

Navigating the Employment Impacts of COVID-19

Spencer Fane LLP
April 14, 2020

Paul Satterwhite, Partner
Elizabeth Wentz, Partner

Overview

- **Families First Coronavirus Response Act**
 - Emergency FMLA
 - Paid Sick Leave
- **CARES Act**
 - Pandemic Unemployment Assistance (PAU)
 - Federal Pandemic Unemployment Compensation (FPUC)

FFCRA-Emergency FMLA



- **Eligibility** = employee worked for the company for 30 days
- **Qualifying Reason** = the employee is unable to work (or telework) because they need to care for their child whose school or place of care is not available because of COVID-19
 - *have to certify no other suitable adult available
- **Benefit** = 12 weeks of leave (combined with other FMLA); first 10 days unpaid, remaining paid at 2/3

3

FFCRA-Paid Sick Leave



- **Qualifying Reason** =
 - Category 1: Employee is:
 - subject to federal, state or local quarantine or isolation order related to COVID-19;
 - advised by a health care provider to self-quarantine due to COVID-19 related concerns; or
 - exhibiting symptoms of COVID 19 and seeking a diagnosis.
 - Category 2: Employee is caring for
 - an individual that is subject to a reason in Category 1; or
 - their child whose school or child care provider is closed/unavailable due to COVID-19

4

FFCRA-Paid Sick Leave



- **Eligibility** = full-time or part-time employee
- **Benefit** = Paid leave
 - 80 hours for full-time (prorated for part-time)
 - Category 1 Reason = 100% pay
 - Category 2 Reason = 2/3 pay

5

FFCRA-Small Business Specifics



- **Exemption for Small Employers:** Employers with fewer than 50 employees can argue an exemption from EFMLA and EPSL if:
 - the leave results in expenses and financial obligations exceeding available revenues causing business to cease operating at a minimal capacity;
 - the employee's absence creates a substantial risk to the financial health or operational capabilities because of their specialized skills, knowledge, or responsibilities; or
 - there are not enough workers to cover the work of the employee requesting leave and such services are needed for the small business to operate at a minimal capacity.

6

FFCRA-Small Business Specifics



- **No Civil Liability for EFMLA:** Employers with fewer than 50 employees cannot be sued for a EFMLA violation

7

Unemployment Benefits – COVID-19 Pandemic



- Title II provides 2 ways unemployment insurance (UI) benefits will be available from 1-27-20 through 12-31-20:
 - A. Normal Method – Employee meets UI requirements of applicable State law (normally State where he/she worked); or
 - B. COVID-19-Related Method - Employee does *not* meet those State requirements but meets the requirements for Pandemic Unemployment Assistance (PUA).

8

Unemployment Benefits – COVID-19 Pandemic



Option A – Normal Eligibility – State Unemployment Benefits

Normally eligible for benefits:

- Unless discharged for misconduct; or
- Unless resigned without good cause attributable to work; or
- Unless not ready (available), willing (actively seeking), and able (fit for duty) to work; or
- Unless has insufficient earnings history.

9

Unemployment Benefits – COVID-19 Pandemic



Option B – COVID-19-Related Eligibility – Pandemic Unemployment Assistance (PUA)

Will be eligible for benefits:

- #1 If otherwise able to work and available to work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because of 1 of 11 designated COVID-19-related reasons; or
- #2 If self-employed, seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for normal benefits and meets the requirements of #1 above.

10

Unemployment Benefits – COVID-19 Pandemic



Duration of COVID-19-Related Eligibility:

- As long as unemployment or inability to work continues because of COVID-19
- For the number of weeks that the individual is not entitled to normal UI benefits
- For weeks beginning on or after 1-27-20 and ending on or before 12-31-20
- For a maximum of 39 weeks

11

Unemployment Benefits – COVID-19 Pandemic



Exclusions – *Not* Eligible for Benefits:

- If has the ability to telework with pay; or
- If receiving paid sick leave or other paid leave benefits (regardless of whether there is a COVID-19-related qualifying reason), including paid leave under FFCRA.

12

Unemployment Benefits – COVID-19 Pandemic



Amount of Benefits

- Normal weekly unemployment benefit amount (as determined under applicable State law)

Plus Federal Pandemic Unemployment Compensation (FPUC)

- \$600/week through July 31, 2020
- **If the individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC.**

13

Unemployment Benefits – COVID-19 Pandemic



Pandemic Emergency Unemployment Compensation (PEUC)

provides up to 13 weeks of federally funded benefits to qualified individuals who:

- Have exhausted all rights to regular compensation under State law or Federal law with respect to a benefit year that ended on or after July 1, 2019;
- Have no rights to regular compensation with respect to a week under any other state UC law or Federal UC law, or to compensation under any other Federal law;
- Are not receiving compensation with respect to a week under the UC law of Canada; and
- Are able to work, available to work, and actively seeking work, although states must offer flexibility on "actively seeking work" where there are COVID-19 impacts and constraints.

14

Unemployment Benefits – COVID-19 Pandemic



- Waiting week is waived (through 12-31-20)
- FPUC benefit (the \$600/week) paid weekly either with the normal weekly payment or as a separate payment (up to the State)
- Special rules for non-profits and government entities
- Shared Work/Work Sharing Programs

15

Unemployment Benefits – COVID-19 Pandemic



Q: Can I quit my job to collect unemployment and the \$600 weekly FPUC payment?

A: If an employer offers sick leave and/or other leave or remote work options to address COVID-19 in lieu of layoffs, then a person who quits on his/her own volition would not qualify for unemployment benefits. Quitting without good cause to obtain additional funds under the regular unemployment program or the CARES Act qualifies as fraud. If an individual obtains benefits through fraud, the individual is ineligible for any additional benefit payments, must pay back the benefits received and is subject to criminal prosecution.


16

Unemployment Benefits – COVID-19 Pandemic



**EMPLOYEE NOTICE:
UNEMPLOYMENT INSURANCE
BENEFITS ELIGIBILITY**

- If workers quit a job without good cause, they are not eligible for unemployment insurance benefits. Quitting a job due to fear of exposure to COVID-19, absent advice from your health care provider, is not considered good cause for quitting under the law.
- Quitting a job without good cause to obtain unemployment benefits may be considered fraud. Benefits obtained through fraud must be repaid. The individual is not eligible for future payment and may be subject to prosecution.
- Unemployment benefits are for those who are laid off through no fault of their own.
- If a workplace is operating during COVID-19, workers should provide a doctor's note when filing for unemployment. The note should explain what work the employee can perform.
- If a worker is put in a temporary layoff status or furlough, then declines their employer's request to come back to work, the worker is not eligible for unemployment benefits.

LEARN MORE ONLINE AT
 [LABOR.MO.GOV/CORONAVIRUS](https://labor.mo.gov/coronavirus)

17

Unemployment Benefits – COVID-19 Pandemic



Missouri DOL – Coronavirus (COVID-19) and Unemployment Insurance Benefits Questions and Answers for Employers and Employees:

[https://labor.mo.gov/coronavirus#mini-panel-coronavirus-
tabs2](https://labor.mo.gov/coronavirus#mini-panel-coronavirus-tabs2)

18

COVID-19 Resources



- Spencer Fane COVID-19 Resource Page: <https://www.spencerfane.com/service/covid-19-resources/>
- DOL FAQ: <https://www.dol.gov/agencies/whd/pandemic/ffcr-a-questions>
- IRS FAQ: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

19

Presenters



Paul Satterwhite

Spencer Fane LLP
2144 E. Republic Road, Suite B300
Springfield, MO 65804
417.888.1035
psatterwhite@spencerfane.com



Elizabeth Wente

Spencer Fane LLP
2144 E. Republic Road, Suite B300
Springfield, MO 65804
417.888.1038
ewente@spencerfane.com

20