

# Coronavirus Laws and Your Dealership: Part II

April 16, 2020

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## What are we covering today?

(emphasis on changes since last webinar)



How do the state and local orders restrict dealership operations?



What do you need to do to protect your employees, customers, and vendors?



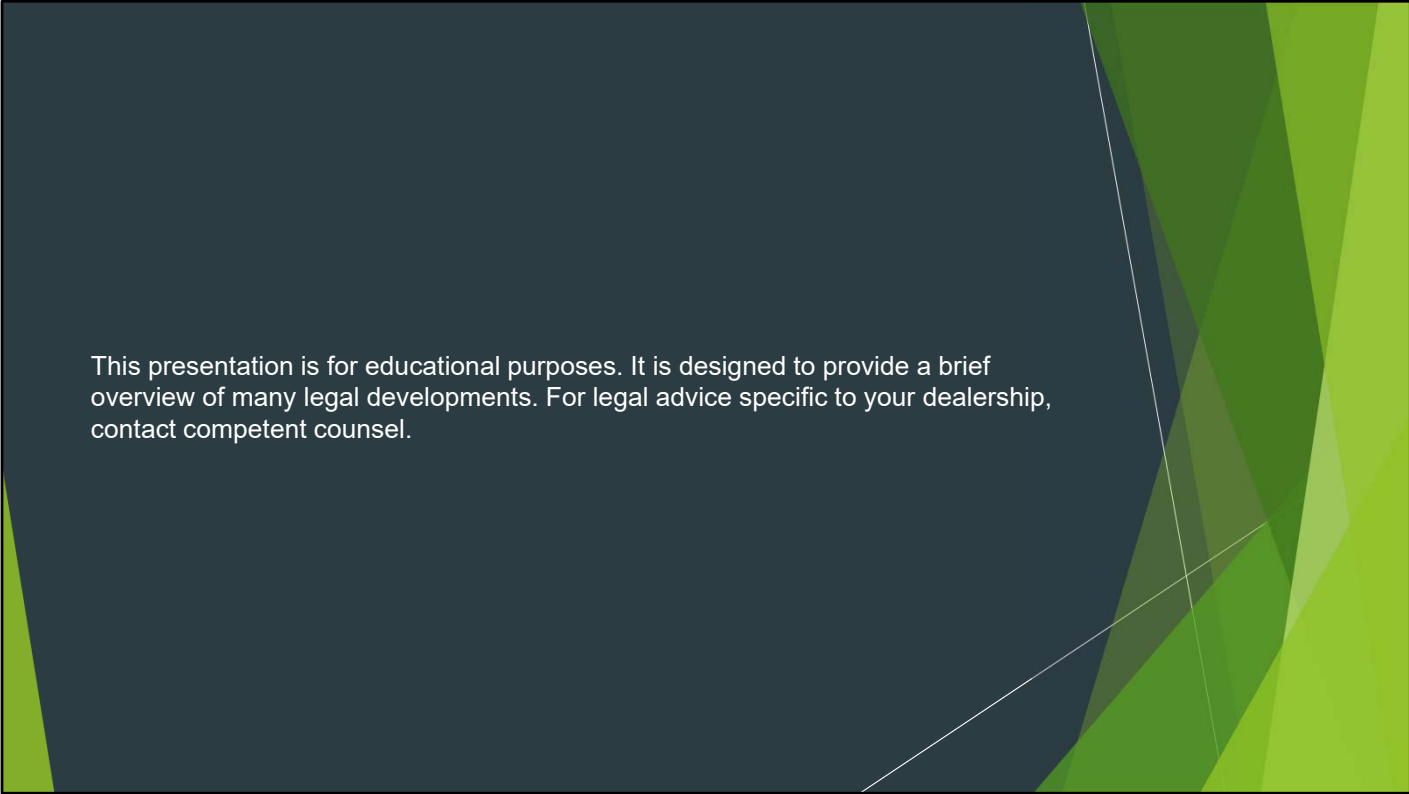
What are the wage-and-hour implications?



How do I handle reductions in workforce?



What do the new federal programs (FFCRA and CARES Act) mean for your business?



This presentation is for educational purposes. It is designed to provide a brief overview of many legal developments. For legal advice specific to your dealership, contact competent counsel.

# Free Online Resources for CNCDA Members



HOME | DEALERSHIP CORONAVIRUS RESOURCES

## Dealership Coronavirus Resources

UPDATED 4-14-20

This website is designed to provide California new motor vehicle dealerships with resources on issues involving the coronavirus (COVID-19). CNCDA will use its best efforts to continue to update this website, but this situation is rapidly evolving. Please also note that the materials on this website are for educational purposes, and are not intended as legal advice. For legal advice, contact competent counsel. For the most current information, please visit government websites for your jurisdiction or call CNCDA at 916-441-2599.

### OPERATIONS

[Can I continue to operate my dealership with the state and local stay home orders?](#)

[How can I apply for a temporary loan through the Paycheck Protection Program?](#)

[Do I need to adjust social health networks at my dealership?](#)

### EMPLOYMENT LAWS

[I need general assistance on employment issues. Where should I go?](#)

[Where can I find employment forms and other documents for this crisis?](#)

### REGISTRATION AND RELATED ISSUES

[I need assistance on vehicle registration or related issues. Where should I go?](#)

[How should I determine when my license expires during this crisis?](#)

### ACCOUNTING/TAXES



### Legal Updates

To receive copies of documents and any legal advice letters, to be emailed to you free of charge, you must enter your information and verify that you are a client of Fine, Rogge & Stevens LLP, a current user of FRI Helix, and/or a member of the California New Car Dealers Association, the California Motorcycle Dealers Association, the California Auto Body Association or the California Recreational Vehicle Dealers Association.

If you have previously registered, you can [LOG OUT](#)

For assistance, please call 800 717 8808

First Name

Last Name

Name of Business

Email

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[REGISTER NOW](#)

<https://www.cncda.org/dealer-coronavirus-resources/>

<https://www.employerlawyers.com/legal-updates/>

## State and Local Orders

- ▶ Dealership Operations
  - ▶ Service and Parts Departments – permitted in all jurisdictions
  - ▶ Vehicle Sales – getting more restrictive
    - ▶ No dealership in California should operate a showroom open to the general public
    - ▶ Online sales with offsite delivery to residences and essential businesses only
      - ▶ Bay Area
      - ▶ Los Angeles County (including most incorporated areas)
      - ▶ City of Fresno
      - ▶ Ventura County
    - ▶ Online sales and limited in-person sales to essential workers and/or essential businesses
      - ▶ Likely permissible in jurisdictions where vehicle sales are not addressed in a local order

## State and Local Orders

### ▶ Vehicle Sales

- ▶ Check your local order for most current information.
- ▶ Considerable confusion exists among local government officials.
- ▶ If you get an order to shut down, comply with the order, let CNCDA know, and contact competent counsel.

## State and Local Orders

- ▶ Protect your dealership
  - ▶ CNCDA has received reports of individuals potentially casing dealership lots.
  - ▶ If you close or reduce operations make sure that you take adequate precautions and protect your inventory and dealership.
  - ▶ Increase video and in-person surveillance.
  - ▶ Coordinate with local law enforcement patrols.
    - ▶ Make sure they know that your people on your lot are not there for sales.

## State and Local Orders

### Social distancing protocols

- ▶ Outlines many health and safety requirements in a single document.
- ▶ Required by many jurisdictions:
  - ▶ Los Angeles County
  - ▶ Bay Area
  - ▶ San Diego County
  - ▶ Sacramento County
  - ▶ Fresno County
  - ▶ Ventura County



## State and Local Orders

### ► Social distancing protocols – typical requirements (check your local order):

- Install signage at each public entrance to your business.
- Daily symptom checks for employees at the beginning of their shift.
- Reconfiguring of public and employee spaces (six feet apart).
- Posting of cleaning schedule.
- Measures to increase sanitation.

### Appendix A: Social Distancing Protocol

Business name: \_\_\_\_\_

Facility Address: \_\_\_\_\_

Approximate gross square footage  
of space open to the public: \_\_\_\_\_

**Businesses must implement all applicable measures listed below and be prepared to explain why any measure that is not implemented is inapplicable to the business.**

#### A. SIGNAGE

- Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another.
- Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

#### B. MEASURES TO PROTECT EMPLOYEE HEALTH (CHECK ALL THAT APPLY TO THE FACILITY)

- Everyone who can carry out their work duties from home has been directed to do so.
- All employees have been told not to come to work if sick.
- Symptom checks are being conducted before employees may enter the workspace.
- All employees that have contact during their shift(s) with the public or other employees are offered, at no-cost, a cloth face covering to be used at work when interacting with them.
- All desks or individual workstations are separated by at least six feet.
- Break rooms, restrooms, and other common areas are being disinfected frequently, on the following schedule:
  - Break rooms: \_\_\_\_\_
  - Restrooms: \_\_\_\_\_
  - Other: \_\_\_\_\_
- Disinfectant and related supplies are available to all employees at the following location(s): \_\_\_\_\_

## Safety Issues

- ▶ Keep the purpose of the Stay at Home orders in mind when operating your dealership. Take actions to avoid the spread of COVID-19.
- ▶ If a department stays open, it must practice “social distancing” and take other appropriate actions in light of the pandemic.
- ▶ The more protective precautions are open and conspicuous, the more likely any enforcement official may exercise discretion in your favor.

## Safety Issues

### ▶ Protective Masks

- ▶ Initial guidance was that masks were counterproductive, especially when balanced against the acute need for medical personnel to have access to available resources.
- ▶ Updated guidance has shifted to neutral, to recommended, and now in many cases to mandatory. For example,
  - ▶ San Diego County mandates masks for all who serve food or groceries.
  - ▶ City of Los Angeles requires essential employers to provide masks for all of their employees.
- ▶ Even if your jurisdiction does not (yet) mandate masks or face coverings, implementing them will further demonstrate your dealership's commitment to the common goal of social distancing.
- ▶ Do not recommend or mandate respirators or similar masks, as those remain in short supply for health-care workers.

# Safety Issues

- ▶ **Social distancing and basic infection prevention measures**
  - ▶ Social distancing – maintain at least six-foot distance from others, whenever possible.
  - ▶ Promote frequent hand washing (20 seconds with soap and warm water).
  - ▶ Make hand sanitizer available to customers and employees.
  - ▶ Employees that are sick should stay home.
  - ▶ Encourage coughing/sneezing etiquette (don't cough/sneeze into hands).
  - ▶ Customers and employees should have access to tissues and trash receptacles.
  - ▶ Encourage remote work, if possible.
  - ▶ Avoid direct contact with surfaces (e.g., use paper towel to open doors, avoid handshaking, etc.).
  - ▶ Discourage frequent use of communal equipment, and frequently disinfect all surfaces (with priority on surfaces frequently touched).

## Safety Issues

- ▶ Maintain the following items in stock:
  - ▶ Tissues and paper towels
  - ▶ Hand sanitizer
  - ▶ Soap
  - ▶ Disinfectant wipes
- ▶ If such gear is required, employers may be required to provide it under the Labor Code.
- ▶ Consider purchasing an infrared body thermometer to check employee temperature.



# Safety Issues

- ▶ Travel

- ▶ All nonessential travel should be avoided.
- ▶ Individuals returning from domestic and foreign hotspots should follow CDC guidance, and self-isolate if recommended.

- ▶ Travel to and from work

- ▶ Reports have been received that local law enforcement and highway patrol have been stopping employees in route to work and warning them that they need a letter of authorization from their employer to drive to and from work. No state or local requirement exists for this at this time. However, a sample travel authorization is available at [www.employerlawyers.com/legal-updates/](http://www.employerlawyers.com/legal-updates/) and on HR Hotlink for subscribers. You can also download one [here](#).

## Safety Issues

- ▶ Visit CDC Website for most current guidance:  
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

## Safety Issues

- ▶ We MAY have exposure! Now what?
  - ▶ EEOC has relaxed certain employee privacy rules in light of the pandemic.
  - ▶ You can ask if employees if they have symptoms of COVID-19:
    - ▶ Dry cough
    - ▶ Fever
    - ▶ Shortness of breath
    - ▶ Tiredness or fatigue



## Safety Issues

- ▶ Temperature checks?
  - ▶ You can test an employee's body temperature.
  - ▶ In many jurisdictions, it is mandatory.
    - ▶ Bay Area Counties now require it as part of their Social Distancing Protocols.
    - ▶ Fresno, too, has a requirement for "febrile respiratory illness" checks that requires it.
  - ▶ Information should be treated as a confidential medical record.
  - ▶ Other limits on medical examinations still apply.
  - ▶ However, a sample Symptoms Check form is available at [www.employerlawyers.com/legal-updates/](http://www.employerlawyers.com/legal-updates/) and on HR Hotlink for subscribers. You can also download one [here](#).
- ▶ Continue to keep in mind that many who may spread the virus are asymptomatic, so do not relax other social distancing practices.

## Safety Issues

- ▶ May we send home individuals who we believe may have been exposed to the virus?
  - ▶ If a person traveled to an area with a high infection rate, self-quarantine for 14 days.
  - ▶ Critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community.
    - ▶ A potential exposure means being a household contact or having close contact within 6 feet of an individual with confirmed or suspected COVID-19.
    - ▶ The timeframe for having contact with an individual includes the period of time of 48 hours before the individual became symptomatic.

## Safety Issues

- ▶ CDC Guidance: Critical Infrastructure workers who have had an exposure but remain asymptomatic should adhere to the following practices prior to and during their work shift:
  - ▶ Pre-Screen: Employers should measure the employee's temperature and assess symptoms prior to them starting work upon entering the facility.
  - ▶ Regular Monitoring: As long as the employee doesn't have a temperature or symptoms, they should self-monitor under the supervision of their employer's occupational health program.
  - ▶ Wear a Mask: The employee should wear a face mask at all times while in the workplace for 14 days after last exposure.
  - ▶ Social Distance: The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
  - ▶ Disinfect and Clean work spaces: Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.
  - ▶ Do not share equipment or electronic devices.

## Safety Issues

- ▶ May we send home individuals who we believe may have been exposed to the virus?
  - ▶ If symptoms are present:
    - ▶ If the employee becomes sick during the day, they should be sent home immediately.
    - ▶ Surfaces in their workspace should be cleaned and disinfected.
    - ▶ Information on persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled.
    - ▶ Others at the facility with close contact within 6 feet of the employee during this time would be considered exposed.
    - ▶ Person should self-isolate for at least seven days since the beginning of symptoms.
    - ▶ Must wait until 3 days after the fever abates and symptoms diminish without medication.
  - ▶ If tested positive:
    - ▶ Send home until they test negative twice (at least 24 hours apart); or,
    - ▶ Person should self-isolate for at least seven days since the beginning of symptoms, and must wait until 3 days after the fever abates and symptoms diminish without medication.

## Safety Issues

- ▶ What if an employee tests positive?
  - ▶ The infected employee should not return to work and self-isolate.
  - ▶ Inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).
  - ▶ The fellow employees should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

## Safety Issues

- ▶ What about vulnerable employees?
  - ▶ Employees with pre-existing conditions may be entitled to accommodations such as time off or additional distancing in the workplace.
  - ▶ Handle like any other disability accommodation.
  - ▶ Handle discreetly to protect privacy.

## Wage and Hour Issues

- ▶ While we are in uncharted territory with much of this crisis, we should not assume that the normal rules will not apply.

## Wage and Hour Issues

- ▶ “Furloughs” under California law
  - ▶ Furloughs that are occurring throughout California are not contemplated by the law.
  - ▶ The California Labor Commissioner has taken the position that an indefinite interruption of work without an anticipated return date within the same pay period should be treated as a termination of employment.
    - ▶ Employers must pay all final wages.
    - ▶ Employers must pay out all accrued-but-unused paid leave balances.
  - ▶ This does not apply if employees requests leave or time off.



## Wage and Hour Issues

- ▶ “Termination” does not need to end the relationship.
  - ▶ Many employers balk at “terminating” employees.
  - ▶ Concerns can be reduced by providing notices to employees that explain situation (current conditions require us to layoff employees; we anticipate the layoff as temporary; we will keep you updated).
  - ▶ Sample notices available on Fine, Boggs, and Perkins LLP website and from CNCDA.

# Wage and Hour Issues

## ▶ Reductions in Pay

### ▶ Salaried employees

- ▶ Exempt salaried managers and administrators are entitled to their full salary if they do any work during the week. (exception for PTO/vacation/sick leave)
- ▶ If you want to reduce salary, must provide advance notice.
- ▶ Salary cannot be less than 200% of state minimum wage @ 40 hour workweek. (\$1,040 per week @ \$13/hr)
- ▶ Can consider moving salaried employees to hourly pay plans.

# Wage and Hour Issues

## ▶ Reductions in Pay

### ▶ Pay Plan Changes

- ▶ Employees subject to a written pay plan may have to have guaranteed payments adjusted.
- ▶ A sample addendum to reduce minimum guaranteed payments is available at <https://www.employerlawyers.com/legal-updates/> or through HR Hotlink.

### ▶ COBRA

- ▶ An employee whose hours are reduced may fall outside of eligibility requirements for maintaining benefits (e.g., regularly scheduled for at least 30 hours per week).
- ▶ This could trigger a qualifying event under COBRA.

# WARN Act

- ▶ WARN Acts
  - ▶ Federal and state laws that generally requires employers to provide 60 days' advance notice of a mass layoff.
  - ▶ California WARN Act applies to “covered establishments” with more than 75 employees. (Site-specific count)
  - ▶ California WARN Act suspended by Governor Newsom via executive order.
- ▶ Remember that WARN applicability is measured over a 30-day period; if your employment losses have been phased in, you should review changes and planned changes over 30-day window to determine whether you are affected.

# WARN Act

- ▶ WARN Act

- ▶ To take advantage of the Governor's suspension of the WARN Act, dealerships must comply with the following:
  - ▶ Provide the notices specified in Labor Code § 1401(a)-(b) to all employees of the covered establishment affected by the termination, relocation, or layoff, the California EDD, the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or layoff occurs;
  - ▶ Give "as much notice as is practicable," and provide a brief statement of the basis for reducing the notification period;
  - ▶ Consistent with 29 U.S.C. § 2102(b)(2)(A) and its implementing regulations, the order for the mass layoff, relocation, or termination must be caused by COVID-19 related 'business circumstances that were not reasonably foreseeable as of the time that notice would have been required';
  - ▶ For written notices given after March 17, 2020, in addition to the other elements required by Labor Code § 1401(b), the notice must contain the following statement:
    - ▶ "If you have lost your job or been laid off temporarily, you may be eligible for Unemployment Insurance (UI). More information on UI and other resources available for workers is available at [labor.ca.gov/coronavirus2019](http://labor.ca.gov/coronavirus2019)."

# Reinstatement Issues

- ▶ Reinstatement after a Furlough or Layoff raises legal issues
  - ▶ Many courts take the position that the furlough or layoff results in a loss of employment and then a “re-employment” of the employee.
  - ▶ This break in employment causes serious legal concerns with the enforceability of contracts, agreement, etc. (such as at-will or arbitration) from the prior stint of employment.
  - ▶ Failure to properly handle the reinstatement could give rise to serious legal liability and risk.
  - ▶ Employers must either get all new hire documents and pay plans resigned at reinstatement or must use a Reinstatement Agreement to protect themselves.
  - ▶ HR Hotlink has automated the entire furlough/layoff process and the Reinstatement process to address these issues and protect dealers. Information on HR Hotlink is available at [www.hrhotlink.com](http://www.hrhotlink.com) or through CNCDA’s licensed vendor webpage.
  - ▶ A sample Reinstatement Agreement is available also available at <https://www.employerlawyers.com/legal-updates/>.

## Government Benefits - Overview

- ▶ Major actions by government over the past few weeks:
  - ▶ California eliminated the waiting time period for unemployment benefits.
  - ▶ Families First Coronavirus Response Act (FFCRA)
    - ▶ Creates coronavirus-related paid employee leave benefits
  - ▶ Coronavirus Aid, Relief, and Economic Security Act (CARES)
    - ▶ Creates new business loan program
    - ▶ Expanded UI benefits

# Government Benefits – Employee Leave

## ▶ The FFCRA

- ▶ Signed into law on March 18, 2020. Took effect April 1, 2020 and remains in effect until December 31, 2020.
- ▶ Posting requirement
  - ▶ Federal notice must be posted in the workplace, emailed, or direct-mailed to employees.
  - ▶ It's available at:  
<https://www.dol.gov/agencies/whd/pandemic>



**EMPLOYEE RIGHTS**  
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE  
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

**PAID LEAVE ENTITLEMENTS**  
Generally, employers covered under the Act must provide employees:

- Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:
  - 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
  - ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
  - Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**ELIGIBLE EMPLOYEES**  
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employees, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

**QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**  
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;	5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
2. has been advised by a health care provider to self-quarantine related to COVID-19;	6. is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.
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) or self-quarantine as described in (2).	

**ENFORCEMENT**  
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:  
1-866-487-9243  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://www.dol.gov/agencies/whd)

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## Government Benefits – Employee Leave

### ▶ The FFCRA

- ▶ Applies to private sector employers with 500 or less employees.
  - ▶ Count determined by either FMLA “integrated employer test” or FLSE “joint employer” test.
- ▶ Applies to employees that have worked for employer for at least 30 days.
- ▶ The DOL provides guidance on how to count employees (and other issues) at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- ▶ Local concerns
  - ▶ LA City passed ordinance imposing leave requirements on large employers (no reimbursement!).
- ▶ Small Employer Exception: Employers with fewer than 50 employees may be exempt from providing both Paid Sick Leave and Expanded FMLA to employees whose leave is prompted by closure of schools or child care providers “when doing so would jeopardize the viability of the small business as a going concern.” Authorized officer must confirm that through one of three different conditions apply.
  - ▶ Seek specific legal advice before assuming this will apply for you.

# Government Benefits – Employee Leave

## ▶ FFCRA paid leave requirements

### ▶ Generally, the FFCRA requires covered employers to provide to all employees:

- ▶ Up to 80 hours of paid sick leave at the employee's regular rate of pay (\$511 per day cap).
  - ▶ When? If employee is unable to work because of quarantine (not stay home order) or experiencing COVID-19 symptoms and seeking a medical diagnosis.
- ▶ Up to 80 hours of paid sick leave at 2/3 the employee's regular rate of pay (\$200 per day cap).
  - ▶ When? If employee needs to care for someone that is subject to a quarantine or care for a child who is not at school or with a child care provider due to COVID-19.
- ▶ Up to 10 additional weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay (\$200 per day cap).
  - ▶ When? To take care of a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

### ▶ Learn more at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

## Government Benefits – Employee Leave

- ▶ FFCRA employer reimbursement

- ▶ Employers providing qualifying paid leave under the FFCRA can receive tax credits, which are designed to fully reimburse the employer for its costs.
- ▶ The program is designed to provide prompt reimbursement to employers:
  - ▶ The IRS has indicated on its website that employers who pay qualifying sick or childcare leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid.
  - ▶ If there are not sufficient payroll taxes to cover the cost of qualified leave, employers will be able to file a request for an accelerated payment from the IRS, which the IRS expects to process quickly.

## Government Benefits – Employee Leave

- ▶ FFCRA Limitations

- ▶ FFCRA paid leave is limited and is not designed to replace unemployment benefits.
- ▶ An employee regularly scheduled to work must request such leave. You should not plan to use the leave as a substitute for furloughs/layoffs.

- ▶ CHANGE IN GUIDANCE:

- ▶ Employees now may qualify for leave if their department was shut down **because of** statewide or local Stay Home orders as long as work would otherwise be available to the employee but for the order.
- ▶ Key Question: Would the employee be able to work “but for” the quarantine or isolation order?

# Government Benefits – Employee Leave

- ▶ FFCRA Limitations

- ▶ Reinstatement Rights

- ▶ Reinstatement obligations match those of FMLA historically.
    - ▶ If an employer choose to lay off an employee, that employer will bear the burden of demonstrating that the employee would have been laid off even if the employee had not take leave under this Rule.
    - ▶ Small-Employer Exception (less than 25) allows employers to not reinstate the employee under certain, very limited conditions.
    - ▶ This same set of limitations applies to employer treatment of “key” employees as defined under FMLA.

- ▶ Seek Legal Assistance before going down this path

# Government Benefits – CARES Act

- ▶ The CARES Act

- ▶ Signed into law on March 27, 2020, the Coronavirus Aid, Recovery, and Economic Security Act (CARES) authorizes more than \$2 trillion in government resources to aid workers and businesses. Key elements include:

- ▶ Small business loans (Paycheck Protection Program);
    - ▶ Enhanced unemployment benefits;
    - ▶ Changes to estimated tax payments and tax credits;
    - ▶ Special rules for the use of retirement funds.

# Government Benefits – CARES Act

- ▶ Small Business Loans (Paycheck Protection Program)
  - ▶ Purpose
    - ▶ Designed help businesses retain employees at their pre-crisis base pay.
  - ▶ Eligibility
    - ▶ Nearly every small business may qualify (employees 500 or less) — Review counting rules at [www.sba.gov/size](http://www.sba.gov/size).
    - ▶ No personal guarantee or collateral required.
  - ▶ Amount
    - ▶ Employers may borrow up to 250% of monthly pre-crisis payroll, up to \$10,000,000.
  - ▶ Certification
    - ▶ Must certify in good faith that your businesses needs the funds due to the crisis and that you will use the funds for allowable purposes

## Government Benefits – CARES Act (PPP)

### What are you allowed to use PPP loans for?

- Payroll costs (allowable; forgivable up to \$100K per employee)
- Interest on mortgage obligations (allowable and forgivable)
- Interest on other debt obligations (allowable, might not be forgivable)
- Rent (allowable and forgivable)
- Utilities (allowable and forgivable)

### Application Deadline

- June 30, 2020



# Government Benefits – CARES Act (PPP)

- ▶ How is forgiveness determined?
  - ▶ Brief overview
    - ▶ Add up your forgivable expenses during the eight-week period immediately following loan disbursement (payroll, mortgage interest, rent, utilities).
    - ▶ Total forgivable expenses will be reduced by complex process including:
      1. At least 75% of total forgivable expenses must be payroll costs.
      2. Reduction of FTEs compared to pre-crisis baseline periods.
      3. Person-by-person wage reduction analysis (does not include employees earning more than \$100K).
        - ▶ Reductions based on prongs 2 and 3 can be reduced/eliminated if employees rehired prior to June 30.
  - ▶ How to maximize your loan forgiveness?
    - ▶ Make sure that at least 75% of loan proceeds are used for payroll costs during the 8 week period immediately following disbursement (in other words, consider immediately reinstating employees).
      - ▶ Remember – Have your rehired employees sign a reinstatement agreement.
    - ▶ Prepare records to support expenses and your eventual forgiveness application.
    - ▶ Use your records to model best forgiveness strategy (e.g., may be able to exclude employees if they earned more than \$100K on an annualized basis during any pay period in 2019).

# Government Benefits – CARES Act (PPP)

- ▶ Additional resources
  - ▶ [DHG Webinar – You've applied for you PPP Loan, what's next?](#)
  - ▶ [NADA – PPP Loan Use of Proceeds and Forgiveness - Preliminary Guidance](#)

## Government Benefits – CARES Act (PPP)

- ▶ Ongoing concerns with the PPP
  - ▶ Guidance on important aspects of the program will change (particularly forgiveness)
  - ▶ The program is running out of money
    - ▶ The CARES Act allocated \$349 billion to the PPP.
    - ▶ As of April 15, the SBA reported over 1.4 million loans approved totaling over \$315 billion.
    - ▶ On April 16, the SBA announced they are no longer accepting new applications.
    - ▶ Congress is considering additional funds, but nothing has been approved.
    - ▶ Additional congressional action could result in further changes to the PPP.

## Government Benefits – CARES Act

- ▶ Enhanced Unemployment Benefits
  - ▶ CARES adds \$600 per week from the federal government on top of whatever amount a worker receives through State unemployment benefits.
    - ▶ California's maximum now is \$450 per week
    - ▶ Thus, recipients would get \$1,050 per week in unemployment benefits
    - ▶ These benefits will last for four months (through July 31, 2020)
  - ▶ CARES also adds 13 weeks of unemployment insurance, both for existing claimants and for potential new filers (resulting in a 39-week period for benefits).
  - ▶ CARES allows self-employed, freelancers, and independent contractors to apply for special (temporary) Pandemic Unemployment Assistance benefits.

# Government Benefits – CARES Act

- ▶ Business Tax Relief
  - ▶ Employee retention credits
    - ▶ Refundable tax credit for an employer's share of Social Security tax.
    - ▶ Eligible employers must have operations fully/partially suspended because of shut-down order, or gross receipts decline by more than 50%.
    - ▶ May not qualify if you received forgivable loan (PPP).
  - ▶ Payroll tax deferral
    - ▶ Tax can be deferred into 2021 and 2022.
    - ▶ May not qualify if you received a forgivable loan (PPP).
  - ▶ Other changes (check with your accountant)
    - ▶ Net operating losses, business interest deductions, AMT credits, depreciation changes.

## Government Benefits – CARES Act

- ▶ Special Rules for Use of Retirement Funds
  - ▶ The CARES Act provides special rules for taking distributions from retirement funds.
  - ▶ Where applicable, the rule allows distribution without early-distribution penalty of up to \$100,000 from qualified requirement funds.

Thank you!

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