

The background features a dark blue gradient with a starry space pattern. Overlaid on this are several circular gauges and progress indicators. One large gauge on the left has a scale from 140 to 260. Other smaller gauges are scattered across the frame, some with dashed lines and arrows indicating movement or progress. The overall aesthetic is technical and futuristic.

# COVID-19

## EMPLOYER UPDATE

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# DISCLAIMER

- This is strictly for informational purposes. The information is intended to be used solely by the subscribers to the Webinar.
- Any answered questions are for hypothetical purposes only. There is no attorney-client privilege information or specific advice.
- If you have specific questions and are a part of Foley & Foley's On-Call Triage Service, then please feel free to reach out to me at [wendy@foleylawpractice.com](mailto:wendy@foleylawpractice.com). You MUST be a part of the on call triage service in order for me to answer your question and maintain the attorney client privilege.

# FFCRA – DOL UPDATES

- Furloughed Employees – Will NOT be covered by these leaves. This is a stark contrast from what has been suggested. If employees are furloughed or the company is shut down, employees will NOT be entitled to paid leave. This is regardless of whether the furlough happened before April 1 or after.

# FFCRA – DOL UPDATES

- Intermittent Leave – Only allowed if the employer and employee agree, up to the employer's discretion. This can only be used with telework, meaning an employee can't use intermittent leave and still come into work physically.
  - Example: Employee can work from home 30 hours per week but needs to care for her child 10 hours per week. She would telework for 30 hours and 10 hours would be paid at 2/3 rate.
  - In person jobs – can only use intermittent leave in circumstance where there is a minimal risk that the employee will spread COVID-19 to other employees at the worksites. Basically only allowable for care of son or daughter.

# FFCRA – DOL UPDATES

- Employers can permit employees to supplement their 2/3 pay with their existing PTO or Sick Time bank but are not required to do so. Employers cannot force the use of PTO or Sick Time to supplement pay.
- Emergency Family and Medical Leave – 12 weeks includes the FMLA allotment. This means that if an employee has already exhausted their FMLA 12 weeks, they are NOT entitled to additional leave. The 12 weeks are apart of FMLA and not in addition to.

# FFCRA – DOL UPDATES

- New Regulations:
  - Son/Daughter is defined the same as under the FMLA, meaning if they are over 18 and cannot care for themselves then they qualify for the leave.
  - Quarantine/Isolation orders include orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility.
  - Furloughed employees do not count towards the 500 employee count.

# FFCRA – DOL UPDATES

- Symptoms of COVID19 include fever, dry cough, shortness of breath, or CDC defined symptoms.
  - Paid sick leave taken for this reason must be limited to the time the employee is unable to work because he is taking affirmative steps to obtain a medical diagnosis
  - Employee cannot take leave to self-quarantine without seeking a medical diagnosis
  - Extenuating circumstances can include severe sickness symptoms
  - Employee may continue to take leave while experiencing symptoms or may continue to take leave after testing positive for COVID 19 provided the health care provider advises the employee to self-quarantine.

# FFCRA – DOL UPDATES

- Leave for Care for another during a quarantine:
  - Applies only if but for a need to care for an individual the employee would be able to work.
  - The employee must have a genuine need to care for the individual.
  - Can't be taken if they have no personal relationship- it must be an immediate family member, roommate or similar person that creates an expectation the employee would care for the person.



# FFCRA – DOL UPDATES

- Here's a link to the DOL's Q&A: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.
- New Poster: [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA Poster WH1422 Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

# FFCRA – IRS UPDATES

- Documentation you can request:
  - The employee's name;
  - The date or dates for which leave is requested;
  - A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
  - A statement that the employee is unable to work, including by means of telework, for such reason.

# FFCRA – IRS UPDATES

- Quarantine order or self-quarantine advice – name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine
  - If not the employee, that person’s name and relation to the employee.
- School closing or child care provider unavailability - name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child.
- <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

# REDUCTION IN FORCE

- **Unemployment:** Available for reduction in hours/wages, furloughs, and lay offs.
  - Eligibility varies by state, based on compensation and reasons for the reduction.
  - Under the new CAREs Act Employees will receive \$600, every week for four months in addition to their weekly base rate. States will be issuing this – still awaiting more information.
  - The bill does not provide a cap, however, likely will not be able to earn above what you currently make.

# PAYROLL PROTECTION PROGRAM

- Guidance will be given to lenders from the SBA and the Department of Treasury in the coming weeks – still a lot of information we do not know.
- Need to use the loan to cover your payroll, rent, mortgage, and utilities – if you do then you receive forgiveness of the loan. You cannot lay off or furlough employees while you are using the loan.
  - Document, document, document.
- If you have furloughed employees from February 15 – April 26, then you will receive partial forgiveness. If you bring back all of your employees by June 30<sup>th</sup>, you will receive full forgiveness.
- Reach out to your lender – they will likely have the most up to date information first.

# RELIABLE SOURCES

- Department of Labor's – this agency is in charge of promulgating and executing the rules under the FFCRA, if it comes from them, then it is the most accurate/up-to-date information.
- Internal Revenue Service – this agency is in charge of applying tax credits to the FFCRA, they will have the most up to date information.
- Center of Disease Control – In charge of providing evidence-based, scientific information on COVID-19, how to prevent it, how to manage it, and what they symptoms are.
- State or Local Government Orders – each state website has an location where all the executive orders are kept. The order will have the list of essential businesses and the expected enforcement.
- State Department of Health – This will provide the up to date statistics on COVID-19 in your area.

# FAQS

- We have an employee self-quarantining due to symptoms. It appears that starting Wednesday 4/1 she will be eligible for 2/3 paid sick leave. We are assuming that it doesn't matter that her quarantining started before 4/1 and that we would pay her for the remaining days of her quarantine. Is that correct?
  - If she is self quarantining for reasons due to COVID-19 for herself, she would be eligible for full pay for 10 days as of 4/1.
- Also, under the Paycheck Protection Program, would forgivable loan funds be eligible to pay employees their full wages even with reduced, limited, or no hours worked? We have been deemed an essential business, but are currently only asking our employees to work 24 hour rather than 40. We intend to pay them their full 40 hour wages. Would those wages be eligible wages for loan forgiveness? What if we were eventually forced to cut some, or all, employees to no hours but wanted to continue to pay them their full 40 hour wages. Again, would those wages be eligible wages for loan forgiveness?
  - Likely yes, if you pay them the full amount, even if they are not working, then that would qualify for forgiveness. However the bill does not mention this and this will be something we will receive more guidance on.

# BIO

- After completing law school on a merit scholarship, Wendy Hansen organized and created a legal compliance program for a large manufacture in Massachusetts. Starting from the ground up, Wendy taught legal compliance and leadership training; implemented and produced policies from employee records to employee reviews; drafted and implemented a framework for a new Human Resources department for the company; and conferred with upper management regularly on HR and general business problems. This experience gives Wendy an insider's perspective on the day to day challenges HR and management face.
- As well as her strong human resources background, Wendy worked at an insurance defense litigation firm in Boston. She reviewed and analyzed employment law agency charges, threatened litigation, and actual litigation. Wendy worked with employers under their employment practice liability insurance on a variety of claims, including harassment, discrimination, retaliation and wrongful termination.



# Q&A

The background is a dark blue gradient with a field of small white stars. Overlaid on this are several technical diagrams in a lighter blue color. In the top right, there is a large circular gauge with a scale from 0 to 210 and a needle pointing to approximately 190. Below it is a smaller circular diagram with concentric circles and arrows. In the bottom right, there is another circular diagram with concentric circles and arrows. In the bottom left, there is a circular diagram with a dashed arrow pointing left. In the top left, there is a small circular diagram with a dashed arrow pointing left.