

# Ultimate Guide to COVID-19 Updates

Updates Released  
April 27, 2020

Below are notable updates, guidance, and reminders from the Department of Labor (DOL) and Internal Revenue Service (IRS) regarding the Families First Coronavirus Response Act (FFCRA) and Unemployment Insurance Agency (UIA).

We kindly ask that you take a moment to familiarize yourself with these updates and reach out to MRPR if we may be of further assistance:

[Executive Order](#)

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We understand that in these times there can be information overload, especially when the world is changing around us on a seemingly daily basis. [MRPR stands ready to help you](#) with any issues.

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## Executive Order

Governor Whitmer announced on May 7, 2020 that the [Stay Home, Stay Safe Order](#) is extended through **May 28, 2020**. The extension lifts some restrictions on certain activities. However, it also includes face-covering requirements for employees while in public spaces in addition to the employer's responsibility to provide such equipment to their workers.

Under the Governor's Order, companies who continue to operate as essential workplaces are required to put a COVID-19 Preparedness and Response Plan in place and make that plan available to workers. OSHA has provided the following resource to guide employers on developing such a plan:

<https://www.osha.gov/Publications/OSHA3990.pdf>

In addition, EO 20-36 relates to job-protected leave for employees. Employers are prevented from discharging, disciplining, or retaliating against an employee who does not report to work because s/he:

1. tests positive for COVID-19;
2. displays one or more of the principal symptoms of COVID-19 (fever, atypical cough, or atypical shortness of breath);
3. has been in "close contact" (within six (6) feet for a prolonged period of time) with an individual who tests positive for COVID-19, or with an individual who displays one or more of the principal symptoms, until either 14 days have passed since the last close contact with the sick or symptomatic individual, or the symptomatic individual receives a negative COVID-19 test.

The DOL had also previously indicated that the Executive Order (EO) does qualify as a "quarantine or isolation order". An employee may, therefore, be eligible for paid sick leave during the course of an Executive Order if that specifically is the reason for which they are not able to work (and work is available to them if they were able to leave their home). An employee will not qualify for leave due to an EO if they are able to work remotely from home.



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## Documentation

When requesting emergency paid sick leave or expanded family and medical leave, employees must provide their employer either orally or in writing the following information:

- Employee name;
- The date(s) for which leave is being requested;
- The reason for leave;
- A statement that an employee is unable to work because of the above reason.

If employee leave request is due to a government order or health care provider advice, they should provide the above along with:

- The name of the government entity issuing an order to quarantine or isolation order, or to care for an individual subject to such an order; or
- The name of the health care provider who gave the advice to self-quarantine.

If employee leave request is due to caring for their child whose school or place of care is closed, or childcare provider is unavailable, employee must provide the initial four (4) items above along with:

- The name and age of your child;
- The name of the school, place of care, or childcare provider that has closed or become unavailable;
- A statement that no other suitable person is available to care for your child; and
- With respect to care for a child older than fourteen during daylight hours, a statement that special circumstances exist that requires the employee to provide care for such child.



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### **Additional Guidance:**

- If an employer is covered under the FMLA, all existing certification requirements will remain in effect if the employee is taking leave, beyond the initial two-week period, for one of the existing qualifying reasons under the Act.
- Under the U.S. Equal Employment Opportunity Commission (EEOC), documentation containing information about an employee's illness or medical condition (such as COVID-19 diagnosis, a completed FFCRA leave request form, and/or any written health screening information regarding temperature or symptoms) should be kept as a confidential medical record and housed separately from the employee's personnel file.
- Employers may not require the above documentation if an employee requesting leave is taking the time unpaid or is using other paid time off options outside the FFCRA (i.e.: Michigan Paid Medical Leave).



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## Employer Paid Leave Benefits & FFCRA

During the first two weeks under FFCRA (emergency paid sick leave), employers cannot require employees to use employer-provided paid leave benefits in lieu of or concurrently with FFCRA. However, the employee may choose, with the employer's approval, to supplement with employer-paid leave up to their normal earnings.

In the remaining ten weeks, under the expanded family and medical leave (EFML), employers **may require** an employee to concurrently use EFML **and** employer-paid leave benefits for the same hours. Employer policies should provide guidance as to what leave benefits are applicable.

- Per the DOL, employers who require concurrent usage must pay the employee the full amount to which s/he is entitled to under their paid leave policy for the period of leave taken.
- Employees must be paid at least 2/3 of his or her pay for subsequent periods of EFML taken, up to the maximum limits.
- If an employee exhausts all preexisting paid time off, the employer would need to pay the employee at least 2/3 of his or her pay for subsequent periods of expanded family and medical leave taken, up to the maximum limits.

Employers should amend their policies consistent with applicable law until DOL provides further examples.



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## Less than 50 Employees Exemption

Per the DOL, employers who have less than 50 employees, at the time a request for leave is submitted, may only claim exemption for emergency paid sick or expanded family and medical leave if the request is due to caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19, and if doing so would jeopardize the viability of the small business as a going concern.

“A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.”



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## Unemployment: Benefits Under CARES Act

Michigan has begun sending out the \$600 weekly federal unemployment payments promised under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The state's self-employed workers, gig workers, 1099-independent contractors, and low-wage workers affected by COVID-19 are still able to apply online at [Michigan.gov/UIA](https://Michigan.gov/UIA) for the federal **Pandemic Unemployment Assistance** (PUA) benefits.

Eligible workers who have yet to file a claim can still do so. Qualified claimants who have previously been denied may log in to their MiWAM account through the state's Unemployment Insurance Agency website and complete further steps to begin receiving federal benefits.

Every eligible worker in Michigan who applies for unemployment benefits will receive them, officials have advised. Applications will be back-dated to reflect when a claimant was laid off due to COVID-19, even beyond the previously established 28-day period.

The \$600 weekly federal payments are retroactive back to March 28 -- the day after President Donald Trump signed into law Congress' \$2 trillion stimulus package. The CARES Act includes weekly unemployment payments to eligible individuals, for up to four months, on top of state unemployment benefits.

All newly eligible workers will need to provide proof of income when filing their claim to receive the maximum amount they are entitled. This could include W-2s, 1099 tax forms, and pay stubs. Newly eligible workers will begin receiving federal benefits as early as Monday, April 20 after their bi-weekly certification.

Individuals on paid sick leave or other paid leave – and those who have the ability to telework with pay – are not eligible for federal unemployment benefits in the weeks that they received pay.



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## Summary of Payroll Effects for FFCRA Wages

There are various complexities to be taken into consideration with regards to payroll and the various COVID-19 benefits and credits. We have gathered some items to be aware of. Make sure to consult with your payroll provider to indicate you want to take advantage of the COVID-19 payroll options AND to determine their process and required coding when processing payroll.

If an employer is utilizing R&D, WOTC, Tip, etc. credits related to wages and payroll taxes, these amounts will need to be offset by any COVID-19 credit received on those wages and payroll taxes to eliminate any double-dipping on the tax return.

### Required Emergency Paid Sick Leave ([EPSL](#))

- Employee and Employer meets specific criteria
- Employer pays wage up to 80 hours not to exceed cap
- Wages are coded to FFCRA codes for special tax calculations
- Employee is still subject to normal withholdings & taxability
- Employer does not pay Employer's Social Security payroll tax on FFCRA wages paid since FFCRA wages are not subject to Employer Social Security payroll tax.
- Employer is subject to the Employer Medicare payroll tax on FFCRA wages paid, however, the Employer will receive in its credits the FFCRA wage plus the Employer's Medicare payroll tax and Employer qualified health plan expenses allocable to the FFCRA wages paid
- Employer reduces 941 payment to reimburse itself with the FFCRA credits
- Reported on 2nd Qtr 941 form (currently being modified)
- Employer can seek advance relief on 2nd Qtr [Form 7200](#) if wages paid exceeded 941 deposits



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## Amended Expanded Family and Medical Leave (**EFML**)

- Employee and Employer meets specific criteria
- Employer pays wage up to 10 weeks not to exceed cap (first two weeks is unpaid, with options to utilize EPSL or other employer benefits, if applicable)
- Wages are coded to a special Wage code to identify these wages for tax calculations
- Employee is still subject to normal withholdings & taxability
- Employer does not pay Employer's Social Security payroll tax on FFCRA wages paid since FFCRA wages are not subject to Employer Social Security payroll tax.
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## Summary of Payroll Effects for CARES Act Wages

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### Payroll Protection Program (**PPP**)

- Employer meets specific criteria
- There is relief of incurring failure to deposit and failure to pay penalties for 941 tax deposits through the date the lender issues a decision to forgive the PPP loan

### Employee Retention Credit (**ERC**)

- Employer meets specific criteria
- Employer can receive a credit of up to 50% of the 1st \$10,000 in eligible gross wages paid to an employee; \$5,000 credit
- Employer reduces 941 payment to reimburse itself
- There is relief of incurring failure to deposit and failure to pay penalties for 941 tax deposits through the date the lender issues a decision to forgive the PPP loan
- Reported on 2nd Qtr 941 form (currently being modified)
- Employer can seek advance relief on 2nd Qtr [Form 7200](#) if wages paid exceed 941 deposits



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## Deferred Employer Social Security (**DESS**)

- Employer meets specific criteria
- Employer reduces 941 payment of the Employer portion of Social Security tax as a loan
- There is relief of incurring failure to deposit and failure to pay penalties for 941 tax deposits through the date the lender issues a decision to forgive the PPP loan
- Reported on 2nd Qtr 941 form (currently being modified)
- Employer pays back 50% of the amount December 2021
- Employer pays back remaining 50% of the amount December 2022
- Employer should set up 2 Long Term Liability accounts for the December 2021 & 2022 payable
- Employer should enter 50/50 to each of these accounts with each payroll processed for ease of tracking amounts to be paid in future years
- Employer will be required to remit these amounts via [EFTPS.Gov](https://eftps.gov); as liability transfers to the employer for filing and remitting. Employer/Officers/Owner of the Company could be held personally liable for any unpaid DESS.



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# Resources:

[DOL Fact Sheet For Employers](#)

[DOL FAQs](#)

[UIA FAQs for Employers](#)

[UIA FAQs for Employees](#)

[IRS SMB FAQs](#)

[Previous Updates Released March 26, 2020](#)

[Previous Updates Released March 20, 2020](#)

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