



**IANA**

**INTERMODAL ASSOCIATION  
OF NORTH AMERICA**

# **Families First Coronavirus Response Act, Other Critical COVID-19 Employment Issues, and Intermodal**

Thursday, April 9<sup>th</sup>, 1:00 PM ET



# Housekeeping

- Panelist presentations will be followed by audience question and answer session
- Audience audio will be muted
- Submit questions at any time for Q&A session at the end of the webinar presentations
- A recorded version of this webinar, including the slides, will be available in the near future



# Today's Speaker

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**Margo Wolf O'Donnell**

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# Agenda

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- Families First Coronavirus Response Act (FFCRA)
- EEOC Pandemic Guidance – ADA
- Furloughs and Temporary Layoffs
- Permanent Layoffs
- WARN ACT
- Reduction in Hours/Compensation

A close-up, first-person perspective shot from the driver's seat of a car. The driver's hand is visible on the steering wheel. The dashboard features a speedometer, a central infotainment screen, and various control buttons. The car is on a road with a white dashed line, and the background is blurred, suggesting motion. The text "Let's Get Started" is overlaid in a large, white, sans-serif font across the upper portion of the image.

Let's Get Started

# COVID-19 Impact on Employers

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The following is not legal advice and subject to change

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# Families First Coronavirus Response Act (FFCRA)

- Signed into law on March 18, 2020
- Effective April 1, 2020
- Provides paid leave benefits in certain circumstances for employees who cannot work due to reasons related to the COVID-19 global pandemic
- Required for employers with less than 500 employees – number of employees determined by the date the leave requested
- Paid leave must be taken between April 1, 2020 and December 31, 2020
- Must be written documentation and supporting documentation in order to obtain the payroll tax credit—advance notice only to care for a child



# FFCRA

- 500-employee threshold determination
  - Employer fewer than 500 employees in the US
  - Includes temporary employees jointly employed. Workers that are true independent contractors and workers on temporary or permanent layoff are not included.

# FFCRA

- 500-employee threshold determination
  - Joint employers under FLSA
  - Two or more entities are separate employers unless meet the integrated employer test under the FMLA.
    - Common management
    - Interrelation between operations
    - Centralized control of labor relations
    - Degree of common ownership/financial control

# FFCRA

- Paid Sick Leave Benefit
  - Provides the first Federally mandated paid leave entitlement for qualifying sick leaves related to COVID-19
  - Available to employees starting the first day of employment
- Expanded Family Medical Leave Benefit
  - Provides federally mandated paid leave entitlement for qualifying family related leaves specific to COVID-19
  - Available to all employees after 30 calendar days of employment

# FFCRA

- What does it provide?
- For **all employees**: Two weeks (up to 80 hours) of **paid sick leave** for an employee unable to work (or telework):
  - (i) At **full pay** -- up to \$511/day or \$5,110 in the aggregate -- if employee cannot work (or telework):
    - - because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or
    - - because the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis

# FFCRA

- What does it provide?
- (ii) At **2/3 pay** -- up to \$200/day or \$2000 in the aggregate -- if employee cannot work (or telework):
  - - because he/she needs to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider);
  - - because he/she needs to care for a child (under 18 years of age or over 18 with a disability that impedes their ability to care for themselves) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or
  - - because the employee is “experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.”

# FFCRA

- What does it provide?
- For **employees who have worked for an employer for at least 30 days**: Up to an additional 10 weeks of **paid family leave** at 2/3 pay “where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.”

# FFCRA

- Paid sick leave is in addition to any other paid leave already offered
- Expanded FMLA and FMLA leave taken for serious health condition unrelated to COVID-19
- Intermittent leave– for caring for a child, not if sick leave
- Employer notice is required – poster issued by DOL
- Effect of a state or local shut down order due to COVID 19
- Small employers

# FFCRA

- **What about tax credits?** [Per the DOL](#): “Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.”



# EEOC Pandemic Guidance -- ADA

- **Question:** May employers send employees home if they display influenza-like symptoms during a pandemic?
- **Answer:** Yes. Employer can send employees with COVID-19, or symptoms associated with it, home. Currently, these symptoms can include fever, chills, cough, shortness of breath, or a sore throat.
- **Question:** How much information can employers request from employees who report feeling ill at work or who call in sick?
- **Answer:** Employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19.

# EEOC Pandemic Guidance --ADA

- **Question:** Can employers take employees' temperatures to determine whether they have a fever?
- **Answer:** Employers may take their employees' body temperatures, but must maintain the medical information about fevers or other symptoms confidential.
- **Question:** Can employers ask employees about their exposure to COVID-19 during travel?
- **Answer:** Yes, employers may follow the advice of the CDC and state/local public health authorities about information required to permit their employees' return to the workplace after visiting a specific location, whether for business or personal reasons.

# Furloughs and Temporary Layoffs

- Technically time off without pay
- Generally remain on payroll and access to benefits
- A mutual expectation of a return to work
- Provide notice of unemployment benefits
- Notices of furlough should specifically state no work is to be performed
  - No work should include no email review, no calls and no paperwork
  - Should include anticipated length of furlough, that the employer will reassess as the furlough proceeds, provide a number for the employees to contact the employer and request information on how to reach the employee
  - Consider requesting the employees provide information on a positive COVID-19 diagnosis

# Furloughs and Temporary Layoffs

- **Nonexempt** employees generally need only be paid for hours worked
- Be aware of any state show-up pay or notice requirements
- Be aware of any employee who was on paid sick leave or other paid leave before layoff occurred
- Certain states and municipalities have predictive scheduling laws—most have force majeure provisions, but those need to be considered
- **Exempt** employees under "white collar" exemptions must be paid on a "salary basis," that is, they generally must be paid a full salary for any week they perform work
- Ensure that exempt employees perform no work during furlough—inform them not authorized to perform work
- Exempt employees may use paid leave or vacation for any partial weeks not worked

# Permanent Layoffs

- Termination of employment
- Without specific right to be recalled
- Benefits end
- Usually triggers payout requirements under state wage laws

# WARN ACT

- Federal WARN Act
  - Applies to business that employees 100 or more employees
  - Generally requires covered employers to provide 60 days' advance written notice to affected employees of a "plant closing" and "mass layoff"
  - This involves 50 employees affected by an "employment loss" at a single site during a 90-day period
  - Definition of "employment loss"
  - Applicability of exception for unforeseen business circumstances
  - Be aware of different requirements for state "mini" WARN acts

# Reduction in Hours/Compensation

- Hourly, nonexempt employee hours worked may generally be changed; however, be mindful of any show up to work and/or predictive scheduling laws
- For a change in hourly compensation or compensation of exempt employees, state and local laws sometimes require notice
- Exempt employees must be paid \$684 per week on a "salary" basis. Their salary can be reduced on a prospective basis but not on a day-to-day or week-to-week basis

**THANK YOU!**



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A blue Freightliner truck is parked on a paved surface at a port. In the background, there is a large suspension bridge with green towers and a stack of colorful shipping containers. The sky is clear and blue.

# Questions?

Enter your questions in the control panel

# For More Information

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- For more information about COVID-19 and the response:  
<https://www.intermodal.org/coronavirus-update>
- If you have questions for IANA, please contact:  
[hal@intermodal.org](mailto:hal@intermodal.org)



A white semi-truck is parked in a lot, with a large green shipping container attached to its trailer. The container has the number '53' and the code 'HGU 644753' printed on it. A person is walking in the background to the right of the truck. The text 'Stay Safe!' is overlaid in large white letters on the right side of the image.

Stay Safe!

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