

# COVID-19 Update

Presented by  
The Franklin Partnership, LLC  
Policy Resolution Group at Bracewell  
August 28, 2020



# Your Team in Washington, D.C.



## Lobbying Firm – The Franklin Partnership, LLC

- Bi-partisan Washington, D.C.-based government relations firm
- Representing manufacturing industry since 2002
- Clients include: manufacturing associations, defense contractors, hospitals, cities



## Strategic Communications Firm – Policy Resolution Group at Bracewell

- Wash, D.C.-based public affairs & strategic communications consultants
- Promote NTMA and PMA in print, digital and other media
- Support Franklin Partnership government relations efforts by designing and implementing coordinated strategic communications strategy
- Representing metalworking industry since 2003

*Nothing contained in here shall be deemed legal advice.*

More Resources: [www.onevoiceinfo.org](http://www.onevoiceinfo.org)

**ONE VOICE COVID-19 RAPID RESPONSE WEBSITE**

EMAIL:  
[ONEVOICE@POLICYRES.COM](mailto:ONEVOICE@POLICYRES.COM)



# Agenda

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- Government Resources – What We Check Daily
- CDC: Travel Recommendations
- OSHA: Enforcement Continuing
- Unemployment, the States, and Compensation
- Still Awaiting Payroll Tax Deferral Guidance
- MSLF, EIDL, PPP Status Updates
- PPP Interim Final Rule on Ownership Issued
- Status of COVID-19 Legislation
- Questions

*All information presented as of August 26, 2020*

# COVID Government Resources: Where to Look

- DoL FFCRA EPSL & EFMLA FAQ
  - All information on employee leave related to COVID
  - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- OSHA COVID Page – lists newest documents on top
  - <https://www.osha.gov/SLTC/covid-19/>
- CDC Business and Workplace Guidance
  - CDC always has a date stamp on site for when updated; look for manufacturing guidance
  - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- IRS Economic Support – Includes FFCRA Tax Credits; date at bottom tells last update
  - <https://www.irs.gov/coronavirus/coronavirus-and-economic-impact-payments-resources-and-guidance>
- State Public Health Websites (use for local updates, travel restrictions)
  - <https://www.cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html>



# CDC Guidance – Travel Recommendations

Before you travel, consider the following:

Is [COVID-19 spreading](#) at your destination?

The more cases at your destination, the more likely you are to get infected during travel and spread the virus to others when you return.

Do you live with someone who might be [at increased risk for severe illness from COVID-19](#)?

If you get infected while traveling, you can spread the virus to loved ones when you return, even if you don't have symptoms.

Are you [at increased risk for severe illness from COVID-19](#)?

Anyone can get very ill from the virus that causes COVID-19, but older adults and people of any age with certain underlying medical conditions are at [increased risk for severe illness](#) from COVID-19.

Does your destination have requirements or restrictions for travelers?

Some state, local, and territorial governments have requirements, such as requiring people to wear masks and requiring those who recently traveled to stay home for up to 14 days. Check [state, territorial, tribal](#) and local public health websites for information before you travel. If you are traveling internationally, check the destination's Office of Foreign Affairs or Ministry of Health or the [US Department of State, Bureau of Consular Affairs, Country Information page](#) [↗](#) for details about entry requirements and restrictions for arriving travelers, such as mandatory testing or quarantine.

# OSHA Enforcement Continues

- [Charlotte, North Carolina, Transportation Company Pays Back Wages To Employee Instructed to Self-Quarantine Due to Coronavirus Concerns](#) – After an investigation by the Wage and Hour Division, a Charlotte, North Carolina a trucking and warehousing service has paid \$3,116 in back wages after failing to provide an employee two weeks of paid sick leave after the worker received instructions from a healthcare provider to self-quarantine due to coronavirus concerns.
- [El Paso Plumbing Contractor Pays Back Wages to Employee After Denying Paid Leave to Care for Children Whose School Closed for Coronavirus](#) – After an investigation by the Wage and Hour Division, a plumbing contractor based in El Paso, Texas has paid \$804 in back wages to an employee wrongly denied paid sick leave for a qualifying reason covered under the Emergency Paid Sick Leave Act (EPSLA) provisions of the Families First Coronavirus Response Act (FFCRA).
- [LaGrange, Georgia, Firm Pays Back Wages to Employee Denied Paid Sick Leave After Doctor Directed Coronavirus-Related Quarantine](#) – Following an investigation by the Wage and Hour Division, a firm has paid \$1,040 in back wages to an employee after failing to pay two weeks of paid sick leave after the worker was directed by a doctor to self-isolate due to coronavirus-related concerns. Investigators found that the firm violated the EPSLA provisions of the FFCRA, which requires covered employers to provide eligible workers two weeks of paid sick leave under those circumstances.
- [Florida Trucking Company Pays Back Wages to Two Employees After Denying Paid Sick Leave Under Families First Coronavirus Response Act](#) – After an investigation by the Wage and Hour Division (WHD), a freight shipping and trucking company based in Hialeah, Florida has paid \$3,110 in back wages to two employees for wrongly denying them emergency paid sick leave while they sought medical diagnosis for suspected coronavirus infection. Once their tests returned positive, the employer again denied the two employees' requests for emergency paid sick leave. WHD investigators found that denials violated Emergency Paid Sick Leave Act provisions of the Families First Coronavirus Response Act (FFCRA). After WHD contacted the company, the employer agreed to pay the back wages found due, grant the paid sick leave, and comply with the FFCRA's requirements in the future.

# Must Pay Employee for Telework – All Hours Worked

August 24, 2020



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington, DC 20210



FIELD ASSISTANCE BULLETIN No. 2020-5

MEMORANDUM FOR: Regional Administrators  
Deputy Regional Administrators  
Directors of Enforcement  
District Directors

An employer is required to pay its employees for all hours worked, including work not requested but suffered or permitted, including work performed at home. See 29 C.F.R. § 785.11-12. If the employer knows or has reason to believe that work is being performed, the time must be counted as hours worked. An employer may have actual or constructive knowledge of additional unscheduled hours worked by their employees, and courts consider whether the employer should have acquired knowledge of such hours worked through reasonable diligence. *See Allen v. City of Chicago*, 865 F.3d 936, 945 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 1302 (2018). One way an employer may exercise such diligence is by providing a reasonable reporting procedure for non-scheduled time and then compensating employees for all reported hours of work, even hours not requested by the employer. *Id.* If an employee fails to report unscheduled hours worked through such a procedure, the employer is not required to undergo impractical efforts to investigate further to uncover unreported hours of work and provide compensation for those hours. *Id.* However, an employer's time reporting process will not constitute reasonable diligence where the employer either prevents or discourages an employee from accurately reporting the time he or she has worked, and an employee may not waive his or her rights to compensation under the Act. *Id.* at 939; *see also Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382, 388 (6th Cir. 2016).

[https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab\\_2020\\_5.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_5.pdf)



# FFCRA FAQ – Paid Leave Covers *Mandatory* Remote Learning

98. **My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?** (added 08/27/2020)

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child's remote-learning days.

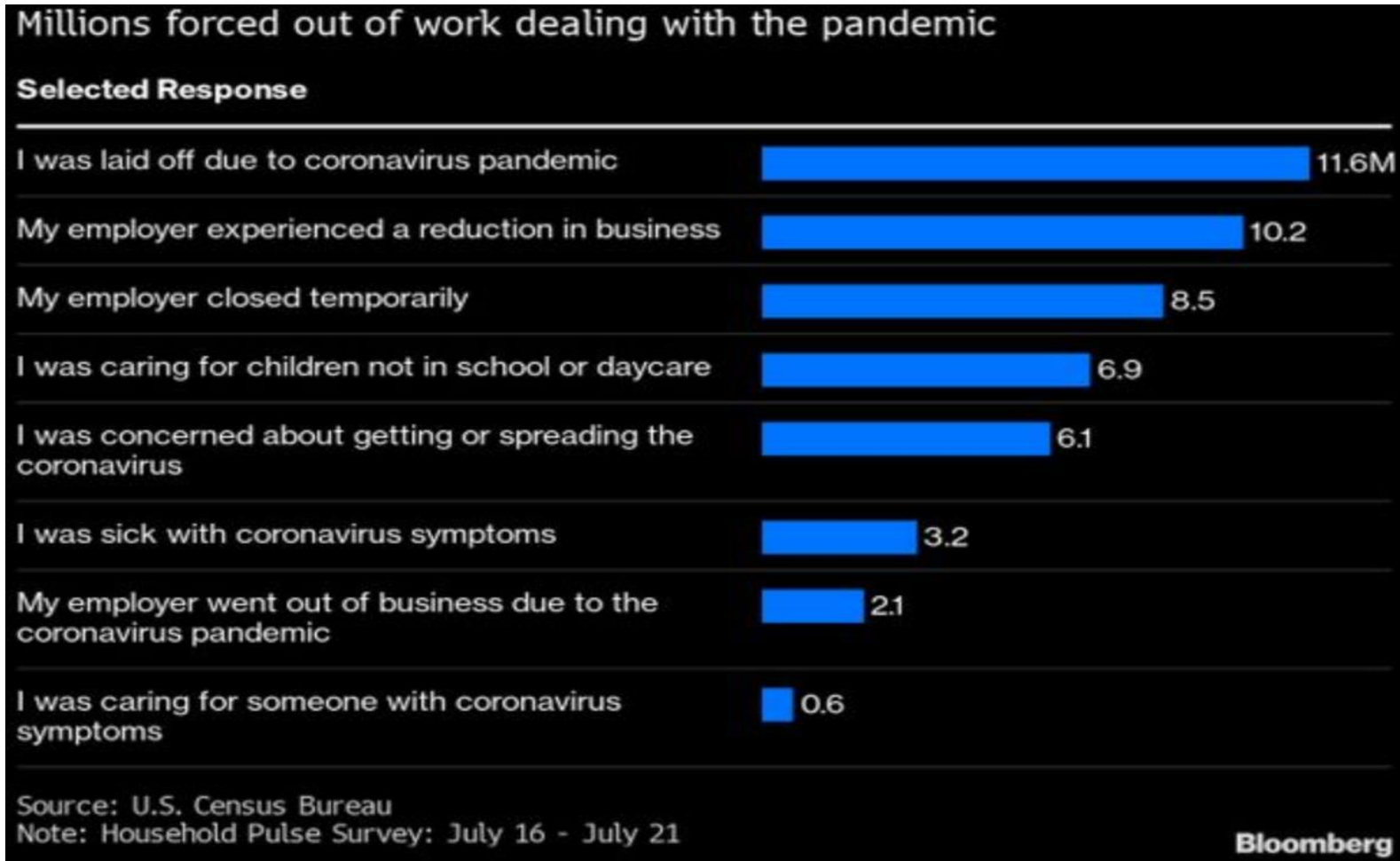
# FFCRA FAQ – Voluntary Remote Learning Not Covered

99. **My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?** (added 08/27/2020)

No, you are not eligible to take paid leave under the FFCRA because your child's school is not "closed" due to COVID-19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her. See [FAQ 63](#).

Also, as explained more fully in [FAQ 98](#), if your child's school is operating on an alternate day (or other hybrid-attendance) basis, you may be eligible to take paid leave under the FFCRA on each of your child's remote-learning days because the school is effectively "closed" to your child on those days.

# Reasons for Unemployment Claim



# \$400 Unemployment Supplement Agreements

- |                |                   |                    |
|----------------|-------------------|--------------------|
| 1. Alabama     | 11. Kentucky      | 21. New York       |
| 2. Alaska      | 12. Louisiana     | 22. North Carolina |
| 3. Arizona     | 13. Maryland      | 23. Oklahoma       |
| 4. California  | 14. Massachusetts | 24. Pennsylvania   |
| 5. Colorado    | 15. Michigan      | 25. Rhode Island   |
| 6. Connecticut | 16. Mississippi   | 26. Tennessee      |
| 7. Georgia     | 17. Missouri      | 27. Texas          |
| 8. Idaho       | 18. Montana       | 28. Utah           |
| 9. Indiana     | 19. New Hampshire | 29. Vermont        |
| 10. Iowa       | 20. New Mexico    | 30. Washington     |

A state must sign an agreement with FEMA to contribute at least \$100 towards \$400  
Signing agreement doesn't mean state will pay; Arizona only state to start payments



# Reminder: Unemployment Compensation is Taxable

## **IRS: Unemployment compensation is taxable; have tax withheld now and avoid a tax-time surprise**

IR-2020-185, August 18, 2020

WASHINGTON — With millions of Americans now receiving taxable unemployment compensation, many of them for the first time, the Internal Revenue Service today reminded people receiving unemployment compensation that they can have tax withheld from their benefits now to help avoid owing taxes on this income when they file their federal income tax return next year.

By law, unemployment compensation is taxable and must be reported on a 2020 federal income tax return. Taxable benefits include any of the special unemployment compensation authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted this spring.

Withholding is voluntary. Federal law allows any recipient to choose to have a flat 10% withheld from their benefits to cover part or all of their tax liability. To do that, fill out [Form W-4V, Voluntary Withholding Request \(PDF\)](#), and give it to the agency paying the benefits. Don't send it to the IRS. If the payor has its own withholding request form, use it instead.

If a recipient doesn't choose withholding, or if withholding is not enough, they can make quarterly estimated tax payments instead. The payment for the first two quarters of 2020 was due on July 15. Third and fourth quarter payments are due on September 15, 2020, and January 15, 2021, respectively. For more information, including some helpful worksheets, see [Form 1040-ES](#) and [Publication 505](#), available on IRS.gov.

<https://www.irs.gov/newsroom/irs-unemployment-compensation-is-taxable-have-tax-withheld-now-and-avoid-a-tax-time-surprise>

*August 18, 2020*

# Still No Treasury Guidance on Payroll Tax **Deferral**

- Memorandum: Delays payroll tax collection for those making under \$104,000
  - Trump instructs the U.S. Treasury to halt collection of payroll taxes from Sept. 1 through Dec. 31 for workers who earn less than \$4,000 every two weeks (people earning under \$104,000 a year). Will still need to pay the tax unless Congress passes a full tax holiday, not deferral. **BE VERY CAREFUL WITH THIS**
- September 1<sup>st</sup> implementation date days away
- Mass confusion, many believe this is a holiday for the employee payroll tax portion
- Treasury Secretary says not mandatory for employers and employees may “opt out”
- Executive Branch (President) does not have authority to mandate a permanent tax holiday
- Congress would have to pass a law; very unlikely to proactively implement a holiday
- Democrats, many senior Republicans worried about impact on Social Security
- Employers may have to claw back deferred payments if not held for employee

*If too many Americans are in a “bind”, thinking it is a holiday, Congress may have to retroactively bail them out by passing a law – maybe in tax extenders in December*

# Main Street Lending Facility – 0.07% Funds Used

## **The Fourth Report of the Congressional Oversight Commission**

The Main Street Lending Program has seen modest initial activity thus far. As of August 19, 2020, eligible lenders had issued loans totaling \$496.8 million under the program.<sup>30</sup> The Federal Reserve's participation amount in these loans is \$472 million—about 0.07% of the program's \$600 billion lending capacity.<sup>31</sup> As of August 10, 2020, 522 lenders have registered with the program, although only 160 had publicized that they are accepting loan applications from new customers.<sup>32</sup>

*August 21, 2020*

# EIDL Status...

## Bloomberg Businessweek

■ August 26, 2020, 4:00 AM EDT

### Phantom Companies Got More Than \$1 Billion in Coronavirus Aid

- The number of \$10,000 Small Business Administration grants exceeded the number of eligible applicants in many places.

August 15, 2020

### **SBA Disaster Assistance Update Nationwide EIDL Loans / COVID-19**

Loans Approved

3,497,081

Dollars Approved

\$184,464,635,819

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>



# PPP Loan Application Period **Closed** Aug. 8

Notice: Paycheck Protection Program closed August 8, 2020

Current law dictates that the Paycheck Protection Program (PPP) close at the end of August 8, 2020. As such, SBA is no longer accepting PPP applications from participating lenders.

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

# PPP IFR: Ownership Stake Threshold is 5%

## **1. Owners**

*Are any individuals with an ownership stake in a PPP borrower exempt from application of the PPP owner-employee compensation rule when determining the amount of their compensation that is eligible for loan forgiveness?*

Yes, owner-employees with less than a 5 percent ownership stake in a C- or S-Corporation are not subject to the owner-employee compensation rule. The First Loan Forgiveness Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 85 FR 38304, 38307 (June 26, 2020), caps the amount of loan forgiveness for payroll compensation attributable to an owner-employee. There is no exception in the rule based on the owner-employee's percentage of ownership. The Administrator, in consultation with the Secretary, has now determined that an owner-employee in a C- or S-Corporation who has less than a 5 percent ownership stake will not be subject to the owner-employee compensation rule. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated.

*August 24, 2020*

# PPP IFR: Rent Payments to Related Parties

*b. Are rent payments to a related party eligible for loan forgiveness?*

Yes, as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020.<sup>1</sup> Any ownership in common between the business and the property owner is a related party for these purposes. The borrower must provide its lender with mortgage interest documentation to substantiate these payments. While rent or lease payments to a related party may be eligible for forgiveness, mortgage interest payments to a related party are not eligible for forgiveness. PPP loans are intended to help businesses cover certain non-payroll obligations that are owed to third parties, not payments to a business's owner that occur because of how the business is structured. This will maintain equitable treatment between a business owner that holds property in a separate entity and one that holds the property in the same entity as its business operations.

*August 24, 2020*

# COVID Phase 4 – The Timing of a Bill

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- House passed Post Office bill
- Senate GOP “Skinny Bill” close to 51 Senate votes
- McConnell wants negotiations to resume
- Is the White House angling for a deal now?
  - White House Chief of Staff “stopped by” Speaker’s office Saturday, she was unavailable
  - Chief of Staff Meadows popped into McConnell’s office last month, Leader McConnell was out, staff said, “you really should have called first...”
- Pelosi holding out against smaller, piecemeal approach White House, Senate GOP want
- Pelosi getting pressure from moderate House Democrats to address PPP, other issues
- GOP wants to tie next COVID bill to government shutdown, Pelosi resisting



# COVID Phase 4 – Key September Dates

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- September 1 – Payroll deferral could begin
- September 4 – August Jobs Report
- September 8 – U.S. Senate returns to Washington, D.C.
- September 14 – U.S. House of Representatives returns to Washington, D.C.
- September 15 – quarterly estimates impact PPP deduction of expenses
- September 18 – Jewish holidays – no Congressional action until Sept. 22
- September 27 – Section 1112 of CARES Act expires for SBA principal, interest payments
- September 29 – First Presidential debate
- September 30 – Federal government runs out of money after 11:59 PM Eastern (shutdown)

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# Questions?

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<https://www.pma.org/advocacy/donate-today.asp>

<https://ntma.org/programs/advocacy/>

