



Hopler, Wilms, & Hanna, PLLC
Attorneys & Counselors at Law




THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (“CARES”)



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On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act was signed into law to offer much-needed relief to businesses and individuals negatively impacted by the COVID-19 outbreak.

The Act focuses on, among other things, offering disaster relief loans to corporations, small and large, direct cash payments to individuals, and extended unemployment insurance benefits. This blog focuses on what this could mean for our business clients and the changes to UI benefits.

This Firm has provided an outline of the impact which can be found at: <https://hoplerwilms.com/blog/2020/03/31/coronavirus-aid-relief-and-economic-security-act/> Small Business Loans, Grants, and Loan Forgiveness

In addition to the other programs and forms of relief, the CARES Act utilizes the existing Small Business Administration (“SBA”) Payroll Protection Program loan system to get relief to small businesses that have been impacted by COVID-19. These programs had overrun their budget in April, however Congress refunded them in the Paycheck Protection Program & Health Care Enhancement Act, which was signed into law on April 24th, 2020

The existing SBA loan structure has been amended to enable requests to be expedited and streamlined with the hope that these loans will enable small businesses to better maintain their workforce. One of the largest changes is that these loans will not require a personal guarantee or collateral requirement. However, in order to qualify for these loans, a business must have less than 500 employees (with a few exceptions).

The Payroll Protection Program loans may be

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used by a business to pay for payroll expenses, including sick leave, as well as, property rent, mortgage payments, and utilities. Furthermore, a business utilizing these loans may have up to 100% of their loan forgiven if they maintain their workforce at the same capacity as it was pre-COVID-19.

The forgiveness amount is reduced proportionally based on the reduction in the payroll of the company, which is determined both by the number of workers employed and the salaries they receive.

Additionally, the loan forgiveness is capped by the actual covered costs for the business for the first 8 weeks of the loan. From a practical perspective, this means that while a business can take out a loan amount that can assist in maintaining the operation of the business for a year or longer, the forgiveness will be for only 8 weeks of covered operating costs. The remaining balance of the loan will be repayable over a period of up to 10 years at

less than 4% APR interest with the beginning of payments deferred for 6-12 months with the SBA lending partners determining the specific terms of each loan on a case-by-case basis.

As an alternative, businesses in particularly dire situations and requiring immediate relief can petition to have an emergency grant of up to \$10,000 as part of an Economic Injury Disaster Loan (EIDL) application.

These emergency grants do not need to be repaid and should be made available within 3 days pending a credit check. However, any amounts received this way cannot be used in conjunction with a Payroll Protection Program loan, and any funds received would need to be refinanced into the Payroll Protection Program loan and would offset some of the loan forgiveness under that program.

In evaluating these programs and which is right for your situation, there are a few things to keep in mind. First, you can only have one



of these loan applications pending at any time, and you cannot have more than one loan active covering the same expenses (eg. payroll expenses).

This means if immediate relief is required, then you may need to file for a grant under the EIDL application, and then later refinance that into a Payroll Protection Program loan. Similarly, a business looking to maximize their relief may look to that 8-week forgiveness and limit their loan to that amount to minimize their loan principal. However, that may cause issues at a later date if they need to dip back into the program for another loan. Furthermore, businesses need to evaluate that most of these forgiveness and tax credits

under the CARES Act are calculated based on the retention of employees and payroll.

Also, if a company does not expect that they can retain their payroll at pre-COVID-19 levels, these loan programs may not be ideal.

Small businesses that are seeking relief under these programs should consult with an attorney and/or financial advisor who can help direct them to the appropriate program. However, for those that wish to go it alone, you can contact the SBA at <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources> to get paired with an SBA qualified lender.

UNEMPLOYMENT INSURANCE

Through the Act, Congress has directed \$250 billion dollars in economic aid to be issued to State Unemployment Insurance benefit programs.

This allows qualifying North Carolina citizens that file for benefits for the weeks of April 4 through July 31 to receive an additional \$600.00 per week. It also expected that the DES will implement the extension of UI benefits to December 31st as required by the Act.

One major temporary change to UI law as established by Congress is the broadened terms of who qualifies for benefits. For citizens impacted by the virus outbreak who served as self-employed, independent contractors, they will now be qualified for benefits under the Act. Congress acknowledged the impact that “gig economy workers” were being especially hit hard by the economic effects of the outbreak.

It is anticipated that employees from hairdressers to Uber drivers will now be able to file and receive benefits during this pivotal time. Another key piece of guidance from the DES is that the State will be providing up to 13 weeks of additional benefits for those individuals whose benefits have been exhausted. Currently, the State’s unemployment benefit weeks are capped at between 12 and 20 weeks depending on the seasonally adjusted statewide unemployment rate. Now, if an individual exhausts the State cap, he or she can rely on a Federal increase of 13 weeks.



The DES will continue to provide updates regarding claims and administrative requirements and we will do our best to alert our community of these changes.

If you need assistance with unemployment claims, please call us for a virtual consultation: (919) 244-2019 or fill out a form here: <https://hoplerwilms.com/virtual-appointments/>

PAYROLL TAX

The Act also creates some changes to the Payroll Tax (FICA, Social Security, and Medicare) obligations of employers until December 31, 2020. Any Payroll Taxes obligations for employers can be deferred for up to 2 years, with 50% of the deferred amount due December 31, 2021, and the balance due December 31, 2022.

This deferment only covers the employer's portion of the Payroll Taxes. Employees will still have to pay their portion, and Employers will still be responsible for withholding and remitting the Employee portion as normal. However, if a business is enrolled in one of the SBA loan programs which allow for loan forgiveness, then they are not eligible for deferment of their Payroll Tax obligations.

Additionally, certain employers may receive a Payroll Tax credit if their business was fully or partially suspended because of Government orders or has a significant decline in gross receipts of more than 50% as a result of COVID-19.

Tax credits differ from deferments in that they are applied against the taxes owed instead of just postponing your obligations to another year. Additionally, these tax credits may be eligible for a refund to the Employer if they result in an overpayment of taxes at year-end.

Employers can receive a credit of up to \$5,000 per employee if the Business has 100 or fewer full-time employees. For Employers with over 100 employees, they can also be eligible for a

tax credit; however, it is calculated based on slightly different criteria.

Finally, like with the Payroll Tax deferral program, Businesses that take SBA loans are not eligible for the credit.

IN CONCLUSION

The CARES Act has created multiple avenues of relief for small businesses, their owners, and their employees.

However, there is no one-plan-fits-all solution. Each program is tailored to a specific need and often they are exclusionary of one another. This creates a situation where a business may only have one bite at the apple to determine how they are going to utilize these programs to weather the crisis we all find ourselves in.

As such, it is important to retain the services of professionals like attorneys and financial advisors to determine your business needs and which program will best address those needs.

At Hopler, Wilms, and Hanna, we are committed to keeping up with the day-to-day, sometimes hour-by-hour changes that impact our small business clients so that we can offer the best counsel possible.

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND WHAT IT MEANS FOR EMPLOYERS AND EMPLOYEES IN NORTH CAROLINA

As reports about the Coronavirus continue to come out, employers and employees continue to monitor the situation and wonder how their lives and business will be affected.

On March 18, 2020, the President signed the Families First Coronavirus Act. It addresses administering paid sick leave to those employees who have been impacted by COVID-19 and expanding the Family Medical Leave Act (FMLA). This Act, which has an official start date of April 2, 2020, will remain in effect until December 31, 2020, and will have a direct effect on employers in several different manners.



TEMPORARY EXPANSION OF FMLA LEAVE

The Act creates a significant expansion of FMLA. The prior rules regarding leave only impacted employers with fifty or more employees. The Act now mandates that small businesses with less than five hundred employees offer twelve weeks of job-protected emergency leave.

Employees now qualify for the emergency leave if they are unable to work from home or work at all, and/or if the employee cannot come to work because they must care for a minor child who is out of school due to school closings. Based on the temporary changes, employees who have worked at least thirty days will qualify for leave compared to one year previously.

Companies will still be required to provide job protection when the employee comes back to work; however, the Act provides some leeway to employers with twenty-five employees or less.

FMLA PAID LEAVE

Another drastic change to the FMLA requirements is a payment structure. Under the Act, the first ten days of this expanded definition of leave will be unpaid.

Employees may use paid time off, including sick and vacation time, to subsidize this period; however, what will be critical to small businesses is that after the first ten days, full-time employees must receive pay at the rate of two-thirds the employee's regular rate of pay from their employer. This amount may not exceed \$200 per day, and the employer is not required to pay more than \$10,000 total to an employee for this period.

PAID SICK LEAVE

Another substantial impact to small businesses is the paid sick leave requirement. Businesses with five hundred or fewer employees will be required to issue eighty hours of paid sick leave for the situations in which the employee is subject to a federal, state, or local quarantine or in isolation due to COVID-19; if the employee was advised by a healthcare professional to self-quarantine

due to virus concerns; or if the employee experiences COVID-19 symptoms and seeks a medical diagnosis.

Despite a lack of testing, employers will be required to take a liberal stance on the definition of symptoms, as long as the employee seeks a diagnosis. The amount paid out by employers will be capped at \$511 per day or \$5,110 total.

If the employee must take time off because he or she must care for an individual who is subject to an isolation order; or self-quarantine; or if the employee must care for a minor child because school is closed; or is experiencing a hardship defined by the Department of Health and Human Services, the Treasury, or the Department of Labor, he or she will qualify for two-thirds of their rate of pay.

The amount paid out by employers will be capped at \$200 per day or \$2,000 total. It is important to know that this paid leave will not carry over after December 31, 2020. Part-time employees may also receive paid leave per the aforementioned events; however, pay will be based on the average number of hours worked within the last six months or, if the employee worked less than six months, an average number of hours that the employee would normally work during a two week period.

Finally, at the express request of the employee, the employer must pay eighty hours to cover the first ten days of unpaid leave under FMLA.

BUSINESS TAX CREDITS

If an employer is required to pay out sick leave or emergency FMLA leave, they may qualify for a tax credit. The tax credit will be reimbursed if the cost for the employee coverage exceeds the taxes owed by the employer.

Tax credits are taken against the employer portion of Social Security. Per the Act, an employer will be entitled to a 100% refundable tax credit for the qualified sick leave paid out for each calendar quarter.

These amounts are capped at \$511 per day (less if the employee is caring for an individual or child) for up to ten days per employee during the quarter. For qualified leave wages, the employer is entitled to a 100% tax credit for each calendar quarter. This amount is capped at \$200 per day for each employee up to \$10,000 per quarter.

EXEMPTIONS TO FMLA

The Act has provided the Department of Labor with the option to exclude healthcare providers and exempt small businesses with fewer than fifty employees if the requirement would jeopardize the viability of their business.

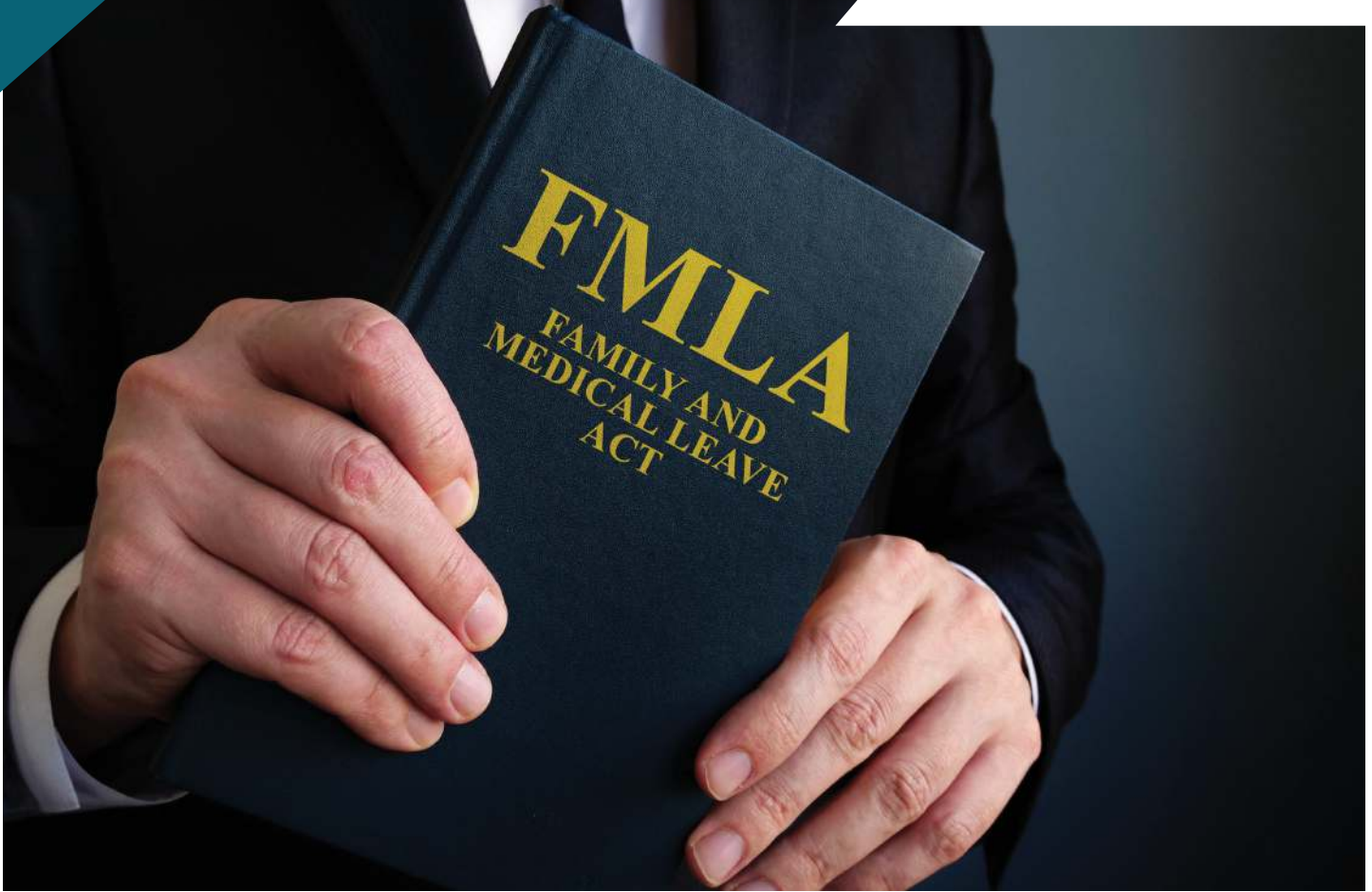
These exceptions will still require further guidance from the Department of Labor before



the Act goes into effect on April 2, 2020. The Act is still under review with the Department of Labor, and additional guidance is expected before April 2, 2020. In addition, Congress is currently debating further stimulus packages which may positively impact small businesses.

Small businesses are an integral part of our country as are the employees who work for them. As the COVID-19 situation develops, Hopler, Wilms, & Hanna is staying on top of the impact it can have on both businesses and employees. Keep checking our blog to find out the latest on the impact this ever-developing situation could have on you, your business, and your employees.

Do you have questions about the Families First Coronavirus Response Act in regards to your business? contact us at 919-244-2019 or visit our contact page.



EMPLOYER AND EMPLOYEE GUIDELINES FOR THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On April 6, 2020, the Department of Labor gave guidelines to further clarify the changes that the Families First Coronavirus Response Act <https://www.congress.gov/bill/116th-congress/house-bill/6201> (FFCRA) made in expanding the Family Medical Leave Act (FMLA).

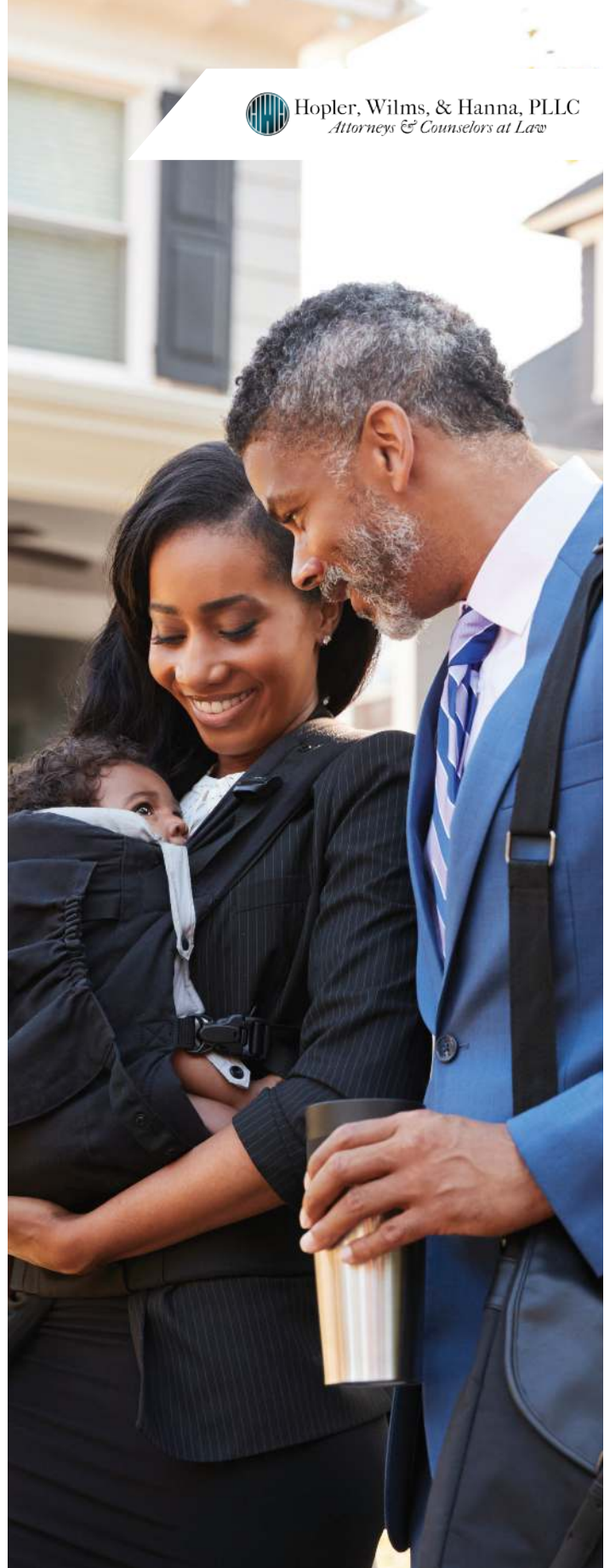
While these guidelines do not technically change anything in the bill, they do offer Employers clarification on what their obligations are under the Act. If you are totally unfamiliar with the FFCRA, we have some basic information at <https://hopperwilms.com/blog/2020/03/20/families-first-coronavirus-response-act-nc> here.



EMPLOYER NOTICE POSTER: EMPLOYEE RIGHTS: PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

As an Employer, the most important change is that the Guidelines require Employers to post a notice for Employees to explain their rights. They can either be posted in a break room or similar, just like a Minimum Wage Poster.

Alternatively, the Guidelines allow Employers to mail or email a copy to Employees. Copies of the poster can be obtained from the Department of Labor here: <https://www.dol.gov/agencies/whd/pandemic> Additionally, should you receive any claims from an Employee under FFCRA, you are required to retain all records from that request for 4 years, whether or not that claim was approved or denied.



EMPLOYEE QUALIFICATIONS UNDER THE FFCRA

Additionally, the Guidelines clarify that an Employee only qualifies for these benefits if there is work available were they not taking leave. They further clarify that this includes teleworking options. The implications of this are two-fold.

First, if an Employee's position is no longer available (i.e. a business is shuttered because it's been deemed non-essential or similar), then that Employee would no longer qualify for paid leave under the FFCRA, even if they had qualified previously.

Second, if a teleworking arrangement would allow for the Employee to continue to perform their job duties (and the Employee is capable of teleworking), then the Employer can provide that option instead of providing leave.

This second option will be particularly useful for Employers who are dealing with Employees that are immunocompromised, at-risk, or have COVID-19 and have medical orders to isolate. Finally, requests for intermittent leave only need to be granted if both the Employer and Employee agree.

Teleworking as an option is a major topic for these Guidelines and they strongly

urge Employers to take steps to make this option available for Employees. In providing teleworking options, they offer clarity to both Employers and Employees on how that process should look.

First, the Department of Labor has ruled that the "continuous work" requirement of the Fair Labor Standard Acts doesn't apply. This means that Employees and Employers can work together to create a work schedule which accommodates other responsibilities the Employee may have during the day and enable the use of non-traditional business hours or days to make up for that time.

To facilitate these atypical working arrangements, the Guidelines place the burden on Employees to accurately track and record their time and makes the Employer only liable to pay for hours which were properly tracked and recorded.



CALL US OR USE THE FORM FOUND AT THE LINK BELOW

During this COVID-19 crisis, our clients and others are still facing legal challenges in estate planning, business law, criminal law, and other practice areas.

Since before this pandemic, Hopler, Wilms, and Hanna PLLC has utilized communication technologies to meet the needs of our clients.

Schedule today. We stand ready, from our home offices, to serve the legal needs of North Carolina throughout these challenging times.

CALL FOR APPOINTMENT HERE: (919) 244-2019

<https://hoplerwilms.com/virtual-appointments/>