

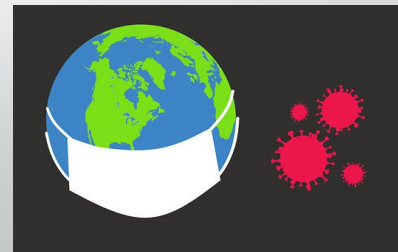
ODHC Emergency Services Webinar on COVID-19

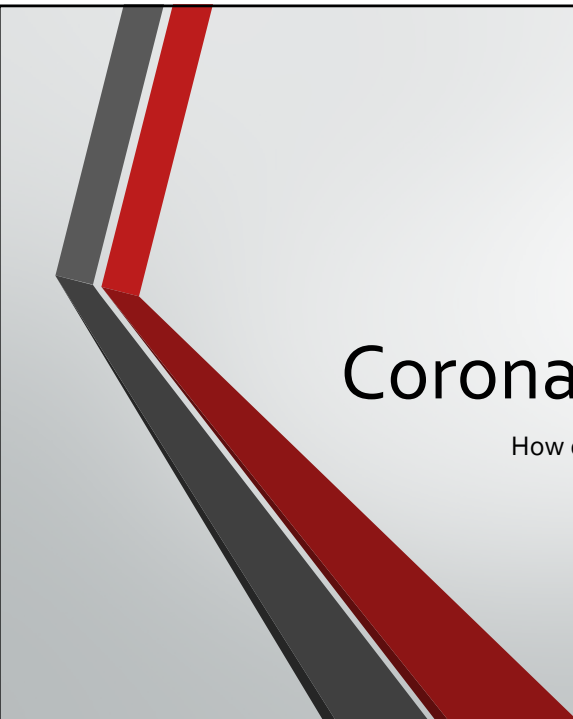
April 3, 2020

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Emergency Services Topics Related to COVID-19

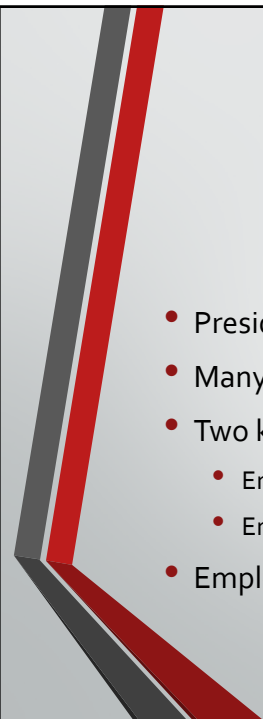
- Families First Coronavirus Response Act (FFCRA)
- Unemployment Benefits
- Open Meetings Act
- Practical Considerations





The Families First Coronavirus Response Act

How employees can qualify for two new forms of paid leave



FFCRA - Overview

- President Trump signed FFCRA on March 18, 2020 (H.R. 6201)
- Many provisions related to child nutrition, SNAP, and health insurance
- Two key provisions for public employers:
 - Emergency Paid Sick Leave (Sec. 5101, *et seq.*)
 - Emergency Paid Family Leave (Sec. 3101, *et seq.*)
- Employers can exempt their “emergency responders”

Emergency Paid Sick Leave

- ALL public employees eligible
 - No hours or tenure requirement
- Entitled to two weeks of paid sick leave under specific circumstances
 - Full-time employees = up to **80 hours** (hard cap)
 - Part-time employees = up to the "**number of hours** that such employee works, **on average**, over a 2-week period"
 - For those with varying hours, take an average based on previous 6 months worked
 - If the employee did not work during the previous 6 months, then use "the reasonable expectation of the employee at the time of hiring"

Emergency Paid Sick Leave - Reasons

- Employee qualifies for paid sick leave if the employee cannot work or telework for one of these 6 reasons
- Receive 100% compensation if the employee is :
 - (1) Subject to federal, state or local **quarantine or isolation order** related to COVID-19
 - This includes Governor Pritzker's "Stay at Home" order
 - (2) Advised by a health care provider to **self-quarantine** due to COVID-19 concerns
 - (3) Experiencing symptoms of COVID-19 and **seeking a medical diagnosis**
- Receive 66.67% compensation if the employee is:
 - (4) **Caring for** an individual subject to quarantine or isolation order, or who has been told to self-quarantine
 - (5) Caring for child whose **school or place of care has closed**, or whose child care provider is unavailable, due to COVID-19 precautions
 - (6) Experiencing any other "substantially-similar" condition to COVID-19, as specified by the U.S. Department of Health and Human Services.

Emergency Paid Sick Leave - Compensation

- For reasons (1), (2), & (3), employee entitled to full regular rate of pay
 - Maximum **\$511/day** (capping salaries > \$132,860) and \$5,110 in the aggregate.
- For reasons (4), (5), & (6), employee entitled to two-thirds regular rate of pay
 - Maximum **\$200/day** (capping salaries > \$78,000) and \$2,000 in the aggregate
- Employers can provide more than these amounts



Emergency Paid Sick Leave – Restrictions

- Employer cannot require employees to use other accrued paid leave first]
- Employees cannot request FFCRA paid leave retroactively (*i.e.*, for leave taken before April 1, 2020).
- Employees cannot carry over emergency paid leave into 2021



Emergency Paid Family Leave

- Temporary expansion for Family and Medical Leave Act (FMLA)
- Employees must have worked 30 calendar days to be eligible
 - Ignores normal FMLA requirements (12 months; 1,250 hours)
 - Includes employees laid off after March 1, 2020 and then re-hired.
- Part-time employees are eligible
- Entitled to two weeks unpaid family leave, then ten weeks paid family leave
 - Employees receive **at least two-thirds** of their regular rate of pay for number of hours normally scheduled to work
 - Varying schedules = If employer is uncertain how much the employee would have worked, use an average of the hours per day over the six months prior to leave (x 14)

Emergency Paid Family Leave - Reasons

- Employee qualifies for paid family leave if the employee cannot work or telework for only one reason:
 - Caring for a minor child whose school or place of care has been closed, or whose child care provider is unavailable, due to a public health emergency
- “Public health emergency” only applies while a Federal, State, or local emergency has officially been declared due to COVID-19



Emergency Paid Family Leave - Compensation

- Maximum compensation (at two-thirds) is **\$200/day**, \$10,000 in aggregate (capping salaries > \$78,000)
 - Employers can provide more than this amount
- Most employees are entitled to reinstatement to the same or equivalent position after leave
 - For employers with fewer than 25 employees: if a position is permanently eliminated, the employer must make reasonable efforts to find equivalent position

Emergency Paid Family Leave – Accrued Leave

- Employer cannot require employees to use other accrued paid leave first
- However, employees can choose to use other leave, including Emergency Paid Sick Leave (reason #5), for those two unpaid weeks
- Emergency Paid Family Leave counts against an employee's annual allotment of 12 weeks of regular FMLA leave

FFCRA – Effective Date

- “Not later than 15 days after the date of enactment”
- Department of Labor has set April 1, 2020 as the start date
 - Ends December 31, 2020
- If leave already granted for COVID-19 reason, pay is not retroactive

FFCRA – Notice

- Employers must conspicuously post the Department of Labor’s “FFCRA Notice”
 - Available at www.dol.gov/agencies/whd/pandemic
 - Should be posted at all worksites and stations
- “Posting” can be satisfied by emailing or direct mailing to employees, or posting on an employee information internal or external website

EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide employees:
Up to ten weeks (80 hours) of a paid leave equivalent of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:
• 100% for qualifying reasons #1 and 2 below, up to 801 days and \$5,115 total;
• 75% for qualifying reasons #4 and 5 below, up to \$200 daily and \$2,000 total; and
• 12 weeks of paid sick leave for expanded family and medical leave and at 75% for qualifying reasons #6 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYERS
In general, employers of certain smaller employers with fewer than 500 employees, and certain public sector employers, are eligible for up to these reasons of sick or family paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 12 weeks of family and medical leave and medical leave for reasons #6 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to the leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:
1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or (2) or who is subject to a self-quarantine as described in (2);
5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
6. is experiencing any other substantial employer condition specified by the U.S. Department of Health and Human Services.

ENFORCEMENT
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA. Any a complaint, or violation of a provision of the Act, Employees in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information:
WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR
1-866-487-9243
TDD: 1-877-202-6002
dol.gov/services/whd

FFCRA – Employer Costs

- Local governments are not eligible for federal tax credits to reimburse emergency paid leave costs
- However, the FFCRA states that emergency paid leave compensation is not considered “wages” for social security tax purposes
 - Employers must set up separate payroll coding to ensure FICA not taken out of employees’ checks
 - Employers can also choose not to pay their portion of FICA for that compensation

FFCRA – Emergency Responders

- Employers can exclude “emergency responders” from emergency paid leave
- U.S. Department of Labor definition:
 - “an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, **fire fighters, emergency medical services personnel**, physicians, nurses, public health personnel, **emergency medical technicians, paramedics**, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

FFCRA – Emergency Responders

- Local decision whether to exclude emergency responders from receiving either type of paid leave, or both
 - We recommend excluding expansion of FMLA
- Prepare for Union negotiations if excluding employees
 - Important to open dialogue with Union before making final decision
 - Check your management rights clauses



FFCRA – Other Employer Provisions

- Employees must provide documentation tailored to the COVID-19 reason
- If an employer has no work available, paid leave benefits do not need to be provided to former or furloughed employees
- Paid leave benefits end the day after the reason for leave ends
- Unlawful to discharge, discipline, or discriminate against employee who takes emergency paid sick leave
- More guidance available at www.dol.gov/agencies/whd/pandemic

FFCRA – Frequently Asked Questions

- The FFCRA says that part-time employees can take emergency paid leave up to their average amount of hours in a two-week period. But, my part-time employees generally work more than 80 hours in a two-week period. Do I have to offer them more than 80 hours a week?
 - No. The DOL has subsequently clarified that a “full time employee” is one who is normally scheduled to work more than 40 hours in a week. A “part time employee,” by contrast, is one who works less than 40 hours in a week.
 - Part-timers who ordinarily work more than 40 hours in a week are therefore entitled to 80 hours of emergency leave at maximum.

FFCRA – Frequently Asked Questions

- The FFCRA says that employees are only entitled to receive up to \$511/day when they take emergency paid leave. But my employees make more than that by working a 24-hour shift. Are these employees only allowed to receive \$511 *per shift*?
 - No. 24-hour shifts generally span two calendar days, each with its own cap of \$511. However, the \$511 cap *may* have some effect in cases where the hours worked in any one day multiplied by the employee’s hourly rate exceeds \$511.
 - Plus, employers are always allowed to offer more benefits to their employees.

FFCRA – Frequently Asked Questions

- Can my District exempt administrative staff from the FFCRA's leave provisions?
 - No. Local governments can only exempt "emergency responders."

Holding Public Meetings During the Covid-19 Outbreak

How the Open Meetings Act intersects with new "social distancing" measures.

Social Distancing

- Governor Pritzker's Executive Order 2020-10:
 - "All individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence except as allowed."
 - All non-essential businesses and operations in the State are closed (except teleworking)
 - Any gathering of more than ten people is prohibited.
 - All non-essential travel is prohibited.
 - "Essential Government Functions" are exempt.
 - All services provided by the State or local government needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors

Governor's Executive Order 2020-07

- On March 16, 2020, Governor J.B. Pritzker issued an executive order **banning** all events with more than 50 people in attendance.
 - Executive Order 2020-10 further limited this to 10 people.
- This same executive order temporarily suspends the portions of the Open Meetings Act that require in-person meeting attendance (5 ILCS 120/2.01) and specific justifications for audio or video participation (5 ILCS 120/7).
- This means a public body can conduct meetings via phone and/or video conference without a quorum physically present.

Public Participation

- In his Order, Governor Pritzker **encouraged** public bodies to postpone public business where possible
 - Trying to strike a balance between taking care of necessary business and keeping meetings fully accessible to the public
- The Governor also **encouraged** public bodies to provide video, audio, and/or telephonic access to meetings so that the public could monitor the meeting
 - Websites and social media should also alert the public to meeting changes

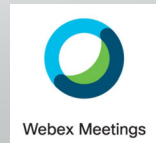


Attorney General's Guidelines

- Attorney General Kwame Raoul issued OMA guidelines on March 17, 2020.
- Public bodies are encouraged to **cancel** any public meetings that might draw crowds of more than 10.
- If a public body feels it must hold a meeting in person instead of remotely, consider:
 - Having the meeting in a large room, such as a gym or auditorium.
 - Providing a video or audio feed to another room to reduce the size of the gathering
 - Recording the entire meeting, putting the recorded open session on your website as soon as practical after the meeting.
 - Clearly marking the location of the meeting in the notice and with signage.

Attorney General's Guidelines

- The AG **urges** to provide remote access to in-person meetings for members of the public:
 - Consider taking public comment submissions by email, then reading comments at meetings.
- For conference call or web-assisted meetings, the AG says the public body **should ensure** that the public has a means to both observe **and** comment
 - Conference call (or other log-in) information should be included in the public meeting notice.



What Does This Mean For You?

- In-person meetings cannot be attended by more than 10 individuals.
- Public bodies are encouraged to cancel in-person meetings if there are no critical issues to address.
- Meetings should be limited to necessary agenda items.
- If holding a web meeting via a platform such as Zoom, we recommend providing the public with information on how to access the meeting. For instances, a link to the webinar, or a call-in number at the top of the meeting's agenda.

What Does This Mean For You?

- We recommend public bodies provide ways for the public to comment on meetings, such as:
 - Allowing the public to comment by video or audio, in real time, during the required “public comment” section of the meeting. The public body can still impose reasonable restrictions to public comment, such as time limits and muting participants except during that portion of the meeting; or
 - Alternatively, directing the public to comment via email, or write in, and then reading those comments at the meeting.

Frequently Asked Questions

- If we decide to hold an entirely remote meeting, where do we post the agenda?
 - By law, you must post it at your principal place of business, as normal (generally, the fire station or administrative office).
 - You are encouraged—though not legally required—to post the agenda online.

Frequently Asked Questions

- If we decide to have a normal, in-person meeting and the fire station is closed to the public, what do we do?
 - The Governor's Executive Order did *not* suspend the Open Meetings Act's requirement that the public be allowed to participate in board meetings.
 - Either:
 - Make an exception and allow the public to also attend in person (while observing the 10-person per gathering limit), or
 - Require the public to attend remotely via telephone or video conference.

Frequently Asked Questions


- If we decide to have a remote meeting, how do we handle closed session?
 - Going into closed session poses logistical problems if the board decides to hold a completely remote meeting.
 - Board would have to start another virtual meeting or another telephone conference where the public is not invited.
 - Governor's Executive Order did not suspend the requirement that closed session be recorded.
 - We recommend, if possible, foregoing closed session until normal operations are resumed.

Frequently Asked Questions

- Do we still have to take minutes for remote meetings?
 - Yes – arrangements must be made for someone to take minutes of remote meetings, just as with in-person meeting minutes.

Frequently Asked Questions

- If we have important business to conduct (*e.g.*, issue bonds, pass a budget or levy ordinance), do you recommend a virtual meeting?
 - To avoid any potential challenges, it would be ideal to have a normal, in-person meeting where significant Board action is contemplated.



Unemployment Benefits During the Pandemic

How the CARES Act affects employers



Changes to Unemployment Benefits

- Eligible individuals will receive an **additional \$600 per week** in federal unemployment benefits, on top of the unemployment assistance offered by their states (maximum in Illinois is \$471).
- Unemployment is extended for an **additional 13 weeks** past the unemployment period offered by the individual's state, for a maximum of 39 weeks of unemployment in Illinois.
- The standard one-week waiting period to collect unemployment has been **waived**.

Eligibility Determination

- In order to be eligible for the extended federal unemployment benefits, an individual's unemployment must be related to COVID-19.
- Under the CARES act, individuals will have to self-certify they:
 - Are no longer working for a reason related to COVID-19; and
 - Are otherwise able to work.



Eligible Unemployment

Legitimate Covid-19 related unemployment exists if:

- The individual, someone in the individual's home, or someone the individual is caring for has COVID-19;
- The individual must stay home and care for a child after the child's school shutdown due to COVID-19;
- The individual's place of employment is shut down due to Covid-19;
- The individual is unable to get to the workplace due to a COVID-19 quarantine (including if a healthcare provider has advised the individual to self-quarantine);
- Lost or forced to quit job due to COVID-19; or
- The individual has suddenly become the breadwinner because the Head of Household has died of COVID-19.

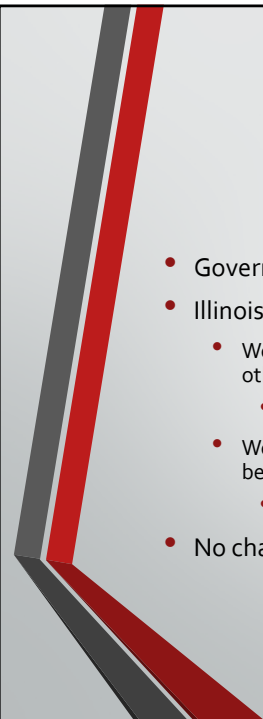
Eligibility

- Individuals who do not typically qualify for unemployment may qualify under the CARES Act, such as those who are:
 - Self-employed;
 - Part-time workers; or
 - Lacking in sufficient employment history.
- Those who are not eligible to receive extended unemployment benefits are:
 - Individuals who are able to work remotely;
 - Individuals that quit a job solely out of fear of COVID-19;
 - Individuals who are receiving paid sick leave or other paid leave.

Assistance for Government and Nonprofit Employers

- Section 2103 of the CARES Act provides that the federal government, through the states, will reimburse 50% of a reimbursable employer's costs incurred paying for unemployment benefits through the end of 2020.





Illinois Unemployment Assistance

- Governor Pritzker eliminated the one-week waiting period for benefits
- Illinois Department of Employment Security (IDES) adopted emergency rules
 - Workers temporarily laid-off due to COVID-19 are eligible for benefits without having to actively seek other employment
 - As long as the worker is prepared to return to work when the employer reopens
 - Workers confined to home due to COVID-19 (sickness, care for others, or quarantine), are eligible for benefits
 - Worker must be able to perform work from home and actively seek that employment
- No changes have been made regarding employers' unemployment contribution rates



Local Government Grants

Where public bodies can find relief

Other Provisions of the CARES Act

- \$139 billion shared among the 50 states and local governments for unbudgeted costs related to COVID-19
 - Only covers local governments with populations over 500,000
- Other Grants
 - \$1.5 billion to support economic development
 - \$850 million for law enforcement response efforts
 - \$100 million for Assistance for Firefighters to purchase PPE
 - \$345 million for worker layoffs
 - \$1.5 billion for public health preparedness and response

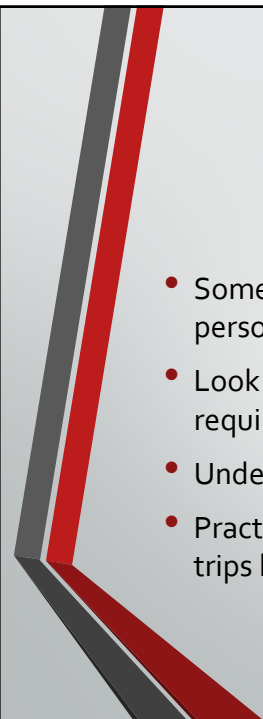


Disaster Declaration

- Public Assistance (PA) grant program
 - Available to all local units of government
 - May be entitled to up to 75% of COVID-19 response costs
- Reimbursable costs:
 - Management, control, and reduction of immediate threats to public health and safety (emergency operations centers, training, disinfection of eligible public facilities)
 - Emergency medical care
 - Medical sheltering
 - Purchase and distribution of consumable goods (including personal protective equipment)
- To submit initial Request for Public Assistance (RPA):
 - Fill out FEMA Form 009-0-49, no later than **April 12, 2020**



Practical Considerations



Can I Cancel an Employee's Vacation?

- Some public safety employees have cancelled vacation leaves or denied personal or vacation leave due to the pandemic.
- Look to CBA – Most contracts permit the cancellation of leave and/or required mandatory forcebacks in the event of an emergency
- Under any definition, this pandemic constitutes an emergency.
- Practically, most employees are fine with vacation cancellations as their trips have all been cancelled.

Can I Limit Secondary Employment?

- Some fire employers have imposed restrictions that would disallow emergency service workers from working any other secondary employment.
- Justification is for public safety to prevent their full-time employees from COVID exposures elsewhere. This action has an impact on both the primary and secondary employer.
- Look to CBA if applicable or internal rule.
- Employees likely have little choice but to obey and grieve.

Can COVID-19 Be a Workers' Compensation Injury?

- Yes, potentially. However, the employee would have to establish that their COVID exposure arose out of their employment.
- Easy case: employee encounters COVID patient, there is a PPE failure, the employee has no chance of exposure off-duty, and the employee gets sick. Likely Workers' Comp coverage.
- Another easy case: employee gets COVID, there is no documented evidence of exposure on-the-job, and employee's family member had the virus. No Workers' Comp coverage.
- Hard cases: all those in between.

Can COVID-19 Trigger PEDA Benefits?

- Yes, an employee could potentially seek Public Employee Disability Act benefits (*i.e.*, full-pay for up to 1 year) – so long as the employee got the virus in the course of their employment and the employee is disabled from working.

Do We Need to Offer an Off-Site Quarantine Option for Employees?

- Some districts have begun partnering with nearby hotels, universities, and etc. to provide a place for potentially exposed employees to quarantine without further exposing their families.
- There is no legal requirement that a district offer a place for an employee to quarantine.
- However, it may constitute a mandatory topic of bargaining, which may require you to talk about it with your union.