective 4/1/2020\)](#)

President signed on March 18th

- Emergency Family and Medical Leave Expansion
 - Applies to most employers with less than 500 employees (and some government employers, including state and local governments).
 - Carveout for most **federal** employees because most federal employees are not covered under Title I of the FMLA and so would not be eligible for partially paid EFML.
 - Employee worked for employer at least 30 days prior to leave
 - Exceptions for small businesses with less than 50 employees
 - Can exempt certain healthcare providers or emergency responders
 - Up to 12 weeks of job-protected leave
 - Child's school or place of business is closed or childcare provider unavailable due to public health emergency (AND EMPLOYEE NOT ABLE TO PERFORM ANY WORK OR TELEWORK)
 - First 10 days unpaid (but see below for Emergency Paid Sick Leave)
 - Can substitute any accrued paid leave to cover
 - After 10-day period, 2/3 regular rate (cap of \$200/day and \$10,000 in aggregate/employee)
 - Cannot require employees to use other benefits first

- Emergency Paid Sick Leave
 - Applies to all employers with less than 500 employees and all government employers.
 - 6 different reasons for leave (see Poster for quick reference) - (AND EMPLOYEE NOT ABLE TO PERFORM ANY WORK OR TELEWORK)
 - For full-time employees (regardless of period of employment)
 - 80 hours of paid sick leave
 - Regular rate OR 2/3 regular rate (depends on the reason for the leave)
 - Exception for employers of healthcare providers or emergency responders to exempt such employees
 - Limited to \$511/day up to \$5,110 total/employee for own use OR \$200/day up to \$2,000 total for care of others
 - Cannot require employees to use other benefits first
- Emergency Unemployment Insurance Stabilization and Access
 - Immediate funding given to states and ability for states to receive grants if experience increase in claims
 - Require employers to provide notification of availability of unemployment compensation at time of separation
 - States to ease eligibility requirements and access (like waiving work search requirements and the waiting period)
- Tax Credits for Paid Sick and Paid Family and Medical Leave
 - FAQs just released yesterday (3/31) by IRS with many details on how to obtain the credits and any reimbursement if costs exceed taxes they would owe (<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>)
 - State and local governments are not entitled to FFCRA Tax Credits
- Coverage for Testing For COVID-19
 - Testing and related services without cost sharing; not require prior authorization or similar medical management requirements as precondition to testing or services

Coronavirus Aid, Relief and Economic Security (CARES) Act


President signed March 27th


- Small Business “Paycheck Protection” Loans
 - Loan based off of payroll (2.5x average monthly “payroll cost” for previous year); ability for loan forgiveness; submit documentation/application to bank.
 - **Start by contacting bank.**
- Additional Loans to Mid-Size Businesses
 - Emergency Injury Disaster Loan (EIDL) - can receive \$10,000 advance in 3 days
 - Was in place before the Act, the Act expanded access and permitted uses
- Employee Retention Tax Credit
 - IRS (See IR-2020-62, March 31, 2020) (<https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19>)
 - Not available to employers that receive a paycheck protection loan
 - Refundable payroll tax credits for 50% of the wages paid by employers during crisis (paid between 3/13/2020 and end of the year)
 - Provided for the first \$10,000 of qualified wages (may include employer’s contribution to employees’ health insurance costs but excludes any amount employer already received a tax credit for under EFMLA or EPSL)
 - Operations fully or partially suspended due to a COVID-19 related “shut-down order” or gross receipts declined by more than 50% when compared to same quarter in previous year
 - Employers with 100 or fewer employees, wages may qualify for the credit, whether the employer is open for business or subject to a shut-down order
- Payroll Tax “Holiday”
- Changes to The New Federal Leave Laws (for rehired employees/EFMLA)
- Unemployment – Expanded Coverage and Availability/Pandemic Unemployment Assistance program through 12/31/2020
 - Unemployment, partial unemployment or inability to work caused by COVID-19 between 1/27/2020 and 12/31/2020
 - \$600 in addition to existing state benefit (TN maximum is \$275) – through July 31st
 - Maximum entitlement expanded to 39 weeks rather than 26 weeks
 - Expanded list of reasons can obtain unemployment benefits

- Expanded to cover self-employed, those seeking part-time employment, and those who do not have sufficient work history
- Cannot obtain if have the ability to telework with pay or if receive paid sick leave or other paid leave benefits
- Direct Financial Assistance to Individuals
 - \$1,200 for individual taxpayers or \$2,400 for joint taxpayers, plus \$500 for each child of the taxpayer
 - Phase-out at certain thresholds
 - Single filers with income exceeding \$99,000 and \$198,000 for joint filers with no children are not eligible
 - More info from IRS: <https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>.
- Benefits/Health Care Issues
 - Expands coverage for certain state-developed COVID-19 diagnostic testing and other testing
 - Requirement to cover any “qualifying coronavirus preventive service”
 - HDHP not disqualified for failure to have a deductible for telehealth or remote care services; not prevent HSA eligibility
 - Eliminates the requirement that over-the-counter medicines and drugs must be prescribed in order to be considered qualified medical expenses for HSAs, FSAs, HRAs and MSAs.
- Loans to struggling industries, grants to health care providers, money to state and local governments, colleges and universities, school districts, etc.

Tennessee Specific Resources

- Governor Lee has issued several Executive Orders over the past several weeks (found on the Tennessee Secretary of State’s website), including #15 which affected unemployment in Tennessee (<https://sos.tn.gov/products/division-publications/executive-orders-governor-bill-lee>)
- TN DOL & Workforce Development – Full page on COVID-19 Response and Resources (including information for employers and employees on unemployment and layoff notices/WARN) <https://www.tn.gov/workforce.html>

 Unemployment Process Table		
Reason for Separation	Potential Eligibility	Decision
<ul style="list-style-type: none"> • Lack of Work (not enough work to keep an employee employed) • Reduction In Force/ RIF (employer reducing workforce) • Temporary or Permanent closing/shutdown • Furlough (government shutdown) • Shutdown due to Covid-19 <p>➤ All 5 reasons above are separations due to no fault of the claimant</p>	<ul style="list-style-type: none"> • If Monetarily Eligible (wages in TN base period) • Other requirements met • IF NOT being paid by employer <ul style="list-style-type: none"> ○ Paid sick/annual leave ○ Regular wages or % of regular wages equal to or more than UI payments 	<ul style="list-style-type: none"> • Approved • Approved • Approved • Approved
<ul style="list-style-type: none"> • Discharge (work related / for cause) 	<ul style="list-style-type: none"> • If Monetarily Eligible (wages in TN base period) • Other requirements met 	<ul style="list-style-type: none"> • Depends on facts from claimant and employer. Can be Approved or Denied per UI laws/rules.
<ul style="list-style-type: none"> • Quit (without good work related cause) • Self-quarantine by claimant w/o medical professional or health authority proof Covid-19 	<ul style="list-style-type: none"> • If Monetarily Eligible (wages in TN base period) • Other requirements met 	<ul style="list-style-type: none"> • Depends on facts from claimant and employer. Can be Approved or Denied per UI laws/rules.
<ul style="list-style-type: none"> • Quarantined by medical professional or health authority and returning to his/her current employer Covid-19 	<ul style="list-style-type: none"> • If Monetarily Eligible (wages in TN base period) • Other requirements met • IF NOT being paid by employer <ul style="list-style-type: none"> ○ Paid sick/annual leave ○ Regular wages or % of regular wages equal to or more than UI payments 	<ul style="list-style-type: none"> • Approved per Executive Order 15 (normally not eligible)

 Tennessee Department of Labor and Workforce Development. Authorization No. 337631, March 2020. This public document was promulgated for electronic use only.

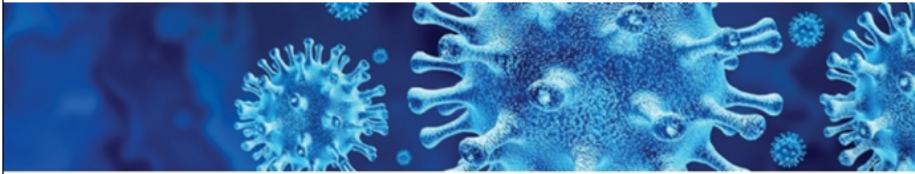
The Tennessee Department of Labor and Workforce Development is committed to principles of equal opportunity, equal access, and affirmative action. Auxiliary aids and services are available upon request to individuals with disabilities.

Resources

- Fisher Phillips (UBA partner law firm): Legal Alerts and FAQs with links to government websites (i.e. DOL, CDC, IRS, EEOC, OSHA, etc.) <https://www.fisherphillips.com/>
- ThinkHR
- SHRM (page/info section for non-members)
- Trinity Companies website: <http://www.trinityben.com/covid-19-updates>
- Below is an email from Alston & Bird (former UBA partner law firm): If you are not already receiving these, I suggest that you sign up. The Flash Update (linked in the email) provides a great overall summary and numerous links with regular updates.
 - Here's a link to get you started:
<https://www.alston.com/en/insights/publications/2020/04/coronavirus-flash-update-april-1-2020>

[View online](#)

ALSTON & BIRD



Coronavirus *Flash* Update: Wednesday, April 1, 2020

Click [here](#) to find Alston & Bird's Coronavirus *Flash*, with updates on policy and regulatory actions under consideration across many important industry areas being monitored by our teams. Links to key government and legal resources are provided throughout the report.

You may forward this within your organization or invite others to [subscribe](#) for updates.

[Read the Coronavirus *Flash* Update](#)

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