

**Ward, Hocker & Thornton, PLLC**

Vine Center  
333 W. Vine St., Suite 1100  
Lexington, KY 40507  
Tel 859.422.6000

Hurstbourne Place  
9300 Shelbyville Rd., Suite 700  
Louisville, KY 4022  
Tel 502.583.7012  
WHTlaw.com

# FEDERAL CORONAVIRUS/COVID-19 RELIEF FOR SMALL BUSINESSES & NON-PROFITS

AS OF APRIL 2, 2020

*A summary of the Families First Coronavirus Relief Expansion Act (FFCRA)  
and Coronavirus Aid, Relief, and Economic Security (CARES) Act*

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# FAMILIES FIRST CORONAVIRUS RELIEF ACT (FFCRA)

## Families First Coronavirus Relief Act (FFCRA) Overview:

The FFCRA was the first federal coronavirus-responsive legislation enacted on March 18, 2020. The Act became effective on April 1, 2020 and applies through December 31, 2020. Additionally, the Act contains two sub-acts that provide paid leave for employees affected by coronavirus/COVID-19:

- (1) Emergency Family and Medical Leave Expansion Act (EFMLEA) and
- (2) Emergency Paid Sick Leave Act (EPSLA).

### (1) EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA)

- **12 weeks of emergency family and medical leave.**
  - Family leave defined: when an employee cannot work *or telework* due to:
    1. Caring for child due to school or childcare center closure related to COVID-19, or
    2. Childcare provider unavailable due to COVID-19.
- **Pay rate:**
  - 2/3<sup>rd</sup>s pay:
    - Up to \$200/day and
    - Up to \$12,000 over the entire paid sick leave.
- **Covered employees:**
  - Full and part-time employees who have been employed for at least 30 days.
    - No minimum hours worked requirement during those 30 days.
- **Covered employers:**
  - EFMLEA applies to *any* private employer with fewer than 500 employees.
  - No requirement of 50 employees within 75-mile radius such as in the FMLA.
- **Note:**
  - Under EFMLEA, first 10 days of employee's leave may consist of unpaid leave, but an employee may choose to substitute any accrued paid leave (vacation, personal, medical, or sick leave) for such unpaid leave. After this 10-day period, an employer must provide *paid* leave to the employee for each additional day of leave.

# FAMILIES FIRST CORONAVIRUS RELIEF ACT (FFCRA)

## (2) EMERGENCY PAID SICK LEAVE ACT (EPSLA)

- **Two weeks of emergency paid sick leave.**
  - Employee leave defined: when an employee cannot work *or telework* due to:
    1. Federal, state, or local quarantine or isolation order,
      - Order specific to an individual, not an entire business or industry.
    2. Advice from health care provider to self-quarantine,
    3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis,
    4. Caring for someone advised or ordered to quarantine,
    5. Caring for child whose school or place of care has closed, or whose childcare provider is unavailable, due to COVID-19, or
    6. Experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services (HHS).
- **Pay rate:**
  - Reasons 1-3: regular pay
    - Up to \$511/day and
    - Up to \$5,110 over the entire paid sick leave period.
  - Reasons 4-6: 2/3<sup>rd</sup>s pay
    - Up to \$200/day and
    - Up to \$2,000 over the entire paid sick leave period.
- **Covered employees:**
  - Full-time employees: entitled to 80 hrs. (two weeks) of paid leave.
  - Part-time employees: entitled to paid leave equal to the number of hours that the employee works, on average, over a two-week period.
    - e.g. employee who averages 15 hrs./wk. entitled to 30 hrs. paid leave.
  - Available to all employees immediately, regardless of how long an employee has worked for a covered employer, and employers cannot require employees to use other forms of paid leave before using paid sick leave under the EPSLA.
    - Goal is to avoid exposure to coronavirus/COVID-19, thus new employees who are ill are incentivized to stay home rather than meet a minimum employment threshold.
- **Covered employers:**
  - Private employers with fewer than 500 employees.
  - No requirement of 50 employees within 75-mile radius such as in the FMLA.
- **Note:**
  - The EPSLA specifically prohibits retaliation against any employee who takes leave or files any complaint or proceeding related to the statute. Remedies for violations of the EPSLA, are coextensive with those set forth in the Fair Labor Standards Act (FLSA).

# FAMILIES FIRST CORONAVIRUS RELIEF ACT (FFCRA)

## COMMONALITIES OF THE EFMLEA & EPSLA UNDER THE FFCRA

- **Tax credits:**
  - The FFCRA provides covered employers with a refundable tax credit against federal payroll tax for each quarter in an amount **equal to 100 percent** of the qualified leave wages.
  - Refundable: leave costs exceeding payroll taxes owed will be refundable to the employer at the end of each quarter.
  - Employers should file IRS Form 941 for this credit.
  
- **Small business exemption:**
  - An employer with fewer than 50 employees may be exempt from compliance “when the imposition of such requirements would jeopardize the viability of the business as a going concern.”
    - High standard. Proceed with caution.
  - No/minimal published procedure or guidelines regarding this exemption.
    - DOL guidance explains that a business seeking this exemption “should document why your business with fewer than 50 employees meets the criteria set forth by the Department” rather than immediately file for exempt status.
      - Designed to prevent a flood of applications at this time. Expect further regulations and guidelines regarding this exemption.
  
- **30-day grace period:**
  - The DOL issued Field Assistance Bulletin No. 2020-1 to announce that it will not bring enforcement actions against any employer for FFCRA paid leave violations “occurring within 30 days of the enactment of the FFCRA, i.e. March 18 through April 17, 2020.”
    - Only applicable if the employer has made reasonable, good faith efforts to comply.
    - An employer acts “reasonably” and “in good faith” if:
      - The employer remedies any violations, including by making all affected employees whole as soon as practicable,
      - The violations were not “willful” (where willful means the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited”), and
      - The DOL receives a written commitment from the employer to comply with the applicable paid leave requirements in the future.
  - This grace period is designed to help covered employers with limited cash flows. As a result, it will not cover employers with sufficient funds to pay required sick leave which also choose not to timely pay employees taking covered leave.

# FAMILIES FIRST CORONAVIRUS RELIEF ACT (FFCRA)

- The bulletin further states that tax-credit eligible employers who have insufficient cash flow should make the paid leave wage payments “as soon as possible, but not later than seven (7) calendar days after the employer has withdrawn an amount equal to the required paid sick leave and expanded family and medical leave wages from the employer’s federal payroll tax deposits or, to the extent such deposits are not sufficient, has received a refund of the credit amount from the IRS to cover the required wages.”
- **Worksite closure:**
  - Cancels paid leave requirements. An employer does not have to pay employees if it closes the entire site.
  - This will likely qualify employees for unemployment insurance benefits.
- **Looking ahead:**
  - Look for additional guidelines regarding the small business exemption. Many small businesses risk penalties for failure to comply with the FFCRA. The FFCRA is designed to put federal money in the pockets of employees during an unprecedented time.

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

## Coronavirus Aid, Relief, and Economic Security (CARES) Act Overview:

The CARES Act is the \$2 trillion stimulus package that was signed on March 27, 2020 and provides significant relief (loans) for small businesses and non-profits. Available loans include:

- (1) Paycheck Protection Program (PPP)
- (2) Emergency Economic Injury Disaster Loans (EIDL)
- (3) Mid-Size Business Loan Program (MBLP)

### (1) PAYCHECK PROTECTION PROGRAM (PPP)

- **Eligible businesses:**
  - Small businesses with 500 or fewer employees including:
    - Restaurant, foodservice centers, caterers, and hotels that employ not more than 500 employees per physical location;
      - Must operate under North American Industry Classification System code beginning with 72.
    - Tax-exempt non-profits (501(c)3s including religious institutions);
    - Tax-exempt veterans organizations (501(c)19s); and
    - Tribal businesses (as defined by SBA 31(b)(2)(C)).
  - Sole proprietorships,
  - Independent contractors,
  - Certain self-employed individuals,
  - Must have been in operation on February 15, 2020 and either had employees for whom the business paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099.
- **Loan amount:** lesser of:
  - \$10M or
  - 2.5x monthly payroll (as defined in the Act).
    - $(\text{Annual payroll} / 12) \times 2.5$  or
    - $(\text{Average total monthly payroll between } 2/15/19 \text{ (or } 3/1/19) \text{ and } 6/30/19) \times 2.5$ 
      - For seasonal employers
- **Interest rate:** 1%

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

- **Term duration:** Up to two years
  
- **Loan use:**
  - Payroll costs (note that annual salaries in excess of \$100k will not be forgiven),
  - Benefits,
  - Rent/mortgage, and
  - Interest payments on any debt obligations incurred before February 15, 2020, or
  - Refinancing an SBA EIDL loan from January 31, 2020 through April 3, 2020.
  
- **How to apply:** through local banks
  - Must certify that:
    - The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099;
    - The loan is necessary due to the uncertainty of current economic conditions caused by COVID-19;
    - Funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, utility payments, and that not more than 25 percent of loan proceeds may be used for non-payroll costs; and
    - Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, and not more than 25 percent of the forgiven amount may be for non-payroll costs.
  - No collateral required
  - No personal guarantees required
  - Required documents:
    - SBA Form 2483 (Application)
    - Payroll documentation
  
- **When:**
  - Small businesses and sole proprietorships: Friday, April 3 through June 30, 2020.
  - Independent contractors and self-employed: Friday, April 10 through June 30, 2020.
  - Program is retroactive to February 15, 2020 to help bring workers who may have already been laid off back onto payrolls.
  
- **Key provision: loan forgiveness**
  - During the eight-week period beginning on the date a Paycheck Protection Loan is funded (the Forgiveness Period), a borrower will be eligible for forgiveness and cancellation of indebtedness for **up to the full amount of the loan principal**.
    - Amount eligible for forgiveness is equal to the total costs incurred and payments made during the Forgiveness Period for:
      - Payroll



# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

- Mortgage interest
  - Rent, and
  - Utilities.
  - Not more than 25 percent of loan forgiveness amount may be attributable to non-payroll costs. Primary purpose of loan is payroll.
  - The loan forgiveness amount available to a borrower is subject to reduction if the borrower terminates employees or reduces employee salary and wages (for employees earning less than \$100k annually) during the Forgiveness Period.
    - There is, however, relief from the forgiveness reduction if the borrower rehires employees or makes up for wage reductions by June 30, 2020.
- **Payment deferral:**
  - The SBA will direct lenders to defer all payments otherwise due under a PPP loan for a minimum of 6 months and maximum of 12.
- **Note:** If an eligible employer receives an employee retention credit under another provision of this act, that employer is not eligible for the same credit under PPP.
- **Note for religious organizations:** All loans guaranteed by the SBA pursuant to the CARES Act will be made consistent with constitutional, statutory, and regulatory protections for religious liberty, including the First Amendment, Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 and bb-3, and SBA regulation at 13 C.F.R. 113.3-1h, which provides:

“Nothing in [SBA nondiscrimination regulations] shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.”

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

## (2) ECONOMIC INJURY DISASTER LOANS (EIDL)

- **Two major types:**
  - “Normal” EIDL (loans)
  - Emergency EIDL grants
  
- **Normal EIDL:**
  - **Eligible businesses:** any business with fewer than 500 employees that suffered “substantial economic injury” from COVID-19.
    - Includes sole proprietors, independent contractors, and self-employed individuals.
    - Must have been in business since January 31, 2020.
  
  - **Loan amount:** up to \$2M
  - **Interest rate:**
    - 3.75% for traditional businesses
    - 2.75% for non-profits
  
  - **Term duration:** Up to 30 years
  
  - **How to apply:** SBA online ([sba.gov/funding-programs/disaster-assistance](https://sba.gov/funding-programs/disaster-assistance))
    - Treasury intends to be generous with approvals. Goal is to put federal funds into the hands of employees.
  
  - **Uses:** EIDL loans may be used for:
    - Payroll,
    - Mortgage,
    - Rent,
    - Accounts payable, and
    - Other bills.
      - Funds are intended to sustain businesses under stress due to COVID-19.
  
  - **When:** through Dec. 31, 2020
  
  - **Key provisions:**
    - Based on credit score.
    - Waives personal guarantee up to \$200,000.
    - Not forgivable
  
  - **Required documents:**
    - SBA Form 5 (application),
    - Credit score,
    - IRS Form 4506T,

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

- Most recent federal income tax return for the business,
  - SBA Form 1143 (Personal Financial Statement),
  - SBA Form 2202 or a similar schedule of liabilities listing all fixed debts.
- **Emergency EIDL grants**
    - **Eligible businesses:** same requirements as normal EIDL.
    - **Grant amount:** up to \$10,000, available in three days
    - **How to apply:** SBA online ([covid19relief.sba.gov/#/](https://covid19relief.sba.gov/#/))
    - **When:** through Dec. 31, 2020
    - **Forgivable if used for:**
      - Providing paid sick leave to employees unable to work due to the direct effect of COVID-19,
      - Maintaining payroll to retain employees during business disruptions or substantial slowdowns,
      - Meeting increased costs to obtain materials unavailable from the applicant's source due to interrupted supply chains,
      - Making rent or mortgage payments,
      - Repaying obligations that cannot be met due to revenue losses.
    - **Required documents:** same as normal EIDL.
    - **Note:** If granted, the amount advanced must be deducted from any loan forgiveness amounts under a PPP loan.

## (3) MID-SIZE BUSINESS LOAN PROGRAM (MBLP)

- Eligible businesses: non-profits, other businesses between 500 and 10,000 employees
- Loan use: retain 90% of staff
- Loan amount: unclear, still in formation process.

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT



## Loans Available for Nonprofits in the CARES Act

Program	Paycheck Protection Program (Emergency SBA 7(a) Loans) Secs. 1102, 1106	Expanded EIDL & Emergency Grants (SBA 7(b) Loans) Sec. 1110	Mid-Size Loan Program Sec. 4003
<b>Description</b>	Emergency loan program for nonprofits and for-profit entities to secure funds to pay staff and operating costs for two months, and secure full loan forgiveness under certain circumstances.	Existing Economic Injury Disaster Loan (EIDL) program expanded to more for-profit entities, applies looser credit standards, and creates a rapid grant procedure.	Largely undefined loan program to be created by the Treasury Department to fill the gap between the Paycheck Protection Program for smaller employers and the industry stabilization loans to big business.
<b>Size Eligibility</b>	500 or fewer employees	Existing EIDL limits for nonprofits*	Between 500 and 10,000 employees
<b>Dollar Amount</b>	The lesser of \$10 million or 2.5 times the average total monthly payroll costs from the one-year period (look back) prior to the date of application. Express 7(a) loans available up to \$1 million.	Normal EIDL loans available up to \$2 million. EIDL advances of \$10,000 paid within 3 days.	Unspecified
<b>Loan Processor</b>	Local financial institutions	Small Business Administration	Local financial institutions
<b>Nonprofit Eligibility</b>	Must have been in operation on 2/15/2020 and had paid employees and/or paid independent contractors. Expressly available for <b>charitable nonprofits</b> with 500 or fewer employees, but requires that employees of affiliated nonprofits may be counted toward the 500 employee cap, depending on the degree of control of the parent.	In operation before 1/31/2020. Loans can be based solely on credit score. Existing EIDL program applies to "private nonprofit organizations" that excludes religious institutions and some other charitable organizations.	Expressly applies to "nonprofit organizations"
<b>Personal Guarantee</b>	No collateral or personal guarantee required.	Waives personal guarantee up to \$200,000, and requirement of inability to obtain credit elsewhere.	Unspecified
<b>Certification</b>	Good-faith certification that need for the loan is based on economic conditions; funds to be used to retain workers and maintain payroll	Self-certification under penalty of perjury.	Good-faith certification that need is based on economic conditions; funds to be used to retain and restore employment, won't

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## Loans Available for Nonprofits in the CARES Act

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<b>Loan Use</b>	or make mortgage, lease, and utility payments; and no duplicate application or receipt of funds for same purposes. Payroll costs, mortgage interest payments, rent, utilities, and interest on prior debt during the 8-week period following loan origination.	\$10,000 advance: Paid sick leave, meeting payroll, increased costs due to disrupted supply chain, mortgage, debt service.	abrogate collective bargaining agreements, and will remain neutral in union organizing efforts, among other things. To retain 90% of workforce at full wages and benefits through 9/30/2020 and intention to restore 90% of workforce in place on 2/1/2020.
<b>Loan Terms</b>	4% interest rate; first 6 months of payments (principal and interest) automatically deferred. Maximum of 10 years.	Normal EIDL: 2.75% interest rate for nonprofits \$10,000 advance treated as a grant	Interest capped at 2% with no principle or interest paid for first 6 months.
<b>Loan Forgiveness</b>	Employers that maintain employment for the 8 weeks after origination of loan, or rehire employees by June 30, will have loans forgiven in whole or part, essentially turning the loan into a grant. <b>Section 1106.</b>	\$10,000 advance forgiven even if borrower denied EIDL loans.	Expressly prohibited in statute. <b>Section 4003(d)(3)</b>
<b>Key Definitions</b>	<b>Covered Period</b> means the 8-week period following loan origination. <b>Employee</b> means an individual working on a full-time, part-time, or other basis. <b>Payroll Costs</b> include compensation (including benefits costs) paid to employees and contractors, capped at \$100,000 per year per individual (prorated over the "covered" period), and state/local payroll taxes.	<b>Covered Period</b> means 1/31/2020 through 12/31/2020. <b>Eligible entity</b> means a business with 500 or fewer employees. <b>*Eligible private nonprofits</b> include, without limitation, nursing homes, food kitchens, educational facilities, senior citizen centers, daycare centers, playhouses, and shelters, among others.	
<b>Application &amp; Documentation</b>	SBA Instructions and <a href="#">sample application</a> (posted 3/31/2020)	For emergency EIDL Grant, <a href="#">apply here now</a> . For normal EIDL loans, complete <a href="#">SBA Form 5</a> online.	To be announced

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

## ADDITIONAL CARES ACT INCENTIVES

- **Tax credits:**
  - Employee retention tax credits:
    - Refundable payroll tax credit equal to 50 percent of “qualified wages” paid to employees from March 13, 2020 through December 31, 2020.
    - Available to employers who meet either of the following conditions:
      1. The employer’s operations are either fully or partially suspended by a government order related to COVID-19, or
      2. The employer’s gross receipts during a calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter during 2019.
    - If an employer’s average number of full-time employees during 2019 was 100+, qualified wages include only wages that continue to be paid to employees who are not providing services due to a COVID-19 suspension of business operations, or the greater than 50 percent reduction in gross receipts.
    - If an employer’s average number of full-time employees during 2019 was 100 or less, qualified wages include all wages paid to employees regardless of whether or not the employee is providing services.
    - Up to \$5,000 per quarter and \$10,000 during the entire COVID-19 period.
    - If an eligible employer receives a forgivable loan under PPP, the employer is not eligible for this employee retention credit.
- **Tax deferral:**
  - Delayed payment of Social Security taxes:
    - All employers, regardless of their individual impact by COVID-19, are permitted to delay payment of 2020 employer Social Security taxes subject to the following:
      1. 50 percent of the deferred 2020 employer Social Security tax must be paid by December 31, 2021, and
      2. The remaining outstanding 50 percent must be paid by December 31, 2022.
- **Unemployment insurance:**
  - For individuals:
    - Increased up to \$600 per week of state unemployment benefits paid through federal funds.
    - Traditionally uninsured religious institutions are covered.
    - Traditional waiting period waived.
    - Extended by 13 weeks.
  - For employers:
    - Eligible for a 50 percent refundable payroll tax credit on wages paid up to \$10,000 during COVID-19 crisis.

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

- Applies to employers whose businesses were disrupted by shutdowns and those that had a decrease in gross receipts of 50 percent or more when compares to the same quarter last year.
- This credit can be claimed for employees who are retained but not currently working due to the crisis, and all employee wages for firms with 100 or fewer employees.
  
- **Student loans:**
  - Forbearance period available through September 30, 2020 for *federal* student loans.
    - Not automatic, contact federal loan provider.
  - Includes Public Service Loan Forgiveness Program.
  - Interest automatically suspended through September 30, 2020.
  - Wage garnishment and debt collections automatically halted.
  
- **Charitable giving:**
  - Individual:
    - \$300 above-the-line deduction available for individual taxpayers (\$600 for married couples) who take the standard deduction.
    - Expanded limit for itemizers.
  - Corporate:
    - Raises cap from 10 percent to 25 percent of taxable income.
    - Raises food donation cap from 15 percent to 25 percent of taxable income.