



CARES Act, Families First Coronavirus Response Act & Unemployment FAQ



CARES Act:

Payroll Protection Program

Note: Some information changed from the time that we did our Webinar to today.

The loan will no longer be 10 years at 4%, it will be 2 years at 1% - yes half a percent

**The loan calculation now appears to be only on your gross payroll not including additional payroll taxes and benefits
Owner/Sole proprietors who do not pay themselves payroll wages – see “What can I use these loans for?”**

When can I apply for the Payroll Protection Program loan?

Starting April 3, 2020, small businesses and sole proprietorships can apply. Starting April 10, 2020 Independent contractors and self-employed individuals can apply. There is a funding cap – i.e. first come first served.

How is loan calculated?

Your Average Monthly Payroll from 2019 for two months plus an additional 25% of that amount, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020 excluding costs over \$100,000 on an annualized basis for each employee. Loan amount is capped at \$10 Million.

What can I use these loans for?

- Payroll costs, including benefits (gross wages including any type of paid time off, severance, health insurance and retirement benefits, plus state and local taxes assessed on compensation. **Sole proprietor or independent contract:** wages, commissions, income or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.
- Interest on mortgage obligations, incurred before February 15, 2020
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020

How much of my loan will be forgiven?

You will owe money if you use the loan for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. You will owe money if you do not maintain your staff and payroll.

- Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount
- Level of Payroll: Forgiveness will be reduced if you decrease salaries and wages by more than 25%. For any employee that made less than \$100,000 annualized in 2019
- Re-hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

Where do I apply for the loan?

You will need to apply with a bank that is approved to process Small Business Administration (SBA) loans. Visit www.sba.gov for a list of SBA Lenders. Additional information from the SBA [More Information](#)

For tax credits and other programs please visit this site for more information <https://www.irs.gov/coronavirus>



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Families First Coronavirus Response Act - FFCRA:

Are all businesses required to provide the FFCRA Leave?

All businesses with less than 500 employees are required to provide employees with this benefit. There are potential exemptions for businesses with fewer than 50 employees if providing the leave would jeopardize the viability of the business as well as first responders and healthcare workers.

What costs are eligible for tax credits?

Employee wages and health insurance. Only wages and health insurance paid to or on behalf of the employee who is taking the leave may be used as a credit.

What taxes can the employer keep?

- Federal income taxes
- EE & ER portion of Social Security and Medicare

Are laid off employees eligible for FFCRA?

No, only currently active employees are eligible for the expanded FMLA and Emergency Sick Leave Pay.

What paperwork should I have an employee complete to validate their need for leave?

In the guidelines just released April 1, 2020, the DOL outlined the documentation needed. Documents must include a signed statement containing the employee's name, the dates for which leave is requested, the COVID-19 qualifying reason for leave and a statement representing that the employee is unable to work or telework because of a COVID qualifying reason.

For Paid sick leave for the employee's own condition

- Name of employee, Name of the government entity that issued the quarantine or isolation order
- If ordered by a health care provider – the name of the health care provider who advised the employee to self-quarantine
- An employee requesting paid sick leave must provide the health care provider who advised him or her to self-quarantine for COVID-19 related reasons.

For Paid leave to care for an individual

- The government entity that issued the quarantine
- The name of the health care provider who advised the individual to self-quarantine or
- The name of the child being cared for, the name of the school, place of care, or child care provider and a statement representing that no other suitable person is available to care for the child

For Emergency Family Leave due to child care

- The name of the child being cared for, the name of the school, place of care, or child care provider and a statement representing that no other suitable person is available to care for the child

Where do I find more detailed information from the IRS on taking the tax credit?

Check these locations frequently for updated information <https://www.irs.gov/forms-pubs/about-form-7200> and <https://www.irs.gov/pub/irs-drop/n-20-21.pdf>



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Unemployment

I am self-employed, an independent contractor or gig worker. Am I eligible and when can I apply for unemployment?

The CARES Act extended unemployment to additional classes of workers. As of 4/1/2020 Employment Security Department's (ESD) website has not been fully upgraded to integrate the newly extended benefits. If you were not eligible for unemployment before the stimulus package was passed, ESD is asking that you wait to file until their system is up. They expect the changes to be complete by mid-April.

Are employees required to use their PTO before filing for unemployment?

No.

Describe the differences between the Unemployment options for employees who are still working and those who are not:

Options for employees who are still working but on reduced hours:

- Partial Employment
- Shared work:
 - Employee is still working 50% of their normal schedule but has some hours reduced
 - Employer must continue benefits just as they did during standard employment
- Furlough

Employees who are not currently working but I may need them to work soon:

- Standby is generally the best option for employees who may be recalled in the coming weeks.

Employees are not working and you have no intention of rehiring them anytime soon:

- Layoff

Can I just layoff my problem employees and call it good?

Not so fast! Employers generally should be making layoff decisions based on non-discriminatory reasons such as seniority and work needed to be done. Performance issues can be a reason for layoffs but employers should have evidence of write ups and show proof of addressing behavior.

Can I move all of my Salaried Exempt employees to hourly so I can only pay them for the time worked?

Employers must be cautious when transitioning employees back and forth between exempt and non-exempt as this can be a violation of FLSA laws. While Unemployment has stated you can transition salaried employees to hourly, they did not use the term exempt employees which is a clear distinction.

Will my employees be eligible for unemployment?

We received many questions regarding specific instances regarding an employee's eligibility for unemployment. All unemployment decisions are made by Unemployment and we cannot speak to how they will be making decisions on cases.

What if I have work for employees to do but they refuse to work due to fear of COVID-19?

In general, we do not want to reprimand an employee for refusing to work if they do not feel comfortable. Employees may have health concerns related to them or a family member and they do not feel comfortable sharing those with their employer. You could allow the employee to use their PTO and then transition them to unemployment. They would work with Unemployment to determine if they are eligible if work was available and they refused.

What if I placed an employee on standby for 6 weeks but need to extend their time?

Employees should be able to update their claim online.



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Can I keep my employees on benefits even if I laid them off?

Employers who wish to maintain an employee's health coverage while laid off should work with their Broker to discuss specifics. Remember to be cautious and treat employees equally to avoid discrimination claims.

When will my employees receive the additional \$600 per week and will it be retroactive?

ESD is still updating their system. If your employees became unemployed on March 29th they will receive the \$600 per week retroactively once ESD's system is up and running and able to support the new eligibility.

Will my employee be making more on unemployment than while working?

The intent of the bill was to make employees whole. We are waiting for additional information, but it appears that they will not make more on unemployment.

Check this page on Employment Security's website for regular updates <https://esd.wa.gov/newsroom/covid-19#PFML>

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Department of Labor Updates as of 3/31/2020

Exemptions for Businesses under 50 employees. The DOL clarified that businesses may only claim exemptions for providing employees leave due to lack of childcare. Businesses may not claim an exemption for Paid Sick Leave for reasons related to taking time off to care for themselves or a family member with COVID-19. Businesses may claim the exemption due to the following reasons:

- FMLA+ and Emergency Paid Sick Leave expenses would exceed revenue and cause the business to cease operating at minimal capacity.
- The absence of employees requesting leave would cause a substantially risk to the financial health or operational capacity due to specialized skills, knowledge, or responsibilities the employee possess. OR
- The business does not have sufficient workers who are able willing and qualified to perform the work that are needed for the business to continue minimum operations.

EPSL & FMLA+ are not required to be run concurrently and are in addition to existing leave. Employees can use employer sponsored benefits such as PTO for the first 10 days of FMLA+. Following 12 weeks of FMLA+, the employee can then use EPSL totaling 14 weeks. Employees may even stack additional employer sponsored available leave following emergency benefits.

FMLA+ vs. Traditional FMLA. Employees are **not** eligible for FMLA+ if they have exhausted traditional FMLA. Employees are limited to a total of 12 workweeks of leave during a 12-month period.

Part Time Employees. For the purposes of FFCA, part-time employee is defined as someone normally scheduled less than 40 hours per week.

This is a dynamic situation that continues to evolve. The information contained in this document should not be construed as legal guidance and is merely an overview.