

Nonprofits during COVID-19

OPTIONS FOR
EMPLOYERS

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Caveat on Today's Presentation

Families First Coronavirus Response Act (FFCRA) enacted March 18
Coronavirus Aid, Relief, and Economic Security Act (CARES) enacted March 27

- NOT all guidance from government is released.
- Today's information is current as of today, but some information will change in near future.
- *Information applies to all Wisconsin nonstock corporations recognized under IRC 501c3*
- *Information applies to all At-Will Employment—not union or contractual employment*

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Important Reminders on Employment Law

Federal and state
employment
laws that are still
in full effect:

- FLSA-covered, nonexempt employees must be paid a minimum wage and cannot “volunteer” services.

Exempt Criteria Review:

To be exempt from overtime pay, employee must be:

- ✓ Salaried
- ✓ Paid >\$35,568/year (as of 1/1/2020), AND
- ✓ Meet exempt job duties requirement

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Important Reminders on Employment Law

Federal and state
employment
laws that are still
in full effect:

- Nonexempt employees that are teleworking must track hours to assure they do not need to be paid overtime.
- Exempt employees generally must be paid their full salary in any week in which they perform work.
- Be mindful of EEO and WFEA laws when changing employment role, creating new work requirement (e.g. teleworking), adjusting staffing, and layoffs or furloughs.

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Teleworking Concerns

- Can an employer require teleworking?
 - Yes
- Must employers pay the same hourly or salary rate for teleworking?

Yes if:

- Teleworking is a “reasonable accommodation”
- They are an exempt employee

No:

- Non-exempt employees only need to be paid for hours worked that follow minimum wage and OT rules

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Teleworking Concerns

Instituting policies for telework when it's new to your organization

- Work hours and having flexibility on when hours are worked
- Data sharing and communication issues
- BYOD policies



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Compliance with FFCRA

Families First Coronavirus Response Act, Effective April 1, 2020

Paid leave that applies when work is available, and the employee cannot work or telework

- This applies to all employers with less than 500 employees
- There will be 100% reimbursement to employers through a Form 941 tax offset (starting with Q2—due July 31), or refund if amount exceeds what is due.
 - Implementation guidelines for reporting credit are forthcoming.
 - Credits should be reported on Form 7200

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Compliance with FFCRA

#1 Paid Sick Leave:

Employers must provide two weeks paid leave to employees that are unable to work or telework because the employee:

- is subject to a government quarantine or isolation order related to COVID-19
- has been advised by a health care provider to self-quarantine because of COVID-19
- is experiencing COVID-19 symptoms
- is caring for person for whom one of above applies
- is caring for a child whose school or childcare is cancelled due to COVID-19

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Compliance with FFCRA

#2 Emergency Family and Medical Leave Expansion:

Employers must provide up to 12 weeks paid leave because the employee:

Is unable to work due to bona fide need to leave to care for a child whose school or childcare provider is closed.

First 2 weeks are Unpaid Leave.

Limited Exemptions for EFMLA

- If the employer has less than 50 employees, AND
- If the imposition of these requirements would jeopardize the viability of the business as a going concern as defined by FFCRA

If the organization believes itself to be exempt, an authorized officer should document this and wait for further instructions.

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Compliance with FFCRA



All employers with less than 500 employees must post a FFCRA poster, *even if you believe your organization is exempt.*



Any credit received from the FFCRA will NOT be eligible for Employee Retention Credit.

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Options for Retaining or Not Retaining Staff



KEEPING STAFF



REDUCING STAFFING
LEVELS



FURLOUGHING OR
LAYING OFF EMPLOYEES

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Keeping Staff

CARES Act §2301: Employee Retention Tax Credit

- Eligibility: nonprofits that are fully or partially suspended by government order due to COVID-19 during 2020
 - Gross receipts are below 50% of comparable quarter in 2019
- Applies to: Wages & Benefits between 3/13/20 – 12/31/20
 - Up to 50% of wages per employees
 - Maximum of \$5,000 per employee total (not per quarter)

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Keep Staff

CARES Act §2301: Employee Retention Tax Credit

- Implementation: Form 941, beginning with 2nd quarter, the credit is claimed against employer portion of employment taxes (including SS).
 - If credit exceeds employer portion of taxes due, the credit is treated as overpayment and is refundable to the employer
 - Implementation guidelines for reporting credit are forthcoming.
 - Credits should be reported on Form 7200
- Restriction: No double credits are allowed—cannot be used on FFCRA wages credit or by Organizations that are receiving a Paycheck Protection Program loan.

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Reducing Staffing Levels

Compliance Reminders for FLSA

- Exempt staff working less due to an office closure will continue to be paid at regular salaried rate.
 - Employer can require paid time off to be used
 - The paycheck amount must be the same
- Employer can assign work outside the employee's regular job description

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Reducing Staffing Levels: Work-Share Program

How it works: Employee hours are reduced in lieu of laying off workers; employees with reduced hours receive a pro-rated UI benefit.

- Usually paid for through employer's UI account
 - CARES Act §2108 Temporary Financing of Short-Time Compensation Payments in States with Programs in Law
 - Pays for up to 100% of costs through 12/31/2020.
- Wisconsin's Work-Share plan requirements:
 - Must include greater of 20 employees or 10% of employees in a work unit
 - Working hours must be evenly reduced among employees
 - Reduction of hours must be between 10% and 50% of normal hours per week

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Reducing Staffing Levels

If Work Share is Not an Option due to Requirements

- Reduce staffing as needed
- Utilize Unemployment Insurance benefits available to partially or fully unemployed staff

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Unemployment Insurance Benefits for Employer

Self-insured (self-funded or reimbursable) Nonprofit Employers

- Wisconsin: reimbursable employers are charged “dollar for dollar” for benefits paid
- CARES Act §2103 Emergency Unemployment Relief for Government and Nonprofit Organizations: Reimburses self-funded nonprofits for half of costs of benefits provided to laid off employees through 12/31/2020

Contributory Employers

- Wisconsin: Could see an increase in their UI tax rate, which would result in higher taxes according to DWD

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Unemployment Insurance Benefits for Employees

Who is not covered:

- Independent Contractors
- Self-employed
- Orgs with less than 4 employees
- Church employees

Traditional Eligibility Qualifications:

- Unemployed through no fault of employee
- Worked in WI for the past 18 months earning at least minimum wage
- Available for work each week person is receiving benefits
- Actively seeking new work

Traditional UI Coverage:

- Maximum amount is \$370/week
- Maximum length is 26 weeks

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Unemployment: New Rules from CARES

#1 CARES Act §2102 Pandemic Unemployment Assistance (PUA)

Creates UI for those that are typically ineligible

- Self-employed, Independent Contractors, Gig workers, Employees with inadequate work history including employees who have not yet started employment
- Provides payment for maximum of 39 weeks of unemployment between 1/27/20-12/31/20
- Benefit is equal to weekly benefit amount calculated under state law
 - Minimum is equal to half of the state's average weekly UI benefit

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Unemployment: New Rules from CARES

#2 CARES Act §2107 : Pandemic Emergency Unemployment Compensation (PEUC)

Extends Traditional State UI

- For individual who has or will exhaust state UI
- Provides additional 13 weeks of federal financed UI
- Expires 12/31/2020



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Unemployment: New Rules from CARES

#3 CARES Act §2104: Emergency Increase in Unemployment Compensation Benefits

Bonus UI on top of UI through Traditional State UI, PUA (#1), or PEUC (#2)

- For individuals already eligible for UI
- **Additional \$600 per week**
- Begins when state elects to offer this payment
- Lasts up to 4 months- Ends on or before 7/31/2020

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Unemployment: New Rules

FFCRA gave money and permission to states to adapt usual rules including:

- No job search requirement—WI has enacted
- CARES Act §2105 provides funding to pay for the 1st week of UI benefits through 12/31/2020 for states that choose to pay recipients as soon as they become unemployed
 - Wisconsin has not yet waived wait time. (Likely to pass soon)

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Furlough vs. Layoff

- Under temporary new rules, Furloughed employees are still eligible for UI
- Where UI costs are prohibitive, consider loan and pay employees directly as finances allow (partial furlough)
- No drawback for Employer or Employee to use Furlough option vs. Layoff in most cases
- Pay for Furloughed employees' health benefits (still UI eligible)

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What Should Employers Do

Considerations for each organization:

- What are the Organizations options for recovery, long-term?
 - Regrouping and innovating
 - Shuttering temporarily
- What level of staffing is appropriate to achieving this recovery plan?
- What are the costs to the organization? For the Employees?

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Resources

For more information on FMLA compliance during COVID-19:

<https://www.dol.gov/agencies/whd/flsa/pandemic>

For more information on FFCRA:

<https://www.dol.gov/agencies/whd/pandemic>

<https://www.dol.gov/agencies/whd/ffcra>

FFCRA notice poster (to be posted or emailed to every employee):

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

For more information on Employee Retention Tax Credit:

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

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Resources

For more information on Wisconsin's Work-Share Program:

<https://dwd.wisconsin.gov/uitax/workshare.htm>

For more information on Wisconsin's Traditional Unemployment Insurance:

<https://dwd.wisconsin.gov/uitax/>

<https://dwd.wisconsin.gov/uiben/calculators.htm>

For more information on the CARES Act Unemployment Insurance:

[https://www.finance.senate.gov/imo/media/doc/CARES%20Act%20Section-by-Section%20\(Tax,%20Unemployment%20Insurance\).pdf](https://www.finance.senate.gov/imo/media/doc/CARES%20Act%20Section-by-Section%20(Tax,%20Unemployment%20Insurance).pdf)

<https://www.dol.gov/coronavirus/unemployment-insurance>

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