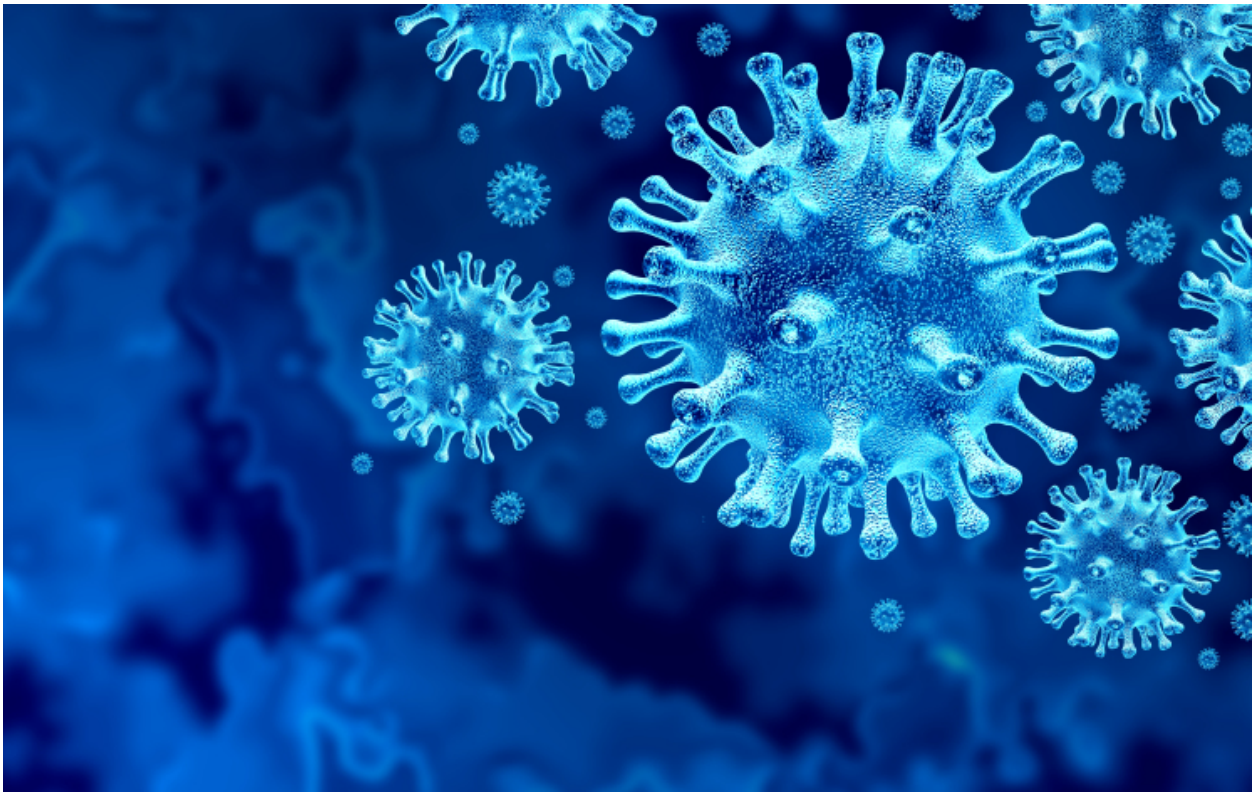

National Electrical Contractors Association, Inc.

COVID-19 and Coronavirus Publications

March 12, 2020 though Present

NECA
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Print Date: May 18, 2020

NECA

COVID–19 and Coronavirus Publications

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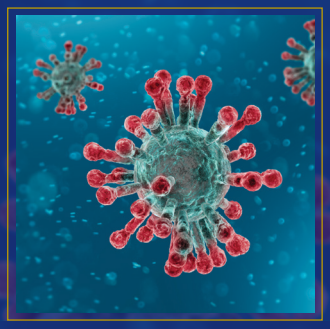

NECA Fact Sheet

Coronavirus (COVID-19)

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

With the recent emphasis on Novel-Coronavirus, COVID-19, exposures and ongoing employer obligations, NECA wants to remind employers of the OSHA and Department of Labor Requirements to protect with workers in the workplace from this and other workplace exposures. While there are many reported cases of COVID-19, nationally and internationally, it is important to review all facts concerning this virus and implement Universal Precautions to prevent this virus from spreading and affecting jobsites across the nation.

What can Employers and Employees do in response?

Employers and workers should follow these general practices to help prevent exposure to coronavirus:

- Frequently wash your hands with soap and water for at least 20 seconds.
- If soap and running water are not available, use an alcohol-based hand rub that contains at least 60% alcohol.
- Avoid touching your eyes, nose, or mouth with unwashed hands.
- Avoid close contact with people who are sick.

Employers of workers with potential occupational exposures to coronavirus should follow these practices:

- Assess the hazards to which workers may be exposed.
- Evaluate the risk of exposure.
- Select, implement, and ensure workers use controls to prevent exposure, including physical barriers to control the spread of the virus; social distancing; and appropriate personal protective equipment, hygiene, and cleaning supplies.

Employers should also review company policies on sick leave, family medical care leave and other federal regulations protecting employer and employee rights.

Workers should remember, if you are sick or show any signs of fever or other symptoms: Stay home, (except to seek medical care from a licensed health care provider), avoid public areas, public gatherings and public transportation. Remember to stay away from others in your family and also pets that could transmit viruses to others. Don't forget to clean and disinfect surfaces regularly including items you touch repeatedly and if possible, use disposal cups and glasses to minimize exposures.

By following the simple information found here and at OSHA, CDC and WHO websites, we can all do our part to prevent further transmission of this and all communicable viruses we are exposed to.

Please review the following links from OSHA, MSHA and WHO for additional, up-to-date information:

- www.osha.gov/SLTC/covid-19/
- www.cdc.gov/coronavirus/2019-ncov/index.html
- www.cdc.gov/coronavirus/2019-ncov/communication/index.html
- www.who.int/emergencies/diseases/novel-coronavirus-2019
- www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html
- wwwnc.cdc.gov/travel
- www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html

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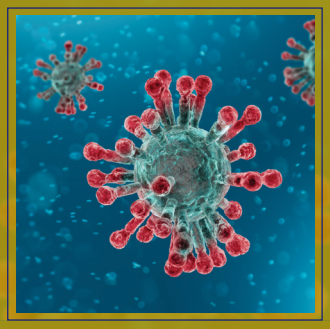

NECA Labor Relations

Return

Top Ten NECA Contractor Coronavirus Labor and Employment Q&A

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

The following are general guidelines from NECA labor relations. Chapters and members are advised to consult their CBA and state and local laws for additional information.

1 Question: Can I send an employee who appears sick home? Can I ask questions about his or her health and symptoms?

Answer: Contractors can be proactive in sending employees home when they appear to have acute respiratory illness symptoms, such as coughing or shortness of breath. Generally, a Contractor can ask that employee to seek medical attention and get tested for COVID-19 when exhibiting these symptoms. Guidance from the Equal Employment Opportunity Commission (EEOC) indicates that if the situation is declared a "pandemic," Contractors could begin to ask the employees questions about their symptoms, or even take employees' temperatures. Until then, those types of inquiries are considered a prohibited medical examination under the Americans with Disabilities Act (ADA). Lastly, while you can legally require medical clearance for a return to work, be mindful of the delay in getting such doctor's notes in the current health environment.

Now that the World Health Organization (WHO) has declared a pandemic, the EEOC advises to check CDC and OSHA updates regularly to see how expansive medical examinations and inquiries can extend. This from the EEOC guidance:

"Direct threat is an important ADA concept during an influenza pandemic.

Whether pandemic influenza rises to the level of a direct threat depends on the severity of the illness. If the CDC or state or local public health authorities determine that the illness is like seasonal influenza or the 2009 spring/summer H1N1 influenza, it would not pose a direct threat or justify disability-related inquiries and medical examinations. By contrast, if the CDC or state or local health authorities determine that pandemic influenza is significantly more severe, it could pose a direct threat. The assessment by the CDC or public health authorities would provide the objective evidence needed for a disability-related inquiry or medical examination.

During a pandemic, employers should rely on the latest CDC and state or local public health assessments. While the EEOC recognizes that public health recommendations may change during a crisis and differ between states, employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information."

2 Question: What do I do if an employee reports a positive test?

Answer: If an employee does test positive for COVID-19, the Contractor should ask the employee to identify all individuals who have worked in close proximity with them during the previous 14 days. The positive employee and those employees can be sent home for a time period consistent with CDC recommendations, law and contractual obligations. While the employees should be informed that they have been exposed, it is important that the name of the infected employee is not disclosed, or the Contractor could risk a violation of confidentiality laws. These same precautions should be taken when an employee has a suspected but unconfirmed case of COVID-19, or when an employee self-reports that he or she has had contact with an individual who has tested positive for COVID-19.

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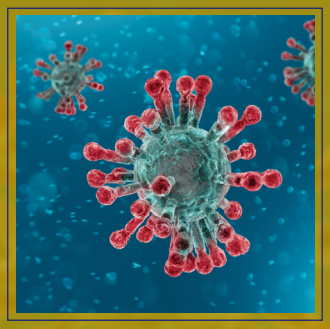

3 Question: Can an employee refuse to come to work or travel with no adverse employment ramifications?

Answer: A Contractor cannot literally force an employee to come to work or to travel for work. However, in most circumstances, that employee is subject to discipline and/or termination for such refusal. The Occupational Safety and Health Act (OSHA) provides that employees can refuse to work if they believe they are in imminent danger. Requiring an employee to travel to a country deemed as High-Risk by the CDC currently may rise to that level. However, the Centers for Disease Control (CDC) has determined that at this time most work conditions in the United States do not meet the elements required for the employee to refuse to work.

However, be mindful of a collective objection to working in a particular situation – perhaps with a colleague who just returned from overseas. Such activity could be protected as concerted by Section 7 of the National Labor Relations Act (NLRA). In addition, Section 502 could be invoked by the union to support a decision not to work in an "abnormally dangerous" situation – even in the face of a no-strike clause.

4 Question: Can a Contractor prohibit or regulate off-duty travel by employees?

Answer: Generally, no – unless a government mandate or restriction has made the travel illegal. Contractors should make efforts to educate their employees on travel and the areas that are on the watch or restricted list. However, Contractors may require an employee to inform the them if they are traveling to a High-Risk country as determined by the CDC. Contractors should also let employees know that, upon their return, they may be prohibited from coming to work for a period of time until the incubation period for COVID-19 has passed. As COVID-19 spreads across the U.S. and other regions, Contractors should consult the CDC or medical resources to make determinations based on the most up-to-date information.

5 Question: Must a Contractor continue to pay an employee that stays home or is sent home because of COVID-19?

Answer: The answer to this question depends on whether your CBA or another contract addresses such absences. For example, if the employee is SENT home, that may qualify as work-required leave. You may also need to check state law on sick and safe leave. Under the Fair Labor Standards Act (FLSA), the answer is generally no. FLSA minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages the FLSA requires. Exempt employees properly paid on a salary basis would continue to receive full salary for any time worked during the workweek at issue.

6 Question: Can a Contractor charge leave for absences occasioned by COVID-19?

Answer: Again, you will need to consult your CBA or other employment contract as well as state law, but the FLSA generally does not regulate the accumulation and use of vacation and sick leave and would make no such requirement. Be advised that there is some discussion relating to a federal legislative appropriation and mandate on sick leave and coronavirus. Lastly, the Family and Medical Leave Act may come into play and require at least the provision of LWOP and job protection.

7 Question: Can a Contractor make changes to work schedules or duties in response to circumstances related to COVID-19?

Answer: It depends on whether your CBA has an "emergency or exigent circumstances clause" that relates to mandatory subjects of bargaining. Of course, the NLRA imposes on

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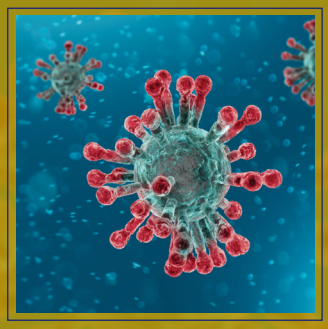

contractors the duty to bargain in good faith over mandatory subjects of bargaining such as wages, hours, and terms and conditions of employment, and Contractors who make unilateral changes may be subject to unfair labor practice charges that would apply even in emergency situations such as this one. The best course of action is to work with your NECA Chapter to engage the union on these issues and try to bargain an addendum or memorandum of understanding to cover the exigent (and likely temporary) circumstances.

8 Question: Can an employee claim workers' compensation if he or she contracts COVID-19 and alleges that it was because of the work environment?

Answer: Workers' compensation is statutory and very dependent on state law. That said, basic workers' compensation law requires that the contraction of a disease be "occupational" and that it arise out of the peculiar conditions of the workplace. Best advice is to refer all such claims to your insurer or third-party administrator and follow their guidance on time off and benefits.

9 Question: Can a Contractor institute a work travel-ban for employees?

Answer: Absolutely. A ban on nonessential work-related travel may be appropriate if employee travel would take them to areas where there is elevated risk of exposure or would otherwise cause unnecessary and elevated risk of exposure (e.g., certain airline or train travel). Situations should be evaluated on a case-by-case basis, considering guidance from the CDC and other organizations, the nature of expected travel and whether ready alternatives to travel might be available, such as videoconferences, postponement, and the like.

10 Question: What does a Contractor need to do if an entire job site is shut down and the owner or contractor prohibits all work for an extended period of time?

Answer: If the job site becomes inaccessible because of COVID-19, a Contractor should immediately consult the CBA, communicate with the NECA Chapter and the union, and be mindful of any obligations related to layoffs or shut-downs under the federal and state Worker Adjustment and Retraining Notification (WARN) Act. Events that trigger the requirements of the WARN Act are: 1) a plant closing resulting in employment losses of at least 50 employees; 2) a mass layoff of at least 50 employees where the employment loss consists of at least 33% of employment at the site; or 3) a mass layoff with an employment loss of 500 or more at a single site of employment, regardless of its proportion of total employment at the site or if the employment loss is part of a plant closing.

NECA will continue to monitor the coronavirus crisis. Please refer to the resources on the NECA website, which will be periodically updated.

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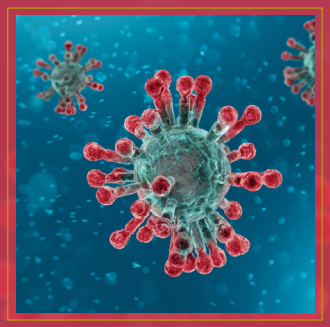

Guidelines for Dealing with Coronavirus COVID-19 on Construction Sites

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

As coronavirus has spread from China to Europe, the United States and around the globe, it has begun to have a debilitating impact on manufacturing, distribution, supply chains, and the workforce in general. It seems only a matter of time before COVID-19 directly affects U.S. construction projects.

First and most importantly, experts say the concern must be for construction site employee's health and well-being. The situation is fluid, but the good news is that the risk of transmission for those employed outside the healthcare sector is still low but is evolving, according to OSHA.

The construction industry must prepare for the effects of COVID-19 and mitigate the potential harm to workers and projects. Complete solutions are complex to develop in short order, but there are some simple initial steps that construction contractors and owners can take to assess their ability to deal with the potential impact of an outbreak on a construction project. The best approach is prevention.

Owners and contractors can and should work together to implement sanitation and infection control improvements on the jobsite. It could mean the difference between continuing operations and a shut-down of a project. The guidelines in this message do not address contract obligations or insurance coverages. These guidelines are in the interest of construction worker's safety, health and well-being.

Closing a construction project on short notice should be treated as an organized integral part of the project. Each step should be as carefully planned and executed as any other portion of the project.

The closure of a project (interim or long term) will vary depending on the size and complexity of the project, but it should include, but not be limited to, these items:

- **Coordination and Communication** with General Contractors and Owners: plan and conduct risk assessments specific to each site.
- **Identify and Remove Known Threats:** Hazards, contaminated surfaces or areas.
- **Medical Care:** workers experiencing symptoms should be deferred offsite to seek professional diagnosis and medical attention.
- **Identify and Isolate** Infected Spaces, Tools, Areas, Surfaces: Determine whether those areas can be effectively disinfected and assist in risk assessments to determine the need to close the site down completely or partially for a period of time to allow focused screening.
- **Appropriate Personal Protective Equipment:** Heath care specific PPE should be deployed while shutdown or evacuation processes occur (see below).
- **Establish Tool and Material Security** and safe logging in and out as well as cleaning of tools, materials, and equipment.
- **Documentation** of the conditions, response and implemented course of action (which could include complete or partial shutdown of projects for short or long term timeframes).
- **Continued Construction:** Determine the length of project shutdowns and continuance of construction options (through the construction management team).

It is important to maintain a stable approach to assessing and addressing these evolving situations. Attack the problem, not the people—protect the people. The efforts should focus on

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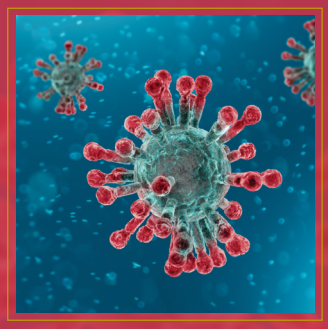

Guidelines for Dealing with Coronavirus COVID-19 on Construction Sites

the virus. In the construction industry, long workdays and overtime at a jobsite are normal, but for infection control purposes there is increased risk for transmission of illness due to weakened immune systems. To make matters more challenging, construction-site sanitation is frequently less stringent than that in an office environment. It doesn't have to be, however, and for a little extra cost, better sanitation can be accomplished. It is recommended that portable washing stations be provided as needed and jobsite screenings of workers can be implemented as an interim step to minimize spread of disease.

Education and Training:

- Provide training for supervisors, employees and other key personnel to recognize signs and symptoms of COVID-19 as recommended by the CDC: *https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html*
- Humanize the virus precautionary measures by asking supervisors to greet employees at the gate or jobsite entry point
- Schedule daily briefing or jobsite safety talks to communicate the news concerning the virus/project, etc. and to visually assess your crew
- During project safety talks, remind employees to keep 6 feet of personal space if possible
- Communicate a current fit-for-duty policy, including the requirement to provide a return-to-work authorization form if seen by a physician

Personal Protective Equipment:

- Personal protective equipment should be assigned to an individual, not shared among groups.
- Companies should consider implementing a 100% glove use policy.
- Individuals should wear disposable gloves while wiping down all tools before storing or at the end of every shift.

IMPORTANT: *The guidelines in this message do not address contract obligations or insurance coverages. These basic guidelines are in the interest of construction worker's safety, health and well-being.*

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TO: Executive Committee

FROM: David Long, NECA CEO

SUBJECT: National Disease Emergency Response Agreement (NDERA)

DATE: March 16, 2020

PLEASE NOTE: We will send this out immediately to all the Chapters, Governors, Presidents and Field Staff. President Stephenson is simultaneously sending to all IBEW construction locals, inside, outside, including tree services.

As a result of ongoing discussions and to address the recently declared National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, NECA and the IBEW have reached agreement for a national agreement to address the COVID-19 pandemic (or similar diseases) and potential emergency situations created by it. The attached "National Disease Emergency Response Agreement (NDERA)" has been reviewed and approved unanimously by the NECA Executive Committee and will be available for use immediately effective March 16, 2020. It will be submitted to the Board of Governors for affirmation by electronic ballot as soon as possible.

This threat is ongoing and must be continually monitored by the Parties who agree to discuss any new legislation or regulation related to the coronavirus or similar disease that may impact this Agreement. The Parties may mutually terminate this Agreement immediately, and either party may unilaterally terminate this Agreement by providing at least a 90-day written notification to the other party.

TO: All NECA Chapters and IBEW U.S. Local Union Business Managers

FROM: IBEW International President Lonnie R. Stephenson
NECA CEO David Long

SUBJECT: National Disease Emergency Response Agreement (NDERA)

DATE: March 16, 2020

In recognition of the current emergency in our nation and the need for our industry to react quickly to this and future emergencies, the IBEW and NECA have developed the National Disease Emergency Response Agreement (NDERA) for use by our contractors and members. This agreement provides our industry with the ability to react quickly to potential emergencies related to this pandemic.

The provisions of the agreement will become effective immediately, March 16, 2020, as it is intended for use and shall remain in effect until terminated. We shall meet via teleconference every 30 days to evaluate this agreement and determine its continued utility.

If you have any questions, please be sure to contact either the IBEW or NECA national organizations.

NECA/IBEW
National Disease Emergency Response Agreement (NDERA)

This Agreement is made and entered into by and between the National Electrical Contractors Association ("NECA") and the International Brotherhood of Electrical Workers ("IBEW") (together the "Parties"), and it is applicable to all firms and IBEW local unions that sign a Letter of Assent to be bound to a construction agreement between any chapter of NECA and any local union of the IBEW. The IBEW may make this Agreement available to other employers in the construction industry that have not signed a Letter of Assent to be bound to a construction agreement between any chapter of NECA and any local union of the IBEW.

This Agreement shall take effect March 16, 2020 and shall remain in effect until terminated as provided herein. The Parties shall meet via teleconference every 30 days to evaluate this Agreement and determine its continued utility. The Parties may mutually terminate this Agreement immediately, and either party may unilaterally terminate this Agreement by providing at least a 90-day written notification to the other party.

The term *chapter*, as hereinafter used, shall mean the applicable chapter of NECA.

The term *local union*, as hereinafter used, shall mean an IBEW Local Union.

The term *employer*, as hereinafter used, shall mean the individual firm that has signed a Letter of Assent to a construction agreement between any chapter of NECA and any local union of the IBEW or agreement between NECA and the IBEW, or if this Agreement is made available to a contractor that has not signed a Letter of Assent, but is otherwise signatory to a construction agreement with a local union of the IBEW, *employer* shall also mean such contractor.

This Agreement (NDERA) shall supersede any conflicting provisions in a construction agreement between any chapter of NECA and any local union of the IBEW, except that it shall not supersede any locally negotiated MOU or agreement between a chapter of NECA and an IBEW local union addressing the impact of coronavirus.

The term *employee*, as hereinafter used, shall mean an individual performing work pursuant to the terms of a collective bargaining agreement between any chapter of NECA and any local union of the IBEW or agreement between NECA and the IBEW, or pursuant to a collective bargaining agreement between a contractor that has not signed a Letter of Assent, but is otherwise a signatory to a construction agreement with a local union of the IBEW and has adopted this Agreement.

The term *coronavirus* shall mean coronavirus disease COVID-19.

During the period of this Agreement, the following conditions exist:

If an employee:

- Reports having contact with another person(s) who has reasonably believed to have contracted coronavirus or a similar disease

- Has recently returned from a High-Risk Country as defined by the Center for Disease Control (CDC); or
- Presents symptoms associated with the coronavirus or similar disease as defined by the CDC

The employer shall be permitted to remove the employee from the jobsite and require the employee to obtain a doctor's release certifying that the employee is able to return to work. If an employee is confirmed to have coronavirus or similar disease, the employer shall notify all employees who were believed to be in contact with this individual and take actions consistent with appropriate protocols to prevent the further spread of the disease.

If an employee reasonably believes another employee(s) has met one or more of the above conditions, the employee shall report such to the employer as soon as reasonably possible. The employer shall then follow all appropriate guidance and protocols to ensure a safe jobsite.

There shall be no adverse action taken against an employee who refuses to be present at the jobsite so long as the employee genuinely believes there is imminent danger and a reasonable person would agree there is a real danger of contracting coronavirus at the jobsite, nor shall any adverse action be taken against an employee who has been quarantined, or advised to self-quarantine, due to possible exposure to coronavirus.

In the event access to a jobsite is restricted or denied by the employer or other appropriate public or private authority in response to the coronavirus or similar disease, the employer shall be permitted to temporarily furlough the employees assigned to this jobsite. The employer shall not contest any unemployment claims filed by employees temporarily furloughed as a result of a restricted or closed jobsite due to the coronavirus or similar disease, or who have refused to be present at the jobsite out of a genuine belief that being present would place them in imminent danger of contracting coronavirus, or who have been quarantined, or advised to self-quarantine, due to possible exposure to coronavirus. Such employees shall be permitted to return to their original positions with their employer upon the resumption of work on the jobsite, and/or their ability to return, without the need of the referral process, and irrespective of whether such employees have signed their local union's out-of-work list.

This threat is ongoing and must be continually monitored by the Parties who agree to discuss any new legislation or regulation related to the coronavirus or similar disease that may impact this Agreement.

Signed for NECA

David Long
CEO

Date: 3/16/2020

Signed for the IBEW

Lonnie Stephenson
International President

Date: 3/16/2020

Center for Disease Control Resources for COVID-19

Symptoms

https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html

High-Risk Countries

https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html

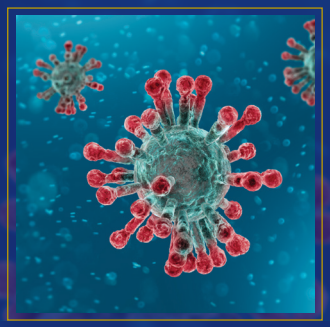
Prevention

https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html

OSHA Resources

Guidance on Preparing Workplaces

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



NECA Fact Sheet

Stay-at-Home Orders Following DOL Temporary Regulations

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Since our most recent "NECA Fact Sheet: Families First Coronavirus Response Act FAQ," prepared on Wednesday, April 1, 2020, the Department of Labor (DOL) promulgated temporary regulations applicable to the Families First Coronavirus Response Act (FFCRA) through December 1, 2020.

Among other items, the DOL clarified how **local, state, or federal "shelter in place"/"stay at home" orders** affect entitlements to FFCRA leave. Because the DOL's regulations diverge, to some extent, from previous guidance and expectations, we highlight this issue for our members.

- Under the FFCRA, an employee is entitled to paid sick time if the employee is "unable to work (or telework)" due to the need for leave because the employee is subject to a "Federal, State, or local quarantine or isolation order."
- The DOL has now clarified that a "quarantine or isolation order" ***includes*** shelter in place and stay at home orders.
- Therefore, an employee may take paid sick leave if being subject to a shelter in place/stay at home order ***prevents*** him/her from working, including teleworking.
- This means the employee would be unable to work or telework ***"but for"*** the order.
- Examples:

Scenario	Are employees entitled to paid benefits under the FFCRA?
A business closes temporarily or indefinitely due to a business downturn related to COVID-19.	**No.** The employee could not work even if there was no stay at home/shelter in place order.
A business closes because business is down due to its customers being subject to a stay at home/shelter in place order.	**No.** The reason the employee could not work is because the customers were subject to the order, not because the employee was subject to the order.
A business is ordered to close due to a stay at home/shelter in place order.	**No.** The reason the employee cannot work is because the business is ordered closed, not because the employee is subject to the order.
An employee is subject to a stay at home/shelter in place order, but is able to telework.	**Maybe.** An employee is *not* entitled to paid sick leave if: (a) the employer has work for the employee to perform, (b) the employer permits the employee to work remotely, *and* (c) there are no extenuating circumstances that prevent the employee from performing that work (for example, a power outage preventing the employee's use of a computer).
An employee is subject to a stay at home/shelter in place order, but the employer is not.	**Yes.** An example of this situation is an employer located in a state without a shutdown order, but the employee works in a state with a shutdown order.
An employee is caring for an individual who is subject to a stay at home/shelter in place order.	**Yes, if** the employee would be able to perform work but for having to care for the individual **and** this person is (a) an employee's immediate family member, or (b) a person who regularly resides in the employee's home, or (c) has a "personal relationship" with the employee requiring the employee's care. **No, if** the employer does not have work for the employee.

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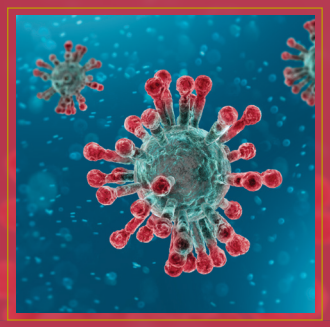

NECA Safety Talk

COVID-19 Worksite Safety Recommendations

What is the Coronavirus?

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OSHA had issued workplace guidance for jobsites that are in operation during the Coronavirus (COVID-19) outbreak and need to address appropriate control measures and possible containment of exposures.

It is important to recognize hazards and exposures through a proper risk assessment and provide education and training to supervisors and workers in the methods and procedures that have been developed for public and personnel protection.

While this guidance does not create any new regulatory or legal obligations, following the recommended procedures can protect workers, businesses, customers and, most importantly, the public, which includes family and friends.

- Identify possible sources of exposure and track any known cases of infectious person(s) who are or may be assigned to the worksite.
- Implement basic Infection Control Measures at each worksite or company location. This includes hand wash stations, hand sanitizer distribution and providing individual water bottles to prevent any cross contamination at common water kegs and break areas.
- Create a social distancing protocol where appropriate and limit worker interactions with other trades and personnel to a minimum.
- Develop, review and implement an overall infectious control measure policy and protocols for all employees to review and adhere to. This can include specific personal protective equipment, handwashing guidelines and disinfecting/housekeeping responsibilities.
- Remind employees of sick leave policies, Family Medical Leave Act, Customer Workplace regulations and other company policies that may affect each worker. Remind workers of Employee Assistance Programs (EAP) that may be available to them during times of crisis and encourage them to use these resources that are available.
- If appropriate, allow for flexible workhours and other measures that could limit employee interaction.
- Implement the Hierarchy of Controls per OSHA regulations. Use Engineering, Administrative Controls, Safe Work Practices and appropriate PPE for employees and possible exposures.

As the current situation continues to develop, we encourage all workers to stay in contact with your employer and follow all guidance issued for worker protection. Each jobsite and work location may have unique challenges and must be addressed individually and in collaboration with other employers who are present on the jobsite.

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published 3/19/2020

TO: All NECA Chapters and IBEW U.S. Local Union Business Managers

CC: All NECA and IBEW District and Regional Field Operations, Officers and Staff

FROM: IBEW International President Lonnie R. Stephenson, NECA CEO David Long

SUBJECT: Questions and Answers (Q&A) - National Disease Emergency Response Agreement (NDERA)

DATE: March 19, 2020

In response to the release of the National Disease Emergency Response Agreement (NDERA) on Monday March 16 that was designed to address the current national public health emergency and to provide guidance for our industry, we have received a number of questions.

The attached NDERA Questions and Answers has been written to address the questions we have received from the field to date and the guidance is intended to answer as many of those questions as possible. These questions and answers are subject to being revised by NECA and the IBEW as often as necessary.

The questions and answers have been vetted and reviewed by both IBEW and NECA Leadership including IBEW International President Lonnie Stephenson, IBEW International Secretary Treasurer Kenny Cooper, NECA President Larry Beltramo and NECA CEO David Long. Additionally, these Questions and Answers have also received legal review from the legal counsels of both organizations.

This threat is ongoing and must be continually monitored by the parties who have agreed to discuss any questions, new legislation or regulation related to the coronavirus or similar disease that may impact this agreement. This agreement has provided the electrical construction industry with the ability to react quickly to potential emergencies related to this pandemic.

Once again, the IBEW and NECA are leaders in the construction industry with the development of the NDERA and other organizations in the construction industry are working on similar agreements for their industries using the NDERA as the pattern.

If you have any questions, please be sure to contact either the IBEW or NECA national organizations.

Signed for NECA

David Long
CEO
Date: 3/19/20

Signed for IBEW

Lonnie R. Stephenson
International President
Date: 3/19/20

JOINT NECA/IBEW NDERA Q&A (3.19.2020)

The intent of the National Disease Emergency Response Agreement ("NDERA") is to address the current public health emergency and provide guidance on safety and referral issues in a fair manner. Several questions have arisen at a local level, and this guidance is intended to answer as many as possible. This guidance is subject to being revised by NECA and the IBEW as often as necessary.

IMPORTANT: Unless they have adopted their own agreement at the local level, Local Unions must post the NDERA and these Q&As on their website; if possible, in their referral halls; and should, if possible, email them to their members. If a Local Union and Chapter have adopted their own coronavirus agreement instead of the NDERA, then that locally negotiated agreement must be distributed and posted by the Local Union as set forth in this paragraph.

1. Does the NDERA supersede any local recall/furlough language that provides a right of recall than would be available under the NDERA?

Yes, unless the recall/furlough language provides a longer right of recall, in which case the longer right of recall would remain in place.

2. If employees who lose their jobs due to coronavirus sign the out-of-work list, can they still be recalled by the contractor they were working for before losing employment?

Yes. The NDERA allows those who (i) are laid off due to a coronavirus shutdown, (ii) were absent due to being quarantined, or (iii) refused to be present at the jobsite out of a genuine belief that being present would place them in imminent danger of contracting coronavirus, to return to their original positions with their employer upon the resumption of work on the jobsite, and/or their ability to return, without the need of the referral process, and irrespective of whether such employees have signed their local union's out-of-work list. Nothing in the NDERA prohibits an employee from signing the out-of-work list.

3. To what jobs does this Agreement apply?

All jobs covered by an agreement between any chapter of NECA and any local union of the IBEW. This includes any agreements with signatory employers not normally considered construction agreements such as Trade Show Agreements, Test Site Agreements, etc., and to National Agreements that adopt local referral practices.

4. If employees lose their job due to coronavirus, sign the out-of-work list and obtain a regular "long-term" referral, may they still be recalled by contractor for which they were working before losing their job due to coronavirus?

No. However, if employees only take a short-term call, then they may still be recalled by the contractor for which they were working before losing their job due to coronavirus. For purposes of this NDERA, a short-term call shall be as defined in the applicable Local Agreement or in the Local's referral procedures. If a Local does not have an Agreement or referral procedure defining the length of a short-term

call, then for such Locals for purposes of this NDERA only, a short-call shall mean a call of 14 calendar days or less.

5. Does the NDERA prohibit a Local and a Chapter from entering into their own agreement that addresses the impact of coronavirus and provides for different terms?

No. While the intent of the NDERA is to address the issues surrounding coronavirus, NECA and the IBEW recognize there may be unique circumstances in a local area. This is the purpose of the exclusion for locally negotiated agreements or MOUs in the NDERA. If the local parties mutually choose to bargain their own agreement on the impact of coronavirus, it must deal specifically with coronavirus, be reduced to writing, and signed by both parties. There shall be no requirement on any Local Union or Chapter to bargain their own agreement on coronavirus.

6. If a Local and a Chapter do not enter into their own agreement addressing the impact of coronavirus, does the NDERA apply to the construction agreements between that Local and Chapter?

Yes. As the NDERA states: "*This Agreement (NDERA) shall supersede any conflicting provisions in a construction agreement between any chapter of NECA and any local union of the IBEW, except that it shall not supersede any locally negotiated MOU or agreement between a chapter of NECA and an IBEW local union addressing the impact of coronavirus.*"

7. If a worker is sent home due to suspected coronavirus contraction, who must the contractor inform and how timely?

The employer should follow all guidance and protocols provided by the appropriate federal agencies if there is a suspected case of coronavirus on their jobsite. The NDERA contains links to resources for the employer's reference.

8. Is there a maximum length for a furlough?

a. For employees observing the CDC recommended quarantine period due to exposure to coronavirus or similar disease, the furlough should end when the employee has completed the recommended quarantine period and provided a doctor's release to return to work.

b. For employees who have been restricted or denied access to a jobsite due to coronavirus, the furlough shall end when the jobsite reopens.

c. All furloughs pursuant to the NDERA will end when the Parties terminate the NDERA.

9. When will employees be permitted to return to work when a jobsite reopens?

Employees will be permitted to return to work if/when their original position is available as determined by the employer. Everyone who was furloughed and still meets the eligibility requirements for recall, however, shall be offered recall before an employer may seek employees for that project through referral.

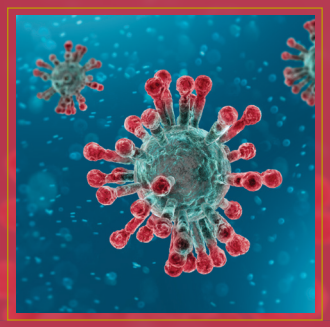
10. What are the responsibilities of the employees if they have or suspect a coronavirus related illness?

If an employee is exhibiting the symptoms of coronavirus: fever, cough, and/or shortness of breath, or if an employee sees another employee exhibiting those symptoms, the employee has a responsibility to report that to their employer's representative as soon as reasonably possible. It is then up to the employer to follow all guidance and protocols following such report. Current guidance may be found at: https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

Employees have a duty to self-quarantine if they reasonably believe they have contracted the coronavirus as recommended by the Center for Disease Control. A doctor's release will be required to return to work.

11. Should the Local and Chapter devise a system to ensure that each is informed of which employees have lost employment due to coronavirus?

Yes, the IBEW and NECA encourage the parties to devise such a system on the local level.



NECA Safety Talk

Return

COVID-19 and other communicable exposures

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

With the recent emphasis on Novel-Coronavirus, COVID-19, exposures and ongoing employer obligations, NECA wants to remind employers of the OSHA and Department of Labor Requirements to protect workers in the workplace from this and other workplace exposures. While there are many reported cases of COVID-19, nationally and internationally, it is important to review all facts concerning this virus and implement Universal Precautions to prevent this, and other viruses from spreading and affecting jobsites across the nation.

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19.

Since the announcement of the spread of COVID-19 from its origin overseas, world health organizations and associations have worked to develop guidance material and plans for protecting all public citizens from this virus and ensure proper information is communicated to everyone. The OSHA, CDC and WHO have provided dedicated websites with up to the minute information for all to use. While no new specific employer requirements related to COVID-19 are going in to affect, general rules, universal precautions and other work practices should be implemented to address worker and public concerns.

Please review the following links from OSHA, MSHA and WHO for additional, up-to-date information:

- www.osha.gov/SLTC/covid-19/
- www.cdc.gov/coronavirus/2019-ncov/index.html
- www.cdc.gov/coronavirus/2019-ncov/communication/index.html
- www.who.int/emergencies/diseases/novel-coronavirus-2019

Developing an overall policy for employees to follow related to illness prevention and the spread of germs and common illnesses such as cold and flu will help in meeting OSHA regulations. OSHA has now developed an employer guide, “Guidance on Preparing Workplaces for COVID-19, OSHA Publication 3990” and an alert, “Prevent Worker Exposure to Coronavirus, (COVID-19), OSHA Publication 3989” that provides details for worker protection detailed below:

Employers and workers should follow these general practices to help prevent exposure to coronavirus:

- Frequently wash your hands with soap and water for at least 20 seconds.
- If soap and running water are not available, use an alcohol-based hand rub that contains at least 60% alcohol.
- Avoid touching your eyes, nose, or mouth with unwashed hands.
- Avoid close contact with people who are sick.

Employers of workers with potential occupational exposures to coronavirus should follow these practices:

- Assess the hazards to which workers may be exposed.
- Evaluate the risk of exposure.
- Select, implement, and ensure workers use controls to prevent exposure, including physical barriers to control the spread of the virus; social distancing; and appropriate personal protective equipment, hygiene, and cleaning supplies.

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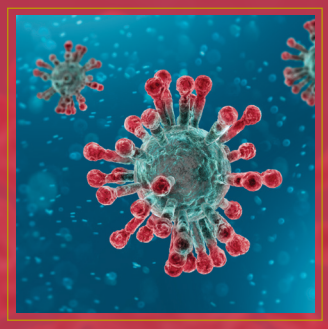

NECA Safety Talk: **COVID-19 and other communicable exposures**

Employers should review company policies and contracts on sick leave, family medical care leave and other federal regulations protecting employer and employee rights. Additional recommended practices related to COVID-19 include providing hand wash stations and hand sanitizer where hand wash stations do not exist. Providing Kleenex and other tissues for covering mouth and nose during coughing and sneezing along with proper trash receptacles help isolate germs and protect additional workers from exposure.

Workers should remember, if you are sick or show any signs of fever or other symptoms: Stay home, (except to seek medical care from a licensed health care provider), avoid public areas, public gatherings and public transportation. Remember to stay away from others in your family and also pets that could transmit viruses to others. Don't forget to clean and disinfect surfaces regularly including items you touch repeatedly and if possible, use disposal cups and glasses to minimize exposures.

By following the simple information found here and at the aforementioned links to OSHA, CDC and WHO websites, we can all do our part to prevent further transmission of this and all communicable viruses we are exposed to.

Questions and Answers:

1. What are Universal Precautions related to communicable exposures in the workplace?

   Using precautionary techniques and/or personal protective equipment to prevent exposures and the unnecessary exposures in the workplace.

2. What should an employee do if they experience fever or show signs of respiratory issues before going to work?

   It is recommended that if an employee shows signs of fever of other respiratory illness that can be communicable, they should stay home to prevent infecting other workers and follow the advice of a licensed health care provider for their recovery. Only return to work after symptoms have subsided for at least 24-36 hours.

3. What is the best technique for washing and sanitizing hands?

   Washing hands under warm water using soap for at least 20 seconds is the best protection. Use hand sanitizer if soap and water are not available.

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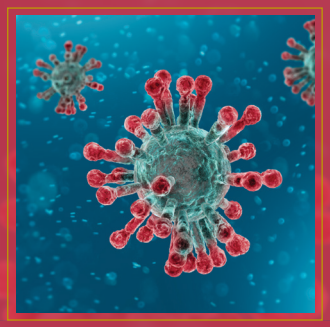

NECA Safety Talk

COVID-19 Worksite Safety Recommendations

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OSHA had issued workplace guidance for jobsites that are in operation during the Coronavirus (COVID-19) outbreak and need to address appropriate control measures and possible containment of exposures.

It is important to recognize hazards and exposures through a proper risk assessment and provide education and training to supervisors and workers in the methods and procedures that have been developed for public and personnel protection.

While this guidance does not create any new regulatory or legal obligations, following the recommended procedures can protect workers, businesses, customers and, most importantly, the public, which includes family and friends.

- Identify possible sources of exposure and track any known cases of infectious person(s) who are or may be assigned to the worksite.
- Implement basic Infection Control Measures at each worksite or company location. This includes hand wash stations, hand sanitizer distribution and providing individual water bottles to prevent any cross contamination at common water kegs and break areas.
- Create a social distancing protocol where appropriate and limit worker interactions with other trades and personnel to a minimum.
- Develop, review and implement an overall infectious control measure policy and protocols for all employees to review and adhere to. This can include specific personal protective equipment, handwashing guidelines and disinfecting/housekeeping responsibilities.
- Remind employees of sick leave policies, Family Medical Leave Act, Customer Workplace regulations and other company policies that may affect each worker. Remind workers of Employee Assistance Programs (EAP) that may be available to them during times of crisis and encourage them to use these resources that are available.
- If appropriate, allow for flexible workhours and other measures that could limit employee interaction.
- Implement the Hierarchy of Controls per OSHA regulations. Use Engineering, Administrative Controls, Safe Work Practices and appropriate PPE for employees and possible exposures.

As the current situation continues to develop, we encourage all workers to stay in contact with your employer and follow all guidance issued for worker protection. Each jobsite and work location may have unique challenges and must be addressed individually and in collaboration with other employers who are present on the jobsite.

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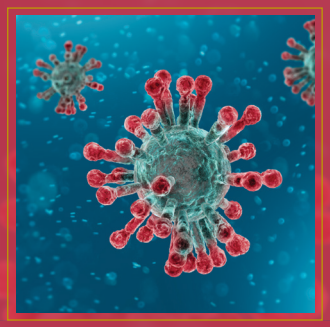

NECA Safety Talk

Social Distancing for Protection

What is the Coronavirus?

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Webster's Dictionary defines **social distancing** as "the practice of maintaining a greater than usual physical distance from other people, or of avoiding contact with people or objects in public places during the outbreak of a contagious disease in order to minimize exposure and reduce the transmission of infections."

- **Maintain a 6-foot distance if possible**

  Stay home and avoid having visitors. By keeping at least 6' in physical distance separation from others, you lessen the chance of being contaminated or contaminating others and spreading illnesses. Avoid large crowds, restaurants and other locations where large groups meet and follow CDC recommendation of no more than 10 people in any one area.

- **No shaking hands**

  Remember to practice no physical contact, including shaking hands, holding hands, hugging and embracing others in public and some private settings. This helps to limit skin-to-skin, clothes-to-clothes and possible airborne transmission of contagious agents while in close proximity of other individuals.

- **Work from home**

  Today's technology enables workers to work from home offices that permit isolation and social distancing from coworkers and work environments, preventing work-related contamination and possible exposures to infectious viruses and/or diseases. Teleconferences can take the place of in-person, face-to-face meetings.

- **Use technology such as video conferencing with family friends and co-workers**

  Postpone in-person meetings with co-workers. This helps to prevent pandemic situations from arising due to person-to-person transmissions of contagious illnesses. If video conferencing is good for work, remember that it is good for connecting to family and friends as well. By avoiding or limiting outside trips and locations, you can limit possible exposure from places like the gas station, grocery store and other public places.

- **Wear protective gloves**

  Using personal protective measures like wearing protective gloves can reduce or eliminate the possibility of becoming infected from contaminated surfaces. When used while cleaning with disinfecting agents, they can also help in reducing any skin reactions to harsh chemicals. Never touch your face, eyes or mouth while wearing your gloves. Remember to dispose of any gloves that have been worn to prevent cross-contamination.

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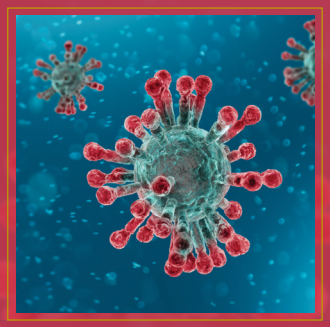

NECA Safety Talk

What to Do if You Develop Symptoms of COVID-19

What is the Coronavirus?

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If you are experiencing symptoms of cold, flu or other possibly infectious or contagious illnesses, please follow the guidelines listed below and help stop any spread to other individuals, family and other workers you may come in contact with.

Stay home

By staying home and restricting your activities, you can concentrate on following the proper medical care advice and work towards a complete recovery. Only through proper rest, medications, and staying hydrated, can you give your body time to heal itself and return to a normal activity schedule.

Separate yourself from others

Remember to isolate yourself from family members and pets by staying in a separate room and limiting interactions with a caregiver. This way, other family members will be less likely to come down with the same illness affecting you. Pets, while comforting during this time, interact with all family and could inadvertently carry germs from you to others in your household.

Seek medical attention

If your condition warrants or gets worse, seek medical attention. Contact your licensed health care provider and give them your symptoms. They may then wish to schedule a time that would limit exposure to other patients and staff to minimize exposure and possible infections.

Wear a facemask

By wearing a facemask when you are around other people, you can help prevent the spread of your symptoms to others. If you have any difficulty in wearing or breathing through a facemask, then limiting your contact with others is imperative. Ask your caregivers to also take precautions and wear protective garments and gloves. Remind them to wash their hands after interactions and dispose of or properly clean any exposed garments and/or gloves that have been used.

Cover your cough

By covering your coughs and sneezes, you prevent airborne transmission of the germs that could infect others. Disposing of spent tissues in a trash receptacle also helps limit germs from reaching others. It is important to wash your hands with soap and warm water for at least 20 seconds and/or use proper hand sanitizer until hands are dry after disposing of tissues and covering a cough.

Don't share any items

The items that you touch and then could be touched by others could inadvertently transmit your germs to unsuspecting persons. It is important to not share items such as glasses, dishes and other utensils without first cleaning and sanitizing them. Don't share towels, pillows and bedding that could also contaminate others.

Wash your hands

Reiterating, it is of utmost importance to wash your hands with soap and warm water for at least 20 seconds and/or use proper hand sanitizer until hands are dry after disposing of tissues and covering a cough. You should clean visibly dirty hands and also remember to not touch your face—especially eyes, nose and mouth—to risk further contamination.

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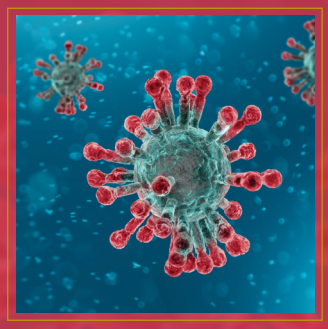

Clean all surfaces frequently and regularly

Use disposable wipes or disinfecting spray to clean counters, doorknobs, bathroom fixtures and other items that you touch. Use alcohol disinfecting wipes to clean your phone and smart devices and to wipe off computer keyboards. Use gloves while cleaning to help prevent accidental exposure and follow all manufacturers instructions related to the cleaning agent you use. ***Important: NEVER MIX AMMONIA CLEANING AGENTS WITH BLEACH-CONTAINING PRODUCTS AS THIS CAN RESULT IN TOXIC VAPORS!***

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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 two weeks (80 hours, or a part-time employee's two-week 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 #1-3 below, up to $511 daily and $5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to $200 daily and $2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 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 EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially 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 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▸ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take 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 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 substantially-similar condition specified by the U.S. Department of Health and Human Services.

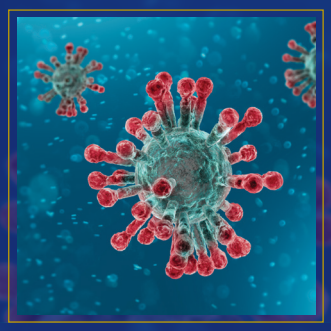
▸ ENFORCEMENT

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, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

WH1422 REV 03/20



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NECA Overview

Families First Coronavirus Response Act

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020.

- **Purpose:** Temporary relief to eligible employees off of work because of the COVID-19 pandemic.
- **Effective Date:** The DOL will announce the official effective date, but it will be on or before April 2, 2020.
- **Coverage:** Employers with fewer than 500 employees (and some government entities).
- **Two Laws under the FFCRA:**
  (1) Emergency Paid Sick Leave Act.
  (2) Emergency Family and Medical Leave Expansion Act
- **Emergency Paid Sick Leave Act:**
  - Up to *80 hours* (pro-rated for part-timers) of *paid sick leave,* available for immediate use *regardless of length of employment.*
  - Available if the employee cannot work (or telework) because he/she:
    - » Is experiencing symptoms of COVID-19 and seeking a medical diagnosis → paid at 100%, capped at $511 per day/$5,110 in the aggregate;
    - » Is subject to a government quarantine or has been told by a health care provider that he/she should self-quarantine due to COVID-19 → paid at 100%, capped at $511 per day/$5,110 in the aggregate;
    - » Is assisting an individual who must quarantine/self-quarantine due to the above reasons → paid at 2/3 the employee's rate, capped at $200 per day/$2,000 in the aggregate;
    - » Is caring for a son or daughter if his/her school/child care provider is unavailable due to COVID-19 → paid at 2/3 the employee's rate, capped at $200 per day/$2,000 in the aggregate; *or*
    - » Is experiencing any other substantially similar condition specifi d by the Secretary of Health and Human Services → paid at 2/3 the employee's rate, and capped at $200 per day/ $2,000 in the aggregate.
- **Emergency Family and Medical Leave Expansion Act:**
  - Up to *12 weeks of expanded FMLA leave.*
  - Unpaid during the fi st 10 days (but which are practically covered by the Emergency Paid Sick Leave Act)
  - After the fi st 10 days, paid at 2/3 the employee's rate (but capped at $200 per day/$10,000 in the aggregate).
  - Available to anyone after 30 days of employment for time to care for the employee's son or daughter, if the child's school/child care provider is unavailable due to COVID-19 and the employee is unable to work (or telework).
- **Other Key Points:**
  - **DOL Guidance:** The DOL plans to issue guidance and implementing guidelines sometime during the week of March 23, 2020.
  - **Non-use of concurrent leave:** Although the law is not clear, it appears that an employer *cannot* force employees to use other forms of leave concurrently with FFCRA leave.

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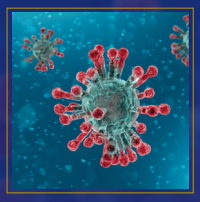


Families First Coronavirus Response Act

- **Notice:** Covered employers must post a notice to employees about their rights under the FFCRA (at least as to the Emergency Paid Sick Leave Act) once the DOL prepares it.
- **Expiration:** The legislation expires December 31, 2020; unused time would *not* carry over from one year to the next.
- **Exemptions for Small Businesses:** The Secretary of Labor is empowered to exempt small businesses (fewer than 50 employees) from the leave benefits if the requirements would jeopardize the viability of the business as a going concern.
- **Changing Leave Policies:** Employers may not change paid leave policies once the legislation is enacted to avoid being subject to the FFCRA's paid sick time provisions.
- **Exclusions:** An employer may elect to exclude health care providers and emergency responders from the leave benefits.
- **Contributions to Multiemployer Plans Count:** For Emergency Paid Sick Leave, an employer satisfies he legal requirements to provide such paid sick leave to collectively bargained employees if it contributes to a multiemployer plan that pays sick leave to such employees. Similarly, for Emergency Family Medical Leave, an employer satisfies he legal requirements to provide such paid FMLA leave to collectively bargained employees if it contributes to a multiemployer plan that pays for FMLA leave. Contributions to other types of multiemployer benefit plans do not count for purposes of complying with these laws.

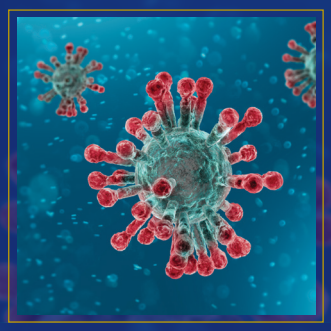
■ **Tax Credits:** The FFCRA provides tax credits to help cover the benefit cost.

- Credits are computed on a quarterly basis.
- The employer would take the total amount of qualifi d sick leave wages paid (in the fi st two weeks) and qualifi d family leave wages paid (in the following 10 weeks) during that quarter, and use that as a credit against the employer-portion of the social security taxes (at 6.2%) that would otherwise be due.
- Any excess amounts above and beyond the employer-portion of the social security taxes would be refunded as a credit (as if the employer had overpaid the employer-portion of the social security taxes for that period).
- In effect then, the government will provide a credit against the employer-portion of the social security taxes that would otherwise be due from the employer as follows:

1. First, against the social security taxes due for the given period, and
2. Second, as a refund as if the excess was an overpayment by the employer of the employer-portion of the social security taxes.

For purposes of computing the amount of the credit, there are two relevant periods:

- First two weeks (this credit relates to qualifi d sick leave wages paid). The credit amount depends on whether the employee is sick or is caring for a sick family member or providing childcare to the employee's child:
  - » Employee Sick: The credit is the lesser of the daily wage or $511 per employee, per day, for 10 days.
  - » Providing Care to Family Member/Childcare to Child: The credit is the lesser of the daily wage or $200 per employee, per day, for 10 days.
- Next 10 Weeks (this credit relates to qualifi d family leave wages paid): The credit is the lesser of the daily wage or $200 per employee, per day, with the credit capped at $10,000 per employee for a given calendar quarter.



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NECA Overview

Understanding Contract Rights Related to Construction Impacts from the COVID-19 Pandemic

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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The National Electrical Contractors Association ("NECA") and Faegre Drinker Biddle & Reath LLP ("Faegre Drinker") have prepared this information sheet to help your company better understand its contract rights and obligations as they relate to the COVID-19 pandemic. [1]

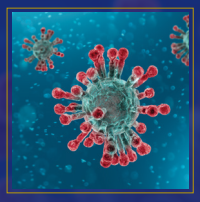
Step 1: Gather written contracts

- Gather your signed contracts and utilize this guide and your company's legal counsel to commence review of provisions addressing delays, force majeure, change order rights and termination.

Step 2: Review the language of the written contracts

- Force majeure clauses are often found in the excused/excusable delay or in the change order sections of a contract. The clause may not use the term "force majeure" but may simply refer to delays beyond the control of the contractor/subcontractor.
- Force majeure contract clauses typically provide varying forms of relief for events outside the contractor/subcontractor's reasonable control that prevent it from performing its contractual obligations (i.e., constructing the project). The nature of your remedy may be specified in your contract/subcontract.
- If the contract does include a force majeure clause (or any other provision on excused delays) → look at the specific language of the clause for:
  A. A list of triggering events
  B. Any catch-all or non-exclusive language
  C. Any language describing the required impact
  D. The nature of the relief afforded (time or money)

Triggering Events	• Specifi d examples may include: acts of God, terrorism, pandemic, natural disaster, war, embargo, industry-wide labor disputes, abnormally extreme weather • Events that are not covered by a limited list of triggering events typically will not be viewed as force majeure events, unless there is a broad catch-all provision (see below) • If a clause lists triggering events as including only weather-related events, then the COVID-19 pandemic is not likely to be considered a triggering event as it is not a weather event. However, pay attention to clauses including "acts of government" or "state action" as COVID-19 impacts could fall under these events
Catch-all Language	• If the force majeure clause lists triggering events and then includes broad catch-all language, such as "any other delay beyond the control of the contractor", this can be used to cover impacts from COVID-19



Required Impact	• Some clauses state the event must prevent total or partial performance, while others set forth a lower standard for an event to constitute a force majeure event, such as signifi antly interfering with, hindering or otherwise making the invoking party's performance substantially more onerous than originally anticipated
Relief Afforded	• Some clauses allow only for time extensions; other clauses also allow for the recovery of additional costs caused by the delay • Some subcontracts only grant a remedy (time extension or cost adjustment) to the extent the prime contractor is granted a remedy from the owner

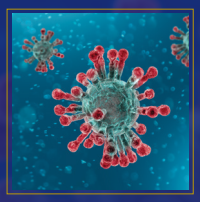
Step 3: Follow process and procedures required under the contract

- Comply with notice requirements
  - There are likely specific rocess requirements you must follow in order to obtain relief under the force majeure clause, including notice requirements contained in the agreement.
  - **Strictly comply with these process and notice requirements in order to preserve your claim. Failure to adhere to contract notice requirements can result in the waiver of a claim.**
- Assert claims
  - Assert any claims under the force majeure clause as broadly as the contract allows and expressly reserve all rights under the contract.
  - Identify the type of relief you are requesting – excused performance, additional time and/or additional money. If the full scope of the impact from COVID-19 is not yet known, say that.
  - Follow up with regular updated notices as the full impact of COVID-19 on your work becomes known.
- Mitigate risks and damages
  - The party seeking to avoid performance of the contract must mitigate any "foreseeable" risks of nonperformance.
  - In order to assist with efforts to demonstrate mitigation, be sure to keep detailed evidence of efforts to continue work, re-locate work efforts and otherwise limit how and when your work is impacted due to the outbreak, quarantine and/or government shutdown.
  - Also, be sure to consider concurrent delays that may have occurred during the same time but with no causal relation to the force majeure event. Your contract might expressly limit your rights in the event of a concurrent delay.

Step 4: What if there is no applicable force majeure clause?

If your contract/subcontract does not have a force majeure (or other excusable delay) clause, there are narrow circumstances in which performance may be excused due to an unforeseeable event that makes performance impossible, impracticable, or frustrates the primary purpose of the contract. These legal concepts vary from state to state, so you must consult with your company's legal counsel to confirm how these doctrines might apply to your specific circumstances.

- **Impossibility**
  - Legal impossibility excuses performance only when performance is rendered **objectively impossible,** typically when the subject matter has been destroyed or by operation of law.
  - Increased costs for performance or fi ancial hardship are typically not suffici t to excuse a party's performance under the doctrine of impossibility. However, courts may



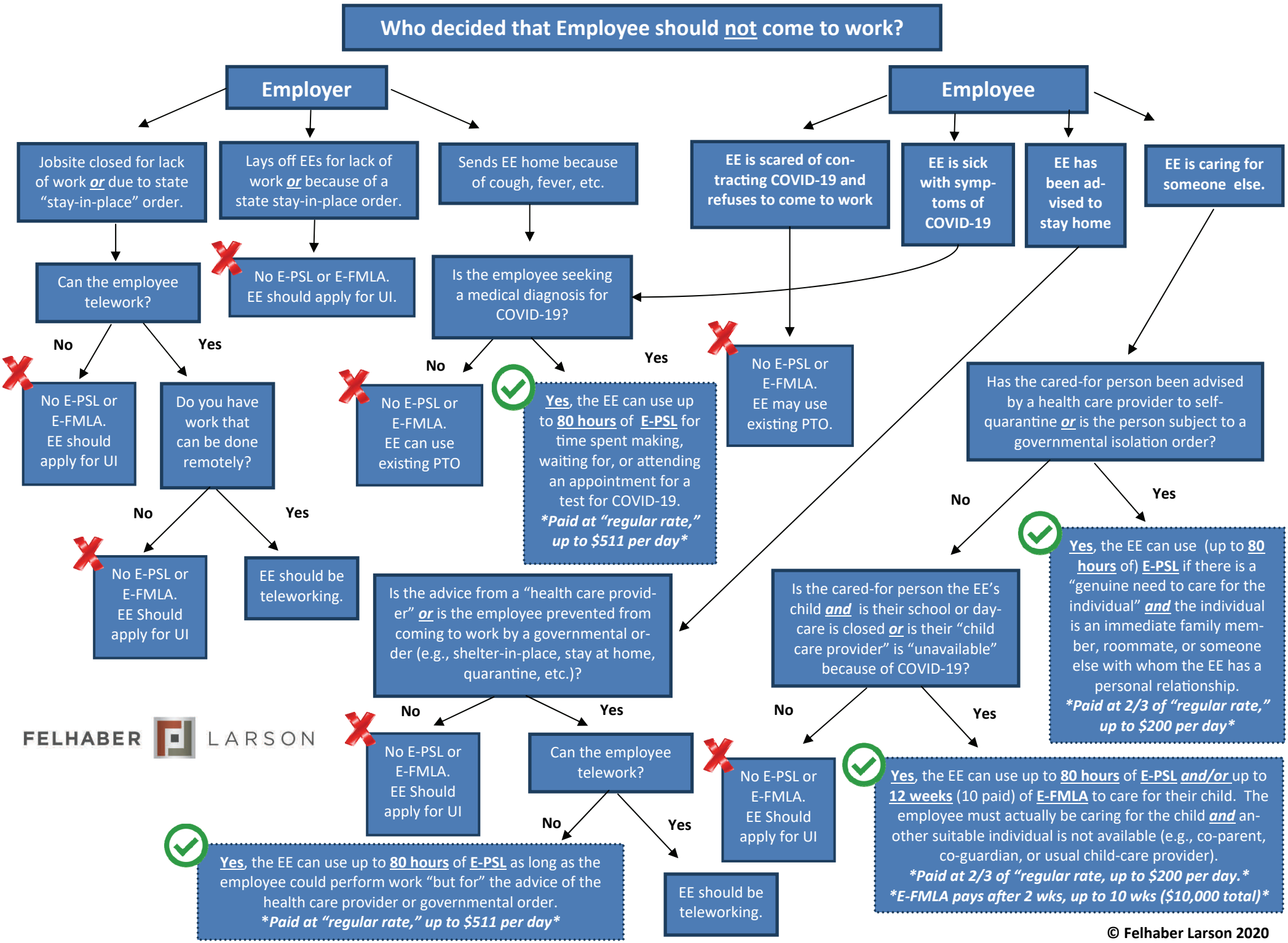
excuse performance where events have occurred that are inconsistent with the conditions the parties assumed existed and would continue to exist at the time the contract was formed. Therefore, the doctrine of impossibility could apply to excuse the performance of contracts made impossible by COVID-19.

- **Impracticability in construction work contracts**
  - In some states, even where performance is not impossible, performance might be excused on grounds of impracticability. Impracticability is similar to impossibility in that it requires an unforeseen event that has made the performance of the contract impracticable.
  - Typically, an increase in cost of performance is not grounds for excuse under this doctrine as it is presumed that contracting parties take the risk of such cost fluctuations.
- **Impracticability in contracts for the purchase of goods**
  - Courts generally provide more leniency in analyzing whether performance of an agreement to purchase goods is impracticable. However, if the event that caused performance to be impracticable is determined to be foreseeable then the party obligated to perform must bear the costs of nonperformance because it could have negotiated for greater contractual protections.
- **Frustration of purpose**
  - Frustration of purpose or commercial frustration (as the doctrine has been called in some states) may be applied when the party has satisfi d two grounds:
    (i) the frustrating event was not reasonably foreseeable; and
    (ii) the value of counter-performance has been totally or nearly totally destroyed by the frustrating event.
- **Federal Contracts**
  - The Federal Acquisition Regulation ("FAR") §52.249-14 provides a **"Contractor shall not be in default** because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are … (5) **epidemics,** (6) **quarantine restrictions** …. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor."
  - Thus, if your company is involved in federal contracting to which the FAR applies, your contract will likely allow for excused performance due to COVID-19.
- **Contractual right to stop work and/or terminate**
  - Your contract may contain provisions allowing the contractor/ subcontractor to submit a claim, stop work or to terminate the contract for nonpayment, delayed suspensions and other material breaches.
  - If COVID-19 causes the project owner or prime contractor to suspend the project, stop payment or otherwise breach the contract, your contract may allow you to claim damages, suspend performance or terminate the contract.
  - The business relationships and impacts should be carefully analyzed before terminating, since damages for wrongful termination can be quite signifi ant.
- **Negotiation and Dispute Resolution**
  - Informal negotiation and pre-dispute resolution mechanisms should be considered with the goal of reaching an amicable amendment to your contract to account for the impacts from COVID-19.
  - While informal negotiations are pending, continue to satisfy all contractual requirements relating to the preservation of a force majeure or other claim, as set forth above.

[1] *This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.*

Emergency FMLA ("E-FMLA") and Emergency Paid Sick Leave ("E-PSL") under the FFCRA

Return



NECA Example Exposure Control Plan (ECP)

The _____ is committed to providing a safe and healthful work environment for our entire staff. In pursuit of this goal, the following infectious exposure control plan (ECP) is provided to eliminate or minimize occupational exposure to infectious disease in accordance with Federal Regulations and recommendations from the Center for Disease Control and Prevention, (CDC) and World Health Organization (WHO). The ECP is a key document to assist our organization in implementing and ensuring compliance with the standard, thereby protecting our employees.

This Infectious Control Policy (ICP) is intended to address Bloodborne Pathogens and Infectious exposures such as:

- SARS
- MERS
- EBOLA
- COVID-19
- H1N1
- Other infectious pandemic exposures

This ECP includes, but is not limited to:

1. Determination of employee exposure
2. Implementation of various methods of exposure control, including:
   - Universal precautions
   - Engineering and work practice controls
   - Personal protective equipment (PPE)
   - Housekeeping
3. Required or recommended vaccination(s)
4. Post-exposure evaluation and follow-up
5. Communication of hazards to employees and training
6. Recordkeeping (Documentation)
7. Procedures for evaluating circumstances surrounding exposure
8. Incidents
9. Implementation methods for these elements of the standard are discussed in the subsequent pages of this ECP.

PROGRAM ADMINISTRATION

_____ is/are responsible for implementation of the ECP. _____ will maintain, review, and update the ECP at least annually, and whenever necessary to include new or modified tasks and procedures. Contact location/phone number: _____.

METHODS OF IMPLEMENTATION AND CONTROL

Universal Precautions All employees will utilize universal precautions.

Exposure Control Plan

Employees covered by the infectious exposure control plan will receive an explanation of this ECP during their initial training session. It will also be reviewed in their annual refresher training. All employees can review this plan at any time during their work shifts by contacting _____. If requested, we will provide an employee with a copy of the ECP free of charge and within 15 days of the request. _____ is responsible for reviewing and updating

the ECP annually or more frequently if necessary, to reflect any new or modified tasks and procedures that affect occupational exposure and to reflect new or revised employee positions with occupational exposure.

Engineering Controls and Work Practices

Engineering controls and work practice controls that may be used to prevent or minimize infectious exposure(s) are listed below:

- Employee Training
- Employee Access
- Medical Evaluations
- Personal Protective Equipment
- Site Specific Requirements
- Ventilation
- Job Rotation
- _____
- _____

Personal Protective Equipment (PPE)

PPE is provided to our employees at no cost to them. Training in the use of the appropriate PPE for specific tasks or procedures is provided by (Name of responsible person or department).

The types of appropriate PPE available to employees are as follows:
(gloves, eye protection, etc.)

- Safety Glasses/Faceshields
- Rubber Aprons
- Protective Glove, (Nitrile/Non-Allergenic)
- _____
- _____

Proper PPE will be provided by the employer and can be obtained from the Foreman/Supervisor onsite. The company is responsible for ensuring that PPE is provided and available and that employees have been instructed in the proper donning, doffing and use of required PPE.

All employees using PPE must observe the following precautions:

- Wash hands immediately or as soon as feasible after removing gloves and/or other PPE.
- Remove PPE after it becomes contaminated and before leaving the work area.
- Used PPE may be disposed of in _____.
- Wear appropriate gloves when it is reasonably anticipated that there may be hand contact with blood or other potential infectious material, and when handling or touching contaminated items or surfaces; replace gloves if torn, punctured or contaminated, or if their ability to function as a barrier is compromised.
- Utility gloves may be decontaminated for reuse if their integrity is not compromised; discard utility gloves if they show signs of cracking, peeling, tearing, puncturing, or deterioration.
- Never wash or decontaminate disposable gloves for reuse.
- Wear appropriate face and eye protection when splashes, sprays, spatters, or droplets of blood pose a hazard to the eye, nose, or mouth.
- Remove immediately or as soon as feasible any garment contaminated by blood or COVID-19 virus, in such a way as to avoid contact with the outer surface.

POST-EXPOSURE MEDICAL EVALUATION AND FOLLOW-UP

Should an infectious exposure incident occur, please contact _____ at the following number _____ .

An immediately available confidential medical evaluation and follow-up will be conducted by _____ _____.

Following any possible infectious exposure on the job or following any initial first aid procedures, (clean the wound, flush eyes or other mucous membrane, etc.), the following activities will be performed:

- Document the routes of exposure and how the exposure occurred.
- Identify and document the source individual (unless the employer can establish that identification is infeasible or prohibited by state or local law).
- Obtain consent and make arrangements to have the source individual tested as soon as possible to determine HIV, HCV, HBV or COVID-19 virus infectivity; document that the source individual's test results were conveyed to the employee's health care provider.
- If the source individual is already known to be HIV, HCV and/or HBV COVID-19 virus positive, new testing need not be performed.
- Assure that the exposed employee is provided with the source individual's test results and with information about applicable disclosure laws and regulations concerning the identity and infectious status of the source individual (e.g., laws protecting confidentiality).
- After obtaining consent, collect exposed test samples as soon as feasible after exposure incident, and test blood for HBV, HIV or COVID-19 virus serological status
- If the employee does not give consent for HIV or COVID-19 virus serological testing during collection of blood for baseline testing, preserve the baseline blood sample for at least 90 days; if the exposed employee elects to have the baseline sample tested during this waiting period, perform testing as soon as feasible.

EMPLOYEE TRAINING

All employees who have occupational infectious exposures and/or exposure to bloodborne pathogens COVID-19 virus or exposures as indicated above shall receive initial and annual training conducted by _____.

All employees who have occupational exposure to bloodborne pathogens or exposures as indicated above receive training on the epidemiology, symptoms, and transmission of bloodborne pathogen and diseases. In addition, the training program covers, at a minimum, the following elements:

- a copy and explanation of the OSHA standard
- an explanation of our ECP and how to obtain a copy
- an explanation of methods to recognize tasks and other activities that may involve exposure, including what constitutes an exposure incident
- an explanation of the use and limitations of engineering controls, work practices, and PPE
- an explanation of the types, uses, location, removal, handling, decontamination, and disposal of PPE

- an explanation of the basis for PPE selection information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine will be offered free of charge
- information on the appropriate actions to take and persons to contact in an emergency involving blood, COVID-19 virus or exposures as indicated above
- an explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available
- information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident
- an explanation of the signs and labels and/or color coding required by the standard and used at this facility
- an opportunity for interactive questions and answers with the person conducting the training session.

Training materials for this facility are available at _____.

RECORDKEEPING

Training Records

Training records are completed for each employee upon completion of training. These documents will be kept for at least three years at (Location of records).

The training records include:

dates of the training sessions
contents or a summary of the training sessions
names and qualifications of persons conducting the training
names and job titles of all persons attending the training sessions

Employee training records are provided upon request to the employee or the employee's authorized representative within 15 working days. Requests should be addressed to _____.

Medical Records

Medical records are maintained for each employee with occupational exposure in accordance with 29 *CFR* 1910.1020, "Access to Employee Exposure and Medical Records."

_____ is responsible for maintenance of the required medical records. These confidential records are kept in (List location) for at least the duration of employment plus 30 years.

Employee medical records are provided upon request of the employee or to anyone having written consent of the employee within 15 working days. Such requests should be sent to _____
_____.

NECA NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION SAFETY

Risk Assessment Process and Checklist for Work Impacted by COVID-19

- ☐ Project Name _____
- ☐ Project Owner/GC _____
- ☐ Project Location_____
- ☐ # of workers required? _____
- ☐ Project Start Date? _____ Duration? _____
- ☐ Can project meetings be held via conference call or video conferencing? _____
- ☐ Can this work be scheduled at a later date? _____
- ☐ Have Supervisors been properly trained in COVID-19 awareness and procedures? _____
- ☐ Have all employees received COVID-19 Awareness Training in the signs and symptoms of exposure? _____
- ☐ Have any workers recently traveled internationally, on a cruise ship or to a known virus exposure location? ____
- ☐ Have any workers or family member been directly exposed to the virus through a confirmed case? _____
- ☐ Are any workers or their family members experiencing symptoms? _____
- ☐ Can special separation and social distancing be maintained? _____ At least 6'? _____
- ☐ Is there any work that requires 2 or more persons in close proximity? _____

  If so, what additional precautions are being taken to protect workers? _____
- ☐ Is OSHA/CDC/WHO recommended signage on jobsite? _____
- ☐ All workers must answer the following questions daily:
  - Have you or anyone in your family traveled outside the United States within the last two weeks?
  - Have you or anyone in your family been in contact with a person being tested for Covid-19?
  - Have you been medically directed to self-quarantine due to possible exposure to Covid-19?
  - Are you having trouble breathing or had flu like symptoms within the past 48 hours, including: fever, cough, shortness of breath, sore throat, runny/stuffy nose, body aches, chills, or fatigue?
- ☐ Are cleaning products available for all frequently touched surfaces on the jobsite? _____
- ☐ Will tools and work surfaces be cleaned daily? _____
- ☐ Are Safety Data Sheets available on the jobsite for all cleaning materials? _____
- ☐ Are hand wash stations with soap and warm water or hand sanitizer (Alcohol-based) available? _____
- ☐ Is all required PPE available? _____ (Hard Hat, Safety Glasses, Protective Garments, etc.)
- ☐ Are N-95 respirators required and available? _____
- ☐ Aware of company 100% PPE glove policy _____ (Nitrile and Non-allergenic gloves)
- ☐ Is PPE clean and sanitized each day? _____ If so, who is responsible? _____
- ☐ Only company authorized person allowed only in company vehicles? _____
- ☐ No common drinking water facilities will be allowed on project, individual water bottles shall be utilized.
- ☐ No Unauthorized visitors allowed onsite. Vendor Deliveries must be pre-scheduled.

Risk Assessment Process and Checklist for Work Impacted by COVID-19

Hand Washing Protocols

As hand washing is one of the most effective defenses, employers need to make sure that employees have ready access to washing facilities and that those are kept well stocked withsoap, paper towels and an approved trash receptacle.

Follow these five steps every time.

1. Wet your hands with clean, running water (warm or cold), turn off the tap, and apply soap.
2. Lather your hands by rubbing them together with the soap. Lather the backs of your hands, between your fingers, and under your nails.
3. Scrub your hands for at least 20 seconds. Need a timer? Hum the “Happy Birthday” song from beginning to end twice.
4. Rinse your hands well under clean, running water.
5. Dry your hands using a clean towel or air dry them.

COVID-19 Symptoms

These symptoms may appear **2-14 days after exposure** (based on the incubation period of MERS-CoV viruses).

- Fever
- Cough
- Shortness of breath
- Redness around the eyes

If you develop **emergency warning signs** for COVID-19 **get medical attention immediately.** Emergency warning signs include*:

- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion or inability to arouse
- Bluish lips or face

Assessment

Description of Procedure/Task/Worksite to be Assessed

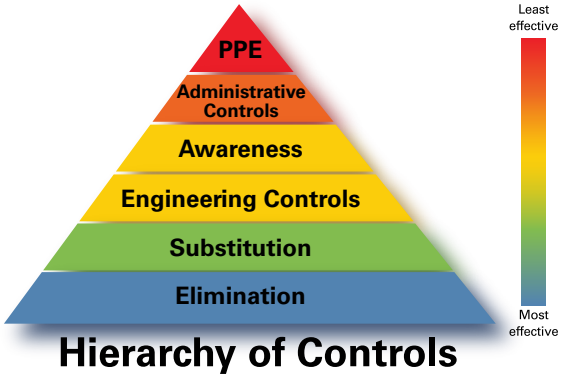
Risk Matrix for Reference Use

Likelihood or Incident

Consequence	Very Likely	Likely	Unlikely	Highly Unlikely
Fatality				
Major Injuries				
Minor Injuries				
Negligible Injuries				

Risk Assessment Process and Checklist for Work Impacted by COVID-19

Hierarchy of Controls for Reference Use



What is/are the Unique Hazards?

Risk Metrics – Refer to Matrix Above

Consequences

- ☐ Fatality
- ☐ Major Injuries
- ☐ Minot Injuries
- ☐ Negligible Injuries

Notes:

Likelihood of Incident

- ☐ Very Likely
- ☐ Likely
- ☐ Unlikely
- ☐ Highly Unlikely

Notes:

Risk Assessment Process and Checklist for Work Impacted by COVID-19

Risk Rating

- ☐ High
- ☐ Medium
- ☐ Low
- ☐ None

Notes:

Control Measures and Description

- ☐ Elimination – Removed the risk completely
- ☐ Substitution – Reduced risk through substitution
- ☐ Engineering – Engineering the risk out
- ☐ Awareness – Raising Awareness: Signage, Barriers, or other means
- ☐ Administrative Controls – Reduction of risk through policies
- ☐ Personal Protective Equipment (PPE) – Use of PPE for protection against the risk and exposure

Additional Recommendations:

_____ _____

Signature(s) Date

TO: All NECA Chapters and IBEW U.S. Local Union Business Managers

CC: All NECA and IBEW District and Regional Field Operations, Officers and Staff

FROM: IBEW International President Lonnie R. Stephenson, NECA CEO David Long

SUBJECT: Questions and Answers (Q&A) - National Disease Emergency Response Agreement (NDERA) – Second Round

DATE: March 30, 2020

We are continuing our efforts to address questions that have been raised regarding the application of the National Disease Emergency Response Agreement (NDERA).

The attached round two NDERA Questions and Answers have been written to address additional questions and concerns that we have received from the field.

These questions and answers, like those before, are subject to being revised by NECA and the IBEW as often as necessary.

This threat remains ongoing and must be continually monitored by the parties who have agreed to discuss any questions, new legislation or regulation related to the coronavirus or similar disease that may impact this agreement.

If you have any questions, please be sure to contact either the IBEW or NECA national organizations.

Signed for NECA

David Long
CEO
Date: 3/30/20

Signed for IBEW

Lonnie R. Stephenson
International President
Date: 3/30/20

JOINT NECA/IBEW NDERA Q&A – Round 2 (3.30.2020)

IMPORTANT: Unless they have adopted their own agreement at the local level, Local Unions must post the NDERA and these Q&As on their website; if possible, in their referral halls; and should, if possible, email them to their members. If a Local Union and Chapter have entered adopted their own coronavirus agreement instead of the NDERA, then that locally negotiated agreement must be distributed and posted by the Local Union as set forth in this paragraph.

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12. Does the NDERA protect an employee's right to refuse to be present and/or request a layoff/furlough if he/she has a reasonable belief that being present would place them in imminent danger of contracting coronavirus?

    - Yes. The NDERA is designed to facilitate a return to work of employees who are out due to coronavirus, or who stay home because they have a genuine belief that being present would place them in imminent danger of contracting coronavirus. If the absence is for those reasons, then the recall rights, protections against adverse action, and unemployment protections in the NDERA apply. However, the employee must inform the employer that he/she is staying home due to coronavirus or because being present would place them in imminent danger of contracting coronavirus. Employees cannot be asked to go into any details about whether the employee has an underlying health condition or other concern. If the employee refuses to be present or is absent for other reasons, then the recall rights and protections under the NDERA do <u>not</u> apply.

13. Can the employer deny an unemployment claim if an employee stays home because of a genuine belief that being present would place them in imminent danger of contracting coronavirus?

    - No. The Agreement provides that in such situations, unemployment shall not be contested. However, the employee must inform the employer as set forth above.

14. Does having an imminent danger of contracting coronavirus take into account an individual's own health and/or family situation?

    - Yes. If an employee's own underlying health conditions or family situation (having an elderly relative at home, etc.) is such that the employee has a genuine belief that reporting to the job site would place him/her in imminent danger of contracting coronavirus, the recall rights, protection against adverse actions, and unemployment protections in the NDREA would apply. The employee must inform the employer as set forth above.

15. Is there a difference between furlough and layoff? Is an employer required to furlough if a jobsite is restricted/denied access or may the employer issue a lay-off? Is there a difference under the NDERA?

    - No. There is no difference. We have seen questions asking if a layoff is somehow more severe or permanent than a furlough, and the answer is no. For purposes of the NDERA, the employer has the option to furlough/layoff under appropriate circumstances and use the recall process described in the Agreement. The employee is protected against adverse action as described in the NDERA.

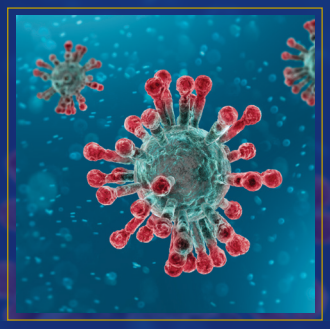
16. Do furloughed employees get sick or FMLA benefits under the newly passed Federal legislation?

- This and similar questions are not within the purview of the NDERA. The law and regulations of the legislation will guide these responses.

17. Does the language of the NDERA that specifies that the employer shall not "contest" unemployment benefits require the employer to fraudulently fill out the state unemployment paperwork?
- No. The employer is not required or encouraged to violate federal, state or local law when responding to unemployment inquiries from the government. While forms vary, if leave is taken consistent with this Agreement, where possible the employer should note that separation of employment is due to "the COVID-19 Crisis" or similar language. The state at issue will make the unemployment determination.

Comment:

- Locals and chapters are encouraged to develop their own screening procedures, which can include requiring temperatures to be taken. More guidance is available from the EEOC with respect to allowable screening procedures, and can be accessed here: EEOC Guidance North America's Building Trades has also published guidance, available here: NABTU Guidance



NECA Fact Sheet

Families First Coronavirus Response Act FAQ

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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Updated 4/1/20

The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020, and will go into effect on April 1, 2020. The FFCRA provides temporary relief to eligible employees affected by the COVID-19 pandemic. The FFCRA contains two laws that provide such relief: (1) a new paid sick leave benefit (Emergency Paid Sick Leave Act), and (2) an expansion of the FMLA (Emergency Family and Medical Leave Expansion Act).

Below are answers to commonly asked and anticipated questions regarding the FFCRA's paid leave provisions. The information provided below is based on the final text of the legislation, legislative history, and the news release issued by the U.S. Treasury Department, the U.S. Department of Labor and the Internal Revenue Service; however, unknowns remain regarding this new law. The Department of Labor released its first round of guidance on March 24, 2020 and announced that it will release additional guidance before the April 1, 2020 effective date. We will continue to provide updates to this guidance accordingly.

Does the FFCRA apply to my business?

The FFCRA applies to employers with **fewer than 500 employees** as well as certain governmental entities.

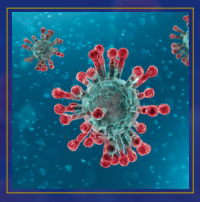
The new law does not specifically explain how employers are to count their employees to determine if they are covered, i.e. does it apply to the number of employees as of the effective date or some other prior point in time, do employers count employees across all their facilities regardless of geographic scope, etc. The forthcoming DOL guidance may address this.

> **Supplement as of March 24, 2020:** To determine whether the FFCRA is applicable to your business, you must count the number of employees that are working for you as of the date the requesting employee's leave is to be taken. If the number of employees is fewer than 500, then the FFCRA applies to the business and it must provide the paid benefits under the new law.
>
> Businesses must count: (1) full-time and part-time employees within the United States (which includes any State of the United States, the District of Columbia, or any Territory of the United States); (2) employees on leave; (3) temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and (4) day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Though, workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are **not** considered employees for purposes of the 500-employee threshold.

Are there any exceptions to businesses with fewer than 50 employees?

The Secretary of Labor has authority to exempt small businesses with **fewer than 50 employees,** but only if the requirements would **"jeopardize the viability of the business."** We expect that the DOL will provide guidance soon on how it will administer such exemptions.

> **Supplement as of March 26, 2020:** A small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:



- Employer employs fewer than 50 employees;
- Leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- An "authorized officer" of the business has determined that at least one of the following 3 conditions is satisfied:
  - 1) the provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and fi ancial 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 fi ancial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
  - 3) there are not suffici t workers who are able, willing, and qualifi d, 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.

The DOL encourages employers and employees to collaborate to "reach the best solution for maintaining the business and ensuring employee safety."

The small businesses should document how the business meets this criteria but at least as of now are **not required to submit anything to the DOL.**

Are the employees of related entities counted together to determine if a company is subject to the FFCRA?

The new law does not specifically address this issue, and we are hoping the DOL guidance will provide direction. To make it even more complicated, as noted above, there are two types of paid leave (one that amends existing FMLA provisions, and one that provides a brand new two-week paid leave benefit), and each has its own 500-employee threshold.

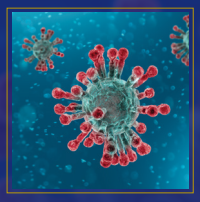
The Emergency Family and Medical Leave Expansion Act would seem to be subject to the FMLA's existing regulations on "integrated employers." (Joint employment is also addressed under the FMLA regulations, but that's applicable when two employers have a contemporaneous employment relationship with an employee (such as with a temporary staffing (agency).) Generally, a business entity that employs employees is the "employer" under the FMLA. However, separate business entities will be deemed to be parts of a single employer for purposes of FMLA if they meet the integrated employer test. The integrated employer test focuses on the following factors to determine if two (or more) entities should be treated as a single employer: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control.[1] Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility.

However, the FFCRA provisions that add the new two-week paid leave benefit are unrelated to the FMLA. Therefore, it is not clear that the FMLA or any integrated employer-type rules would apply to the paid leave benefit provided by the Emergency Paid Sick Leave Act.

Again, we await guidance from the DOL on this issue.

Supplement as of March 24, 2020: The DOL guidance confirmed that the "integrated employer" test, as described above, should be used to determine whether the number of employees for two or more related entities should be counted together for purposes of the EFMLEA. The joint employer theory is also applicable and could be implicated to determine coverage under the EPSLA and EFMLEA. If two entities are found to be joint employers, all of their common employees

1 29 CFR § 825.104(c).



must be counted in determining whether paid sick leave must be provided under the EPSLA and expanded family and medical leave must be provided under the EFMLEA.

My business has fewer than 500 employees in the U.S. but 500 or more globally. Are we required to count employees who reside and work outside the U.S. to determine if the new law applies to our business?

The legislation doesn't explicitly address this point, and here too we hope for DOL guidance. Our best assessment at this point is that employees based abroad will **not** count toward the 500. This is because the new law amends the FMLA, so we think the DOL will look to borrow from it. The FMLA, in turn, says you only count employees in the U.S.[2]

> **Supplement as of March 24, 2020:** A business must count all employees working in any State of the United States, the District of Columbia, or any Territory of the United States.

Why doesn't the FFCRA apply to large employers (i.e. those with 500 or more employees)? Is Congress going to propose additional legislation that would apply to such employers?

This threshold is likely because the amounts paid to employees under the new law are related to a payroll tax credit from the government, which essentially means that the government is ultimately picking up most of the tab. Thus, expanding the law to large employers (many of which already have more generous leave policies) would be much more expensive for the government. Currently, we are unaware of any potential legislation that would cover large employers.

Are there any requirements under the FFCRA that affect pay for employees who are working remotely due to COVID-19?

The FFCRA does not require paying an employee able to work all regularly scheduled hours from home despite the impact of COVID-19.

Are covered employers required to provide paid leave under the FFCRA to employees who have been furloughed or laid off due to COVID-19?

This is not specifically addressed in the new law, though we anticipate guidance to come from the DOL. Based on the information available at this point, we believe that employees who have been furloughed or laid off due to COVID-19 are not entitled to paid leave under the FFCRA, if they develop the coronavirus while on such unpaid leave. This is because arguably furloughed individuals are no longer "employees" under the Fair Labor Standards Act, which is the definition used under the FFCRA. Also, the FFCRA requires employers to provide leave "to the extent that the employee is *unable to work* (or telework) *due to* a need for leave *because*" of having the coronavirus, caring for someone with the virus, caring for kids out of school, etc. By contrast, if an employee is furloughed, the reason they are "unable work" is not "because" of one of the specified reasons in the law; rather, the reason they are unable to work in the first instance is that they are furloughed.

How long does my business have to come into compliance with this new law?

The DOL will be issuing a **temporary, 30-day non-enforcement policy** that provides a period of time for employers to come into compliance with the FFCRA. Thus, the DOL will not bring an enforcement action against any employer for violations of the FFCRA, so long as the employer has acted reasonably and in good faith to comply with this law.

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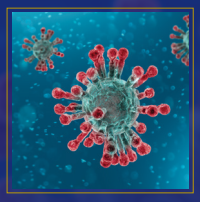
2 *See* 29 C.F.R. § 825.105 ("[T]he FMLA applies only to employees who are employed within any State of the United States, the District of Columbia or any Territory or possession of the United States. Employees who are employed outside these areas are not counted for purposes of determining employer coverage or employee eligibility.").



What if my business cannot afford to comply with the FFCRA's paid leave requirements?

Covered employers can take immediate advantage of the paid leave credits and retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not enough to cover the cost of the paid leave, then employers can seek an expedited advance from the IRS by submitting a streamlined claim (to be released sometime during the week of March 23).

How long is this new law in effect?

Unless or until it is extended by subsequent legislation, the FFCRA will expire on **December 31, 2020.**

What if I have an employee who has already been on sick leave due to COVID-19 prior to this new law? Am I required to retroactively pay that employee under the FFCRA?

This is not specifically addressed in the new law; however, the news release issued on March 20, 2020, states that covered employers will be able to claim payroll credits based on qualifying leave they provide between the effective date and December 31, 2020. We are waiting on the DOL to announce the effective date; however, we know it will be on or before April 2, 2020. Based on this, covered employers should not be required to retroactively pay employees under the FFCRA.

> **Supplement as of March 24, 2020:** The FFCRA becomes effective April 1, 2020 and the paid leave benefits available under FFCRA are **not** retroactive.

Emergency Family and Medical Leave Expansion Act (EFMLEA)

What are covered employers required to provide to their employees under the EFMLEA?

EFMLEA requires covered employers to provide up to **12 weeks of expanded FMLA leave,** unpaid for the first 10 days (which are effectively covered by the EPSLA), and then paid at 2/3 the employee's rate (but capped at $200 per day and $10,000 in the aggregate). This leave is available to anyone **after 30 days of employment** for time to care for the employee's son or daughter if the child's school/child care provider is unavailable due to COVID-19 and the employee is unable to work (or telework).

Which employees qualify for additional leave time under EFMLEA?

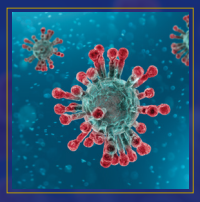
All employees who have worked for the covered employer for **at least 30 calendar days.**

Does the EFMLEA expand the definition of who is a covered employer for purposes of the FMLA?

Yes, the EFMLEA expands the FMLA's reach to **all employees of employers who employ fewer than 500 employees, including certain governmental entities.** This means that there may be companies with facilities that did not previously qualify under existing FMLA criteria (i.e. 50 or more employees within a 75-mile radius) that will now qualify as covered employers based on the overall size of the company (i.e. less than 500 employees). On the other hand, the FMLA covers employers with 500 or more employees, but the EFMLEA does not apply to these large employers.

How does the EFMLEA apply to multiemployer collective bargaining agreements?

Covered employers who are signatories to a multiemployer CBA may fulfill their obligations under the EFMLEA by making contributions to a multiemployer fund, plan or program, provided the fund, plan or program enables employees to secure pay based on hours worked under the CBA for emergency leave.



Does the EFMLEA expand the qualifying reasons for which an eligible employee may take leave?

The only reason is if the eligible employee is unable to work or telework due to the need to care for a minor child when the child's school or place of child care has been closed or is unavailable due to a public health emergency.

Are the calculations different for pay under EFMLEA depending on whether the employee is part-time or full-time?

There is a specific formula for covered employers to use for calculating the pay that applies for both full-time and part-time employees. The DOL guidance will provide this.

> **Supplement as of March 26, 2020:** The EFMLEA does not distinguish between full-time and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

Emergency Paid Sick Leave Act (EPSLA)

Which employees are covered by the EPSLA?

Unlike the EFMLEA, there is **no minimum 30-day employment requirement** for employees of a covered employer to be eligible for paid leave under EPSLA. The EPSLA also provides a paid leave benefit to both full-time and part-time employees.

Does the EPSLA define who is a full-time employee and who is part-time employee?

No, but we believe that anything less than 80 hours in a two-week period is considered part-time.

> **Supplement as of March 26, 2020:** For purposes of the EPSLA, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week, and a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.

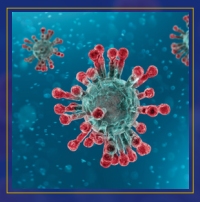
How does the EPSLA apply to multiemployer collective bargaining agreements?

The EPSLA affords paid sick leave to eligible employees who work under a multiemployer CBA and whose employers pay into a multiemployer plan. Covered employers who are signatories to a multiemployer CBA may fulfill their obligations under the EPSLA by making contributions to the multiemployer fund, plan or program based on the hours of paid sick time to which each eligible employee is entitled under the law while working under the respective CBA.

What are covered employers required to provide to their employees under the EPSLA?

The EPSLA requires covered employers to pay employees **up to 80 hours of paid sick leave,** available for immediate use regardless of length of employment, if the employee cannot work (or telework) because he/she:

a. is experiencing symptoms of COVID-19 and seeking a medical diagnosis, which is paid at 100% and capped at $511 per day and $5,110 in the aggregate;
b. is subject to a government quarantine or has been told by a health care provider that he or she should self-quarantine due to COVID-19, which is paid at 100% and capped at $511 per day and $5,110 in the aggregate (or is caring for an individual who must quarantine/self-quarantine for those reasons, which is paid at 2/3 the employee's rate and capped at $200 per day and $2,000 in the aggregate);
c. is caring for a son or daughter if his/her school/child care provider is unavailable due to COVID-19 precautions, which is paid at 2/3 the employee's rate and capped at $200 per day and $2,000 in the aggregate; or



d. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, which is paid at 2/3 the employee's rate and capped at $200 per day and $2,000 in the aggregate.

Are covered employers required to pay this benefit under the EPSLA if employees are required to stay home under a "shelter in place" or other type of local, state or federal "no -travel" order, as opposed to being required to stay home for self-isolation due to exposure to COVID-19?

Based on the text of the law, this benefit is for employees who are in isolation or quarantine due to exposure to COVID-19. Thus, employees who are required to stay at home due to a "shelter in place" or similar no-travel order would **not** be eligible for the EPSLA benefit.

Are covered employers getting reimbursed from the government for the paid leave they are required to provide under the EPSLA?

The paid sick leave required under the new law is subsidized by the federal government through tax credits. According to the March 20 news release, employers who pay this benefit will receive 100% reimbursement, which includes reimbursement for health insurance premiums paid by employers for employees taking qualifying sick leave.

How does my business get reimbursed for the paid leave under the EPSLA?

The reimbursement will be an immediate dollar-for-dollar tax offset against payroll taxes. The forthcoming DOL guidance will provide more details on this process, but what we know now is that covered employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave paid, rather than deposit them with the IRS. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. For example, if a covered employer paid $4,000 in sick leave and is otherwise required to deposit $9,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to $4,000 of the $9,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $5,000 on its next regular deposit date.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. For example, if a covered employer paid $8,000 in sick leave and was required to deposit $6,000 in taxes, the employer could use the entire $6,000 of taxes in order to make the qualified leave payments and then file a request with the IRS for an accelerated credit for the remaining $2,000.

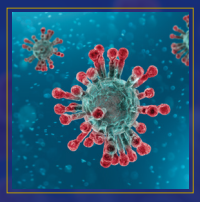
For how many hours will I need to pay full-time employees under the EPSLA? Does such time run concurrently with the FMLA/EFMLEA?

Full-time employees are entitled to 80 hours of paid sick time.

Yes, this time will run concurrently with any time the eligible employee is afforded under the FMLA/EFMLEA.

How much will I have to pay part-time employees under the EPSLA?

Part-time employees are counted in the 500-employee threshold; however, the amount of pay for part-time employees is prorated to the number of hours that the employee works, on average, over a two-week period.



Families First Coronavirus Response Act FAQ

What if I already provide paid sick time to my employees? Am I required to provide an additional 80 hours under the EPSLA?

Unfortunately, the law is not clear on this point. But it appears that the EPSLA requirements are **in addition to existing sick leave.**

Are there any notice requirements that I must provide to employees to inform them of their eligibility?

The EPSLA requires covered employers to post notices of the requirements of the new law in conspicuous places on the employer's premises. The DOL has provided a poster to meet this notice requirement which can be found **here.**

What if my business does not comply with the EPSLA?

Covered employers who fail to comply with the EPSLA will be deemed to have violated the Fair Labor Standards Act and will be subject to fines and penalties. Covered employers that are found to have willfully violated the EPSLA will be subject to liquidated damages.

Additional FAQ

How should businesses count hours worked by a part-time employee for purposes of paid sick leave under EPSLA or expanded family and medical leave under EFMLEA?

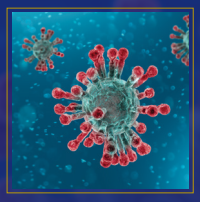
A part-time employee is entitled to leave for his or her **average number of work hours in a two-week period.** Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work:

- If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.
- If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

What if a full-time employee's hours vary week-to week?

Employers should use the same method for calculating full-time employees' hours with varying schedules as they do part-time employees. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work:

- If the normal hours scheduled are unknown, or if the full-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a full-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.
- If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.



Families First Coronavirus Response Act FAQ

Do I include overtime hours when calculating pay due to employees under the FFCRA?

Yes. The EPSLA requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week. However, the EPSLA requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the EPSLA is capped at 80. It's also important to note that there are still daily and aggregate caps placed on any paid leave under EPSLA and EFMLEA.

How does a business determine an employee's regular rate of pay for purposes of the FFCRA?

The regular rate of pay used to calculate an employee's paid leave is the average of the employee's regular rate over a period of up to six months prior to the date on which the employee takes leave. If the employee has not worked for the employer for six months, the regular rate used to calculate the employee's paid leave is the average of the employee's regular rate of pay for each week he/she has worked for the employer. Commissions, tips, or piece rates paid to employees should also be incorporated into this calculation.

Are employees entitled to 80 hours of paid sick leave for a self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. Employees may only take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons.

If I provided an employee with paid sick leave prior to when the FFCRA becomes effective on April 1, 2020, do I have to provide additional paid leave under the FFCRA after April 1, 2020 if the employee qualifies for such leave?

Yes. The FFCRA imposes a new paid leave requirement on employers that is effective beginning on April 1, 2020.

Is all leave under the FMLA now paid leave?

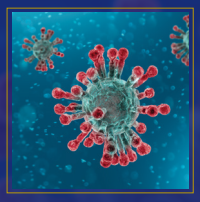
No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the EFMLEA when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

Assuming I am a covered employer, which of my employees are eligible for paid sick leave and expanded family and medical leave?

Both of these new provisions use the employee definition as provided by the FLSA, thus all of your U.S. (including Territorial) employees who meet this definition are eligible including full-time and part-time employees, as are "joint employees" working on your site temporarily and/or through a temp agency.

However, if you employ a health care provider or an emergency responder you are not required to pay such employee paid sick leave or expanded family and medical leave on a case-by-case basis. And, as discussed above, certain small businesses may exempt employees if the leave would jeopardize the company's viability as a going concern.

Do employees have the right to return to work if they are taking paid sick leave or expanded family and medical leave under the FFCRA?



Generally, yes. An employer is required to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, an employee is entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave. Thus, an employer is prohibited from firing, disciplining, or otherwise discriminating against an employee because that employee took paid sick leave or expanded family and medical leave. Nor can an employer fire, discipline, or otherwise discriminate against an employee because that employee filed any type of complaint or proceeding relating to the leave available under the FFCRA, or has or intends to testify in any such proceeding.

However, employees are not protected from employment actions, such as layoffs, that would have affected them *regardless* of whether they took leave. This means an employer can still lay off an employee for legitimate business reasons, such as the closure of its worksite. An employer must be able to demonstrate that the employee would have been laid off even if that employee had not taken leave.

An employer may also refuse to return an employee to work in the same position if employee is a highly compensated "key" employee as defined under the FMLA, or if the employer has fewer than 25 employees, and the employee took leave to care for his or her own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, *and* all four of the following hardship conditions exist:

- the employee's position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the employee's leave;
- the employer made reasonable efforts to restore the employee to the same or an equivalent position;
- the employer makes reasonable efforts to contact the employee if an equivalent position becomes available; *and*
- the employer continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after leave began, whichever is earlier.

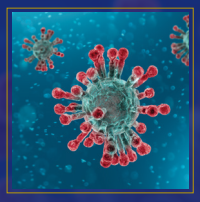
Does an employee qualify for leave for a COVID-19 related reason even if they have already used some or all of their leave under the FMLA?

Yes. Eligible employees are entitled to paid sick leave under the EPSLA regardless of how much leave they have taken under the FMLA.

However, if an employer was covered by the FMLA prior to April 1, 2020, an employee's eligibility for expanded family and medical leave depends on how much leave he/she has already taken during the 12-month period that the employer uses for FMLA leave. An employee may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If the employee has taken some, but not all, 12 workweeks of his/her leave under the FMLA during the current 12-month period determined by his/her employer, he/she may take the remaining portion of leave available. If the employee has already taken all 12 workweeks of FMLA leave during this 12-month period, he/she may not take additional expanded family and medical leave.

For example, assume an employee is eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 (such as to undergo and recover from a surgical procedure). The employee therefore has 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, the employee would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave the employee takes would count against his/her entitlement to preexisting FMLA leave.

If the employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.



Families First Coronavirus Response Act FAQ

Can an employee take leave under the FMLA over the next 12 months if he/she used some or all of his/her expanded family and medical leave under the EFMLEA?

It depends. Employees may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the EFMLEA. If they take some, but not all 12, workweeks of their expanded family and medical leave by December 31, 2020, they may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period. Expanded family and medical leave is available only until December 31, 2020; after that, employees may only take FMLA leave.

However, employees are entitled to paid sick leave under the EPSLA regardless of how much leave they have taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But if an employee takes paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

Who is a "health care provider" for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?

The term "health care provider," as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

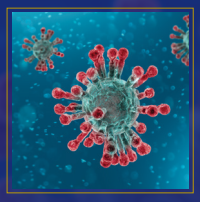
If an employee takes paid sick leave under the EPSLA, does that count against other types of paid sick leave to which they are entitled under State or local law, or their employer's policy?

No. Paid sick leave under the EPSLA is in addition to other leave provided under Federal, State, or local law; an applicable CBA; or the employer's existing company policy.

What records do I need to keep when my employees take paid sick leave or expanded family and medical leave?

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. An employer is not required to provide leave to an eligible employee if the eligible employee does not provide the documentation the employer needs for the applicable tax credit.

If one of your employees takes expanded family and medical leave to take care of his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, under the EFMLEA, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider. You must retain this notice or documentation in support of expanded family and medical leave, including while an employee may be taking unpaid leave that runs concurrently with paid sick leave if taken for the same reason.



Families First Coronavirus Response Act FAQ

NECA's Recently Received Questions

If there is a shelter in place or similar order is in place, does that trigger the benefits for all impacted employees under the FFCRA? In other words, does the legislation adhere in a case of a mass business closure or shutdown or is it personal to each employee?

This is addressed in the FAQ above. Our view is that the FFCRA would not be triggered. The reason the employee is off-work in this situation is the shutdown/shelter-in-place order, not due to the individual's COVID-19 issue.

What if a business is deemed essential but a worker is afraid to come to work and is not sick? For example, "construction" and "critical trades" are deemed to be able to continue during the Governor's Executive Order in Illinois. But, will those employees of our member firms who opt to stay at home be eligible for payment under the FFCRA?

As an initial matter, this characterization of the Executive Order in Illinois may not be accurate, although part of that may be due to lack of clarity and inconsistency in this order.

"Construction" is included as "Essential Infrastructure"; individuals may leave their homes to provide "any services or perform any work necessary to offer, provision, operate, maintain, and repair Essential Infrastructure."

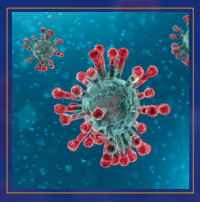
"Critical trades" are encompassed as a category of "Essential Businesses and Operations," but for this category, individuals may leave their homes only if at these Essential Businesses and Operations they "perform work providing essential products and services" – which is not as broad as that connected with "Essential Infrastructure."

Regardless, assuming an individual is authorized to leave home for work notwithstanding a shutdown order, the FFCRA should not be triggered when an individual who is not sick is afraid to come to work. That is not to say an employer is precluded from allowing the employee to work remotely. But in this situation the FFCRA should not apply.

Note though that other laws may be implicated. For example, if someone is under extreme anxiety or stress due to the current pandemic, that may be covered as a disability under the Americans with Disabilities Act (or state equivalents), which could call for a reasonable accommodation.

Is the mandatory paid leave just wages or benefits as well? In other words, are fringe benefits in the CBA, regardless of how they are calculated, owed on the pay either from the FMLA or Emergency Sick Leave Act? Some other ways this has been asked:

- Another way to ask this is: What benefits have to be paid if they are not paid on "hours worked", but rather "gross payroll"?
- How should contributions to Trust Funds treated for the Emergency Paid Sick Days. Since we have several fringe benefit funds for which the contributions are based upon gross wages, will the employer have to pay into these funds and subsequently receive no reimbursement from the government? Is this strictly an issue for each trust fund or is this a legal interpretation?
- How does the FMLA and 2-week pay relate to health and pension benefits?
- If benefits need to be paid as well as wages, are they subject to the caps?
- If benefits must be paid, does the employer get the same "tax credit" for any fringe benefit obligation? For example, in many areas, paying an IBEW worker $500 a day results in a benefit obligation of almost 40% or $200. How is that $200 treated? If the $511 is the total daily pay including benefits, is it allocated so that the pay is only approximately $390 and the benefits $160?



Families First Coronavirus Response Act FAQ

The answers depend on whether there is a separate contractual requirement to pay such benefits. The FFCRA itself requires payment of only wages, so payment of fringes is not required by this law. But the associated fringe payments could be required by contract if a CBA, benefit plan, participation agreement, etc. requires that fringes be paid on this kind of wage payment to employees.

A Louisiana Contractor is going from 100 to 10 men. The Contractor doesn't want to wait 10 days to pay the FMLA monies to the employees. Can they start paying them as soon as they lay them off? It's not payroll generated.

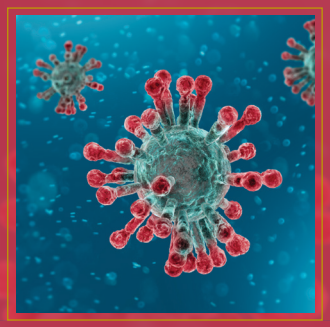
There are a few points to address here. If the business will only have 10 employees after the FFCRA becomes effective on April 1, 2020, then the business may qualify for the small business exemption.

If the business opts not to file for the small business exemption, then it would need to pay eligible employees for paid leave under the EPSLA and the EFMLEA. There is no 10-day waiting period for paid leave under the EPSLA and employee leave that qualifies under the EPSLA should be paid in conjunction with the regular payroll for those days.

Lastly, employees who are laid off or furloughed are not entitled to paid leave under the FFCRA.

How sure are we that these programs are not eligible due to shelter in place ordinances? There was a lot of concern within my group because of the "subject to a government quarantine due to COVID-19." language. I could see that because construction has been excluded in many of the ordinances there is some grey area, but we are having job sites shut down by owners and GC's due to the virus and I'm sure an ordinance is coming soon.

This is a good question, but as noted above, we do not believe at least at this point that the shutdown or shelter orders would apply. The FFCRA refers specifically to a "local quarantine or isolation order related to COVID-19." A quarantine and isolation order have specific meanings tied to exposure to a contagious disease (**see here**), and thus we believe the plain text of the FFCRA is expressly limited to quarantine or isolation orders, not the broad stay-at-home orders. However, the DOL may provide further guidance.



NECA Safety

Guidelines for Construction Projects that Remain Operational

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Construction in many areas has been designated an essential service, therefore employers and employees must review and revise safety protocols and implement new and updated exposure plans to protect workers that are deemed essential. Essential designations relate to continuing maintain U.S. infrastructure, building services for hospitals, government and other critical operations. It is important to always follow the guidelines release by the Center for Disease Control and Prevention, (CDC), as they are updated frequently by the leading experts to effectively address the current situation.

Guidelines for Working on Project that Remain Operational During the COVID-19 Pandemic:

1. It is important for workers who are feeling ill or showing any signs of illness or respiratory distress to refrain from coming to work.
2. If any worker reports to work and exhibits any signs and symptoms of fever, respiratory distress, coughing or sneezing that is uncontrol by allergy medication should be asked to return home and seek medical attention if warranted or develops shortness of breath.
3. While on the jobsite, always practice social distancing by maintaining a minimum 6-foot distance from others. Avoid gatherings or operations that require two or more people in close proximity.
4. Provide employees with all necessary PPE such as gloves, goggles, face shields and face masks as required for the activity and any exposure.
5. It has been recommended to designate a site supervisor dedicated to monitoring COVID-19 issues and provide additional information to workers as needed.
6. Determine areas where workers may be at risk of close proximity like stairwells, break rooms, material trailers and develop plans to minimize interactions between employees.
7. Rotating trades in jobsite areas and providing additional shift work opportunities may also work to keep workers at the required 6' social distancing rule currently in place.
8. A good practice is to not share tools and devices such as cellphones, smart tablets, desks, offices, work tools and equipment. If tools or equipment must be shared, ensure all cleaning protocols have been followed for proper disinfection
9. Provide proper signage from CDC, WHO, OSHA related to proper hygiene and proper hand washing techniques. Washing with warm water and soap for 20 seconds or using an alcohol based, evaporating disinfecting lotion will deter the spread of viruses to others. Always cover your cough, preferable with tissue that can be disposed of properly in trash receptacles.
10. Provide hand wash stations and/or hand sanitizing lotion at multiple locations around the jobsite and workplace to encourage proper hygiene measures.
11. Have employees inform their supervisor if they have been around a person with a confirmed case of COVID-19 or if a family member at home has been diagnosed with COVID-19 or is showing signs or symptoms. Employers may ask worker to self-quarantine at home to protect safety of others on the jobsite.
12. Maintain a daily attendance log of all workers and limit suppliers, vendors and visitors to a designated area away from other employees working on the job. No un-authorized visitors will be allowed on the project.

By following these recommendations and the federal guidelines and information provided for everyone to remain safe and healthy, work may be able to continue while ensuring that additional COVID-19 protocols and precautions that specifically address worker safety and health, while at the same time providing relative to enabling employers with essential information to address the COVID-19 Pandemic as it impacts the electrical construction industry.

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April 6, 2020

ELECTRI International
3 Bethesda Metro Center, Ste. 1100
Bethesda, MD 20814

Attention: Mr. Joey Shorter
Executive Director

Subject: COVID-19 Recommended Immediate Contractor Actions

Reference: ELECTRI Covid-19 Productivity Impacts Study

Dear Mr. Shorter,

Our team is excited to be working with ELECTRI on the referenced project. As we begin our efforts to quantify the impact of COVID-19 on productivity, we believe there are several immediate actions contractors should be taking in order to protect their interests. Below and attached are the specifics as well as examples. Our recommendations are as follows:

1. Reserve your rights and put all projects on notice for cost and schedule impacts. A sample letter is contained in **Appendix A** and was drafted by an attorney. You should review your proposed letter with your counsel to ensure all aspects of your work are covered. AGC National has also published a sample letter that can be found on-line.

2. Clearly document the status of all projects using written narratives, videos and photos. Loss and damage frequently occurs to projects with work slowdowns, shutdowns, weather damage and the like. The insurance companies are strongly recommending you take this action on all projects impacted by COVID-19. It is a recommended practice to contact your insurer to check if there is a specific format in which they require the information collected. The evidence is invaluable in the event of a claim. Share the information with owners, general contractors and subs so everyone is made aware of the "as-was" condition before shutting down a site. If the site is already closed, the recommendation is to request permission to gain jobsite access to document the project status.

3. Update your contract language to include pandemics, epidemics, quarantine, restricted access and travel restrictions beyond Force Majeure. A more in-depth discussion of this issue, as well as recommended contract language provisions, are included in **Appendix B**.

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4. FFCRA/CARES Act – Get your paperwork in order and file as soon as possible for the FFCRA paid sick leave; and if you qualify for the Payroll Protection (PPP) Act, complete the application as soon as possible and collect the necessary backup documents. You may also apply for an EIDL (Economic Injury Disaster Loan). The table in **Appendix C** provides an overview. It is important to note the EIDL **can be** converted into a PPP Loan and have the forgiveness clause applied to the loan if used for the intended purposes. The SBA has been completely overwhelmed with applications for the PPP as their system can only handle 40,000 applications a day. The EIDL program is not nearly as taxed and may provide a good alternative to get funding approved, loaned and seek forgiveness under the same rules as the PPP.

5. Establish a means to track costs associated with the Covid-19 virus. Add new cost codes to your ERP system and instruct employees how to use the codes. Isolate individual activities at the task level. Establish and document rules as to what situation will trigger the use of the new codes. Examples of new cost codes you may consider setting up are contained in **Appendix D**.

6. Evaluate business interruption insurance coverage. Most general liability policies do not allow claims under the current circumstances, but not all policies do. Determine if you may have coverage and inquire what the cost might be to add coverage for the future. Additionally, inquire with your insurer and your attorney what exposure your company may have if one of your employees falls ill and spreads the virus on a jobsite causing impacts and / or closures.

7. Implement a daily process to get updates on projects. Keep your operations team engaged and informed. Draft an agenda, take notes and ensure that the projects that remain operational are receiving the resources they need to be successful. Additionally, have field staff self-certify and complete a compliance report. Retain all documents (digital if possible) in a secure location. Examples are included in **Appendix E**.

8. Increase employee engagement with daily check in with office staff. The remote work world is new to many so consider holding a daily or at a minimum, a weekly check in call to see how employees are doing, identify what they are working on, establish and track deadlines and ensure they feel involved and engaged in problem solving for the company.

9. Establish Restart Plans that include new workplace rules. An example is contained in **Appendix F**. Companies need to be explicit in directing project and team leaders to immediately direct workers who demonstrate symptoms of infection to be sent home to quarantine for a period of at least 14 days. In addition, anyone who has been in contact with

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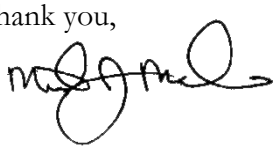
the person demonstrating symptoms of infection need to be identified and sent home to quarantine for 14 days.

10. Additional Resources – We at Maxim stand prepared to assist in any way needed, both strategic and tactical. We have also included a list of additional resources in **Appendix G**.

Our team is excited to assist the industry in continuing to work on this topic and look forward to hearing from you. Should you have any further questions regarding this deliverable, please feel free to contact me.

Thank you,



Michael McLin
Managing Director

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APPENDIX A – SAMPLE NOTICE LETTER

Dated:

VIA E-MAIL AND U.S. MAIL

Recipient
Company
Address

Re: Notice of Delay and Cost Impact
Project:

Dear _____:

_____ has and will continue to take the recommended steps for our administrative staff and at the construction site to protect the health of our employees, customers, vendors, business partners and the public against the COVID-19 pandemic.

This unprecedented event is having a continuous impact on our operations and on construction site activities. The impacts include but are not limited to the delay in supply of materials, manpower shortages, delayed inspections and other activities by building officials and government agencies, delays caused by other subcontractors, project support working remotely, and office and field compliance with social distancing and other health and safety protocols.

At this time, we are unable to quantify either the extent of the impacts, extent of delay or increased costs resulting from these events. We are nevertheless providing you with notice of these impacts as soon as possible and in compliance with contract provisions. At this time, _____ must reserve all rights to any claims for time extension and additional costs resulting from these impacts.

We are continuously monitoring the changing circumstances and will provide you with updated information as soon as it is feasible to do so. _____ actions and decisions must remain consistent with protecting the health of our employees, business partners and the public as we attempt to satisfy the needs of our customers under these challenging circumstances.

We look forward to your cooperation and partnership as we work through these difficult conditions ahead. Please let me know if you have any question or require and additional information at this time.

Very Truly Yours,

Signature

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APPENDIX B – SAMPLE CONTRACT MODIFICATION LANGUAGE

The following is not intended as a legal advice, nor a comment on the rights or responsibilities of any party to a specific contractual agreement, bond form, or particular set of facts. Rather, it is intended to educate you on a range of issues that may arise and suggestions as to possible proactive steps that might be taken by our principals and underwriters in these uncertain times. In all cases, our contractors are advised to seek their own independent legal advice based on the specific contracts and facts related to any project or claim situation. This memorandum was prepared with the benefit of, and some wholesale incorporation of parts of, several good briefing papers received from our outside counsel and others, including the Dickinson Wright, Smith Currie & Hancock, Langley, LLP, and Clark Hill Strasburger firms and ListServ ideas floated by my colleagues with the American College of Construction Lawyers and the International Academy of Mediators. There are many great minds brainstorming on construction and surety issues relating to COVID-19 and we are sure to come across further tips, check lists, and game plans as matters develop. We will do our best to keep you up to date on the latest thinking on such issues. Credit to this information goes to Markel Surety Underwriters and Claims Representatives.

Although contraction of the Coronavirus ("COVID-19") fortunately remains a relatively low risk in the United States, COVID-19 still has the ability to "infect" a project schedule simply by reducing the supply of, or increase the cost of, labor and materials needed to complete their work. Supply lines may be interrupted. Material shortages or price escalations may develop. Travel may be restricted. There is no end to the havoc that the current COVID-19 situation might wreck on otherwise successful projects and contractors. Contractors should take precautionary measures and factor in possible labor and material delays to schedules, and any corresponding price impact, resulting from the spread of COVID-19. Contractors need to consider impacts not only in the United States, but for imported construction materials as well – especially long lead items or materials from highly infected areas (i.e., Italian marble or Chinese steel). If faced with projects requiring materials from highly affected areas, alternate or substitute materials may be an appropriate approach to stay on schedule.

Modern construction contracts commonly contain provisions addressing risks of delays resulting from *"force majeure"* (translated from French as "superior force") and other events and circumstances beyond the control of the parties to the contract. Contractors should discuss potential delays and cost impacts due to COVID-19 during negotiation of the construction documents. Although it is reasonable to argue delay impacts from COVID-19 is a *force majeure* event that should entitle a contractor to an extension of time, the AIA or Consensus Docs form agreements do not specifically address pandemic events. Other manuscript or private forms of agreement may not include a force majeure clause or, worse yet, put such risks on the contractor. To avoid this potential issue, revisions to the standard construction documents, and careful review of all contracts and subcontracts, are required.

By way of example, §8.3.1 of the AIA A201 General Conditions identifies circumstances that may be commonly described or accepted as *force majeure* events, but the term "*force majeure*" is not used or mentioned in the document. Thus, to avoid future disputes (or worse, litigation) over delays and cost impacts due to COVID-19, contracting parties should consider adding the language to the AIA A201 agreement, perhaps along the lines as follows:

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> *§ 8.3.1* **The Contract Time shall be extended and Contractor shall be entitled to an increase in the Contract Sum for its additional General Conditions and increased costs of labor and materials that are attributable to one or more of the following Impacts***: (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor shortages and/or disputes, fire, unusual delay in deliveries, unavoidable casualties;* **(4) disruptions in labor or materials resulting from a health crisis regardless of whether an infectious disease, epidemic, pandemic or isolated to areas from which such labor and materials are supplied***; (5) by delay authorized by the Owner pending mediation and binding dispute resolution; (6) by abnormal weather conditions; (7) by other causes beyond the Contractor's control that justify delay; (8) by adverse government actions, including but not limited to tariffs and embargoes; and/or (9) by any Act of God rendering performance of the Contract impossible or impractical. Any time gained by the Contractor on the Project Schedule shall not be offset against any delays as described herein.*

§6.3.1(j) of the ConsensusDocs 200 agreement references "epidemics" as a cause beyond the control of a Constructor, but it is wise to expand the definition in a similar manner noted above; to avoid any ambiguity, pandemic events are included as well. Potential price impacts may be addressed in the same section, or separately in the ConsensusDocs 200.1 Amendment No. 1 pertaining to Potentially Time and Price-Impacted Materials.

Similarly, the Federal Acquisition Regulations ("FAR") applicable to Federal projects, and often incorporated by reference in subcontracts on those projects, deals with such issues. FAR 52.249-14 states in part:

> *EXCUSABLE DELAYS (APR 1984)*
>
> ***(a)*** *Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. Default includes failure to make progress in the work so as to endanger performance.* (emphasis added)

Notably, the remedies granted in these provisions are only excusable time extensions, not additional compensation for the impacts. ConsensusDocs 200, Section 6.3 excludes epidemics, adverse governmental actions, and unavoidable circumstances from the causes for which the contractor is entitled to an equitable adjustment:

> (2) *In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Constructor shall be entitled to an equitable adjustment in the Contract Price subject to §6.6.*

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Similarly, FAR 52.249-14 addresses only a time extension for such impacts:

> *(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.*

A court's or board of contract appeals' or arbitration panel's determination of whether delays caused by the spread of the coronavirus are excusable will depend on the specific facts and circumstances. A court may consider such factors as whether the length of the delay is reasonable; whether alternative pools of labor or sources of material could replace the pandemic-affected ones at a reasonable cost; whether the government shut down a project site or project management and for how long; and whether the government imposed an area-wide quarantine.

Even if a court, board, or arbitration panel finds that the delay was excusable, the language of the contract determines what, if any, remedies are available. If the contract has no *force majeure* clause, even a delay beyond the contractor's or supplier's control may not be excusable or compensable. The court will have to determine whether the purpose of the contract is entirely frustrated by the outbreak of coronavirus, nullifying it. It must also determine whether the contract affords only a time extension or compensation for damages related to the delay as well as considering what mitigating actions a contractor or supplier took to defray the delay and expense of the event.

Common to all force *majeure clauses* is the requirement to give written notice of the causes of delay. Generally, these clauses require notice to be given immediately upon the occurrence of the event that could impact performance, irrespective of whether the impact is ultimately incurred. Project participants should be hyper-vigilant about potential disruptions to their work, even erring on the side of providing advance warnings and notices of possible disruptions. To be prudent, contractors, subcontractors, and material suppliers should immediately make inquiries as to the status of pending orders and ability of counterparties to fulfill upcoming orders.

When giving notice, project participants should (1) explain how the coronavirus qualifies as a force majeure or other excusable event under the contract; (2) provide as much specificity as possible about impacts to performance; (3) include any additional contractually-required information to the extent it is known; and (4) provide updates as more information becomes available. For contracts still in negotiations, parties should consider including provisions specifically tailored to possible impacts from coronavirus, including suspension clauses that can be implemented on short notice and equitable adjustments to contract prices to account for disruptions and other impacts to performance.

Dodge Data & Analytics estimates that building product imports from China account for nearly 30 percent of all U.S. building product imports, making China the largest supplier to the U.S. Accordingly, current and continued disruptions to supply chains portend an almost certain impact to prices of construction products and materials. While contractors in the U.S. have already incurred or been notified of delays to construction materials, the U.S. has not felt the full cost impact of disruptions to the supply chain caused by coronavirus. To protect against or mitigate these impacts,

project participants should be fully aware of contract provisions addressing price escalation.

To the extent that *force majeure* clauses do not provide financial relief for qualifying impacting events, contractors and subcontractors will need to look to escalation clauses in their existing contracts and/or consider including such provisions in future agreements for relief. Common escalation clauses specify the materials subject to escalation and define the events that trigger the clause. Often, the triggering event is a specified percentage increase in a standard price index. Other clauses call for making price adjustments at fixed intervals (quarterly, annually, etc.) or upon certain project milestones.

Given the uniqueness of coronavirus, project participants should consider escalation clauses tailored to the circumstances with provisions flexible enough to account for the fast-changing impacts associated with the spread of the disease. These clauses should establish standards for documenting and proving the cost increases, including the exhaustion of alternative sources of supply.

To complicate matters, clarifying that a change is necessary to deal with these issues may create an inference that the unchanged documents do not already provide the protections a contracting party may suggest being applicable. Thus, careful thought should be given when a party has an ongoing relationship with an owner and general contractor and claims under existing contracts are possible.

No doubt, issues will arise on contracts, subcontracts, and bonds in force that did not have the benefit of some advance thought on the eventualities of a worldwide pandemic. In some instances, *force majeure* clauses are written with enough breadth that the pandemic may be consider "acts of God," "embargoes," or "causes beyond the contracting party's control." And, absent a *force majeure*, or escalation clause, parties may resort to theories of "impossibility of performance," "frustration of performance," "impossibility," "unforeseen conditions not leading

to a meeting of the minds," Uniform Commercial Code § 2-615 "Excuse by Failure of Presupposed Conditions" and similar arguments and theories, all of which have bubbled up in many contexts in the past…Gulf War, 911, Chinese Steel embargo, energy crisis, sick buildings, Legionnaire's Disease, and any number of other curves thrown at society in the past. The Courts have not always relieved contractors from these risks, taking the position that these were business risks intentionally undertaken. In this situation, however, I believe they might come down more in favor of relief.

The implications for sureties remain to be seen, but our contractors are going to see some bumps in the road. Importantly, they should seek counsel of experienced construction attorneys before acting on pending issues. "Walking off," terminating, or taking unilateral action are typically not remedies available in these circumstances…no matter how dire the delay or cost impact.

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APPENDIX C – PPP LOAN VS EIDL LOAN

	Payroll Protection Loan	Economic Injury Disaster Loan
Covered Period	2/15/20 - 6/30/20	1/31/20 - 12/31/20
Amount	$10M Max	$2M Max
Interest Rate	1%	3.75% (business)
Term	2 years	30 years
Personal Guarantee	N/A	Waived up to $200,000
Collateral	N/A	After $25,000
Forgiveness	Yes	Up to 10,000

	Payroll Protection	Economic Injury Disaster Loan
Covered Period	01/15/2020 – 06/30/2020	01/31/2020 – 12/31/2020
Amount	$10M max	$2M max
Interest Rate	1%	3.75% (business)
Term	2 years	30 years
Personal Guarantee	N/A	Waived up to $200,000
Collateral	N/A	After $25,000
Forgiveness	Yes	Up to $10,000

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APPENDIX D – RECOMMENDED COST CODES

Consider implementing cost codes to track these specific impacts:

- Material cost increases for production delays and supply chain disruption.
- Inspection delays or additional costs incurred with updated inspections processes.
- Overtime if jobs are under rush to complete - think emergency medical services.
- Costs of additional personal protection equipment or health inspections.
- Increased equipment needs - are two boom/scissor lifts now needed to avoid having workers in close proximity?
- Travel costs - are employees traveling separately whereas they could previously car-pool?
- Labor costs incurred which cannot be moved during jobsite shutdowns.
- Technology costs to implement digital owner, architect, contractor meetings, and/or inspections.

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APPENDIX E – SELF CERTIFICATION AND COMPLIANCE REPORT

COVID-19 Guidelines and Procedures for All Construction Sites
and Workers at All Public Work

Employee Self-Certification

Name	Company

I, the above-named employee, certify that I:

- Have no signs of a fever or a measured temperature above 100.3 degrees or greater, a cough or trouble breathing within the past 24 hours;
- Have not had "close contact" with an individual diagnosed with COVID-19. "Close contact" means living in the same household as a person who has tested positive for COVID-19, caring for a person who has tested positive for COVID-19, being within 6 feet of a person who has tested positive for COVID-19 for about 15 minutes, or coming in direct contact with secretions (e.g., sharing utensils, being coughed on) from a person who has tested positive for COVID-19, while that person was symptomatic;
- Have not been asked to self-isolate or quarantine by my doctor or a local public health official.

I understand that if I am exhibiting any symptoms of COVID-19, such as fever, cough, shortness of breath or a sore throat, or if I cannot certify the truthfulness of any of the above statements, that I am to inform my supervisor and should leave the worksite immediately and seek medical attention.

_____ _____

Signature Date

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COVID-19 DAILY REPORT

Contractor	Date
COVID-19 Officer	COVID-19 Officer email and phone number
Project No.	Project Name
Location (Street)	(City) (State)
Owner's Representative	Owner's Representative email and phone number

☐ Prior to starting their shift and/or during each job briefing or toolbox talk, all employees and subcontractor employees self-certified as required.

☐ Anyone unable to self-certify or exhibiting symptoms were directed to leave, seek medical attention, and told not to return to the work site until cleared by a medical professional.

☐ Any workers working in a confined space or inside a closed building envelope were temperature screened as required

☐ Laminated COVID-19 safety guidelines and handwashing instructions are posted at the jobsite as required

☐ Workers have access to either an indoor bathroom or an outdoor wash station with soap and paper towels

☐ All high contact surfaces, such as desks, laptops, vehicles, door handles, etc. and all common and meeting areas, are wiped down/cleaned at least twice a day

☐ A "No Congregation" policy is in effect, wherein individuals are maintaining 6 feet from other individuals, unless work conditions require workers to be closer

☐ Cleaning and decontamination procedures covering trailers, gates, equipment, vehicles, etc. have been shared with all employees and subcontractors and posted at all entry points to the jobsite and throughout the project site

☐ All machines and equipment are wiped down/decontaminated between operators/users

☐ Meetings are being conducted via conference call, unless a critical situation requires an in-person meeting; no meetings of more than 10 people are allowed

☐ All construction workers are wearing cut-resistant gloves or equivalent

☐ All equipment, tools, and vehicles are decontaminated/wiped down at the beginning and end of every shift

Items to be Corrected (Comment if immediately corrected)	Date Corrected

I, the above named COVID-19 Officer for the Project, hereby certify that the Contractor and all subcontractors working on the Project site on this date are in compliance with the guidelines contained in the Commonwealth of Massachusetts COVID-19 GUIDELINES AND PROCEDURES FOR ALL CONSTRUCTION SITES AND WORKERS AT ALL PUBLIC WORK issued by the Governor's Legal Office on March 25, 2020.

_____ _____

Signature Date

_____

Print Name

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APPENDIX F – WORK RULES

Commonwealth of Massachusetts
COVID-19 GUIDELINES AND PROCEDURES
FOR ALL CONSTRUCTION SITES AND WORKERS AT ALL PUBLIC WORK

These Guidelines and Procedures MUST be implemented at all times on all construction sites. All construction sites MUST conduct a Safety Stand Down day to disseminate these Guidelines to all employees and workers.

Employee Health Protection – ZERO Tolerance

The following applies to both State employees and contracted staff working on behalf of the State.

- ZERO TOLERANCE FOR SICK WORKERS REPORTING TO WORK. IF YOU ARE SICK, STAY HOME! IF YOU FEEL SICK, GO HOME! IF YOU SEE SOMEONE SICK, SEND THEM HOME!
- If you are exhibiting any of the symptoms below, you are to report this to your supervisor (via phone, text or email) right away, and head home from the job site or stay home if already there.

  If you notice a co-worker showing signs or complaining about such symptoms, he or she should be directed to their supervisor (via phone, text or email) and asked to leave the project site immediately.

  COVID-19 Typical Symptoms:
  - Fever
  - Cough
  - Shortness of Breath
  - Sore Throat
- Prior to starting a shift, each employee will self-certify to their supervisor that they:
  - Have no signs of a fever or a measured temperature above 100.3 degrees or greater, a cough or trouble breathing within the past 24 hours.
  - Have not had "close contact" with an individual diagnosed with COVID-19. "Close contact" means living in the same household as a person who has tested positive for COVID-19, caring for a person who has tested positive for COVID-19, being within 6 feet of a person who has tested positive for COVID-19 for about 15 minutes, or coming in direct contact with secretions (e.g., sharing utensils, being coughed on) from a person who has tested positive for COVID-19, while that person was symptomatic.
  - Have not been asked to self-isolate or quarantine by their doctor or a local public health official.
- Workers that are working in a confined space or inside a closed building envelope will have to be temperature screened by a Medical Professional or Trained Individual provided that such screening is out of public view to respect privacy and results are kept private.
- Employees exhibiting symptoms or unable to self-certify should be directed to leave the work site and seek medical attention and applicable testing by their health care provider. They are not to return to the work site until cleared by a medical professional.

March 2020

General On-the-Job Guidance to Prevent Exposure & Limit the Transmission of the Virus

- No handshaking
- Wash hands often with soap for at least 20 seconds or use an alcohol-based hand sanitizer with at least 60% ethanol or 70% isopropanol
- Contractor and State Agency Field Offices are locked down to all but authorized personnel
- Each jobsite should develop cleaning and decontamination procedures that are posted and shared. These Procedures must cover all areas including trailers, gates, equipment, vehicles, etc. and shall be posted at all entry points to the sites, and throughout the project site.
- A "No Congregation" policy is in effect, individuals must implement social distancing by maintaining a minimum distance of 6-feet from other individuals
- Avoid face to face meetings – critical situations requiring in-person discussion must follow social distancing
- Conduct all meetings via conference calls, if possible. Do not convene meetings of more than 10 people. Recommend use of cell phones, texting, web meeting sites and conference calls for project discussion
- All individual work crew meetings/tailgate talks should be held outside and follow social distancing
- Please keep all crews a minimum of 6' apart at all times to eliminate the potential of cross contamination
- At each job briefing/tool box talk, employees are asked if they are experiencing any symptoms, and are sent home if they are
- Each jobsite should have laminated COVID-19 safety guidelines and handwashing instructions
- All restroom facilities/porta-potties should be cleaned and handwashing stations must be provided with soap, hand sanitizer and paper towels
- All surfaces should be regularly cleaned, including surfaces, door handles, laptops, etc.
- All common areas and meeting areas are to be regularly cleaned and disinfected at least once a day but preferably twice a day
- Be sure to use your own water bottle, and do not share
- To avoid external contamination, we recommend everyone bring food from home
- Please maintain Social Distancing separation during breaks and lunch.
- Cover coughing or sneezing with a tissue, then throw the tissue in the trash and wash hands, if no tissue is available then cough into your elbow
- Avoid touching eyes, nose, and mouth with your hands
- To avoid sharing germs, please clean up after Yourself. DO NOT make others responsible for moving, unpacking and packing up your personal belongings
- If you or a family member is feeling ill, stay home!

Work Site Risk Prevention Practices

- At the start of each shift, confirm with all employees that they are healthy.
- We will have a 100% glove policy from today going forward. All construction workers will be required to wear cut-resistant gloves or the equivalent.
- Use of eye protection (safety goggles/face shields) is recommended
- In work conditions where required social distancing is impossible to achieve affected employees shall be supplied PPE including as appropriate a standard face mask, gloves, and eye protection.
- All employees shall drive to work site/parking area in a single occupant vehicle. Contractors / State staff shall not ride together in the same vehicle
- When entering a machine or vehicle which you are not sure you were the last person to enter, make sure that you wipe down the interior and door handles with disinfectant prior to entry
- In instances where it is possible, workers should maintain separation of 6' from each other per CDC guidelines.
- Multi person activities will be limited where feasible (two person lifting activities)
- Large gathering places on the site such as shacks and break areas will be eliminated and instead small break areas will be used with seating limited to ensure social distancing.
- Contact the cleaning person for your office trailer or office space and ensure they have proper COVID- 19 sanitation processes. Increase their cleaning visits to daily
- Clean all high contact surfaces a minimum of twice a day in order to minimize the spread of germs in areas that people touch frequently. This includes but is not limited to desks, laptops and vehicles

Wash Stations: All site-specific projects with outside construction sites without ready access to an indoor bathroom MUST install Wash Stations.

- Install hand wash stations with hot water, if possible, and soap at fire hydrants or other water sources to be used for frequent handwashing for all onsite employees
- All onsite workers must help to maintain and keep stations clean
- If a worker notices soap or towels are running low or out, immediately notify supervisors
- Garbage barrels will be placed next to the hand wash station for disposal of tissues/towels

Do all you can to maintain your good health by: getting adequate sleep; eating a balanced, healthy diet, avoid alcohol; and consume plenty of fluids.

Please Note: This document is not intended to replace any formalized procedures currently in place with the General Contractor.

Where these guidance does not meet or exceed the standards put forth by the General Contractor, everyone shall abide by the most stringent procedure available.

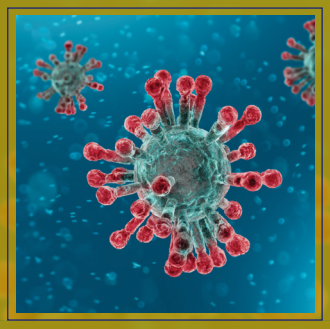
A site-specific COVID-19 Officer (who may also be the Health and Safety Officer) shall be designated for every site.

The approved project Health and Safety Plan (HASP) shall be modified to require that the Contractor's site- specific project COVID-19 Officer submit a written daily report to the Owner's Representative. The COVID-19 Officer shall certify that the contractor and all subcontractors are in full compliance with these guidelines.

Any issue of non-compliance with these guidelines shall be a basis for the suspension of work. The contractor will be required to submit a corrective action plan detailing each issue of non-conformance and a plan to rectify the issue(s). The contractor will not be allowed to resume work until the plan is approved by the Owner. Any additional issues of non-conformance may be subject to action against the contractor's prequalification and certification status.

APPENDIX G – ADDITIONAL RESOURCES

- **SBA:** https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp
- **Treasury:** https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses
- **US Chamber of Commerce:** https://www.uschamber.com/coronavirus#response
- **NECA:** https://www.necanet.org/industry-priorities/safety-regulations/neca-coronavirus-resource-center
- **ELECTRI:** https://electri.org/



COVID-19 and Contractor Liability

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Jef Fagan, *NECA General Counsel*

Employee and workplace safety should be the top concern for contractors during the COVID-19 pandemic. However, every business has justifiable concerns with employer liability as it makes decisions for moving on with operations.

Any contractor can be sued for anything, by anyone, at any time. That statement was true before, is true during, and it will be true after the COVID-19 pandemic. But keep in mind that there must be some underlying fraud, negligence or wrongdoing to actually impose *liability* on a contractor. This alert details some best practices to avoid such liability.

Stay current and aligned with updated guidance and directives on COVID-19

- Make sure your business is compliant with federal, state and local directives on **essential** operations, stay at home orders and mandatory quarantines. Stay open for business only when authorized under the law.
- Stay updated on the best disease health and safety guidance from the World Health Organization (WHO), the Centers for Diseases Control (CDC) and the Occupational and Safety Health Act (OSHA).
- NECA's resource center is constantly updated with the latest guidance and directives for our contractors. We even have a state by state essential services chart for updates on closure orders.
- Compliance with the latest guidance and requirements will be your best defense in the face of claims for liability and damages.

Develop a COVID-19 safety and workplace policy

- It is critical for your company to have a temporary policy to address safety, telework, leave, and other workplace issues related to COVID-19. Written and consistent communication with your employees will provide some level of protection from liability for willful misconduct and negligence.
- Bargain over these matters with the union as required under the CBA, and consistent with your management rights, and always make sure that safety is in the front seat and driving the bus.

Insurance and contracts

- Establish frequent communications with your insurance representative(s). Develop an understanding of your general liability, workers' compensation and specialty coverages.
- Read your construction contracts and analyze gaps in your protections against exposure to claims.
- Comply will all insurance and contractual notice provisions as events require and unfold.

Workers' Compensation

- Is coronavirus compensable under workers' compensation? The answer to that question is "maybe." While workers' compensation laws are state specific, they

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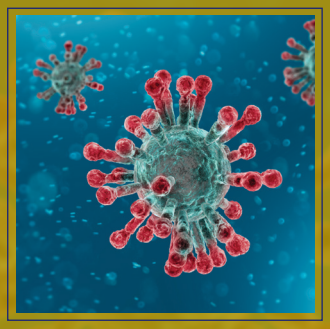

typically provide compensation for "occupational diseases" that arise out of and in the course of employment, but many state statutes exclude "ordinary diseases of life" (e.g., the common cold or flu). There are occupational groups that arguably would have a higher probability for exposure such as healthcare workers. The Department of Labor's (DOL's) statement on claims under the Federal Employee's Compensation Act is instructive in this regard. DOL acknowledges that it is difficult to determine the precise moment and method of virus transmission. Therefore, when an employee claims FECA benefits due to COVID-19, federal workers who are required to have in-person and close proximity interactions with the public on a frequent basis - such as members of law enforcement, first responders, and front-line medical and public health personnel - will be considered to be in high-risk employment, thereby triggering the application of Chapter 2-0805-6 of the FECA Procedure Manual. In such cases, there is an implicit recognition that a higher likelihood exists of infection due to high-risk employment. Federal workers in such positions routinely encounter situations that may lead to infection by contact with sneezes, droplet infection, bodily secretions, and surfaces on which the COVID-19 virus may reside. Therefore, the employment-related incidence of COVID-19 is more likely to occur among members of law enforcement, first responders and front-line medical and public health personnel, and among those whose employment causes them to come into direct and frequent in-person and close proximity contact with the public.

- For liability outside of the workers' compensation process for occupational diseases, there is a concept in workers' compensation known as the "Comp Bar", which means that workers' compensation is typically the sole remedy for injuries that are deemed compensable and incident to the workplace in the absence of intentional conduct or gross negligence on the part of the employer. These determinations are made at the state level, so competent legal counsel should be involved.
- There are very limited exceptions to worker's compensation exclusivity (the Comp Bar). For example, in California, if the employer engages in conduct that exceeds the inherent risk in the employment relationship or violates public policy, the employee may be able to sue the employer in a civil lawsuit. The behavior would likely have to be egregious to meet this standard.

OSHA Requirements and Guidance

- The Occupational and Safety Health Act's "general duty clause" requires employers to furnish "a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm." In its guidance on coronavirus released last month, which is updated frequently, OSHA advises employers that existing OSHA standards apply to protecting workers from exposure and infection. The guidance also includes a number of steps employers should take to reduce employees' risk of exposure to COVID-19, such as developing an infectious disease preparedness plan and policies and procedures for prompt identification and isolation of sick people. Presumably, OSHA would view failure to follow that guidance as a violation of the general duty clause. NECA links to the OSHA guidance on its resource center.
- According to current guidance, COVID-19 is a recordable illness (to OSHA) if the employee's case (a) is a confirmed case; **(b) is work-related (the employee was infected as a result of performing their work-related duties)**; and (c) meets one of the recording criteria (death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness, or involves a significant injury or illness diagnosed by a healthcare provider). Most em-

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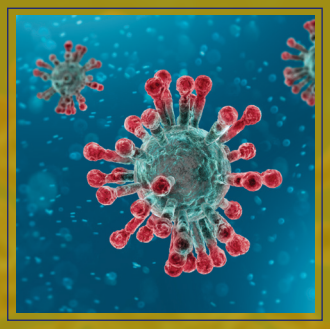

ployers with 10 or fewer employees, or in low risk industries identified by OSHA, are exempt from these recordkeeping requirements, unless instructed otherwise by the government. All employers are required to report work-related deaths within eight hours, and work-related in-patient hospitalizations that involve care or treatment within 24 hours.

» The construction trades are actively seeking clarification from OSHA on the recordable illness standard as it relates to COVID-19. It is practically impossible for a contractor to know where COVID-19 occurred and whether it is work-related. NECA will continue to monitor guidance on this issue.

If you receive a claim or a complaint related to COVID-19, immediately follow all notice requirements and consult local legal representation.

Stay safe.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

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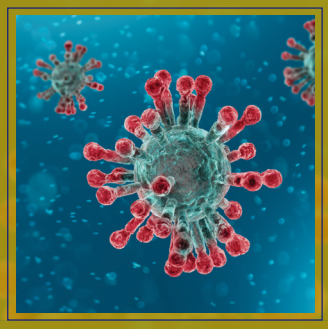

COVID-19 and the Duty to Bargain

What is the Coronavirus?

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This legal alert is provided with the caveat and reminder that bargaining is local. It is impossible for NECA at the national level to know all local facts and counsel individual employers on many local issues. As can be seen by the included memo from the General Counsel of the NLRB, the Board itself has been back and forth on what constitutes an emergency, when it ends, and what an employer is permitted to do. The record is full of you were right to do it in this case, you were wrong to do it in that case, and in the other case part of what you did is okay, and part violates the law. NECA cannot say with certainty that acting in a particular way would be found legal in all cases. Indeed, two contractors in the same town doing essentially the same thing could find themselves with differing results to a union challenge based on factors unique to each company. What we can say is consult with your local legal counsel and your chapter manager. The chapter may already have posed these questions to the union or the local trust funds and developed an understanding. If you must act immediately, tell the union what you are going to do and offer to talk with the union about it, give the union a deadline, and consider your options. If you cannot wait, act, document, and remain open to the union to work out any issues.

The Duty to Bargain — Generally

The National Labor Relations Act (NLRA) imposes on NECA local chapters and contractors the duty to bargain in good faith with unions over mandatory subjects of bargaining such as wages, hours, and other terms and conditions of employment (mandatory bargaining subjects). Relevant to the current COVID-19 pandemic, if contractors implement COVID-19 safety, HR or work rules concerning work assignments, procedures for travel and quarantining as a result of exposure or potential exposure, they may implicate mandatory bargaining subjects. Certain responses to government directives – such as the FFCRA and CARES Act compliance or government closures and work restrictions and orders - may also implicate mandatory bargaining subjects.

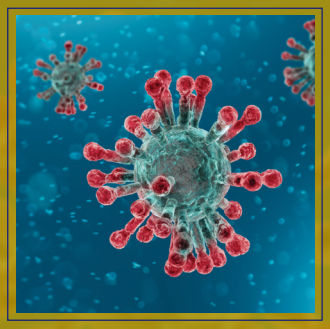
In general, the NLRA provides that chapters and contractors who make material changes to mandatory bargaining subjects without bargaining with a union run the risk of unfair labor practice charges. That risk *could* apply in emergency situations such as the COVID-19 pandemic. However, in an unprecedented emergency like COVID-19, union bargaining obligations *may* be relaxed either based on the terms of the CBA, or under the NLRA.

Collective Bargaining Agreement Language

A contractor must first look to the local NECA CBA. Most NECA CBAs contain a Management Rights clause that reads (or is similar to) as follows:

MANAGEMENT RIGHTS:

Section 2.02. The Union understands the Employer is responsible to perform the work required by the owner. The Employer shall, therefore, have no restrictions except those specifically provided for in the collective bargaining agreement, in planning, directing and controlling the operation of all his work, in deciding the number and kind of employees to properly perform the work, in hiring and laying off employees, in transferring employees from job to job within



the Local Union's geographical jurisdiction, in determining the need and number as well as the person who will act as Foreman, in requiring all employees to observe the Employer's and/or owner's rules and regulations not inconsistent with this Agreement, in requiring all employees to observe all safety regulations, and in discharging employees for proper cause.

This Management Rights clause allows a chapter and contractor flexibility in determining management rights, layoffs, subcontracting, closures, relocations, work assignments, scheduling, leaves of absences, paid time off, sick leave, and health and safety, among others, not inconsistent with the CBA or the current state of the law. This clause *may* give contractors the right to proceed unilaterally without bargaining with the union under *MV Transportation,* 368 NLRB No. 66 (2019) and related cases. However, for certain kinds of major workplace changes like plant closures and relocations, contractors have the duty to bargain over the "decision," as well as the "effects" of the decision (or "implementation" of that decision). The NDERA was circulated to deal with some of these "effects," such as furloughs and recalls.

In light of the unprecedented nature of the COVID-19 pandemic, it is fair to say that a contractor's primary concern is the safety and welfare of its employees. Most NECA CBAs contain a clause related to management rights that is specific to the issue of safety:

EMPLOYER'S RESPONSIBILITY:

Section 10.10. It is the Employer's exclusive responsibility to ensure the safety of its employees and their compliance with these safety rules and standards.

This clause, while directed to OSHA requirements, certainly strengthens the argument that a contractor has the unilateral right to implement changes that are directed at workplace safety and compliance with current best practices and directives related to COVID-19.

The FFCRA, CARES Act and other Government Orders — Impact on CBAs

Certain government directives may override the CBA. The FFCRA, requiring additional paid sick and family leave for certain employees, in addition to and as amplified by the CARES Act, *requires* certain actions by contractors. So may the OSHA and CDC guidance and directives, which seem to come at us on a weekly basis. State and local governments have also issued orders that require the temporary closing or cessation of work at some operations, as well as mass stay at home orders for non-essential business. These kinds of orders potentially may leave contractors and unions with no choice but to make alterations to the workplace not contemplated in any CBA. However, even if these orders do leave contractors with no choice but to make unilateral changes, contractors do have an obligation to bargain over the "effects" of the order and discretionary aspects of implementation.

Compelling Economic Exigencies

Even when a chapter and contractor determine they have a duty to bargain, timing may be an issue. The general duty to bargain over mandatory bargaining subjects may be suspended where "compelling economic exigencies" compel prompt action. *Bottom Line Enterprises,* 302 NLRB 373 (1991), *enf.,* 15 F.3d 1087 (9th Cir. 1994). The NLRB has applied this exception only in very narrow circumstances, and it views "compelling economic exigencies" as "extraordinary events which are an unforeseen occurrence, having a major economic effect [requiring] the employer to take immediate action." To use this exception, a contractor will need to demonstrate not only that the proposed change was "compelled" but also that "the exigency was caused by external events, was beyond the employer's control, or was not reasonably foreseeable."

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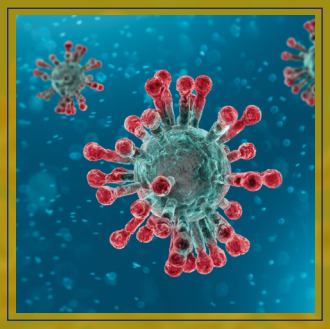

Although an outbreak like COVID-19 and certain government orders issued in response to COVID-19 would seem to fit the description of "compelling economic exigencies," thus relieving a contractor of bargaining with a union, **this will be different for every contractor and will depend on the timing and specific nature of the exigency.** It is certainly conceivable that while COVID-19 might suspend the duty to bargain for a contractor who is ordered by federal, state or local governments to close immediately, or for a contractor with a facility that has an actual COVID-19 infection, it might not suspend the duty for a contractor that has merely lost business or suffered a financial decline as a result of the outbreak. Likewise, it might not suspend the duty to bargain over the "effects" of those orders and discretionary aspects of implementation. *RBE Electronics of S.D.,* 320 NLRB 80 (1995).

The duty to bargain analysis is fact-based and cannot be applied uniformly to all contractors in all situations. Contractors and chapters should be prepared to justify the economic exigency, demonstrate why immediate action is required, and demonstrate that any changes are implemented only for immediately required responses, and not to be continued later on, once the exigency has diminished.

Conclusion

In general, chapters and contractors should consider providing the union notice of intended changes and seek to discuss them, even if those discussions must happen quickly and the contractor must take immediate and decisive action. If that is the situation, contractors should consider being clear with the union about the required timing of the change, the reason for it, and the timeline that the union must respond before the contractor implements. If a contractor must act immediately without notifying and/or discussing with the union, it should be prepared to communicate with the union after such changes as soon as practicable under the circumstances.

Best Practice Advice

- Even when bargaining is not required because of economic exigency, legal mandates, or management rights, chapters and contractors should consider meeting with the union to discuss a solution to problems caused by COVID-19. This may avoid a conflict over the changes, even if the contractor is within its right to make them unilaterally.
- **Local solutions are always the best solutions and NECA National cannot anticipate every specific fact scenario.**
- Document the specific need for proposed changes – the safety emergency or compelling economic exigency.
- Plan for the "effects" or impact of the implementation and open that to bargaining.
- **Sample question 1:** May I implement a COVID-19 employee questionnaire designed to promote workplace safety that may include health or fitness for duty questions without bargaining?
  Answer No.1: If the timing and emergency nature of the implementation require prompt action, best practice would be to provide notice and request immediate response from the union. If the response is delayed or is negative, and you believe the questionnaire is sound and necessary from a safety perspective, implement and document your rationale. In *Virginia Mason Hospital,* 357 NLRB 564 (2011), the hospital implemented a policy requiring both union and non-union nurses who had not received a flu shot to either take antiviral medication or wear a protective mask. The ALJ found that the employer's policy was excused by an exception to the duty to bargain set forth in *Peerless Publications,* 283 NLRB 334 (1987)

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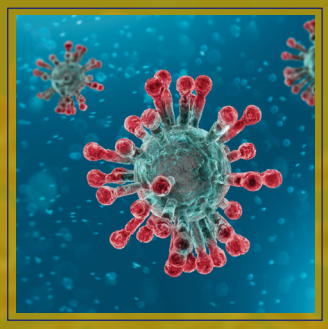

because the employer's policy (1) went directly to its core purpose of protecting patients' health; (2) was narrowly tailored to achieve the aim of reducing the spread of influenza; and (3) was limited to registered nurses who declined other flu-prevention options.

- **Sample question No. 2:** What direction do we have from the DOL on the payment of fringe benefits under the FFCRA?
  Answer No. 2: While specific instructions on the payment of fringe benefits under FFCRA (EPSL and FMLA) have not been provided by the DOL, some general guidelines can be inferred. The law specifically requires the continuance of healthcare coverage and as such, it is reasonable to assume that payments into the healthcare funds should be paid if continuing coverage is not available under the applicable Health Plan in order for coverage to be maintained during the term of this leave. There is no mention or direction on the continuance of other fringe benefits and as such it is not unreasonable to assume that they are not required to be paid, particularly if they are on an hours worked or hours paid basis. However, as with the case of NEBF (that has been historically paid on sick leave benefits), it is best to look to the CBA and the local trust funds for guidance. We would encourage the local parties and trustees to work together and craft appropriate guidelines at the local level to address these issues until such time as we receive any additional direction from the DOL.
- In light of the highly fact-intensive nature of the above referenced bargaining obligations, to the extent possible, contractors should consult with local labor counsel prior to taking action.

Attached to this Legal Alert as Exhibit A is a memorandum from the NLRB General Counsel that provides a summary of some existing cases on bargaining during emergencies similar to COVID-19.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

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OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM GC 20-04 March 27, 2020

TO: Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Peter B. Robb, General Counsel

SUBJECT: Case Summaries Pertaining to the Duty to Bargain in Emergency Situations

The Coronavirus pandemic has prompted many questions regarding the rights and obligations of both employers and labor organizations, particularly in light of responsive measures taken to contain the virus. Sometimes these measures have been taken out of prudence; other times they have been required by state, local or federal orders.

Regardless of the reason for any given response to the spread of the virus, many parties are considering the impact on the duty to bargain. Although we are in an unprecedented situation, I wish to make the public aware of several cases in which the Board considered the duty to bargain during emergencies. These include public emergencies as well as emergencies unique to a particular employer. Accordingly, the following case summaries are divided into those two categories. It is my hope that these summaries prove useful to those considering this issue during these challenging times.[1]

Case Summaries Touching on Duty to Bargain During Public Emergency Situations

Port Printing & Specialties, 351 NLRB 1269 (2007) (hurricane), *enforced*, 589 F.3d 812 (5th Cir. 2009): Where the parties did not have an existing collective-bargaining agreement, the Board found the employer did not violate Section 8(a)(5) by laying off several employees without affording the union notice or an opportunity to bargain, but did violate Section 8(a)(5) by subsequently using non-unit employees, including a supervisor, to perform unit work. The employer was a commercial printer located in Lake Charles, Louisiana. On September 22, 2005, the mayor of Lake Charles ordered a mandatory evacuation of the city in anticipation of the impending arrival of Hurricane Rita. The employer closed operations and laid off all employees, without affording the union notice or an opportunity to bargain. In the weeks after the hurricane, the employer worked to repair the damage done to its facility and fulfill what client orders remained, using some unit employees but also non-unit employees and a supervisor. Approximately a month after the hurricane, the employer sent unit employees a letter permanently confirming their layoffs. At no time did the employer provide the union notice or an opportunity to bargain over these matters. Citing *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), the Board explained that an exception to the duty to bargain exists where the employer can demonstrate that "economic exigencies compel[led] prompt action." (Brackets in the original.) The Board stressed that this exception is limited to "extraordinary events which are an unforeseen

[1] The case summaries herein are limited to the duty to bargain. This memorandum does not discuss other NLRA issues that may arise during the course of emergency situations.

occurrence, having a major economic effect requiring the company to take immediate action" (quoting *RBE Electronics of S.D.*, 320 NLRB 80, 81 (1995)). Applying this rule, the Board found that the impending hurricane and the mandatory citywide evacuation were uniquely exigent circumstances that privileged the employer to lay off unit employees without bargaining with the union. However, the Board also concluded that the employer violated Section 8(a)(5) by failing to bargain over the effects of the layoff after the hurricane, and by failing to bargain over the use of non-unit employees to perform unit work (Member Schaumber dissented on this point). Thus, the Board explained, when the employer made those decisions, the exigency due to the hurricane had passed.

K-Mart Corp., 341 NLRB 702, 720 (2004) (9/11): The ALJ concluded the employer's layoff after September 11, 2001 where the employer's anticipated business volume plunged 60 percent and caused it to file bankruptcy by January 2002, was privileged by *Bottom Line*. The ALJ determined the economic fallout resulted in "extraordinary unforeseen events having a major economic effect that required the employer to take immediate action" as contemplated by that Board decision. The ALJ also found the employer gave adequate notice of its need to lay off unit employees to the union, which had failed to request bargaining. However, the issue of the layoff was not presented to the Board on exceptions.

Dynatron/Bondo Corp., 324 NLRB 572, 578-79 (1997) (hurricane), *enforcement denied in relevant part*, 176 F.3d 1310 (11th Cir. 1999): Board adopted ALJ's conclusion that, during a two-day power outage caused by a hurricane, the employer unilaterally and unlawfully implemented a new policy concerning employee compensation during the hurricane in violation of Section 8(a)(5). It was undisputed that the employer did not attempt to bargain with the union over this compensation structure, and the union only learned of it approximately two weeks later during a bargaining session.

Gannet Rochester Newspapers, 319 NLRB 215 (1995) (ice storm): After employees were required to miss two days of work because local officials banned nonessential travel during a severe ice storm, the employer decided to pay non-represented employees, in accordance with the company's handbook, for the time they missed. However, the employer required represented employees to either take personal days or go uncompensated. There were two unions representing different units at the employer's facility: one collective-bargaining agreement in effect at the time of the ice storm was silent regarding compensation for missed work due to weather emergencies, and had a "zipper" clause privileging the employer's refusal to bargain on uncovered subjects during the life of the contract, whereas the other collective-bargaining agreement, which was likewise silent on compensation for missed work due to weather emergencies, had expired by the time of the ice storm and the parties were negotiating a new agreement. Initially, the Board adopted the ALJ's conclusion that, inasmuch as the employer had no past practice of paying represented employees for absences due to weather emergencies, the employer did not violate Section 8(a)(3) by paying non-represented employees in accordance with its handbook but refraining from doing so for represented employees. The Board also concluded that the employer did not violate Section 8(a)(5) by requiring represented employees working under the extant collective-bargaining agreement to take personal days or go uncompensated, since that agreement did not address payment for absences due to weather emergencies and the zipper clause indicated the parties' intent to allow the employer to take unilateral action on items uncovered by the agreement. However, the Board did conclude that the employer violated Section 8(a)(5) with respect to employees covered by the expired contract. The Board observed that wages for lost time due to a weather emergency are a mandatory subject of bargaining, and given that those unit employees were currently working without a contract, the

employer was obligated to afford the union notice and an opportunity to bargain prior to acting unilaterally regarding a mandatory subject of bargaining.

Case Summaries Touching on the Duty to Bargain During Emergency Situations Particular to an Individual Employer

Cyclone Fence, Inc., 330 NLRB 1354 (2000) (lack of financial credit): The Board granted the General Counsel's Motion for Summary Judgment and found that the employer, which was in bankruptcy, violated Section 8(a)(5) by unilaterally closing one of its facilities, terminating all employees who worked there, and failing to pay their wages and fringe benefits after discovering that its lender had terminated its line of credit. The Board, citing *Nathan Yorke, Trustee*, 259 NLRB 819 (1981), concluded that while the "emergency situation" the employer confronted might excuse its failure to bargain with respect to the decision to close its operations, it did not excuse the employer's failure to bargain over the closing's effects.

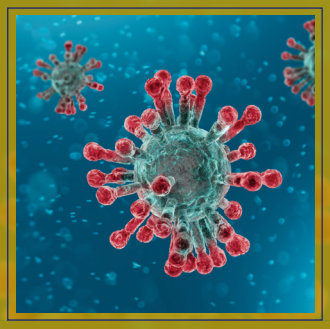
Hankins Lumber Co., 316 NLRB 837 (1995) (log shortage): The Board determined, *inter alia*, the employer violated Section 8(a)(5) by unilaterally laying off employees at a lumber mill due to a log shortage. The Board determined the log shortage had been a chronic problem and there was no "precipitate worsening" of the problem that required immediate action prior to bargaining with the union. The Board noted that the case was distinguishable from *Brooks-Scanlon, Inc.*, 247 NLRB 476 (1979) for several reasons, among which were the fact that the employer in *Hankins* had initially offered to bargain over the permanent layoffs before retracting that offer and proceeding with the layoffs unilaterally.

Brooks-Scanlon, Inc., 247 NLRB 476 (1979) (log shortage), *petition for review denied*, 654 F.2d 730 (9th Cir. 1981) (table): The Board determined the employer did not violate Section 8(a)(5) by closing part of its plant—the sawmill—without bargaining with the union, with which it had a current collective-bargaining agreement. Thus, the employer determined that a projected decline in the amount of harvestable pine trees in the surrounding forests warranted shuttering the sawmill. Notwithstanding that the employer determined to close its operation nearly two months in advance of actually doing so, the Board concluded that a variety of factors—including the activities of conservation groups and the anticipated needs of other area lumber companies—created a set of "economic factors so compelling that bargaining could not alter them." The employer did, however, negotiate with the union regarding the effects of the partial closure.

Raskin Packing Company, 246 NLRB 78 (1979) (lack of financial credit): The Board determined that an employer, while not required to bargain over the decision to abruptly close operations, nevertheless violated Section 8(a)(5) by failing to bargain over the effects of the closure. The employer was a slaughterhouse in Sioux City, Iowa. On October 21, 1977, the employer, after discovering its credit line was discontinued, decided to immediately close the plant, and notified the union shortly afterwards. The employer then held talks with employees, with the union's knowledge, about potentially selling the plant to the employees. After these initial talks, the union notified the employer that it was requesting bargaining with respect to employees' terms and conditions of employment that would be involved in any reopening of the plant. The employer ignored the bargaining request and held another meeting with employees regarding a potential reopening of the plant. The Board determined that the employer did not violate Section 8(a)(5) by having initial discussions with the employees because the union did not initially object to those discussions, but was in violation of 8(a)(5) after it continued to discuss reopening the plant after the union's bargaining demand.

Virginia Mason Hospital, 357 NLRB 564 (2011): The Board held that an employer violated Section 8(a)(5) by unilaterally implementing a flu-prevention policy without affording the Union notice and an opportunity to bargain. The employer was an acute care hospital in Seattle, with approximately 5,000 employees, approximately 600 of whom were registered nurses represented by the union. The employer unilaterally implemented a policy, during the term of the parties' collective-bargaining agreement, requiring all nurses who had not received a flu immunization shot to either take antiviral medication or wear a protective mask. The ALJ held the employer to be excused from its bargaining obligation based on the test set forth in *Peerless Publications*, 283 NLRB 334 (1987), as: (1) the policy went directly to the employer's core purpose: to protect patient's health; (2) the policy was narrowly tailored to prevent the spread of influenza; and (3) the employer limited the requirement to nurses who refused to be immunized. The Board reversed, noting that the Board had, since the issuance of *Peerless*, sharply limited its applicability outside of its specific factual context. Thus, the employer in *Peerless* was a newspaper, and the unilaterally implemented policy in that case—a code of ethics—implicated the newspaper's First Amendment rights. Therefore, the Board determined, that case "injected a constitutional element" into the analysis that was simply missing in the healthcare context. Member Hayes, dissenting, explained that he did not believe *Peerless* "has been—or should be—limited to its facts[,]" and that the *Peerless* test merely expressed in broad terms when an employer may unilaterally establish rules that are designed to protect the "core purpose of its enterprise." In Member Hayes' view, the employer's flu-prevention policy satisfied this test for the reasons articulated by the ALJ.

/s/
P.B.R.



NECA Legal Webinar Q&A

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

1 **Question: Are furlough forms considered a mandatory subject of bargaining?**

We take the position that furlough and layoff forms drafted to address COVID-19 safety concerns fall within management rights and need not be bargained. It is best practice to notify the union and attempt to seek agreement. In the absence of agreement, implement and bargain effects. Also see the guidance provided in the NECA Legal Alert – COVID-19 and the Duty to Bargain.

2 **Question: If employees refuse to work due to concerns of contracting COVID-19, can the employer replace them? Does the employer have to pay individuals who choose to not work?**

This scenario, which is not sickness but FEAR of sickness, would be considered a voluntary quit due to "COVID-19 related concerns." The employer can replace these individuals and has no requirement to pay them or provide the FFCRA pay. Under the NDERA, the employer would truthfully respond to any unemployment inquiry from the state.

3 **Question: Do FFCRA benefits (EPSL & EFMLA) apply to bargained employees? How do benefits apply?**

Yes. FFCRA benefits apply to full-time and part-time employees of employers with less than 500 employees regardless of the existence of a collective bargaining agreement.

On benefits, the FFCRA only speaks to the requirement to maintain healthcare and reimbursement for the same. We are still seeking guidance from the DOL and respective national trust funds to determine the calculation and payment of benefits. As we learn more, it will be communicated.

4 **Question: If employees refuse to work due to concerns of contracting COVID-19, are they eligible for unemployment benefits (including the $600 expanded unemployment benefit)? How does the employer respond to unemployment claims given the language in the NDERA about not contesting unemployment?**

The FFCRA provides flexibility for states to amend their laws to allow for the payment of unemployment benefits for this scenario. Check with your state's unemployment office to determine if the laws have been amended to accommodate leave related to COVID-19.

The CARES Act provides increased unemployment compensation to individuals no longer working or working reduced hours. The Act provides an additional $600 of weekly unemployment compensation for up to four months for individuals already receiving state unemployment compensation. The Act also provides an additional 13 weeks of unemployment compensation to individuals who have exhausted their unemployment compensation through the state. In most states, this will provide a total of 39 weeks of unemployment compensation.

The CARES Act also creates the Pandemic Unemployment Assistance Program which makes unemployment compensation available to individuals who would not otherwise

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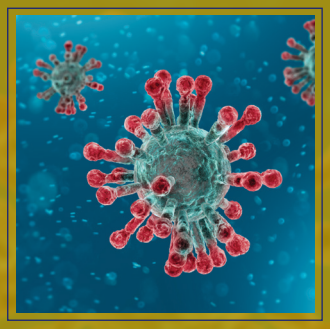

qualify for state unemployment compensation such as independent contractors, self-employed individuals, and individuals without sufficient work history. In order to qualify for benefits under this provision of the Act, an individual must be unable to work due to particular COVID-19-related circumstances as described in the Act.

The NDERA was drafted to allow employers to recall employees if/when their jobsites are reopened following a COVID-19 closure or slowdown. It also assists employers in keeping their employees and jobsites safe during this pandemic. The language regarding not "contesting" unemployment does not mean that employers should not comply with the law. Employers should absolutely be accurate when responding to unemployment claims and realize that the state is the final arbiter of unemployment eligibility. If a state chooses to deny a benefit because of information provided by the employer, this is the state's decision. That employer is complying with the NDERA.

5 Question: If employees refuse to work due to concerns of contracting COVID-19 and my state does not see this as a valid unemployment claim, is the contractor in violation of the NDERA?

See above. No. If an employee calls out consistent with the NDERA, we recommend that the contractor accurately comply with information requests from the state and inform the state that the separation was for "COVID-19 related concerns" or something to that effect – without actively contesting the claim. If the state asks if work is still available to the employee and the answer is yes, **then the answer is yes.**

6 Question: Will any provisions of the NDERA be changed/removed in future revisions of the Agreement?

The NDERA states that it will be evaluated every 30 days by the Parties, not that we need to wait that long. We are in constant discussions to address concerns received from the field and will advise immediately of any edits or adjustments.

7 Question: If an employee is feeling ill, is this an OSHA recordable event?

In almost all cases involving our contractors – No. OSHA deems illness as a recordable event if certain criteria are met. OSHA guidance provides:

COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

OSHA has published guidance on when COVID-19 can be found here: https://www.osha.gov/SLTC/covid-19/standards.html.

8 Question: How does an employer determine regular pay under the FFCRA?

The DOL has set out guidance on this here: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

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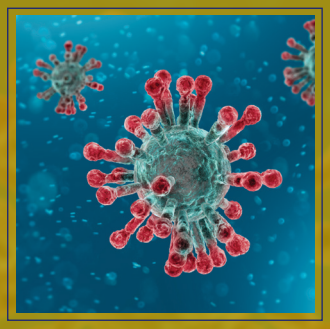

The "regular rate of pay" is that which is determined using the FLSA calculation standard, explained here:
https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate

9 Question: What qualifications must be met for a loan to be converted to a grant?

According to the SBA: Paycheck Protection Program loans will be fully forgiven to the extent the funds are used for payroll costs, interest on mortgages, rent, and utilities; so long as, at least 75% of the loan proceeds are used for payroll, and FTE headcount is the same or higher on June 30, 2020 as it was on February 15, 2020.

10 Question: Is the Small Business Association considering a small business as one with less than 500 employees in lieu of average annual sales less than $16.5 million?

Yes. Please see the updated guidance and regulations from the SBA on the NECA Resource Center. NECA Government Affairs was instrumental in removing the revenue cap.

11 Question: What is the employer's liability if the employee becomes ill on a job that remains open or remains open due to obtaining a waiver?

A contractor may be sued for anything at any time – and there will no doubt be plaintiff's lawyers circling the waters to look for lawsuits during and after this crisis. But keep in mind that there must be some underlying fraud or wrongdoing to actually impose liability. Government "essential services" directives will go a long way to insulate claims that a contractor "made me go to work and I got sick." By keeping jobs open in many jurisdictions, it will be difficult for liability to attach simply because a contractor staffs a job.

To deter liability, it is important to put in place a COVID-19 workplace safety and HR plan. NECA has developed significant guidance on our resource center such as:

- Follow essential industry, CDC and OSHA guidelines and have a COVID-19 safety plan;
- Work with your insurance company to make sure you understand coverages and address as necessary;
- Stay alert for government directives, travel restrictions and closures;
- Be sensitive to employee concerns, requests and needs.

Lastly, a word about workers' compensation. Remember that workplace injuries – to the extent that a claim is based on the contention that an injury is an occupational injury – are diverted to the workers' compensation process. There is a concept in workers' compensation known as the "Workers' compensation bar", which means that workers' compensation is normally the sole remedy for injuries that are deemed compensable and incident to the workplace. The application and interpretation of the bar varies from state to state, so contractors should make sure they are in contact with their carrier and/or third-party administrator as soon as a claim is made.

Also see the NECA Legal Alert – COVID-19 and Contractor Liability.

12 Question: Are furloughed employees eligible for emergency paid sick leave or extended FMLA benefits?

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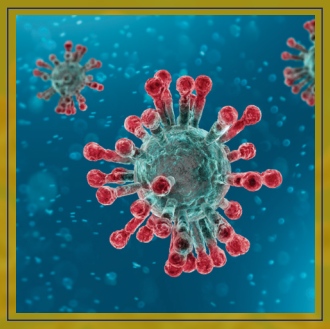


No. They are no longer employees. This is addressed in DOL FAQ Question #26: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

13 Question: Does NECA have a standard form for use by employers when employees request Sick Leave under the FFCRA?

No.

14 Question: How does the CARES Act work with the collective bargaining agreement regarding paid leave?

There is no distinction between bargained and non-bargained employees under the FFCRA or the CARES Act.

15 Question: Does the FFCRA apply to an employer with 15 or less employees?

Yes. The FFCRA applies to all employers with fewer than 500 employees.

16 Question: How long must an individual be employed for the payroll loan to become a grant?

For the loan forgiveness you will have to document and verify the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

17 Question: Why do we as electrical contractors have to provide notices since the shutdowns have been initiated from the Customer, General Contractor, Government, etc.?

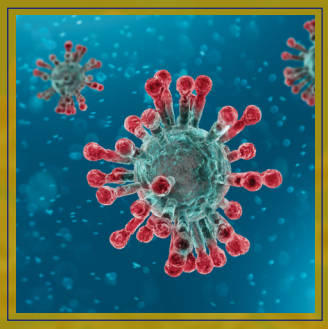
We believe it is best practice to provide your employees with all notices that impact their working conditions, safety and entitlements. Certain notices are mandated by law to be posted by each employer. Take care of your own employees.

18 Question: If employees are afraid to be on a jobsite due to fear of exposure to COVID-19, can this be considered a force majeure claim?

Force majeure is a contractual provision, so first reference is to the language of the contract. If the contract provides potential relief (in the form of delays, termination, extensions, or financial forbearance) then a contractor may be able to use inability to staff a job due to COVID-19 to invoke force majeure, impossibility or other legal remedies. Case specific application.

19 Question: A general contractor told a member that it's business as usual in the construction industry. They expect us to complete the project on time per our contract despite the fact we may not be able to meet the schedule as 1/3 of our workforce has opted to take a furlough. It appears they want to play hardball.

We provided general guidance in the webinar and in other materials on the resource center on how to address construction contract issues such as delay, notice, force majeure, impossibility and other issues. Beyond that, each contractor will need competent local legal counsel to work through fact and contract specific scenarios.



20 **Question: With regards to general conditions, such as providing hand washing stations or "adequate" restroom facilities, do you advise filing a claim if those are not being met?**

It is not clear what is meant by "filing a claim." If this means reporting a violation to a government agency, best practice may be to try to find a workplace solution before seeking government oversight. Must follow anti-retaliation whistleblower practices. If "filing a claim" means filing under a contract with a GC, you should follow your normal contracting practices and seek local legal advice to interpret contract and local obligations.

21 **Question: The additional $600.00 unemployment per week will mean that many of our employees will actually make more considering taxes than they would have made working a 40-hour week. I fear that the NDERA agreement's use of "imminent fear" will cause many of them to take this route although they have not been directly affected when they ask for a furlough. Did NECA take this into account when they agreed to the NDERA?**

The NDERA was drafted to allow employers to recall employees if/when their jobsites are reopened following a COVID-19 closure or slowdown. The NDERA also assists employers in keeping their employees and jobsites safe during this pandemic. The language of "imminent fear" comes directly from OSHA safety standards language and is designed to put some objectivity into an individual employee's safety assessment. It is a difficult balance, particularly is this unprecedented environment.

The NDERA was also drafted before the CARES Act significantly sweetened the unemployment pot. The language regarding not "contesting" unemployment does not mean that employers should not comply with the law. Employers should absolutely be accurate when responding to unemployment claims and realize that the state is the final arbiter of unemployment eligibility. If a state chooses to deny a benefit because of information provided by the employer, this is the state's decision. That employer is complying with the NDERA.

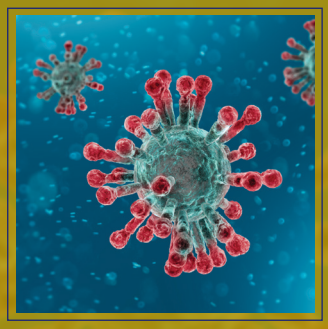
22 **Question: Are sample notice letters available from NECA that would be applicable in most instances for the standard AIA contracts for issues like delay, impact, suspension, etc.?**

Yes, we have posted some templates on the NECA resource center.

23 **Question: In the CARES Act, for the list of costs not eligible for payroll reimbursement in the small business debt relief program, I see information about $100,000 compensation limits. Does that mean $100,000 per month or per year? If the $100,000 limit is then reached, does the loan not cover any of the compensation, or, is it that they compensate up to $100,00 and then the owner is to cover the remainder?**

The $100,000 limit is used to calculate your payroll costs to determine how much loan eligibility you have. If you do not have employees that are paid over $100,000/year then this won't apply. If you do have employees paid over $100,000/year you can only count $100,000/year of each employee's salary when calculating the amount of loan for which you qualify.

24 **Question: Will a single notice cover employee that need to travel between states for essential work? Or will separate notices be needed?**



Best practice would be to draft a notice that covers the exceptions in each relevant state and/or locality.

25 Question: If work is deemed essential and employees refuse to work due to belief of imminent danger from exposure to COVID-19, does the employer have to approve unemployment?

The NDERA was drafted to allow employers to recall employees if/when their jobsites are reopened due to a COVID-19 closure or slowdown. The NDERA also assists employers in keeping their employees and jobsites safe during this pandemic. The language of "imminent fear" comes directly from OSHA safety standards language and is designed to put some objectivity into an individual employee's safety assessment. It is a difficult balance, particularly is this unprecedented environment.

The NDERA was also drafted before the CARES Act significantly sweetened the unemployment pot. The language regarding not "contesting" unemployment does not mean that employers should not comply with the law. Employers should absolutely be accurate when responding to unemployment claims and realize that the state is the final arbiter of unemployment eligibility. If a state chooses to deny a benefit because of information provided by the employer, this is the state's decision. That employer is complying with the NDERA.

26 Question: Can you break down the FLSA regular rate of pay for FFCRA?

The DOL has set out guidance on this here:
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

The "regular rate of pay" is that which is determined using the FLSA calculation standard, explained here:
https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate

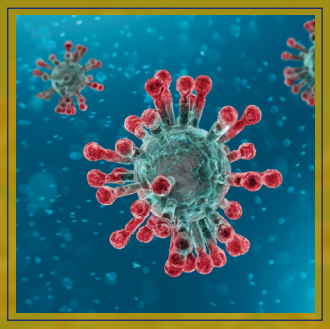
27 Question: Regarding the Paycheck Protection Program, the forgiveness calculation is based in part on the employers' ability to employ average full-time equivalents per month during the eight- or ten-week period after loan origination as compared to the average full-time equivalents during the 2 defined periods. What constitutes a full-time equivalent employee?

Although the CARES Act does not define Full Time Equivalent, it is a term of art in labor and employment; therefore, the standard definition should be used. Generally speaking, a full-time equivalent employee is a combination of employees, each of whom, individually, is not a full-time employee, but who collectively are equivalent to a full-time employee. So, for example, two employees who each work an average of 20 hours per week are equivalent to one full-time employee. However, for purposes of determining eligibility under the Paycheck Protection Program, all individuals employed on a full-time, part-time or other basis are used to calculate the number of employees.

28 Question: Do payroll taxes and fringe benefits count against the $511/day cap?

No.

29 Question: If there is a suspected but unconfirmed COVID-19 infection and the employer asks an employee to quarantine, is the employee eligible for



FFCRA benefits?

No.

30 **Question: Employee rights poster indicates 2/3 pay capped at $2K is for reasons #4 and #6, not #5 childcare?**

Employees are eligible for paid sick leave for Reason #5 (childcare) at 2/3 of their salary capped at $200/day and $2,000 over a two-week period. See Question #7 in the DOL FAQ. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

31 **Question: Can you please address where a state such as Washington State has paid sick leave and a Paid Family Medical Leave, does Federal come first or State? Who dictates that employer/employee? Guidance would be appreciated.**

FFCRA benefits are in addition to other paid leave benefits. See Question #46 in the DOL FAQ. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions.

32 **Question: Does extended FMLA apply to employers with less than 50 employees?**

Yes.

33 **Question: Is there an age limit for when employees request paid leave for the childcare provider reason? How do employers document?**

Age limits are discussed in Question #66 of the DOL FAQ. Documentation is addressed in Question #15 of the FAQ. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

34 **Question: If an employee tested positive for COVID-19 on March 30 and was placed in quarantine, will he be eligible for paid sick leave effective April 1 for the remainder of his quarantine? Or is he excluded from paid sick leave since he was quarantined prior to April 1?**

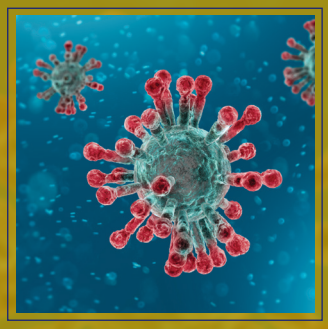
Eligible, but there is no retroactive pay required.

35 **Question: What if your employee is on furlough (temp layoff) due to lack of work, and then on 4/1 they bring you a school closure note and state they are off work due to childcare issues? Would you have to pay them FFCRA benefits?**

No. Furloughed individuals are not eligible for benefits. See Question #26 in the DOL FAQ https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

36 **Question: If they need to stay home to care for children not in school or daycare. What is the age limit requirement for the children? I.e. Kids are high school age 15 and 18. Do we need to pay?**

Age limits are discussed in Question #66 of the DOL FAQ. In this scenario, if the employee has documentation to prove that childcare is unavailable and the schools are closed, the employee is eligible for FFCRA benefits.
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions



37 Question: Do healthcare premiums count toward the wage caps in the FFCRA?

No. They are in addition to these caps. The employer can claim these payments for a tax reimbursement as they would the wages.

38 Question: Is the apprenticeship contribution considered a fringe benefit?

Yes. We do not have guidance on if these are required payments when an individual is receiving FFCRA benefits.

39 Question: Has the DOL determined the procedure for claiming a hardship under the 50 employee or less rule in the FFCRA?

Procedure, No. Qualifications, Yes. It is limited. See DOL FAQS 58 and 59: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

(58) When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

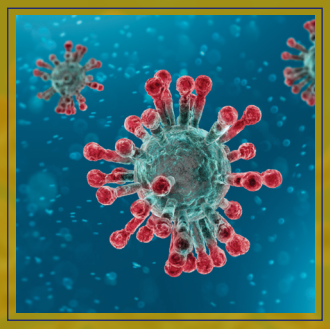
An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child-care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when 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.

(59) If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or child-care provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.



The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

40 Question: Are NECA National Service Charges owed on FFCRA payments?

NECA national has not made this determination. Local Chapters would have to make the decision on their local service charges.

41 Question: Are Payroll Protection Plan funds available to pay bargained for employees? If so, what is the basis for pay (40 hours?) and should fringes be paid on those hours?

Yes. The basis for pay is as defined by the FFCRA and calculation of the regular rate of pay as defined by the FFCRA in the DOL FAQ. The determination on how fringes should be made has yet to be made. This decision is pending guidance from the DOL and respective parties. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

42 Question: How is NEBF applicable to the FFCRA since the affected employee is not working?

NEBF is due on "gross labor payroll." This term is broadly defined. The FFCRA are deemed wages under the legislation.

43 Question: Is NEBF contribution owed on FFCRA payments?

NEBF is due on "gross labor payroll." This term is broadly defined. The FFCRA are deemed wages under the legislation.

44 Question: Do the IBEW working dues get deducted from PSL 80-hour wages?

The IBEW has not provided guidance on this.

45 Question: If none of my employees qualify for the additional 80 hours of sick pay how long do I have to make this available?

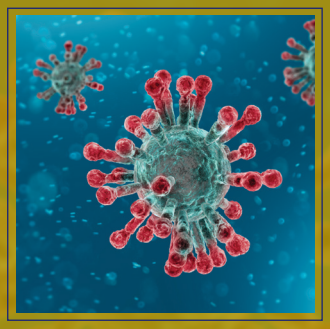
The FFCRA is effective until 12/31/2020.

46 Question: In Jef's example, where an employer has paid $4,000 in sick/family leave and $9,000 in payroll taxes and assume an additional $2,000 in H&W contributions on the $4,000. Does the employer take a $6,000 credit out of the $9,000?

Yes.

47 Question: Relative to PPP, on the salary limitation of $100,000, is this inclusive of benefits or wages only?

Payroll costs includes benefits, wages and certain payroll taxes. Payroll is defined as follows in the guidance issued by the Small Business Association: "Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separa-



tion or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation."

However, in the instructions published by the SBA on April 2, 2020, there are some exclusions. These exclusions include the amount of an employee's compensation greater than $100,000; compensation paid those domiciled outside the U.S.; certain federal employment taxes and any compensation paid for Emergency Paid Sick Leave or Emergency FMLA under the Families First Act.

48 Question: Would payment protection loans cover existing leases on equipment?

There is no specific mention of leases on equipment. However, loan forgiveness is available, and the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. In order to obtain loan forgiveness, the loan must be used for forgivable purposes described below and employee and compensation levels maintained.

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

49 Question: PPP—what if employees quit during the forgiveness period? Employer wants to retain but the employees quit.

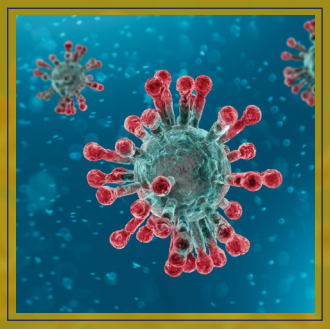
The Paycheck Protection Program does not require that you have the same employees, only the same number of employees. If someone quits, you may hire a replacement and still meet the standard.

50 Question: PPP—are layoffs due to market conditions (oil and gas industry) counted in addition to layoffs due to COVID-19?

Yes, all furloughs due to the current state of the world are included.

51 Question: Will the Small Business Loans be turned into a grant?

Loan forgiveness is available, and the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be



responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

52 Question: For the loans, when is the 500-employee count done? How do you calculate it (for eligibility) if your company fluctuates between fewer than and more than 500?

Although there has not been a specific answer to this question, we believe a company will have a good faith reasoning to use FTEs. Primarily because, the SBA has already established that FTE will be the ultimate measure for maintaining headcount.

In addition, there has not been guidance for when you conduct the FTE calculation, as such, there is an argument to use any of the following: December 31, 2019, February 15, 2020, or the date you apply for the loan.

53 Question: Will bargained employees who have been furloughed count against the head count for loan purposes? Does loan forgiveness apply if only paying wages to office workers?

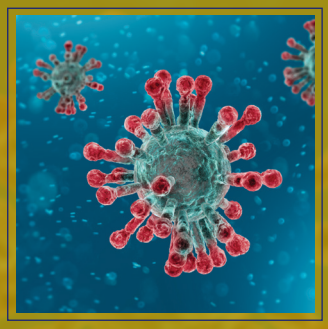
There has not been guidance for when you conduct the FTE calculation, so, as above, it depends on the date chosen for the count and when the employee is furloughed.

Yes, the loan forgiveness applies even if only paying office workers.

54 Question: Are the paid sick leave hours subject to workers comp cost? Is so, how do we get reimbursed?

No, unless you want the illness to be considered an occupational disease and a recordable workplace hazard under OSHA.

55 Question: Regarding PPP—If your company experienced a downsize in 2019 not related to COVID-19 but has maintained the same average monthly payroll in 2020 are you still subject to the proportional reduction of loan forgiveness?



Although the SBA has not answered this specific question, at this time we believe, the measure of time is the number of employees on February 15, 2020 to the number of employees on June 30, 2020 headcount.

56 Question: Under the CARES Act, what constitutes a business for the 500 or less employee cap? Each business location of a company? Each individual NAICS code? Or each entity within a tax-controlled group?

The SBA has released additional guidance on affiliate companies. The test includes a consideration of ownership in excess of 50%, control and potential control, common management, and familial relationship.

57 Question: What liability and latitude does an employer have if an employee is willing to work, has no symptoms, but admits to being exposed to someone who has or has had COVID-19?

Under the NDERA and the law and CDC guidance, the employer can require this employee to obtain a doctor's release before returning to work. The liability to the employer could be great if this individual is in fact carrying the virus and infects others on the jobsite. Also see the NECA Legal Alert on COVID-19 and Contractor Liability.

58 Question: Will there be some type of flow chart on which federal program is best for employers to pursue? Time to publish?

Please see the new comparison chart on the NECA Resource Center.

59 Question: What ways can an employer push back on union information requests?

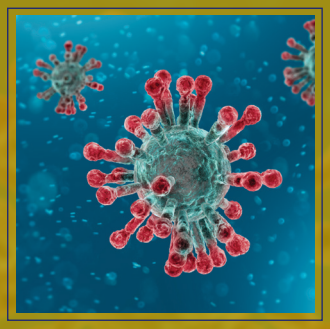
In general, an employer must comply with a request for information from the Union. If the request for information is not relevant or places an undue burden on the employer, the employer should communicate this to the Union and seek a way to comply. The employer should seek competent legal counsel when dealing with requests for information from the Union.

60 Question: Most released guidelines reference individuals (or close contacts) confirmed (or seeking medical confirmation) for COVID-19. There seems to be a gray area concerning people who MAY have COVID-19, but due to testing criteria, are unable to obtain a COVID-19 test.

The triggers for FFCRA sick leave are:

- Subject to a government quarantine or isolation order related to COVID-19;
- Have been advised by health provider to self-quarantine due to COVID-19;
- Experiencing symptoms of COVID-19 and seeking medical diagnosis;
- Caring for an individual subject to quarantine order or self-quarantine;
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency; or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

61 Question: If an employee has taken leave due to, he/she (or close contact) exhibiting Covid-19 symptoms, how/when can the contractor allow the



employee return to work in the absence of a currently unobtainable Covid-19 test?

If an employee has confirmed to have COVID-19 or has been in contact with someone with COVID-19, they are required to obtain a doctor's release before returning to work according to the NDERA and best guidance from CDC and OSHA.

62 Question: Is there any legal counsel on how an employee returns to work after being in contact with COVID-19?

This is a safety/medical issue. If an employee has confirmed to have COVID-19 or has been in contact with someone with COVID-19, they are required to obtain a doctor's release before returning to work according to the NDERA and best guidance from CDC and OSHA.

63 Question: Would the Management Rights Clause come into play If an employer implemented a new safety procedure or whatever not in the CBA?

The employer has the right to implement any policies or procedures that do not conflict with the collective bargaining agreement or a mandatory subject of bargaining. In this case, if the employer is implementing a safety procedure to protect the jobsite and the employees, they should notify the Union of such as this could restrict access to the jobsite for an employee.

64 Question: When is the determination of the 500-employee threshold determined?

This is addressed in Question #2 of the DOL FAQ.
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

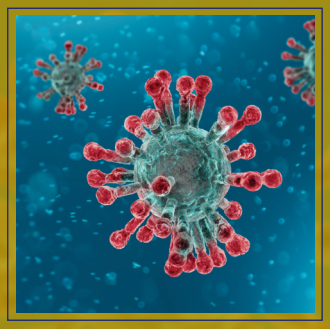
65 Question: Regarding PPP and full-time equivalent employees, I need to understand what constitutes an FTE employ. This has the potential to impact our ability to meet the 25% guideline for forgiveness on the SBA loan.

The standard SBA language is: In determining a business' number of employees, SBA counts the average number of employees based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. Part-time and temporary employees are counted the same as full-time employees. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

However, see above questions for additional details about FTEs and employee counts.

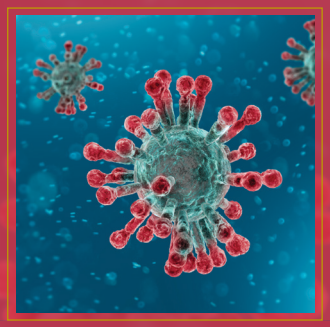
66 Question: Regarding PPP is the $100,000 compensation limit inclusive of employee benefits or is the $100,000 wages only?

The compensation limit is inclusive of employee benefits. Payroll is defined as follows in the guidance issued by the Small Business Association: "Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee ben-



efits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation."

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.



NECA Safety

Respirators/Facemasks: Required, Recommended and Voluntary Uses

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

General

Employers are required, where a hazard exists, to have written respirator programs that complies with OSHA Regulations and is meant to protect workers from recognized hazards associated with exposures and oxygen deficient atmospheres. These programs require proper risk assessments to be completed to determine appropriate personal protective equipment, (PPE), that is needed for employee protection. While other entities or municipalities may impose stricter guidelines and guidance in evolving situations, it is important to remember what is required, what is recommended or when voluntary use of respirator and PPE use by individuals.

Required PPE and Masks

In required situations where exposure is expected or deemed a job hazard, all necessary PPE would be needed and that would include face shield, gloves, protective garments in addition to N-95 or better approved respirators for protection. These are meant to prevent the worker from becoming infected in exposure situations. The CDC, OSHA and World Health Organizations, (WHO), still require that healthcare workers and others with direct exposure wear approved N-95 style respirators and other required PPE since they are designed to prevent an individual from becoming infected from others.

CDC Recommended Face Coverings

At this time and as of April 3rd, 2020, the Center for Disease Control and Prevention, (CDC), has recommended that person(s) going out in public wear face coverings to assist in deterring the spread of COVID-19. Many individuals could be "pre-symptomatic" or "asymptomatic" not realizing they could spread the virus in close proximity to others. Recent information has indicated that people may be infected and show no signs or symptoms and inadvertently spreading Coronavirus. Those showing no symptoms believe they could not and would not spread the disease to others.
https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html

Face Covering/Mask Requirements by Local Governing Body or Voluntary

Many jurisdictions around the country are implementing local and state requirements to wear face coverings/masks in public, and therefore requires an employer to review the use of facemasks, respirators and what are their requirements to protect employees. Since Respirators are designed to prevent an individual from becoming infected, wearing them to contain an individual's own condition may fall into the OSHA category of voluntary use. If that is the case, the employer must document with employee that they chose to wear this for personal reasons and not for direct exposures that are expected in the workplace.

Fit Testing Requirements

Face coverings and surgical masks do not require fit testing, either qualitative or quantitative, as a direct exposure respirator would. The use of these face coverings is simply intended to expand the social distancing and spatial separation recommendations from governmental agencies and work to prevent any incidental spread. Face Coverings are not Personal Protective Equipment (PPE) preventing exposure from others and therefore should not be used as such.

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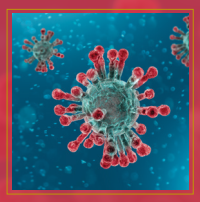
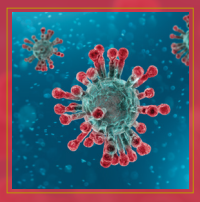


NECA Safety: **Respirators/Facemasks: Required, Recommended and Voluntary Uses**

Coronavirus COVID-19 Respiratory Guidance			
Required Uses	**Recommended Uses**	**Voluntary Uses**	**CDC/WHO Directives**
For exposures that are Immediately Dangerous to Life and Health, (IDLH) For Oxygen deficient atmospheres When exposure levels are above the Personal Exposure Limit, (PEL) When exposure exceeds the Time Weighted Average, (TWA) and/or the 15-Minute Short-Term Exposure Limit, (STEL) For protection against Gases and Vapors For healthcare workers where infectious exposures are present	Where exposures could be present that are IDLH In dusty environments Possible infectious exposures in healthcare settings Where conditions could change to an oxygen deficient atmosphere	When an employee requests and it does not create any additional hazards Follow all use, care, maintenance and storage requirements Understand limitation of different types of respirators	**DO** Wear in public or community locations Completely cover your mouth and nose Follow manufacturer's directions and instructions Maintain proper adjustment and keep face covering clean Keep control of your mask/covering Stay away from rotating machinery that could entangle Replace when soiled or damaged **DON'T** Allow covering to obstruct vision Wear it if you have any breathing difficulties Wear it around the neck or let it hang down Lay it down on any surface that could cause contamination Take it home, dispose of if soiled on the job Use it if it is damaged or soiled

Important things to remember:

- Individuals should wear face covering when they are in a public or community setting.
- Infants younger than 2 and individuals with known breathing difficulties should refrain from using face coverings or respirators and follow recommendation from licensed healthcare professionals. It is also recommended to stay inside and away from others.
- Social Distancing and 6' spatial separation should continue as the norm until new guidelines are released by the CDC and Government.



- N-95 Respirators shall be used by healthcare workers, medical first responders and other with direct exposure possibilities. Follow all respirator program requirements.
- Remember, if you feel sick or show symptoms, self-quarantine and seek medical assistance. A medical professional will decide on testing protocols based on your symptoms.
- If difficulty in breathing develops, seek medical help immediately.

For further information on Respiratory Protection Standard and Written Respirator Programs, see:
https://www.osha.gov/Publications/3384small-entity-for-respiratory-protection-standard-rev.pdf

For NECA Respirator Program Template, please visit the NECA Coronavirus Resource Page at:
https://www.necanet.org/industry-priorities/safety-regulations/neca-coronavirus-resource-center

NECA SAFETY

Written Respirator Program

Company Name: _____

Company Address: _____

Job Location: _____

A. PURPOSE AND SCOPE

This program is developed to comply with 29 CFR 1910.134 and 1926.103 - Respiratory Protection to ensure the protection of _____ employees while using respiratory protection. This program is designed to assist the company in developing, managing and training company employees where respirators are used during the course of their job duties and when they are used on a voluntary basis. A proper risk assessment must be completed prior to any task or potential exposure where a respirator, air purifying or air-supplying is used. If a hazard assessment or information from the host employer indicates that respirator use is required, this program is not adequate.

This program applies to all employees who are required to wear respirators during normal work operations and during some non-routine or emergency operations where recognized hazardous exposures or atmospheres may be present or in the case of a spill of a hazardous substance where appropriate personal protective equipment is required.

B. RESPONSIBILITES

Program Administrator or Safety Director: _____

Medical Evaluator's Phone Number: _____

Project Supervisor: _____

The Program Administrator or Safety Director is responsible for administering the respirator program. Those responsibilities will include:

- Identify work areas, exposures, processes or tasks that would require a worker to wear a respirator and evaluate the hazards that require this protection.
- Implement and operate a periodic, annual evaluation of the Respiratory Protection Program.
- Determine when and where respirators must be used or when respirators, filtering face pieces (dust masks), or face coverings per Center for Disease Control and Prevention can be used on a voluntary basis where they are requested but not required by the standard.
- Supply and provide appropriate respirators where they are needed and at the request of employees, allow them to use self-provided respirators, filtering face pieces, (dust masks), or face coverings when and where respirator use is not required but requested, if their use will not create a hazard.
- Be responsible for determining the potential need for respirators at each work location. Employees will rely mainly on hazard assessment information provided by the Host Employer regarding the potential need for respirators.
- Arrange for proper medical evaluation and fit testing where required and conduct fit tests before voluntary respirator use is permitted. Retesting will be done annually or if there is a physical change that could affect respirator use. Respiratory equipment will be provided to all employees that may be exposed to harmful vapors and oxygen deficient atmospheres.

- Ensure employees are trained to recognize hazards that require respirator use and the in the proper care, cleaning and maintenance of respirators.

Supervisor

The Supervisor for ensuring that the respiratory protection program is implemented and where required, all personal protective equipment components are available for employees. The supervisor shall be knowledgeable about the program and ensure understanding and compliance by the workers under their supervision.

The duties of the supervisor shall include:

- Verifying employees have received proper training, fit testing and medical evaluations
- Ensuring availability of appropriate respirators and accessories needed by employees. Where air-supplying respirators are used, verify quantity, quality and flow rates where used.
- Be aware of the task(s) where respirators are required, recommended are can be used on a voluntary basis.
- Ensure respirators are properly cleaned, disinfected, maintained, inspected, and stored according to the company respiratory program.
- Monitoring proper fit and use of individuals respirator to ensure comfort and compliance with the program.
- Ensure that employees who use respirators voluntarily are also medically fit to do so; as determined by a medical evaluation.

Employee

Each employee has the responsibility to:

- Wear and use respirators when and where they are required according to their training.
- Immediately report any change in medical condition that could affect respirator use.
- Be trained on respirator use, care and maintenance in addition to proper storage.

C. PROGRAM ELEMENTS

Respirators will be selected based on the hazards to which employee(s) are exposed and in accordance with applicable OSHA standards, in addition to all federal regulations, state mandates, and local guidelines where imposed. These hazards could include particulates, vapors, biological/infectious agents and chemical exposures that in some cases represent

Immediately Dangerous to Life or Health, (IDLH), conditions. The purpose of this program is to ensure that all employees are protected from exposure to these respiratory hazards.

A proper hazard evaluation will be conducted by performing an appropriate risk assessment for each operation, process and/or work area that could contain airborne contaminates. A determination will also be made on the need for monitoring, initial and/or continuous, and a record of any results shall be kept on file.

Respirators selection will be based on the Assigned Protection Factor (APF) and calculated Maximum Use Concentrations, (MCUs). It is recommended to have a variety of sizes and styles available for proper fit testing procedures. All respirators must be certified by the National Institute for Occupational Safety and Health, (NIOSH) and used according to their listing and terms of certification.

Medical Evaluation: Employees who are either required to wear respirators, or who choose to wear a respiratory protection voluntarily, must pass a medical exam before being permitted to wear a respirator on the job. Employees are not permitted to wear respirators until a Professional Licensed Health Care Professional, (PLHCP), has determined that they are medically able to do so. Any employee refusing the medical evaluation

will not be allowed to work in an area requiring respirator use. A PLHCP where all company medical services are provided, will provide the medical evaluations.

Medical evaluations will be given to determine the employee's ability to wear a respirator. This evaluation is confidential and will not be seen by unauthorized employees. The evaluation includes a medical questionnaire to be completed by the employee and returned to the Medical Evaluator. When a change in the workplace conditions in-crease the physiological burden on an employee

Medical evaluation procedures are as follows:

- The medical evaluation will be conducted using the questionnaire provided in Appendix C of the Respiratory Protection standard.
- All affected employees will be provided a copy of the medical questionnaire to fill out.

The Medical Evaluator will contact the employee if a medical exam is required. Medical exams will be necessary if an employee responds "yes" to Questions 1 through 8 on the questionnaire or:

- The employee reports medical signs or conditions related to respirator use
- At the request of a supervisor, Physician or Licensed Health Care professional (PLHCP) or a respirator program administrator
- When observations or information indicate a need for an evaluation

Any employee required for medical reasons to wear a positive pressure air purifying respirator will be provided with a powered air purifying respirator. After an employee has received clearance and begun to wear his or her respirator, additional medical evaluations will be provided as needed.

Exception: This does not apply to an employee whose only use of respirators involves the voluntary use of filtering face pieces (dust masks) or CDC recommended Face Coverings.

- Medical evaluations will be kept on file in personnel records and by the medical evaluator.

Fit Testing

Employee will be fit tested per program requirements.

Note: this is an option that can be selected by employees.

- All employees wearing a tight-fitting face piece respirator must pass a Qualitative or Quantitative fit test.
- The fit test will be given after the medical evaluation is completed and before respirator use is permitted. Re-testing will be done annually or when there is a change in physical condition that could affect respirator fit.
- Required when wearing half facepiece APRs when they are required for exposures per this program.
- Employees voluntarily wearing half facepiece APRs may also be fit tested upon request.
- Tested prior to being allowed to wear any respirator with a tight fitting facepiece.
- Annually.
- When there are changes in the employee's physical condition that could affect respiratory fit (e.g., obvious change in body weight, facial scarring, etc.).

D. ACTION DETAILS

Respirator Selection

- Respirators will be selected based on Hazard Assessment that are NIOSH–certified and used in accordance with the conditions of certification. A representative number of respirator models and sizes will be available to ensure that employees will be able to select a comfortable, properly fitted respirator.

Respirator Use – Employee Responsibilities

- Employees will use their respirators under conditions specified by this program, and in accord with the training they receive on the use of each particular model. In addition, the respirator must not be used in a manner for which it is not certified by NIOSH or by its manufacturer.
- No employee will be allowed to wear a tight-fitting face piece respirator with a beard or when any facial hair interferes with the face to face piece seal of the respirator or with the valve function.
- Any other PPE must be worn so it doesn't interfere with the face to face piece seal. An employee must perform a user seal check every time a respirator is put on.
- Vapor or gas cartridges or filters will be replaced based on the end of service life indicator. If no indicator is provided; employees will change them, as scheduled.

Voluntary Use of Respirators, Filtering Face Pieces (Dust Masks) or CDC Face Coverings

- Workers may wear respirators, filtering face pieces or face coverings to avoid exposures to hazards or to provide an additional level of comfort and protection, even if the amount of hazardous substance does not exceed the limits set by OSHA standards.
- When voluntary use of respirators or filtering face pieces (dust masks) is allowed, the employee agrees to the following requirements:
- Company employees will read and comply with the following:
  - ► Read and follow all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirator limitations.
    - ♦ Note: If a respirator is used improperly or is not kept clean, the respirator itself can become a hazard to you.
  - ► Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and the level of protection it provides.
  - ► Not wear respirators into atmospheres containing contaminants for which the respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect against gases, vapors, or very small solid particles of fumes or smoke.
  - ► Keep track of the assigned respirator so that you do not mistakenly use someone else's respirator.
  - ► Be medically evaluated prior to respirator use.
  - ► Be responsible for properly cleaning, storing and maintaining their respirators.

General Maintenance

- Respirator maintenance will be done in accordance with manufacturer's recommendations.
- Employees will be given time to and will be responsible for the cleaning, disinfecting, inspection and storage of respirators.
- Respirators will be inspected before each use and during routine cleaning.
- All respirators found to be defective must be brought to the attention of the Supervisor or the Safety Director and will be removed from service and discarded or tagged as defective.

Inspection Checklist

The following checklist will be used when inspecting respirators:

Facepiece:

- cracks, tears, or holes
- facemask distortion
- cracked or loose lenses/faceshield

Valves:

- Residue or dirt
- Cracks or tears in valve material

Head-straps:

- breaks or tears
- broken buckles

Filters/Cartridges:

- approval designation
- gaskets
- cracks or dents in housing
- proper cartridge for hazard

Air Supply Systems:

- breathing air quality/grade
- condition of supply hoses
- hose connections
- settings on regulators and valves

E. TRAINING

- Before wearing a respirator in the workplace, employees will receive training on the respiratory hazards to which they are exposed, the proper use, care, and maintenance of respirators, and the limitations of the respirators.
- Each employee must be able to demonstrate a working knowledge of:
- Respirator function and usefulness
- The effects of improper fit, usage, and maintenance on a respirator's effectiveness
- Limitations and capabilities of the respirator
- The correct way to inspect, put on, remove, use and check the seals of the respirator
- Proper respirator cleaning, maintenance and storage, as appropriate.
- Proper training will be done initially. Retraining will be done at least annually or when:
    - ► There are changes in the workplace or the type of respirator being used
    - ► Employee use indicates a lack of knowledge or the proper use.

F. PROGRAM EVALUATION

- A checklist will be used to evaluate the effectiveness and implementation of the Respiratory Protection Program.
- The program will be modified as needed and additional training added whenever there is an indication there is improper use or lack of knowledge or respiratory protection.
- Employees will provide feedback on the program's effectiveness.

G. RECORDKEEPING

A written copy of this program and the OSHA standard is kept in the **Program Administrator's** office and is available to all employees who wish to review it.

The following records will be kept on file, as required:

- Fit tests, if required,
- Respirator training,
- Medical recommendation for respirator use, and
- All other documents that support the written program.
- Example: any air monitoring records and information on hazard assessments provided by host employers.

Table: A list of _____ employees currently included in the medical surveillance program/Date of Listing.

Name of first employee _____ Date _____

Second name _____ Date_____

Next name_____ Date_____

Next name_____ Date_____

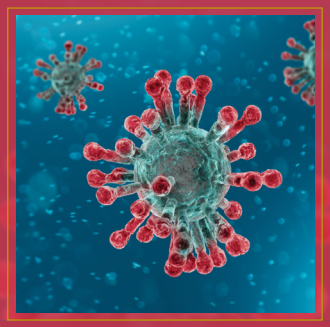
Next name_____ Date_____

Next name_____ Date_____

Next name_____ Date_____

Next name_____ Date_____

Last name_____ Date _____



Return

COVID-19 Guidelines on Social Distancing

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

With many construction sites remaining operational during the COVID-19 pandemic, it is extremely important to maintain compliance with all social distancing guidelines and requirements. The following recommendations are specific to construction projects that continue to be operational. While these are fairly comprehensive, they are not all-inclusive. The needs of each site can vary. State or other local requirements can be more restrictive, and would take precedent.

- Limit the jobsite to essential employees, and keep any visitors and vendors from being in close proximity to workers.
- Maintain a log of all employees on the jobsite.
- Allow only 1 person per aerial lift bucket, scaffold platform or other confined area to maintain appropriate space separation.
- Suspend or postpone work requiring 2 or more people in close proximity.
- Use full body PPE (health related in addition to other hazards identified in risk assessment) in situations where work involving 2 or more workers in close proximity must take place.
- Encourage workers to stay home if they show any signs of illness.
- Regularly clean and disinfect surfaces, common work area and tables, tools, desks, cell phones and any other item(s) that could be shared.
- Use approved cleaning chemicals and follow all label and SDS requirements and manufacturer's instructions

Below is a link to the CDC guidance on Social Distancing:
https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html

Below is the link to the CDC guidance on face coverings to be used in conjunction with social distancing:
https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html

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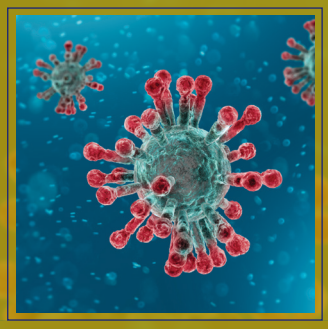

Guidance for NECA Chapters and Employers on Payment of Fringe Contributions on Families First Coronavirus Response Act Leave

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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By: NECA National Labor Relations and General Counsel
Greg Ossi, *Faegre Drinker Biddle and Reath, LLP*

Local Chapters and Unions are encouraged to bargain arrangements on the payment of local fringe benefits to address the requirements of the Families First Coronavirus Response Act. The purpose of this document is to provide guidance if the local parties have not yet reached a solution.

What Does the Law Require?

If an employer must provide paid leave to an employee under the FFCRA, the law requires payment of wages (at that employee's regular rate of pay as defined by the Fair Labor Standards Act); payment of the employer's portion of the Medicare tax (but not the employer's portion of Social Security tax, *click here for DOL Fact Sheet*) on those wages[1], and continued coverage under the group health plan on the same terms as if the employee did not take leave. The law is silent on contributions or deductions related to any other fringe benefits.

Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020.

While the payment of wages and Medicare tax is relatively straightforward, continuing coverage under the group health plan is not. If the employer contributes to health insurance provided by a multiemployer/union trust fund, then that is the kind of group health plan that must continue coverage. The conservative approach to this requirement is for the employer to pay the health fringe contribution on the amount of FFCRA leave it gives the employee. Employers should check with the local NECA chapter or plan administrator for any material modifications made to the plan to see if the employee's *coverage* would not be impacted by a failure to make those contributions. Whether coverage would be impacted depends on the terms of that plan.

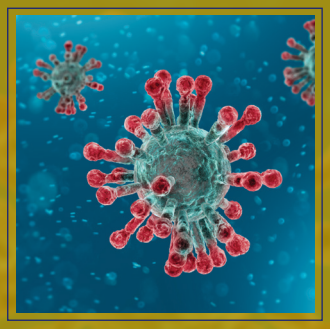
What Do the CBA and Other Fringe Funds Require?

Beyond the requirements of the law, an employer must consider the requirements of any contract to which it is bound, including a CBA or fringe benefit fund participation agreement. These contracts often incorporate other terms the employer must follow, like the terms of the plan and trust documents of the fringe benefit funds. It is possible that the CBA and/or the plan documents require the employer to make fund contributions on the amount of FFCRA leave it gives an employee. Employers should check with their local NECA chapters for interpretation of the CBA.

The first place to look is CBA's provisions about fringe contributions:

- An employer likely must make contributions to fringes calculated by "Gross Labor Payroll," like the NEBF or "Percentage of straight-time rate of pay," unless specifically waived.

1 Note that the employer must still withhold the *employee's* share of social security and Medicare taxes on the qualifi d leave wages paid.



- If the fringe is calculated by "hours paid," or "hours worked" it falls into a legal grey area, and the local parties are encouraged to bargain for an acceptable solution or suspension of fringe payments on these calculations.

Employers should contact their local NECA chapter to determine any local practices on the payment of hours not worked. Evidence of those determinations should be considered in the following order (in decreasing order of importance):

- The language of the CBA regarding when fringes are owed and how they are calculated;
- The language of plan documents signed by the employer;
- The language of the plan;
- Guidance from the plan regarding when fringes are owed and how they are calculated;
- Past practice of employers paying those fringes;
- Evidence of what union and employer bargaining representatives said in bargaining about when fringes are owed and how they are calculated.

Current Decisions on National Contributions

1. The NEBF Trustees have not waived the contributions on the FFCRA wages. The NEBF is Category I CBA language and must be paid on gross labor payroll pending any further Trustee or legal guidance. The local parties are not allowed to waive the payment of NEBF through bargaining.
2. The NLMCC enabling language requires it to be paid on hours worked. The trustees have determined that these contributions are not due because the FFCRA wages are not hours worked.
3. NECA National, with the approval of the Executive Committee, has agreed to waive the national services charges, which are paid on productive electrical payroll pursuant to the Bylaws, the extent that the productive electrical payroll is increased by wages that are paid pursuant to the FFCRA for sick and/or FMLA through June 15, 2020. NECA National will continue to review the status of the current pandemic and the impact of the FFCRA wages on our contractors and may extend this waiver as necessary.
4. The IBEW has advised that union assessments will be determined locally.

Conclusion

Ultimately, employers will need to make quick decisions about which other fringes to pay on FFCRA leave. While employers should seek the "right answer," they likely will have incomplete information at the time they run payroll. In that case, employers should weigh the risks on both sides:

- If an employer makes a fringe contribution on FFCRA leave when it truly was not due, it may depend on the provisions in the Trust agreement as to whether the plan can repay the employer. While applicable law allows for refunds based on mistake of law or fact, it stops short of requiring that the plan make the refund. Any refund due must be made within 6 months after the plan determines is was made in error. It should be noted that if an employer determines that a contribution was made when it was truly not due, the responsibility is typically on the employer to request the refund from the respective fund.
- If an employer fails to make a fringe contribution on FFCRA leave when it truly was due, the fund may catch that in an audit. If so, it would likely demand pay-

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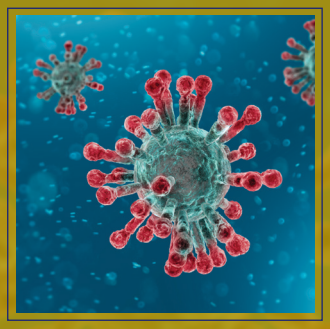

ment for the delinquent contributions along with interest. If the employer does not satisfy the fund at that time, the fund can sue the employer for the amount of contributions, liquidated damages of 20%, interest and attorneys' fees.

These are challenging times, where employers are forced to adapt to new challenges with little time and information. This guidance contains the most concrete information currently available on this topic. NECA will update its guidance as more information becomes available.

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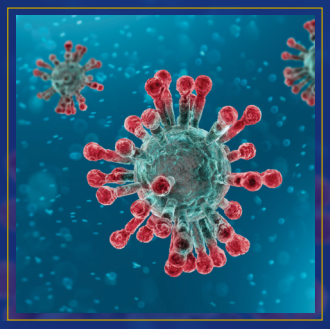

NECA Events

Procedure for Chapters Dealing with Postponements and Cancellations of Meetings and Events

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Meeting planning in the face of COVID-19 can be very stressful. None of us are in control and no one can predict what is going to happen moving forward. The most important thing is to be patient. Do not make rash decisions, weigh all of your options and call us if you need assistance. If you can, try to look at meetings 30 days at a time since the news changes daily and this can make a difference with your contract clauses. Below are steps that will help you to move forward.

- Review your contract.
- Read your force majeure clause
- Read your cancelation clause
- If there is no force majeure clause, look for termination language that references "impossibility" or "acts of God."
- Document the reasons why you cannot complete the contract. There may be specific travel restrictions, stay at home orders, or the like in place now that you can reference.
- Decide if you would like to move forward with or cancel your meeting

If you are moving forward with your meeting:

Call the hotel and let them know you are moving forward. Ask for them to help you by waiving attrition and F&B minimums. Remind them that you want to be a good partner to them. We know that some people will be reluctant to travel and this will effect meeting attendance.

If you are cancelling your meeting:

i. If the meeting is before June 1, contact the hotel about force majeure
ii. If the meeting is after June 1, we suggest you ask for a cancel and replace. The hotel may want the meeting booked in the calendar year or they may want it booked within 12 months. They also may not allow you to do this.

In the future:

You may want to consider using this force majeure clause in future contracts:

Neither party shall be liable for any delays or losses due to a party's failure to perform its obligations hereunder if such failure is caused by events or circumstances beyond its reasonable control, including but not limited to, acts of God, war, riot, governmental action, epidemic or pandemic, fire or flood, strikes or threat of strikes (exception: neither party may terminate this Agreement for strikes or labor disputes involving their own employees or agents), acts and/or threats of terrorism (supported by credible evidence or government warning) in the city or state where the Event is to be held, curtailment of transportation services preventing attendance of at least thirty percent (30%) of the anticipated Attendees from attending the Event, or enactment by state or local governments or governmental agencies of restrictive legislation, ordinances or administrative policies or litigation filed by state or local governments or governmental agencies in direct conflict with the Event and/or its fundamental purpose or similar causes, making it illegal, impossible, commercially impracticable or inadvisable to hold the Event at the Hotel, or to provide the essential Hotel facilities as originally contracted under this Agreement. Either party may terminate or suspend its obligations by any of the above occurrences upon written notice to the other party. Hotel will refund any deposits paid by NECA and Attendees within fourteen (14) days of the date of termination.

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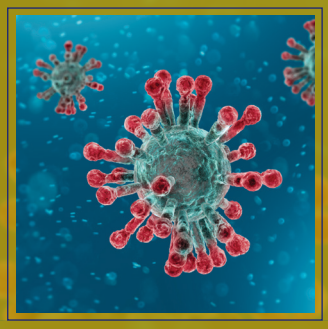

NECA Legal Webinar Q&A

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

1 **Question: Are furlough forms considered a mandatory subject of bargaining?**

We take the position that furlough and layoff forms drafted to address COVID-19 safety concerns fall within management rights and need not be bargained. It is best practice to notify the union and attempt to seek agreement. In the absence of agreement, implement and bargain effects. Also see the guidance provided in the NECA Legal Alert – COVID-19 and the Duty to Bargain.

2 **Question: If employees refuse to work due to concerns of contracting COVID-19, can the employer replace them? Does the employer have to pay individuals who choose to not work?**

This scenario, which is not sickness but FEAR of sickness, would be considered a voluntary quit due to "COVID-19 related concerns." The employer can replace these individuals and has no requirement to pay them or provide the FFCRA pay. Under the NDERA, the employer would truthfully respond to any unemployment inquiry from the state.

3 **Question: Do FFCRA benefits (EPSL & EFMLA) apply to bargained employees? How do benefits apply?**

Yes. FFCRA benefits apply to full-time and part-time employees of employers with less than 500 employees regardless of the existence of a collective bargaining agreement.

On benefits, the FFCRA only speaks to the requirement to maintain healthcare and reimbursement for the same. We are still seeking guidance from the DOL and respective national trust funds to determine the calculation and payment of benefits. As we learn more, it will be communicated.

4 **Question: If employees refuse to work due to concerns of contracting COVID-19, are they eligible for unemployment benefits (including the $600 expanded unemployment benefit)? How does the employer respond to unemployment claims given the language in the NDERA about not contesting unemployment?**

The FFCRA provides flexibility for states to amend their laws to allow for the payment of unemployment benefits for this scenario. Check with your state's unemployment office to determine if the laws have been amended to accommodate leave related to COVID-19.

The CARES Act provides increased unemployment compensation to individuals no longer working or working reduced hours. The Act provides an additional $600 of weekly unemployment compensation for up to four months for individuals already receiving state unemployment compensation. The Act also provides an additional 13 weeks of unemployment compensation to individuals who have exhausted their unemployment compensation through the state. In most states, this will provide a total of 39 weeks of unemployment compensation.

The CARES Act also creates the Pandemic Unemployment Assistance Program which makes unemployment compensation available to individuals who would not otherwise

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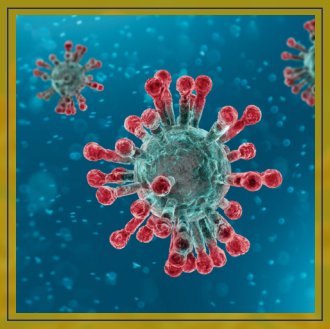

qualify for state unemployment compensation such as independent contractors, self-employed individuals, and individuals without sufficient work history. In order to qualify for benefits under this provision of the Act, an individual must be unable to work due to particular COVID-19-related circumstances as described in the Act.

The NDERA was drafted to allow employers to recall employees if/when their jobsites are reopened following a COVID-19 closure or slowdown. It also assists employers in keeping their employees and jobsites safe during this pandemic. The language regarding not "contesting" unemployment does not mean that employers should not comply with the law. Employers should absolutely be accurate when responding to unemployment claims and realize that the state is the final arbiter of unemployment eligibility. If a state chooses to deny a benefit because of information provided by the employer, this is the state's decision. That employer is complying with the NDERA.

5 Question: If employees refuse to work due to concerns of contracting COVID-19 and my state does not see this as a valid unemployment claim, is the contractor in violation of the NDERA?

See above. No. If an employee calls out consistent with the NDERA, we recommend that the contractor accurately comply with information requests from the state and inform the state that the separation was for "COVID-19 related concerns" or something to that effect – without actively contesting the claim. If the state asks if work is still available to the employee and the answer is yes, **then the answer is yes.**

6 Question: Will any provisions of the NDERA be changed/removed in future revisions of the Agreement?

The NDERA states that it will be evaluated every 30 days by the Parties, not that we need to wait that long. We are in constant discussions to address concerns received from the field and will advise immediately of any edits or adjustments.

7 Question: If an employee is feeling ill, is this an OSHA recordable event?

In almost all cases involving our contractors – No. OSHA deems illness as a recordable event if certain criteria are met. OSHA guidance provides:

COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

OSHA has published guidance on when COVID-19 can be found here: https://www.osha.gov/SLTC/covid-19/standards.html.

8 Question: How does an employer determine regular pay under the FFCRA?

The DOL has set out guidance on this here: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

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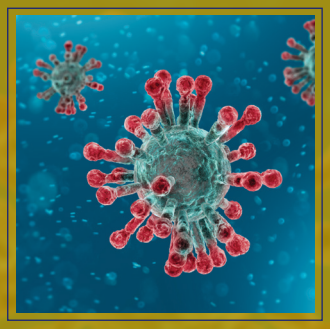

The "regular rate of pay" is that which is determined using the FLSA calculation standard, explained here:
https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate

9 Question: What qualifications must be met for a loan to be converted to a grant?

According to the SBA: Paycheck Protection Program loans will be fully forgiven to the extent the funds are used for payroll costs, interest on mortgages, rent, and utilities; so long as, at least 75% of the loan proceeds are used for payroll, and FTE headcount is the same or higher on June 30, 2020 as it was on February 15, 2020.

10 Question: Is the Small Business Association considering a small business as one with less than 500 employees in lieu of average annual sales less than $16.5 million?

Yes. Please see the updated guidance and regulations from the SBA on the NECA Resource Center. NECA Government Affairs was instrumental in removing the revenue cap.

11 Question: What is the employer's liability if the employee becomes ill on a job that remains open or remains open due to obtaining a waiver?

A contractor may be sued for anything at any time – and there will no doubt be plaintiff's lawyers circling the waters to look for lawsuits during and after this crisis. But keep in mind that there must be some underlying fraud or wrongdoing to actually impose liability. Government "essential services" directives will go a long way to insulate claims that a contractor "made me go to work and I got sick." By keeping jobs open in many jurisdictions, it will be difficult for liability to attach simply because a contractor staffs a job.

To deter liability, it is important to put in place a COVID-19 workplace safety and HR plan. NECA has developed significant guidance on our resource center such as:

- Follow essential industry, CDC and OSHA guidelines and have a COVID-19 safety plan;
- Work with your insurance company to make sure you understand coverages and address as necessary;
- Stay alert for government directives, travel restrictions and closures;
- Be sensitive to employee concerns, requests and needs.

Lastly, a word about workers' compensation. Remember that workplace injuries – to the extent that a claim is based on the contention that an injury is an occupational injury – are diverted to the workers' compensation process. There is a concept in workers' compensation known as the "Workers' compensation bar", which means that workers' compensation is normally the sole remedy for injuries that are deemed compensable and incident to the workplace. The application and interpretation of the bar varies from state to state, so contractors should make sure they are in contact with their carrier and/or third-party administrator as soon as a claim is made.

Also see the NECA Legal Alert – COVID-19 and Contractor Liability.

12 Question: Are furloughed employees eligible for emergency paid sick leave or extended FMLA benefits?

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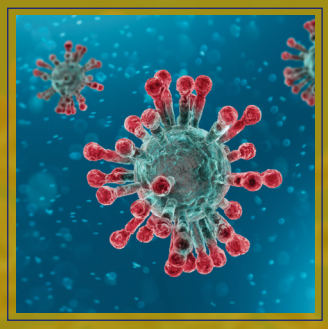

No. They are no longer employees. This is addressed in DOL FAQ Question #26: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

13 Question: Does NECA have a standard form for use by employers when employees request Sick Leave under the FFCRA?

No.

14 Question: How does the CARES Act work with the collective bargaining agreement regarding paid leave?

There is no distinction between bargained and non-bargained employees under the FFCRA or the CARES Act.

15 Question: Does the FFCRA apply to an employer with 15 or less employees?

Yes. The FFCRA applies to all employers with fewer than 500 employees.

16 Question: How long must an individual be employed for the payroll loan to become a grant?

For the loan forgiveness you will have to document and verify the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

17 Question: Why do we as electrical contractors have to provide notices since the shutdowns have been initiated from the Customer, General Contractor, Government, etc.?

We believe it is best practice to provide your employees with all notices that impact their working conditions, safety and entitlements. Certain notices are mandated by law to be posted by each employer. Take care of your own employees.

18 Question: If employees are afraid to be on a jobsite due to fear of exposure to COVID-19, can this be considered a force majeure claim?

Force majeure is a contractual provision, so first reference is to the language of the contract. If the contract provides potential relief (in the form of delays, termination, extensions, or financial forbearance) then a contractor may be able to use inability to staff a job due to COVID-19 to invoke force majeure, impossibility or other legal remedies. Case specific application.

19 Question: A general contractor told a member that it's business as usual in the construction industry. They expect us to complete the project on time per our contract despite the fact we may not be able to meet the schedule as 1/3 of our workforce has opted to take a furlough. It appears they want to play hardball.

We provided general guidance in the webinar and in other materials on the resource center on how to address construction contract issues such as delay, notice, force majeure, impossibility and other issues. Beyond that, each contractor will need competent local legal counsel to work through fact and contract specific scenarios.

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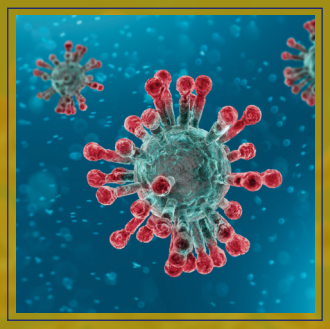

20 **Question: With regards to general conditions, such as providing hand washing stations or "adequate" restroom facilities, do you advise filing a claim if those are not being met?**

It is not clear what is meant by "filing a claim." If this means reporting a violation to a government agency, best practice may be to try to find a workplace solution before seeking government oversight. Must follow anti-retaliation whistleblower practices. If "filing a claim" means filing under a contract with a GC, you should follow your normal contracting practices and seek local legal advice to interpret contract and local obligations.

21 **Question: The additional $600.00 unemployment per week will mean that many of our employees will actually make more considering taxes than they would have made working a 40-hour week. I fear that the NDERA agreement's use of "imminent fear" will cause many of them to take this route although they have not been directly affected when they ask for a furlough. Did NECA take this into account when they agreed to the NDERA?**

The NDERA was drafted to allow employers to recall employees if/when their jobsites are reopened following a COVID-19 closure or slowdown. The NDERA also assists employers in keeping their employees and jobsites safe during this pandemic. The language of "imminent fear" comes directly from OSHA safety standards language and is designed to put some objectivity into an individual employee's safety assessment. It is a difficult balance, particularly is this unprecedented environment.

The NDERA was also drafted before the CARES Act significantly sweetened the unemployment pot. The language regarding not "contesting" unemployment does not mean that employers should not comply with the law. Employers should absolutely be accurate when responding to unemployment claims and realize that the state is the final arbiter of unemployment eligibility. If a state chooses to deny a benefit because of information provided by the employer, this is the state's decision. That employer is complying with the NDERA.

22 **Question: Are sample notice letters available from NECA that would be applicable in most instances for the standard AIA contracts for issues like delay, impact, suspension, etc.?**

Yes, we have posted some templates on the NECA resource center.

23 **Question: In the CARES Act, for the list of costs not eligible for payroll reimbursement in the small business debt relief program, I see information about $100,000 compensation limits. Does that mean $100,000 per month or per year? If the $100,000 limit is then reached, does the loan not cover any of the compensation, or, is it that they compensate up to $100,00 and then the owner is to cover the remainder?**

The $100,000 limit is used to calculate your payroll costs to determine how much loan eligibility you have. If you do not have employees that are paid over $100,000/year then this won't apply. If you do have employees paid over $100,000/year you can only count $100,000/year of each employee's salary when calculating the amount of loan for which you qualify.

24 **Question: Will a single notice cover employee that need to travel between states for essential work? Or will separate notices be needed?**

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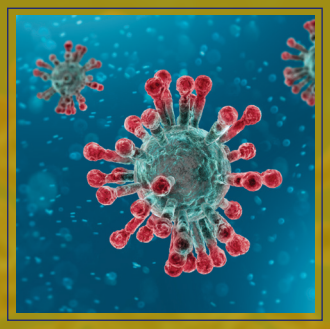

Best practice would be to draft a notice that covers the exceptions in each relevant state and/or locality.

25 Question: If work is deemed essential and employees refuse to work due to belief of imminent danger from exposure to COVID-19, does the employer have to approve unemployment?

The NDERA was drafted to allow employers to recall employees if/when their jobsites are reopened due to a COVID-19 closure or slowdown. The NDERA also assists employers in keeping their employees and jobsites safe during this pandemic. The language of "imminent fear" comes directly from OSHA safety standards language and is designed to put some objectivity into an individual employee's safety assessment. It is a difficult balance, particularly is this unprecedented environment.

The NDERA was also drafted before the CARES Act significantly sweetened the unemployment pot. The language regarding not "contesting" unemployment does not mean that employers should not comply with the law. Employers should absolutely be accurate when responding to unemployment claims and realize that the state is the final arbiter of unemployment eligibility. If a state chooses to deny a benefit because of information provided by the employer, this is the state's decision. That employer is complying with the NDERA.

26 Question: Can you break down the FLSA regular rate of pay for FFCRA?

The DOL has set out guidance on this here:
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

The "regular rate of pay" is that which is determined using the FLSA calculation standard, explained here:
https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate

27 Question: Regarding the Paycheck Protection Program, the forgiveness calculation is based in part on the employers' ability to employ average full-time equivalents per month during the eight- or ten-week period after loan origination as compared to the average full-time equivalents during the 2 defined periods. What constitutes a full-time equivalent employee?

Although the CARES Act does not define Full Time Equivalent, it is a term of art in labor and employment; therefore, the standard definition should be used. Generally speaking, a full-time equivalent employee is a combination of employees, each of whom, individually, is not a full-time employee, but who collectively are equivalent to a full-time employee. So, for example, two employees who each work an average of 20 hours per week are equivalent to one full-time employee. However, for purposes of determining eligibility under the Paycheck Protection Program, all individuals employed on a full-time, part-time or other basis are used to calculate the number of employees.

28 Question: Do payroll taxes and fringe benefits count against the $511/day cap?

No.

29 Question: If there is a suspected but unconfirmed COVID-19 infection and the employer asks an employee to quarantine, is the employee eligible for

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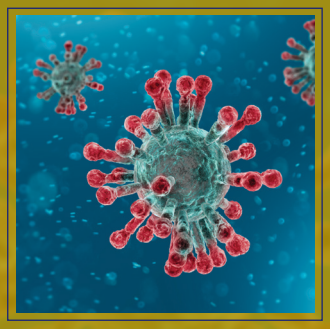

FFCRA benefits?

No.

30 **Question: Employee rights poster indicates 2/3 pay capped at $2K is for reasons #4 and #6, not #5 childcare?**

Employees are eligible for paid sick leave for Reason #5 (childcare) at 2/3 of their salary capped at $200/day and $2,000 over a two-week period. See Question #7 in the DOL FAQ. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

31 **Question: Can you please address where a state such as Washington State has paid sick leave and a Paid Family Medical Leave, does Federal come first or State? Who dictates that employer/employee? Guidance would be appreciated.**

FFCRA benefits are in addition to other paid leave benefits. See Question #46 in the DOL FAQ. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions.

32 **Question: Does extended FMLA apply to employers with less than 50 employees?**

Yes.

33 **Question: Is there an age limit for when employees request paid leave for the childcare provider reason? How do employers document?**

Age limits are discussed in Question #66 of the DOL FAQ. Documentation is addressed in Question #15 of the FAQ. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

34 **Question: If an employee tested positive for COVID-19 on March 30 and was placed in quarantine, will he be eligible for paid sick leave effective April 1 for the remainder of his quarantine? Or is he excluded from paid sick leave since he was quarantined prior to April 1?**

Eligible, but there is no retroactive pay required.

35 **Question: What if your employee is on furlough (temp layoff) due to lack of work, and then on 4/1 they bring you a school closure note and state they are off work due to childcare issues? Would you have to pay them FFCRA benefits?**

No. Furloughed individuals are not eligible for benefits. See Question #26 in the DOL FAQ https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

36 **Question: If they need to stay home to care for children not in school or daycare. What is the age limit requirement for the children? I.e. Kids are high school age 15 and 18. Do we need to pay?**

Age limits are discussed in Question #66 of the DOL FAQ. In this scenario, if the employee has documentation to prove that childcare is unavailable and the schools are closed, the employee is eligible for FFCRA benefits.
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

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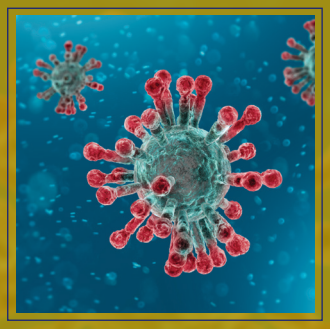

37 Question: Do healthcare premiums count toward the wage caps in the FFCRA?

No. They are in addition to these caps. The employer can claim these payments for a tax reimbursement as they would the wages.

38 Question: Is the apprenticeship contribution considered a fringe benefit?

Yes. We do not have guidance on if these are required payments when an individual is receiving FFCRA benefits.

39 Question: Has the DOL determined the procedure for claiming a hardship under the 50 employee or less rule in the FFCRA?

Procedure, No. Qualifications, Yes. It is limited. See DOL FAQS 58 and 59: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

(58) When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child-care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when 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.

(59) If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or child-care provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

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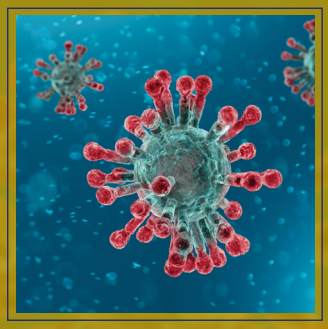

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

40 Question: Are NECA National Service Charges owed on FFCRA payments?

NECA national has not made this determination. Local Chapters would have to make the decision on their local service charges.

41 Question: Are Payroll Protection Plan funds available to pay bargained for employees? If so, what is the basis for pay (40 hours?) and should fringes be paid on those hours?

Yes. The basis for pay is as defined by the FFCRA and calculation of the regular rate of pay as defined by the FFCRA in the DOL FAQ. The determination on how fringes should be made has yet to be made. This decision is pending guidance from the DOL and respective parties. https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

42 Question: How is NEBF applicable to the FFCRA since the affected employee is not working?

NEBF is due on "gross labor payroll." This term is broadly defined. The FFCRA are deemed wages under the legislation.

43 Question: Is NEBF contribution owed on FFCRA payments?

NEBF is due on "gross labor payroll." This term is broadly defined. The FFCRA are deemed wages under the legislation.

44 Question: Do the IBEW working dues get deducted from PSL 80-hour wages?

The IBEW has not provided guidance on this.

45 Question: If none of my employees qualify for the additional 80 hours of sick pay how long do I have to make this available?

The FFCRA is effective until 12/31/2020.

46 Question: In Jef's example, where an employer has paid $4,000 in sick/family leave and $9,000 in payroll taxes and assume an additional $2,000 in H&W contributions on the $4,000. Does the employer take a $6,000 credit out of the $9,000?

Yes.

47 Question: Relative to PPP, on the salary limitation of $100,000, is this inclusive of benefits or wages only?

Supplemental response based on SBA Interim Guidance:

The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;

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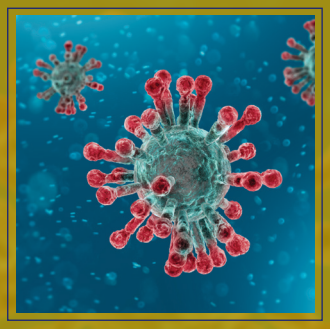

- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

48 Question: Would payment protection loans cover existing leases on equipment?

There is no specific mention of leases on equipment. However, loan forgiveness is available, and the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. In order to obtain loan forgiveness, the loan must be used for forgivable purposes described below and employee and compensation levels maintained.

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

49 Question: PPP—what if employees quit during the forgiveness period? Employer wants to retain but the employees quit.

The Paycheck Protection Program does not require that you have the same employees, only the same number of employees. If someone quits, you may hire a replacement and still meet the standard.

50 Question: PPP—are layoffs due to market conditions (oil and gas industry) counted in addition to layoffs due to COVID-19?

Yes, all furloughs due to the current state of the world are included.

51 Question: Will the Small Business Loans be turned into a grant?

Loan forgiveness is available, and the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not

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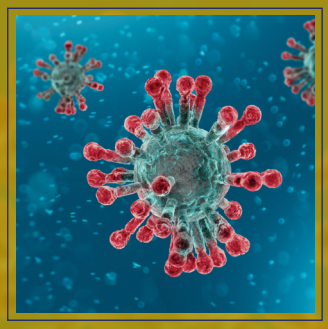

more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs. While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent). Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection. SBA will issue additional guidance on loan forgiveness.

52 **Question: For the loans, when is the 500-employee count done? How do you calculate it (for eligibility) if your company fluctuates between fewer than and more than 500?**

Although there has not been a specific answer to this question, we believe a company will have a good faith reasoning to use FTEs. Primarily because, the SBA has already established that FTE will be the ultimate measure for maintaining headcount.

In addition, there has not been guidance for when you conduct the FTE calculation, as such, there is an argument to use any of the following: December 31, 2019, February 15, 2020, or the date you apply for the loan.

53 **Question: Will bargained employees who have been furloughed count against the head count for loan purposes? Does loan forgiveness apply if only paying wages to office workers?**

There has not been guidance for when you conduct the FTE calculation, so, as above, it depends on the date chosen for the count and when the employee is furloughed.

Yes, the loan forgiveness applies even if only paying office workers.

54 **Question: Are the paid sick leave hours subject to workers comp cost? Is so, how do we get reimbursed?**

No, unless you want the illness to be considered an occupational disease and a recordable workplace hazard under OSHA.

55 **Question: Regarding PPP—If your company experienced a downsize in 2019 not related to COVID-19 but has maintained the same average monthly payroll in 2020 are you still subject to the proportional reduction of loan forgiveness?**

Although the SBA has not answered this specific question, at this time we believe, the measure of time is the number of employees on February 15, 2020 to the number of employees on June 30, 2020 headcount.

56 **Question: Under the CARES Act, what constitutes a business for the 500 or less employee cap? Each business location of a company? Each individual NAICS code? Or each entity within a tax-controlled group?**

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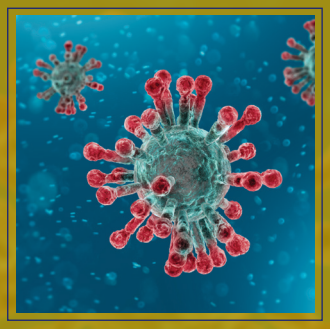

The SBA has released additional guidance on affiliate companies. The test includes a consideration of ownership in excess of 50%, control and potential control, common management, and familial relationship.

57 Question: What liability and latitude does an employer have if an employee is willing to work, has no symptoms, but admits to being exposed to someone who has or has had COVID-19?

Under the NDERA and the law and CDC guidance, the employer can require this employee to obtain a doctor's release before returning to work. The liability to the employer could be great if this individual is in fact carrying the virus and infects others on the jobsite. Also see the NECA Legal Alert on COVID-19 and Contractor Liability.

58 Question: Will there be some type of flow chart on which federal program is best for employers to pursue? Time to publish?

Please see the new comparison chart on the NECA Resource Center.

59 Question: What ways can an employer push back on union information requests?

In general, an employer must comply with a request for information from the Union. If the request for information is not relevant or places an undue burden on the employer, the employer should communicate this to the Union and seek a way to comply. The employer should seek competent legal counsel when dealing with requests for information from the Union.

60 Question: Most released guidelines reference individuals (or close contacts) confirmed (or seeking medical confirmation) for COVID-19. There seems to be a gray area concerning people who MAY have COVID-19, but due to testing criteria, are unable to obtain a COVID-19 test.

The triggers for FFCRA sick leave are:

- Subject to a government quarantine or isolation order related to COVID-19;
- Have been advised by health provider to self-quarantine due to COVID-19;
- Experiencing symptoms of COVID-19 and seeking medical diagnosis;
- Caring for an individual subject to quarantine order or self-quarantine;
- Caring for children if schools are closed or their caregiver is unavailable because of a public health emergency; or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.

61 Question: If an employee has taken leave due to, he/she (or close contact) exhibiting Covid-19 symptoms, how/when can the contractor allow the employee return to work in the absence of a currently unobtainable Covid-19 test?

If an employee has confirmed to have COVID-19 or has been in contact with someone with COVID-19, they are required to obtain a doctor's release before returning to work according to the NDERA and best guidance from CDC and OSHA.

62 Question: Is there any legal counsel on how an employee returns to work after being in contact with COVID-19?

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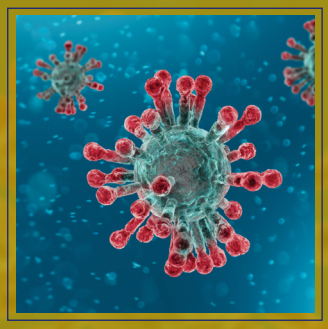

This is a safety/medical issue. If an employee has confirmed to have COVID-19 or has been in contact with someone with COVID-19, they are required to obtain a doctor's release before returning to work according to the NDERA and best guidance from CDC and OSHA.

63 Question: Would the Management Rights Clause come into play If an employer implemented a new safety procedure or whatever not in the CBA?

The employer has the right to implement any policies or procedures that do not conflict with the collective bargaining agreement or a mandatory subject of bargaining. In this case, if the employer is implementing a safety procedure to protect the jobsite and the employees, they should notify the Union of such as this could restrict access to the jobsite for an employee.

64 Question: When is the determination of the 500-employee threshold determined?

This is addressed in Question #2 of the DOL FAQ.
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

65 Question: Regarding PPP and full-time equivalent employees, I need to understand what constitutes an FTE employ. This has the potential to impact our ability to meet the 25% guideline for forgiveness on the SBA loan.

The standard SBA language is: In determining a business' number of employees, SBA counts the average number of employees based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. Part-time and temporary employees are counted the same as full-time employees. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

However, see above questions for additional details about FTEs and employee counts.

66 Question: Regarding PPP is the $100,000 compensation limit inclusive of employee benefits or is the $100,000 wages only?

Supplemental response based on SBA Interim Guidance:

The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

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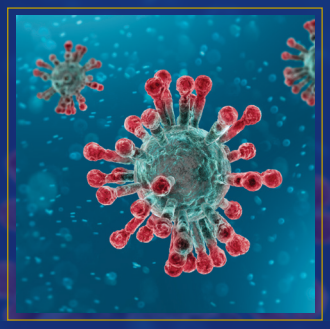

NECA Fact Sheet

Families First Coronavirus Response Act FAQ

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

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The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020, and went into effect on April 1, 2020. The FFCRA provides temporary relief to eligible employees affected by the COVID-19 pandemic. The FFCRA contains two laws that provide such relief: (1) a new paid sick leave benefit (Emergency Paid Sick Leave Act), and (2) an expansion of the FMLA (Emergency Family and Medical Leave Expansion Act).

Below are answers to commonly asked and anticipated questions regarding the FFCRA's paid leave provisions. The information provided below is based on the final text of the legislation, legislative history, and the guidance that has been issued thus far from the Department of Labor (DOL). We will continue to provide updates to this guidance as needed.

1. Does the FFCRA apply to my business?

The FFCRA applies to employers with **fewer than 500 employees** as well as certain governmental entities.

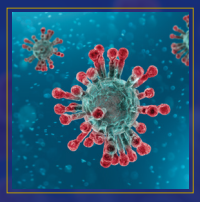
The new law does not specifically explain how employers are to count their employees to determine if they are covered, i.e. does it apply to the number of employees as of the effective date or some other prior point in time, do employers count employees across all their facilities regardless of geographic scope, etc. The forthcoming DOL guidance may address this.

> **Supplement as of March 24, 2020:** To determine whether the FFCRA is applicable to your business, you must count the number of employees that are working for you as of the date the requesting employee's leave is to be taken. If the number of employees is fewer than 500, then the FFCRA applies to the business and it must provide the paid benefits under the new law.
>
> Businesses must count: (1) full-time and part-time employees within the United States (which includes any State of the United States, the District of Columbia, or any Territory of the United States); (2) employees on leave; (3) temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and (4) day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Though, workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are **not** considered employees for purposes of the 500-employee threshold.

2. Are there any exceptions to businesses with fewer than 50 employees?

The Secretary of Labor has authority to exempt small businesses with **fewer than 50 employees,** but only if the requirements would **"jeopardize the viability of the business."** We expect that the DOL will provide guidance soon on how it will administer such exemptions.

> **Supplement as of March 26, 2020:** A small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:
>
> - Employer employs fewer than 50 employees;



- Leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- An "authorized officer" of the business has determined that at least one of the following 3 conditions is satisfied:
  - 1) the provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and fi ancial 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 fi ancial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
  - 3) there are not suffici t workers who are able, willing, and qualifi d, 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.

The DOL encourages employers and employees to collaborate to "reach the best solution for maintaining the business and ensuring employee safety."

The small businesses should document how the business meets this criteria but at least as of now are **not required to submit anything to the DOL.**

Supplement as of April 14, 2020: Any employer that denies a request for leave pursuant to the small business exemption must document and retain the determination by its authorizing officer that it meets the criteria for the exemption. That documentation must be retained for four years but not sent to the DOL. Regardless of whether a small employer chooses to exercise this exemption, the employer is still required to post the notice of FFCRA rights (for which the DOL has provided a poster that is available ***here***).

3. Are the employees of related entities counted together to determine if a company is subject to the FFCRA?

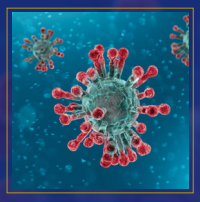
The new law does not specifically address this issue, and we are hoping the DOL guidance will provide direction. To make it even more complicated, as noted above, there are two types of paid leave (one that amends existing FMLA provisions, and one that provides a brand new two-week paid leave benefit), and each has its own 500-employee threshold.

The Emergency Family and Medical Leave Expansion Act would seem to be subject to the FMLA's existing regulations on "integrated employers." (Joint employment is also addressed under the FMLA regulations, but that's applicable when two employers have a contemporaneous employment relationship with an employee (such as with a temporary staffing (agency).) Generally, a business entity that employs employees is the "employer" under the FMLA. However, separate business entities will be deemed to be parts of a single employer for purposes of FMLA if they meet the integrated employer test. The integrated employer test focuses on the following factors to determine if two (or more) entities should be treated as a single employer: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control.[1] Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility.

However, the FFCRA provisions that add the new two-week paid leave benefit are unrelated to the FMLA. Therefore, it is not clear that the FMLA or any integrated employer-type rules would apply to the paid leave benefit provided by the Emergency Paid Sick Leave Act.

Again, we await guidance from the DOL on this issue.

1 29 CFR § 825.104(c).



Supplement as of March 24, 2020: The DOL guidance confirmed that the "integrated employer" test, as described above, should be used to determine whether the number of employees for two or more related entities should be counted together for purposes of the EFMLEA. The joint employer theory is also applicable and could be implicated to determine coverage under the EPSLA and EFMLEA. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the EPSLA and expanded family and medical leave must be provided under the EFMLEA.

4. My business has fewer than 500 employees in the U.S. but 500 or more globally. Are we required to count employees who reside and work outside the U.S. to determine if the new law applies to our business?

The legislation doesn't explicitly address this point, and here too we hope for DOL guidance. Our best assessment at this point is that employees based abroad will **not** count toward the 500. This is because the new law amends the FMLA, so we think the DOL will look to borrow from it. The FMLA, in turn, says you only count employees in the U.S.[2]

Supplement as of March 24, 2020: A business must count all employees working in any State of the United States, the District of Columbia, or any Territory of the United States.

5. Why doesn't the FFCRA apply to large employers (i.e. those with 500 or more employees)? Is Congress going to propose additional legislation that would apply to such employers?

This threshold is likely because the amounts paid to employees under the new law are related to a payroll tax credit from the government, which essentially means that the government is ultimately picking up most of the tab. Thus, expanding the law to large employers (many of which already have more generous leave policies) would be much more expensive for the government. Currently, we are unaware of any potential legislation that would cover large employers.

6. Are there any requirements under the FFCRA that affect pay for employees who are working remotely due to COVID-19?

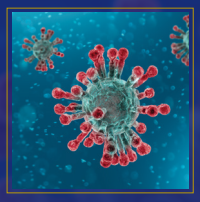
The FFCRA does not require paying an employee able to work all regularly scheduled hours from home despite the impact of COVID-19.

7. Are covered employers required to provide paid leave under the FFCRA to employees who have been furloughed or laid off due to COVID-19?

This is not specifically addressed in the new law, though we anticipate guidance to come from the DOL. Based on the information available at this point, we believe that employees who have been furloughed or laid off due to COVID-19 are not entitled to paid leave under the FFCRA, if they develop the coronavirus while on such unpaid leave. This is because arguably furloughed individuals are no longer "employees" under the Fair Labor Standards Act, which is the definition used under the FFCRA. Also, the FFCRA requires employers to provide leave "to the extent that the employee is *unable to work* (or telework) *due to* a need for leave *because*" of having the coronavirus, caring for someone with the virus, caring for kids out of school, etc. By contrast, if an employee is furloughed, the reason they are "unable work" is not "because" of one of the specified reasons in the law; rather, the reason they are unable to work in the first instance is that they are furloughed.

How long does my business have to come into compliance with this new law?

2 *See* 29 C.F.R. § 825.105 ("[T]he FMLA applies only to employees who are employed within any State of the United States, the District of Columbia or any Territory or possession of the United States. Employees who are employed outside these areas are not counted for purposes of determining employer coverage or employee eligibility.").



The DOL will be issuing a **temporary, 30-day non-enforcement policy** that provides a period of time for employers to come into compliance with the FFCRA. Thus, the DOL will not bring an enforcement action against any employer for violations of the FFCRA, so long as the employer has acted reasonably and in good faith to comply with this law.

> **Supplement as of April 14, 2020:** The DOL has reiterated that it will not bring enforcement actions against any public or private employer for violations of the FFCRA within 30 days of enactment, which is March 18 to April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the FFCRA. After April 17, this limited stay of enforcement will be lifted and the DOL will fully enforce violations of the FFCRA, as appropriate and consistent with the law. Moreover, once the DOL fully enforces the Act (i.e., after April 17), it will enforce violations back until the effective date of April 1, 2020 if employers have not remedied the violations.

8. What if my business cannot afford to comply with the FFCRA's paid leave requirements?

Covered employers can take immediate advantage of the paid leave credits and retain and access funds that they would otherwise pay to the IRS in payroll taxes. If those amounts are not enough to cover the cost of the paid leave, then employers can seek an expedited advance from the IRS by submitting a streamlined claim (to be released sometime during the week of March 23).

9. How long is this new law in effect?

Unless or until it is extended by subsequent legislation, the FFCRA will expire on **December 31, 2020.**

10. What if I have an employee who has already been on sick leave due to COVID-19 prior to this new law? Am I required to retroactively pay that employee under the FFCRA?

This is not specifically addressed in the new law; however, the news release issued on March 20, 2020, states that covered employers will be able to claim payroll credits based on qualifying leave they provide between the effective date and December 31, 2020. We are waiting on the DOL to announce the effective date; however, we know it will be on or before April 2, 2020. Based on this, covered employers should not be required to retroactively pay employees under the FFCRA.

> **Supplement as of March 24, 2020:** The FFCRA becomes effective April 1, 2020 and the paid leave benefits available under FFCRA are **not** retroactive.

Emergency Family and Medical Leave Expansion Act (EFMLEA)

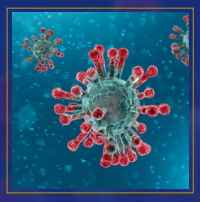
12. What are covered employers required to provide to their employees under the EFMLEA?

EFMLEA requires covered employers to provide up to **12 weeks of expanded FMLA leave,** unpaid for the first 10 days (which are effectively covered by the EPSLA), and then paid at 2/3 the employee's rate (but capped at $200 per day and $10,000 in the aggregate). This leave is available to anyone **after 30 days of employment** for time to care for the employee's son or daughter if the child's school/child care provider is unavailable due to COVID-19 and the employee is unable to work (or telework).

13. Which employees qualify for additional leave time under EFMLEA?

All employees who have worked for the covered employer for **at least 30 calendar days.**

> **Supplement as of April 14, 2020:** The EFMLEA applies to employees of covered employers if such employees have been on their employer's payroll for the 30 calendar days immediately prior



to the day that the employee's leave would begin. This includes an employee who is laid off or whose employment was otherwise terminated on or after March 1, 2020, provided that the employer rehires or otherwise re-employs the employee on or before December 31, 2020, and the employee had been on the employer's payroll for 30 or more of the 60 calendar days prior to the date the employee was laid off or otherwise discharged from employment.

14. Does the EFMLEA expand the definition of who is a covered employer for purposes of the FMLA?

Yes, the EFMLEA expands the FMLA's reach to **all employees of employers who employ fewer than 500 employees, including certain governmental entities.** This means that there may be companies with facilities that did not previously qualify under existing FMLA criteria (i.e. 50 or more employees within a 75-mile radius) that will now qualify as covered employers based on the overall size of the company (i.e. less than 500 employees). On the other hand, the FMLA covers employers with 500 or more employees, but the EFMLEA does not apply to these large employers.

15. How does the EFMLEA apply to multiemployer collective bargaining agreements?

Covered employers who are signatories to a multiemployer CBA may fulfill their obligations under the EFMLEA by making contributions to a multiemployer fund, plan or program, provided the fund, plan or program enables employees to secure pay based on hours worked under the CBA for emergency leave.

16. Does the EFMLEA expand the qualifying reasons for which an eligible employee may take leave?

The only reason is if the eligible employee is unable to work or telework due to the need to care for a minor child when the child's school or place of child care has been closed or is unavailable due to a public health emergency.

17. Are the calculations different for pay under EFMLEA depending on whether the employee is part-time or full-time?

There is a specific formula for covered employers to use for calculating the pay that applies for both full-time and part-time employees. The DOL guidance will provide this.

Supplement as of March 26, 2020: The EFMLEA does not distinguish between full-time and part-time employees, but the number of hours an employee normally works each week affects the amount of pay the employee is eligible to receive.

Emergency Paid Sick Leave Act (EPSLA)

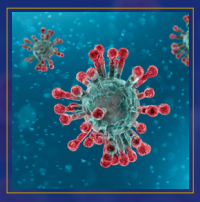
18. Which employees are covered by the EPSLA?

Unlike the EFMLEA, there is **no minimum 30-day employment requirement** for employees of a covered employer to be eligible for paid leave under EPSLA. The EPSLA also provides a paid leave benefit to both full-time and part-time employees.

19. Does the EPSLA define who is a full-time employee and who is part-time employee?

No, but we believe that anything less than 80 hours in a two-week period is considered part-time.

Supplement as of March 26, 2020: For purposes of the EPSLA, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week, and a part-time employee is an employee who is normally scheduled to work fewer than 40 hours per week.



20. How does the EPSLA apply to multiemployer collective bargaining agreements?

The EPSLA affords paid sick leave to eligible employees who work under a multiemployer CBA and whose employers pay into a multiemployer plan. Covered employers who are signatories to a multiemployer CBA may fulfill their obligations under the EPSLA by making contributions to the multiemployer fund, plan or program based on the hours of paid sick time to which each eligible employee is entitled under the law while working under the respective CBA.

21. What are covered employers required to provide to their employees under the EPSLA?

The EPSLA requires covered employers to pay employees **up to 80 hours of paid sick leave,** available for immediate use regardless of length of employment, if the employee cannot work (or telework) because he/she:

a. is experiencing symptoms of COVID-19 and seeking a medical diagnosis, which is paid at 100% and capped at $511 per day and $5,110 in the aggregate;
b. is subject to a government quarantine or has been told by a health care provider that he or she should self-quarantine due to COVID-19, which is paid at 100% and capped at $511 per day and $5,110 in the aggregate (or is caring for an individual who must quarantine/self-quarantine for those reasons, which is paid at 2/3 the employee's rate and capped at $200 per day and $2,000 in the aggregate);
c. is caring for a son or daughter if his/her school/child care provider is unavailable due to COVID-19 precautions, which is paid at 2/3 the employee's rate and capped at $200 per day and $2,000 in the aggregate; or
d. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, which is paid at 2/3 the employee's rate and capped at $200 per day and $2,000 in the aggregate.

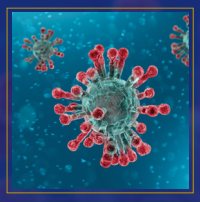
Supplement as of April 14, 2020: As to subsection (d) above, the U.S. Department of Health and Human Services (HHS) has not yet identified any "substantially similar condition" that would allow an employee to take paid sick leave. If HHS does identify any such condition, then the DOL will issue guidance to address this.

22. Are covered employers required to pay this benefit under the EPSLA if employees are required to stay home under a "shelter in place" or other type of local, state or federal "no -travel" order, as opposed to being required to stay home for self-isolation due to exposure to COVID-19?

Based on the text of the law, this benefit is for employees who are in isolation or quarantine due to exposure to COVID-19. Thus, employees who are required to stay at home due to a "shelter in place" or similar no-travel order would **not** be eligible for the EPSLA benefit.

Supplement as of April 14, 2020: Under the FFCRA, an employee is entitled to paid sick time if the employee is "unable to work (or telework)" due to the need for leave because the employee is subject to a "Federal, State, or local quarantine or isolation order." The DOL has now clarified that a "quarantine or isolation order" *includes* shelter in place and stay at home orders. Therefore, an employee may take paid sick leave if being subject to a shelter in place/stay at home order *prevents* him/her from working, including teleworking. This means the employee would be unable to work or telework *"but for"* the order. If an employer is closed due to a shutdown/shelter-in-place order and that is the reason an employee is unable to work, then the employee is not eligible for paid leave under the FFCRA.

23. Are covered employers getting reimbursed from the government for the paid leave they are required to provide under the EPSLA?



The paid sick leave required under the new law is subsidized by the federal government through tax credits. According to the March 20 news release, employers who pay this benefit will receive 100% reimbursement, which includes reimbursement for health insurance premiums paid by employers for employees taking qualifying sick leave.

24. How does my business get reimbursed for the paid leave under the EPSLA?

The reimbursement will be an immediate dollar-for-dollar tax offset against payroll taxes. The forthcoming DOL guidance will provide more details on this process, but what we know now is that covered employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave paid, rather than deposit them with the IRS. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. For example, if a covered employer paid $4,000 in sick leave and is otherwise required to deposit $9,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to $4,000 of the $9,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $5,000 on its next regular deposit date.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able to file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. For example, if a covered employer paid $8,000 in sick leave and was required to deposit $6,000 in taxes, the employer could use the entire $6,000 of taxes in order to make the qualified leave payments and then file a request with the IRS for an accelerated credit for the remaining $2,000.

25. For how many hours will I need to pay full-time employees under the EPSLA? Does such time run concurrently with the FMLA/EFMLEA?

Full-time employees are entitled to 80 hours of paid sick time.

Yes, this time will run concurrently with any time the eligible employee is afforded under the FMLA/EFMLEA.

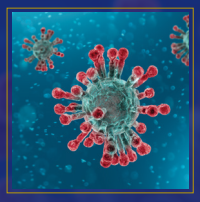
26. How much will I have to pay part-time employees under the EPSLA?

Part-time employees are counted in the 500-employee threshold; however, the amount of pay for part-time employees is prorated to the number of hours that the employee works, on average, over a two-week period.

27. What if I already provide paid sick time to my employees? Am I required to provide an additional 80 hours under the EPSLA?

Unfortunately, the law is not clear on this point. But it appears that the EPSLA requirements are **in addition to existing sick leave.**

> **Supplement as of April 14, 2020:** Paid sick leave under the EPSLA is in addition to other paid leave entitlements that employers may offer to employees. Employers may not require employees to use provided or accrued paid vacation, personal, medical, or sick leave before the paid sick leave under the EPSLA. Employers also may not require employees to use such existing leave concurrently with the paid sick leave under the EPSLA. However, an employer and an employee can come to an agreement that the employee may use preexisting leave entitlements to supplement the amount he/she receives from paid sick leave, up to the employee's normal earnings. It's important to note, however, that employers are not entitled to a tax credit for any paid sick leave that is not required to be paid or exceeds the limits set forth under the EPSLA.



28. Are there any notice requirements that I must provide to employees to inform them of their eligibility?

The EPSLA requires covered employers to post notices of the requirements of the new law in conspicuous places on the employer's premises. The DOL has provided a poster to meet this notice requirement which can be found **here.**

What if my business does not comply with the EPSLA?

Covered employers who fail to comply with the EPSLA will be deemed to have violated the Fair Labor Standards Act and will be subject to fines and penalties. Covered employers that are found to have willfully violated the EPSLA will be subject to liquidated damages.

Additional FAQ

29. How should businesses count hours worked by a part-time employee for purposes of paid sick leave under EPSLA or expanded family and medical leave under EFMLEA?

A part-time employee is entitled to leave for his or her **average number of work hours in a two-week period.** Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work:

- If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.
- If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

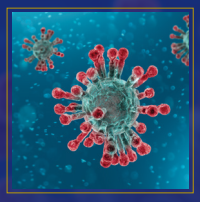
30. What if a full-time employee's hours vary week-to week?

Employers should use the same method for calculating full-time employees' hours with varying schedules as they do part-time employees. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work:

- If the normal hours scheduled are unknown, or if the full-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a full-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.
- If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

31. Do I include overtime hours when calculating pay due to employees under the FFCRA?

Yes. The EPSLA requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week. However, the EPSLA requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a



week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the EPSLA is capped at 80. It's also important to note that there are still daily and aggregate caps placed on any paid leave under EPSLA and EFMLEA.

32. How does a business determine an employee's regular rate of pay for purposes of the FFCRA?

The regular rate of pay used to calculate an employee's paid leave is the average of the employee's regular rate over a period of up to six months prior to the date on which the employee takes leave. If the employee has not worked for the employer for six months, the regular rate used to calculate the employee's paid leave is the average of the employee's regular rate of pay for each week he/she has worked for the employer. Commissions, tips, or piece rates paid to employees should also be incorporated into this calculation.

33. Are employees entitled to 80 hours of paid sick leave for a self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. Employees may only take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons.

34. If I provided an employee with paid sick leave prior to when the FFCRA becomes effective on April 1, 2020, do I have to provide additional paid leave under the FFCRA after April 1, 2020 if the employee qualifies for such leave?

Yes. The FFCRA imposes a new paid leave requirement on employers that is effective beginning on April 1, 2020.

35. Is all leave under the FMLA now paid leave?

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the EFMLEA when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

36. Assuming I am a covered employer, which of my employees are eligible for paid sick leave and expanded family and medical leave?

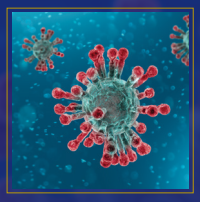
Both of these new provisions use the employee definition as provided by the FLSA, thus all of your U.S. (including Territorial) employees who meet this definition are eligible including full-time and part-time employees, as are "joint employees" working on your site temporarily and/or through a temp agency.

However, if you employ a health care provider or an emergency responder you are not required to pay such employee paid sick leave or expanded family and medical leave on a case-by-case basis. And, as discussed above, certain small businesses may exempt employees if the leave would jeopardize the company's viability as a going concern.

37. Do employees have the right to return to work if they are taking paid sick leave or expanded family and medical leave under the FFCRA?

Generally, yes. An employer is required to provide the same (or a nearly equivalent) job to an employee who returns to work following leave.

In most instances, an employee is entitled to be restored to the same or an equivalent position upon return from paid sick leave or expanded family and medical leave. Thus, an employer is prohibited from



firing, disciplining, or otherwise discriminating against an employee because that employee took paid sick leave or expanded family and medical leave. Nor can an employer fire, discipline, or otherwise discriminate against an employee because that employee filed any type of complaint or proceeding relating to the leave available under the FFCRA, or has or intends to testify in any such proceeding.

However, employees are not protected from employment actions, such as layoffs, that would have affected them *regardless* of whether they took leave. This means an employer can still lay off an employee for legitimate business reasons, such as the closure of its worksite. An employer must be able to demonstrate that the employee would have been laid off even if that employee had not taken leave.

An employer may also refuse to return an employee to work in the same position if employee is a highly compensated "key" employee as defined under the FMLA, or if the employer has fewer than 25 employees, and the employee took leave to care for his or her own son or daughter whose school or place of care was closed, or whose child care provider was unavailable, *and* all four of the following hardship conditions exist:

- the employee's position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of the employee's leave;
- the employer made reasonable efforts to restore the employee to the same or an equivalent position;
- the employer makes reasonable efforts to contact the employee if an equivalent position becomes available; *and*
- the employer continues to make reasonable efforts to contact the employee for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after leave began, whichever is earlier.

38. Does an employee qualify for leave for a COVID-19 related reason even if they have already used some or all of their leave under the FMLA?

Yes. Eligible employees are entitled to paid sick leave under the EPSLA regardless of how much leave they have taken under the FMLA.

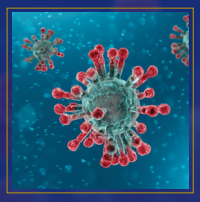
However, if an employer was covered by the FMLA prior to April 1, 2020, an employee's eligibility for expanded family and medical leave depends on how much leave he/she has already taken during the 12-month period that the employer uses for FMLA leave. An employee may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If the employee has taken some, but not all, 12 workweeks of his/her leave under the FMLA during the current 12-month period determined by his/her employer, he/she may take the remaining portion of leave available. If the employee has already taken all 12 workweeks of FMLA leave during this 12-month period, he/she may not take additional expanded family and medical leave.

For example, assume an employee is eligible for preexisting FMLA leave and took two weeks of such leave in January 2020 (such as to undergo and recover from a surgical procedure). The employee therefore has 10 weeks of FMLA leave remaining. Because expanded family and medical leave is a type of FMLA leave, the employee would be entitled to take up to 10 weeks of expanded family and medical leave, rather than 12 weeks. And any expanded family and medical leave the employee takes would count against his/her entitlement to preexisting FMLA leave.

If the employer only becomes covered under the FMLA on April 1, 2020, this analysis does not apply.

39. Can an employee take leave under the FMLA over the next 12 months if he/she used some or all of his/her expanded family and medical leave under the EFMLEA?

It depends. Employees may take a total of 12 workweeks of leave during a 12-month period under the FMLA, including the EFMLEA. If they take some, but not all 12, workweeks of their expanded fami-



ly and medical leave by December 31, 2020, they may take the remaining portion of FMLA leave for a serious medical condition, as long as the total time taken does not exceed 12 workweeks in the 12-month period. Expanded family and medical leave is available only until December 31, 2020; after that, employees may only take FMLA leave.

However, employees are entitled to paid sick leave under the EPSLA regardless of how much leave they have taken under the FMLA. Paid sick leave is not a form of FMLA leave and therefore does not count toward the 12 workweeks in the 12-month period cap. But if an employee takes paid sick leave concurrently with the first two weeks of expanded family and medical leave, which may otherwise be unpaid, then those two weeks do count towards the 12 workweeks in the 12-month period.

40. Who is a "health care provider" for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?

The term "health care provider," as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

41. If an employee takes paid sick leave under the EPSLA, does that count against other types of paid sick leave to which they are entitled under State or local law, or their employer's policy?

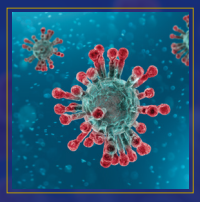
No. Paid sick leave under the EPSLA is in addition to other leave provided under Federal, State, or local law; an applicable CBA; or the employer's existing company policy.

> **Supplement as of April 14, 2020:** Paid sick leave under the EPSLA is in addition to other paid leave entitlements that employers may offer to employees. Employers may not require employees to use provided or accrued paid vacation, personal, medical, or sick leave before the paid sick leave under the EPSLA. Employers also may not require employees to use such existing leave concurrently with the paid sick leave under the EPSLA. However, an employer and an employee can come to an agreement that the employee may use preexisting leave entitlements to supplement the amount he/she receives from paid sick leave, up to the employee's normal earnings.
>
> It's important to note, however, that employers are not entitled to a tax credit for any paid sick leave that is not required to be paid or exceeds the limits set forth under the EPSLA.

42. What records do I need to keep when my employees take paid sick leave or expanded family and medical leave?

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. An employer is not required to provide leave to an eligible employee if the eligible employee does not provide the documentation the employer needs for the applicable tax credit.

> **Supplement as of April 14, 2020:** Regardless of whether the employer grants or denies a request for paid sick leave or expanded family and medical leave, the employer must document the following:



(1) the name of the employee requesting leave;

(2) the date(s) for which leave is requested;

(3) the reason for leave; and

(4) a statement from the employee that he/she is unable to work because of the reason.

If your employee requests leave because he/she is subject to a quarantine or isolation order or to care for an individual subject to such an order, you should additionally document the name of the government entity that issued the order. If the employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, the employer should additionally document the name of the health care provider who gave this advice.

If the employee requests leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, you should also document:

(1) the name of the child being cared for;

(2) the name of the school, place of care, or child care provider that has closed or become unavailable; and

(3) a statement from the employee that no other suitable person is available to care for the child.

43. What if an employee has COVID-19 symptoms and decides to self-quarantine without seeking a medical diagnosis or the advice of a health care provider? Is the employee eligible for paid leave benefits under the FFCRA?

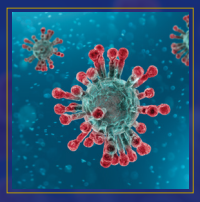
Employees are generally not eligible for paid sick leave under the FFCRA if they unilaterally decide to self-quarantine for an illness without medical advice, even if they are having symptoms related to COVID-19. If employees become ill, then they may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises them to self-quarantine. If they test positive for the virus associated with COVID-19 or are advised by a health care provider to self-quarantine, then they may continue to take paid sick leave available under the FFCRA.

44. Is an employee eligible for paid leave under the FFCRA if he/she is taking leave to care for any individual or just a family member who is subject to a quarantine or isolation order?

An eligible employee may take paid sick leave under the FFCRA to care for an individual who, as a result of being subject to a quarantine or isolation order, is unable to care for him or herself and depends on the employee for care and if providing such care prevents the employee from working or teleworking. The leave may only be taken to care for an individual who genuinely needs the employee's care. This may include: (1) immediate family members; (2) someone who regularly resides in the employee's home; or (3) someone whom the employee has a relationship with that creates an expectation that the employee would care for the person in a quarantine or self-quarantine situation and that the individual depends on the employee for care during such a situation. Employees may not take leave under the FFCRA to care for someone with whom they have no relationship or for someone who does not expect or depend on the employee's care during his or her quarantine or self-quarantine.

Additionally, the individual that the employee is caring for must have been advised by a health care provider to stay home or otherwise quarantine himself/herself because he/she may have COVID-19 or is particularly vulnerable for COVID-19.

45. Are employees eligible for paid leave under the FFCRA to care for their children who are 18 years old or older?



Paid leave under the FFCRA provides employees with leave to care for one (or more) of their children when their school or place of care is closed or their childcare provider is unavailable, due to COVID-19 related reasons. This leave may only be taken by employees: (1) to care for a non-disabled child who is under the age of 18; or (2) to care for a child who is 18 years old or older with a disability who cannot care for himself/herself due to that disability.

Paid leave under the FFCRA is also available to care for an individual who is subject to a federal, state or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. This leave may be taken by employees who have a need to care for a child who is 18 years old or older who needs care for these circumstances if the employees are unable to work or telework as a result of providing such care.

46. What qualifies as a "place of care" or "childcare provider"?

A "place of care" is a physical location in which care is provided for an employee's child. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs and respite care programs.

A "childcare provider" is someone who cares for the employee's child. This includes individuals paid to provide child care, such as nannies, au pairs and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis. This includes grandparents, aunts, uncles or neighbors.

47. What if I employ both parents of the same child? Can both parents take paid leave simultaneously under the FFCRA?

Generally, no. Eligible employees may take paid leave under the FFCRA to care for their child only when they need to, and actually are, caring for their child and if they are unable to work or telework as a result of providing this care. Generally, an employee will not need to take such leave if a co-parent, co-guardian or the employee's usual child care provider is available to provide the care the child needs. Thus, multiple employees (i.e., both parents) would generally not be able to take paid leave simultaneously under the FFCRA. An exception may be if one parent is in self-quarantine due to COVID-19 related reasons such that another qualifying reason for paid leave under the FFCRA may be triggered.

48. Is a school or place of care considered "closed" for purposes of the FFCRA even if they have moved to online instruction or to another model in which children are expected or required to complete assignments at home?

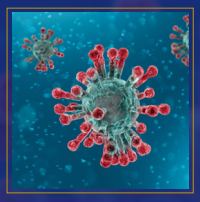
Yes. If the physical location where the employee's child received instruction or care is now closed, the school or place of care is considered "closed" for purposes of the FFCRA. This is true even if some or all instruction is being provided online or through another distance learning format.

49. Can an employee take expanded family and medical leave under the FFCRA to care for a child other than their own?

No. Expanded family and medical leave (EFMLEA) under the FFCRA is only available to care for an employee's own "son or daughter." Under the FFCRA, a "son or daughter" is defined as an employee's biological child, adopted or foster child, a stepchild, a legal ward or a child for whom the employee is standing in loco parentis.

50. How do I calculate the amount to pay a seasonal employee with an irregular schedule for each day of paid leave that he/she takes under the FFCRA?

Employers should use the following guidelines to calculate the daily amount of pay for a seasonal employee with an irregular schedule:



- First, the employer should calculate how many hours of leave its seasonal employee is entitled to take each day. Because the employee works an irregular schedule, this is equal to the average number of hours each day that the employee was scheduled to work over the period of employment, up to the last six months. Please note that the employer should exclude from this calculation off-season periods during which the employee did not work.
- Second, the employer should calculate the seasonal employee's regular hourly rate of pay. This is calculated by adding up all wages paid over the period of employment, up to the last six months, and then dividing that sum by the number of hours actually worked over the same period. Again, the employer should exclude off-season periods during which the employee did not work.
- Third, the employer should multiply the daily hours of leave (first calculation) by the employee's regular hourly rate of pay (second calculation) to compute the base daily paid leave amount.
- Fourth, the employer should determine the actual daily paid leave amount, which depends on the type of paid leave taken and the reason for such paid leave.

Seasonal employees are eligible for the same paid leave under the FFCRA as full- and part-time employees.

Please note, though, that if an employer's seasonal employees are not scheduled to work, for example, because it is the off season, then the employer does not have to provide paid leave under the FFCRA.

51. Is an employee eligible for paid leave under the FFCRA if he/she is receiving worker's compensation or temporary disability benefits through an employer or state-funded plan?

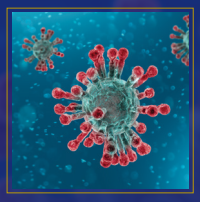
No, unless the employee is able to return to light duty work *before* a qualifying reason (under the FFCRA) prevents the employee from doing such work. If an employee receives worker's compensation or temporary disability benefits because he/she is unable to work, then the employee may not take paid leave under the FFCRA.

52. Is an employee eligible for paid leave under the FFCRA if he/she is on an employer-approved leave of absence?

It depends on whether the leave of absence is voluntary or mandatory. If the employee's leave of absence is voluntary, then the employee may end his/her leave of absence and begin taking paid leave under the FFCRA if a qualifying reason prevents the employee from being able to work or telework. However, an employee may not take paid leave under the FFCRA if his/her leave of absence is mandatory. This is because it is the mandatory leave of absence—and not the qualifying reason for leave—that prevents the employee from being able to work (or telework). Employers who are considering voluntary furloughs should be aware such furloughed employees may opt to end their leave and take paid FFCRA leave if they so qualify.

53. Can an employee take paid leave intermittently under the FFCRA while his/her child's school or place of care is closed, or child care provider is unavailable due COVID-19 related reasons?

Yes, but only with the employer's permission. Intermittent expanded family and medical leave should be permitted only when the employee and employer agree upon such a schedule. For example, if the employer and employee agree, an employee may take expanded family and medical leave on Mondays, Wednesdays and Fridays, but work Tuesdays and Thursdays, while his/her child is at home because his/her child's school or place of care is closed, or child care provider is unavailable, due to COVID-19-related reasons, for the duration of his/her leave.



The DOL encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the DOL supports such voluntary arrangements. If a voluntary arrangement cannot be reached, then this would need to be addressed on a case-by-case basis.

54. What if a business is deemed essential but a worker is afraid to come to work and is not sick? For example, "construction" and "critical trades" are deemed to be able to continue during the Governor's Executive Order in Illinois. But, will those employees of our member firms who opt to stay at home be eligible for payment under the FFCRA?

As an initial matter, this characterization of the Executive Order in Illinois may not be accurate, although part of that may be due to lack of clarity and inconsistency in this order.

"Construction" is included as "Essential Infrastructure"; individuals may leave their homes to provide "any services or perform any work necessary to offer, provision, operate, maintain, and repair Essential Infrastructure."

"Critical trades" are encompassed as a category of "Essential Businesses and Operations," but for this category, individuals may leave their homes only if at these Essential Businesses and Operations they "perform work providing essential products and services" – which is not as broad as that connected with "Essential Infrastructure."

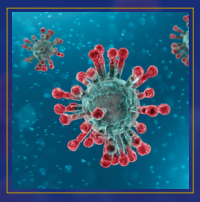
Regardless, assuming an individual is authorized to leave home for work notwithstanding a shutdown order, the FFCRA should not be triggered when an individual who is not sick is afraid to come to work. That is not to say an employer is precluded from allowing the employee to work remotely. But in this situation the FFCRA should not apply.

Note though that other laws may be implicated. For example, if someone is under extreme anxiety or stress due to the current pandemic, that may be covered as a disability under the Americans with Disabilities Act (or state equivalents), which could call for a reasonable accommodation.

55. Is the mandatory paid leave just wages or benefits as well? In other words, are fringe benefits in the CBA, regardless of how they are calculated, owed on the pay either from the FMLA or Emergency Sick Leave Act? Some other ways this has been asked:

- What benefits have to be paid if they are not paid on "hours worked", but rather "gross payroll"?
- How should contributions to Trust Funds treated for the Emergency Paid Sick Days? Since we have several fringe benefit funds for which the contributions are based upon gross wages, will the employer have to pay into these funds and subsequently receive no reimbursement from the government? Is this strictly an issue for each trust fund or is this a legal interpretation?
- How does the FMLA and 2-week pay relate to health and pension benefits?
- If benefits need to be paid as well as wages, are they subject to the caps?
- If benefits must be paid, does the employer get the same "tax credit" for any fringe benefit obligation? For example, in many areas, paying an IBEW worker $500 a day results in a benefit obligation of almost 40% or $200. How is that $200 treated? If the $511 is the total daily pay including benefits, is it allocated so that the pay is only approximately $390 and the benefits $160?

Supplement as of April 14, 2020: Local Chapters and Unions are encouraged to bargain arrangements on the payment of local fringe benefits to address the requirements of the Families First Coronavirus Response Act. The purpose of this document is to provide guidance if the local parties have not yet reached a solution.



What Does the Law Require?

If an employer must provide paid leave to an employee under the FFCRA, the law requires payment of wages (at that employee's regular rate of pay as defined by the Fair Labor Standards Act—click HERE for DOL Fact Sheet); payment of the employer's portion of the Medicare tax (but not the employer's portion of Social Security tax) on those wages,[3] and continued coverage under the group health plan on the same terms as if the employee did not take leave. The law is silent on contributions or deductions related to any other fringe benefits.

Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020.

While the payment of wages and Medicare tax is relatively straightforward, continuing coverage under the group health plan is not. If the employer contributes to health insurance provided by a multiemployer/union trust fund, then that is the kind of group health plan that must continue coverage. The conservative approach to this requirement is for the employer to pay the health fringe contribution on the amount of FFCRA leave it gives the employee. Employers should check with the local NECA chapter or plan administrator for any material modifications made to the plan to see if the employee's coverage would not be impacted by a failure to make those contributions. Whether coverage would be impacted depends on the terms of that plan.

What Do the CBA and Other Fringe Funds Require?

Beyond the requirements of the law, an employer must consider the requirements of any contract to which it is bound, including a CBA or fringe benefit fund participation agreement. These contracts often incorporate other terms the employer must follow, like the terms of the plan and trust documents of the fringe benefit funds. It is possible that the CBA and/or the plan documents require the employer to make fund contributions on the amount of FFCRA leave it gives an employee. Employers should check with their local NECA chapters for interpretation of the CBA.

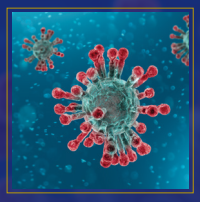
The first place to look is CBA's provisions about fringe contributions:

- An employer likely must make contributions to fringes calculated by "Gross Labor Payroll," like the NEBF or "Percentage of straight-time rate of pay," unless specifically waived.
- If the fringe is calculated by "hours paid," or "hours worked" it falls into a legal grey area, and the local parties are encouraged to bargain for an acceptable solution or suspension of fringe payments on these calculations.

Employers should contact their local NECA chapter to determine any local practices on the payment of hours not worked. Evidence of those determinations should be considered in the following order (in decreasing order of importance):

- The language of the CBA regarding when fringes are owed and how they are calculated;
- The language of plan documents signed by the employer;
- The language of the plan;
- Guidance from the plan regarding when fringes are owed and how they are calculated;
- Past practice of employers paying those fringes;
- Evidence of what union and employer bargaining representatives said in bargaining about when fringes are owed and how they are calculated.

3 Note that the employer must still withhold the employee's share of social security and Medicare taxes on the qualified leave wages paid.



Current Decisions on National Contributions

1. The NEBF Trustees have not waived the contributions on the FFCRA wages. The NEBF is Category I CBA language and must be paid on gross labor payroll pending any further Trustee or legal guidance. The local parties are not allowed to waive the payment of NEBF through bargaining.
2. The NLMCC enabling language requires it to be paid on hours worked. The trustees have determined that these contributions are not due because the FFCRA wages are not hours worked.
3. NECA National, with the approval of the Executive Committee, has agreed to waive the national services charges, which are paid on productive electrical payroll pursuant to the Bylaws, the extent that the productive electrical payroll is increased by wages that are paid pursuant to the FFCRA for sick and/or FMLA through June 15, 2020. NECA National will continue to review the status of the current pandemic and the impact of the FFCRA wages on our contractors and may extend this waiver as necessary.
4. The IBEW has advised that union assessments will be determined locally.

Conclusion

Ultimately, employers will need to make quick decisions about which other fringes to pay on FFCRA leave. While employers should seek the "right answer," they likely will have incomplete information at the time they run payroll. In that case, employers should weigh the risks on both sides:

- If an employer makes a fringe contribution on FFCRA leave when it truly was not due, it may depend on the provisions in the Trust agreement as to whether the plan can repay the employer. While applicable law allows for refunds based on mistake of law or fact, it stops short of requiring that the plan make the refund. Any refund due must be made within 6 months after the plan determines is was made in error. It should be noted that if an employer determines that a contribution was made when it was truly not due, the responsibility is typically on the employer to request the refund from the respective fund.
- If an employer fails to make a fringe contribution on FFCRA leave when it truly was due, the fund may catch that in an audit. If so, it would likely demand payment for the delinquent contributions along with interest. If the employer does not satisfy the fund at that time, the fund can sue the employer for the amount of contributions, liquidated damages of 20%, interest and attorneys' fees.

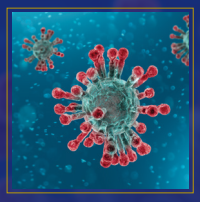
These are challenging times, where employers are forced to adapt to new challenges with little time and information. This guidance contains the most concrete information currently available on this topic. NECA will update its guidance as more information becomes available.

56. A contractor is going from 100 to 10 men. The contractor doesn't want to wait 10 days to pay the FMLA monies to the employees. Can they start paying them as soon as they lay them off? It's not payroll generated.

There are a few points to address here. If the business will only have 10 employees after the FFCRA becomes effective on April 1, 2020, then the business may qualify for the small business exemption.

If the business opts not to file for the small business exemption, then it would need to pay eligible employees for paid leave under the EPSLA and the EFMLEA. There is no 10-day waiting period for paid leave under the EPSLA and employee leave that qualifies under the EPSLA should be paid in conjunction with the regular payroll for those days.

Lastly, employees who are laid off or furloughed are not entitled to paid leave under the FFCRA.



Families First Coronavirus Response Act FAQ

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

Memorandum

To: Larry Beltramo, President NECA
David Long, NECA CEO

From: Jef Fagan, NECA General Counsel JEF

Date: April 22, 2020

Re: Short-Time Compensation, unemployment insurance and the CARES Act

You have asked for some guidance on the intersection of the CARES Act and the concept of short-time compensation as that relates to unemployment insurance, particularly in light of the availability of an extra $600 per week in federal money. This memorandum provides summary guidance.

Short-Time Compensation

Short-Time Compensation (STC), also known as work sharing or shared-work program, is an alternative to layoffs for employers experiencing a reduction in available work. STC preserves employees' jobs and employers' trained workforces during times of lowered economic activity. STC allows employers to reduce hours of work for employees rather than laying-off some employees while others continue to work full time. Those employees experiencing a reduction in hours are allowed to collect a percentage of their unemployment compensation (UC) benefits to replace a portion of their lost wages. STC cushions the adverse effect of the reduction in business activity on workers by averting layoffs and ensures that these workers will be available to resume prior employment levels when business demand increases.

In order to connect a STC with state unemployment insurance during the periods of temporary layoff, a STC program must be established in the state at issue. Currently, 27 states have STC programs established in law that meet the new federal definition with 26 having operational programs (Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin).

I will note that the use of a short-time compensation program is a mandatory subject of bargaining and may not be unilaterally implemented absent specific CBA language authorizing some short-term layoffs or furloughs in some set order. In fact, many of the state laws establishing an STC require an assertion

upon plan submission that the employee representative agrees with the plan submitted to the state. For example, one state law provides in this regard: *A. - The employer certifies that it has obtained the approval of any applicable collective bargaining unit representative and has notified all affected employees who are not in a collective bargaining unit of the proposed short-time compensation plan.*

In order for an employee to receive unemployment benefits under the STC program, employers must have an approved STC plan in place with the appropriate state workforce agency. The STC application process is initiated by employer(s) and not employee(s). Therefore, in order for employees with reduced hours to potentially be eligible for STC, the employer must submit an application to the appropriate state agency, and the state must approve the employer's application/plan. In order to qualify for STC, employees must first be determined to be eligible for UC. While receiving UC benefits under a STC plan, employees are not required to meet availability or work search requirements, but they are required to be available for their normal workweek. Also, employees who are eligible to participate in an employer's STC plan may be required to serve a mandatory "waiting week," which is a non-paid week (required by most states).

The amount of UC paid to individuals filing for STC is a pro-rated portion of the UC payment they would have received if they were totally unemployed. For example, an employee normally works a 40-hour work week. The employee's work week is reduced by eight hours or 20 percent. If the employee had been laid off and totally unemployed and determined eligible for UC, the individual would have received a weekly benefit amount of $270.00. The employer submits a STC plan, and the plan is approved. Under the STC plan, the employee would receive $54.00 of benefits (or 20 percent of $270) in addition to the 32 hours of wages earned from the employer.

The CARES Act and Enhanced Unemployment Programs

The CARES Act temporarily enhances and expands UC benefits through three key programs. To participate in the programs, each state must enter into an agreement with the federal government. The basics of each program are as follows:

1. **Pandemic Unemployment Compensation (PUC)** (Section 2104 of the CARES Act)
    - *Who is Eligible*: Individuals who, as determined by the applicable state unemployment agency, meet that state's criteria to receive UC benefits.
    - *Benefit Provided*: The law provides an increase of a flat payment of $600 per week to the amount regularly available for unemployment under state law.
    - *Additional Criteria that Must be Met to Receive PUC*: None
    - *Time Period for Increased Compensation*: This increase applies to weeks of unemployment beginning after the state agrees to participate in the program through July 31, 2020.
2. **Pandemic Unemployment Assistance (PUA)** (Section 2102 of the CARES Act)
    - *Who is Eligible*: Individuals who are not usually eligible for unemployment benefits, including those who are furloughed or out of work as a direct result of COVID-19, self-employed and

independent contractors, and those who have exhausted existing state and federal unemployment benefit provisions.

  - *Important Note: Individuals who have the ability to telework with pay and those who are receiving paid sick leave or other paid benefits (even if they otherwise satisfy the criteria described below to receive assistance under the new law) are expressly excluded from coverage.*

- *Benefit Provided*: The PUA will equal the minimum weekly benefit amount described in the Stafford Act Disaster Unemployment Assistance (DUA) program, which is the model for the PUA program (CFR 625.6 of Title 20), ***plus*** the $600 per week federally funded supplement (similar to that provided to UC recipients under the PUC).
- *Additional Criteria that must be Met to Receive the PUA*: Applicants for PUA must provide self-certification that they are (1) partially or fully unemployed or (2) unable and unavailable to work because of one of the following circumstances:
  - the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;
  - a member of the individual's household has been diagnosed with COVID–19;
  - the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID–19;
  - a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;
  - the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;
  - the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;
  - the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;
  - the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19; or
  - the individual's place of employment is closed as a direct result of the COVID–19 public health emergency.
- *Time Period for Expanded Compensation*: January 27, 2020 through December 31, 2020.

3. **Pandemic Emergency Unemployment Compensation (PEUC) (Section 2107 of the CARES Act)**

- *Who is Eligible*: UC recipients who exhaust all of their regular state UC benefits, which range from as few as 12 weeks to a maximum of 26 weeks depending on the state
- *Benefit Provided*: Additional 13 weeks of state UC benefits
- *Additional Criteria that Must be Met to Receive PEUC*: Individuals must have exhausted their regular state UC benefits and be actively engaged in searching for work
- *Time Period for Extended Benefits*: The benefits extension is available through December 31, 2020, unless otherwise extended.

The CARES Act and STC

The CARES Act provides funding to support STC programs, where employers reduce employee hours instead of laying them off, and the employees with reduced hours receive a pro-rated unemployment benefit. This provision does not provide new or additional benefits; rather, it provides federal funding for these programs through December 31, 2020. For states with existing short-time compensation programs, the federal government will fully fund the state's program. For states that implement such a program after the passage of the CARES Act, the federal government will fund the program at a rate of 50%, making the state responsible for paying one-half of the short-time compensation to the individual employee.

In summary, payment of the $600 federally funded supplement is entirely dependent on whether, under state law, the individual is awarded unemployment benefits. In other words, the individual's award of UC benefits under state law is the event that triggers the payment of the $600 federal supplement. Thus, whether and to what extent an employee can receive unemployment benefits, including partial unemployment benefits based on, for example, reduced hours, will be determined by existing state law governing the requirements to qualify for unemployment benefits. Many states are modifying existing unemployment laws and regulations to expressly allow partial unemployment benefits where an employee's hours are reduced due to COVID-19 related reasons. In the event that an individual is not entitled to unemployment benefits under state law, the individual may be eligible for assistance under the PUA program.

Bottom Line

In order to utilize an STC program to maximum advantage, a contractor must:

- Be in a state that has an STC program
- Have a company STC program that has been bargained with the local union or have an allowance for a STC program in the local collective bargaining agreement
- Submit an application to the state for approval of that program
- Administer the program effectively to maximize the use and retention of the workforce and the proper receipt by the employee of the CARES Act expanded benefits

Please let me know if I can be of further assistance on this matter.

Updated EEOC Employer Guidance
Source: James Fagan
Friday, April 24, 2020

All

I know that there has been union resistance to health questions, forms and proposed testing in certain areas. I wanted to forward the latest update from the EEOC, which should assist with these efforts and discussions:

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

Of particular note is the new A6:

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? *4/23/20*

The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review guidance from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require - to the greatest extent possible - that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

4.30.20

James Fagan - Payroll Taxes

The Coronavirus, Aid, Relief and Economic Security Act (CARES Act) allows employers to defer the deposit and payment of the employer's share of Social Security taxes and self-employed individuals to defer payment of certain self-employment taxes. These FAQs address specific issues related to the deferral of deposit and payment of these employment taxes. These FAQs will be updated to address additional questions as they arise.

1. What deposits and payments of employment taxes are employers entitled to defer?

Section 2302 of the CARES Act provides that employers may defer the deposit and payment of the employer's portion of Social Security taxes and certain railroad retirement taxes. These are the taxes imposed under section 3111(a) of the Internal Revenue Code (the "Code") and, for Railroad employers, so much of the taxes imposed under section 3221(a) of the Code as are attributable to the rate in effect under section 3111(a) of the Code (collectively referred to as the "employer's share of Social Security tax"). Employers that received a Paycheck Protection Program loan may not defer the deposit and payment of the employer's share of Social Security tax that is otherwise due after the employer receives a decision from the lender that the loan was forgiven. (See FAQ 4).

2. When can employers begin deferring deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

The deferral applies to deposits and payments of the employer's share of Social Security tax that would otherwise be required to be made during the period beginning on March 27, 2020 and ending December 31, 2020. (Section 2302 of the CARES Act calls this period the "payroll tax deferral period.")

The Form 941, Employer's QUARTERLY Federal Tax Return, will be revised for the second calendar quarter of 2020 (April - June 2020). Information will be provided in the near future to instruct employers how to reflect the deferred deposits and payments otherwise due on or after March 27, 2020 for the first quarter of 2020 (January –

March 2020). In no case will Employers be required to make a special election to be able to defer deposits and payments of these employment taxes.

3. Which employers may defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

All employers may defer the deposit and payment of the employer's share of Social Security tax. However, employers that receive a loan under the Small Business Administration Act, as provided in section 1102 of the CARES Act (the Paycheck Protection Program (PPP)), may not defer the deposit and payment of the employer's share of Social Security tax due after the employer receives a decision from the lender that the PPP loan is forgiven under the CARES Act. See FAQ 4.

4. Can an employer that has applied for and received a PPP loan that is not yet forgiven defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

Yes. Employers who have received a PPP loan may defer deposit and payment of the employer's share of Social Security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan in accordance with paragraph (g) of section 1106 of the CARES Act, without incurring failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of Social Security tax due after that date. However, the amount of the deposit and payment of the employer's share of Social Security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates," as described in FAQs 7 and 8.

5. Is this ability to defer deposits of the employer's share of Social Security tax in addition to the relief provided in Notice 2020-22 for deposit of employment taxes in anticipation of the Families First Coronavirus Relief Act (FFCRA) paid leave credits and the CARES Act employee retention credit?

Yes. Notice 2020-22 provides relief from the failure to deposit penalty under section 6656 of the Code for not making deposits of employment taxes, including taxes withheld from employees, in anticipation of the FFCRA paid leave credits and the CARES Act

employee retention credit. The ability to defer deposit and payment of the employer's share of Social Security tax under section 2302 of the CARES Act applies to all employers, not just employers entitled to paid leave credits and employee retention credits. (But see the limit described in FAQ 4 for employers that have a PPP loan forgiven.)

6. Can an employer that is eligible to claim refundable paid leave tax credits or the employee retention credit defer its deposit and payment of the employer's share of Social Security tax prior to determining the amount of employment tax deposits that it may retain in anticipation of these credits, the amount of any advance payments of these credits, or the amount of any refunds with respect to these credits?

Yes. An employer is entitled to defer deposit and payment of the employer's share of Social Security tax prior to determining whether the employer is entitled to the paid leave credits under sections 7001 or 7003 of FFCRA or the employee retention credit under section 2301 of the CARES Act, and prior to determining the amount of employment tax deposits that it may retain in anticipation of these credits, the amount of any advance payments of these credits, or the amount of any refunds with respect to these credits.

7. What are the applicable dates by which deferred deposits of the employer's share of Social Security tax must be deposited to be treated as timely (and avoid a failure to deposit penalty)?

The deferred deposits of the employer's share of Social Security tax must be deposited by the following dates (referred to as the "applicable dates") to be treated as timely (and avoid a failure to deposit penalty):

1. On December 31, 2021, 50 percent of the deferred amount; and
2. On December 31, 2022, the remaining amount.

8. What are the applicable dates when deferred payment of the employer's share of Social Security tax must be paid (to avoid a failure to pay penalty under section 6651 of the Code)?

The deferred payment of the employer's share of Social Security tax is due on the "applicable dates" as described in FAQ 7.

9. Are self-employed individuals eligible to defer payment of self-employment tax on net earnings from self-employment income?

Yes. Self-employed individuals may defer the payment of 50 percent of the Social Security tax on net earnings from self-employment income imposed under section 1401(a) of the Code for the period beginning on March 27, 2020, and ending December 31, 2020. (Section 2302 of the CARES Act calls this period the "payroll tax deferral period.")

10. Is there a penalty for failure to make estimated tax payments for 50 percent of Social Security tax on net earnings from self-employment income during the payroll tax deferral period?

No. For any taxable year that includes any part of the payroll tax deferral period, 50 percent of the Social Security tax imposed on net earnings from self-employment income during that payroll tax deferral period is not used to calculate the installments of estimated tax due under section 6654 of the Code.

11. What are the applicable dates when deferred payment amounts of 50 percent of the Social Security tax imposed on self-employment income must be paid?

The deferred payment amounts are due on the "applicable dates" as described in FAQ 7.

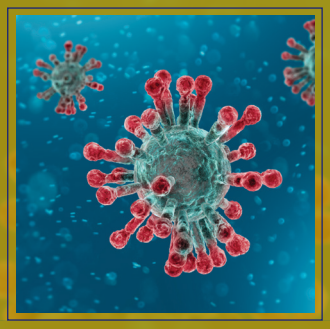
NOTICE TO EMPLOYERS PARTICIPATING IN THE NATIONAL ELECTRICAL BENEFIT FUND

The National Electrical Benefit Fund ("NEBF") and the National Employees Benefits Board (NEBB) have adopted a temporary amendment to the NEBF Trust. Generally, the Trust requires that all employers that provide any sort of paid leave to an employee must pay the 3% contribution on the amount of that paid leave to the NEBF. In recognition of the extraordinary consequences of the coronavirus to employers, unions, and employees alike, the Trustees and the NEBB agreed that there should be a temporary suspension of the application of the 3% contribution obligation for up to a maximum of 80 hours of paid sick leave required under the Emergency Paid Sick Leave Act ("EPSLA") portion of the Families First Coronavirus Response Act ("FFCRA").

As you are probably aware, under federal law the NEBF is required to credit employees for hours of service associated with paid leave of any sort. Accordingly, each employer who pays this sick leave under the EPSLA is required to report on its monthly payroll reports (1) the names of all employees for whom the employer paid mandatory sick leave under the EPSILA, (2) and the periods of the paid leave in days and hours. This temporary amendment to the NEBF Trust is effective as of April 16, 2020 and will remain in effect through December 31, 2020. The 3% contribution is owed on paid leave paid prior to April 16, 2020 and will be owed on paid leave after the end of this year. However, for mandated paid sick leave between April 16 and December 31 of this year, the 3% contribution is waived for up to a maximum of 80 hours.

Below are three examples of paid sick leave circumstances that will not require the 3% contribution:

> *Example 1:* An employee of a covered employer has been advised by a health-care provider to self-quarantine for two weeks related to COVID-19. The covered employer is required by the EPSLA to pay the employee 80 hours of sick leave over a two-week period at the maximum allowable daily rate of $511 ($5,110 total for 10 days). The covered employer is not required to contribute 3% to NEBF on the employee's $5,110 of mandatory sick pay, but the NEBF will credit the employee with 80 hours of service.
>
> *Example 2:* An employee of a covered employer is subject to a state isolation order requiring isolation for one week related to COVID-19. The covered employer is required by the EPSLA to pay the employee 40 hours of sick leave over a week's period at the maximum allowable daily rate of $511 ($2,555 total for five days). The covered employer is not required to contribute 3% to NEBF on the employee's $2,555 of mandatory sick pay, but the NEBF will credit the employee with 40 hours of service.
>
> *Example 3*: An employee of a covered employer is caring for an individual who has been advised by a health-care provider to self-quarantine for eight days related to COVID-19. The covered employer is required by the EPSLA to pay the employee 64 hours of sick leave at the maximum allowable daily rate of 2/3 of pay up to $200 daily ($2,000 total for ten days). The covered employer is not required to contribute 3% to NEBF on the employee's $1,600 of mandatory sick pay, but the NEBF will credit the employee with 64 hours of service.



NECA Legal Webinar 2 Q&A and Updated PPP Forgiveness Guidance

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Questions and Answers 2

1 **Question: What is allowed in the term "Transportation" to be deducted in the PPP?**

Transportation is not defined. However, it likely covers any transportation costs covered by the employer; such as a car allowance.

2 **Question: What do we do if an employee refuses to go to a job site because the employee is over age 60 and fearful of catching the virus?**

Absent an Executive Order or some other state directive that states this individual must quarantine due to their age or direction from a healthcare provider to self-quarantine, this would be viewed as a voluntary quit. Any compensation would be pursuant to the state's unemployment agency.

If this individual is directed to stay home by either an Executive Order, some other state directive or by a healthcare provider while the employer remains open and work is available, this individual is eligible for sick pay benefits as outlined in the Families First Coronavirus Response Act.

3 **Question: Can we be exposed to wrongful death lawsuits? If so, what is the probability of a successful claim under a COVID-19?**

Any employer can be sued for anything at any time. However, there must be some basis to impose liability. It would be challenging to tie a case of COVID-19 definitively to a construction jobsite, unless an employer was truly negligent or willfully disregarded updated directives or safety guidance. In addition, if a case of COVID-19 was determined to be incident to the employment, it would most likely be covered by workers' compensation and subject to the bar that applies to any additional remedy against a contractor. But each case is fact specific and subject to the application of local laws.

4 **Question: Have definitions been established for what is covered under "Utilities" for PPP loans? Electric, water, gas, internet, phone, cell phone, etc.?**

Payments for business related utilities (for the distribution of electricity, gas, water, transportation, telephone, or internet access) for which service began before February 15, 2020.

5 **Question: If I already applied for a PPP loan through my local bank, do I need to reapply if/when more funds become available?**

You should check with the lender that you applied through as to the status of your application.

6 **Question: What insurance premiums beyond health insurance premiums are forgivable under the PPP loan?**

Although it is not clearly defined, certain standard employment provided insurance likely qualifies, such as dental, vision, and disability and life. The good news is that none of these costs are specifically excluded.

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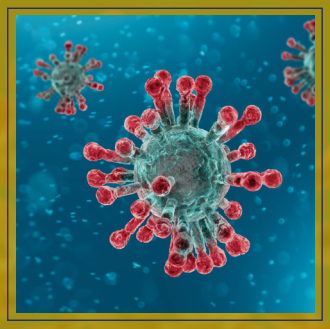

7 **Question: If an existing lease expired 4/1/2020, but a new lease with an increase on the same property was executed, will that be forgivable?**

Possibly. Although the lease renewed in April, the tenancy was created prior to the pandemic.

8 **Question: What are the dates that qualify for 8-week period of the PPP loan?**

The eight-week period of the PPP loan refers to the period following the loan being provided (funded) to the employer.

9 **Question: Do you know if ancillary/other hourly cost can be included in the forgivable amount (like JATC, LMCC, AMF/CAF, NECA Service Charges)?**

Employers should seek forgiveness of these costs along with payroll under the PPP loan. Existing guidance is not specific, but the intent of the legislation is to keep employees on the payroll at their current compensation and benefit. Until specific guidance otherwise is provided by SBA, you could use an expansive interpretation. As new guidance is available, updates will be provided.

10 **Question: An employer advised they were informed by their lender they could only use the loan for rent and payroll costs, not just to have it forgiven, but in general. Could that be a rule by the lender outside of the law? Could a lender enforce the uses of the loan outside of forgiveness?**

The Federal rules on use of the loan are broad, but 75% of the loan must be used for payroll. You should review the promissory note provided by the bank to see if additional terms were added.

11 **Question: What happens with employees who voluntarily quit or retire?**

The requirement of the PPP loan is to maintain the number of FTE employees and salary for the eight-week period. They do not have to be the same people or have the same position/responsibilities. You also have the ability to restore lost FTE and salary by June 30, 2020. The CARES Act includes a "savings" provision that allows businesses that conduct layoffs or furloughs or salary reductions for one or more employees between February 15, 2020, and April 26, 2020 (the reduction window) to receive the full amount of forgiveness to which they would otherwise be entitled provided that: (i) any reduction in FTEs that occurs during the reduction window is restored by June 30, 2020. to at least to the number of FTEs employed on February 15, 2020; and (ii) the reduction in salary or wages for each employee compared to February 15, 2020, has been restored by June 30, 2020.

12 **Question: How will full-time equivalent (FTE) employees be defined/calculated for purposes of determining the potential reduction in forgiveness?**

Full Time Equivalents is a term of art in the labor and employment law arena. Employers should use the definition defined by their respective company. Full time generally ranges between 35-40 hours depending on how the employer has defined full time.

13 **Question: Is the $100,000 salary cap in the PPP loan limited to a weekly basis? Example: An individual may work overtime in one week and**

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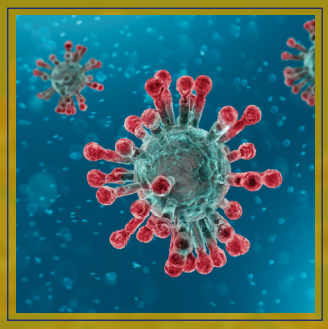

may exceed $100,000 annualized, but the individual may/may not earn $100,000 for the year.

This is not addressed by the law or in the guidance.

14 **Question: What is the process of accounting for the seasonal nature of FTE employees in construction?**

Instead of using twelve months, the seasonal business should use either February 15, 2019 through June 30, 2019 or March 1, 2019 through June 30, 2019.

15 **Question: How is interest being applied given it is unknown the amount to be repaid until after the eight-week period? Is there is a 6-month deferral of payment of any loan amount that is not forgiven?**

The six-month deferral will generally mean no interest will be paid in the 8-week period. Check the language of your lender's promissory note.

16 **Question: With regards to the 8-week period for spending of the Payroll Protection Program (PPP) loan, the time starts when the money is received and ends 8 weeks later. For payroll purposes, is it when the payroll liability is incurred (time worked) or when it is actually paid (paycheck date)?**

This "cash VS accrual" question is another unknown with the current rules. Because some employers pay biweekly, semi-monthly, or monthly, we expect further guidance on how these calculations should be completed. The best advice is to pick a methodology and stick to it.

17 **Question: Are 501(c)(6) organizations eligible for the PPP loans?**

No. A 501(c)(6) is eligible for the Economic Injury Disaster Loan. NECA government affairs is lobbying for a change to this position.

18 **Question: If an employer had 100 employees and currently has 50 employees, so essentially only 50% will be forgiven, can you hire employees over the next 8 weeks to get more forgiveness? When is the deadline to hire? Can you lay them off after the 8 weeks if you don't have enough work?**

75% of the total loan amount received must be used for payroll. The amount of the PPP loan available to an employer is based on the average monthly payroll of the last twelve months times 2.5. This does not mean that an employer must take the maximum amount.

The forgiveness of the loan is based on the number of full-time equivalent employees (and salary) for the 8-week period after the loan is provided to the employer. If the employer's headcount during that period is lower than the previous year's average, the employer may, before the end of the 8-week period, rehire employees back to the former level to avoid the penalty of lower forgiveness. That deadline is June 30, 2020 – and both the FTE and salary levels must be restored. There is no guidance on how long the re-hired employees must be retained.

19 **Question: What happens if the SBA changes the rules for forgiveness after the loan has been received?**

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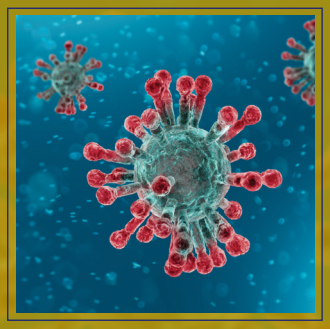

There is no pre-payment penalty. If you feel that you cannot meet the forgiveness rules, you can immediately repay the lender. Or, the loan proceeds will convert to a two-year, one-percent note.

20 **Question: Would you agree that the period that you can determine your FTE number and the period that you utilize to create the average monthly cost is different? For example, the FTE period is the January 1 through February 15 (as allowed in PPP) and the payroll period is the year 2019 payroll costs.**

Yes. There are multiple ways to conduct the various calculations.

21 **Question: Where is the link for the state by state guidance on whether construction is open?**

www.necanet.org/coronavirus. Navigate to the State Government portion of the page and click *view the survey.*

Updated PPP Forgiveness Guidance

A. Document the need for and use of your PPP Loan or return the money

There has been a public backlash over perceived abuses in the PPP loan process. With reports of publicly traded companies such as Ruth's Chris getting loans, the federal government has changed the tenor of its guidance. On April 28, 2020, U.S. Secretary of Treasury Steven Mnuchin announced that all Paycheck Protection Program (PPP) loans over $2 million are subject to audits. The SBA has issued new guidance on the PPP loan process, and the information related to loan forgiveness is of particular importance.

The questions and answers below highlight the need for employers to work with their accountants and payroll specialists to set aside documentation showing the need for the PPP funds for which they apply.

If an employer decides to return PPP money that it does not need or cannot use, it should return the money during the safe harbor period described below on or before *May 7, 2020.*

Question numbers in this section refer to the document **Paycheck Protection Program Loans FAQ** which can be found at ***www.necanet.org/coronavirus***

31 **Question: Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?**

In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing

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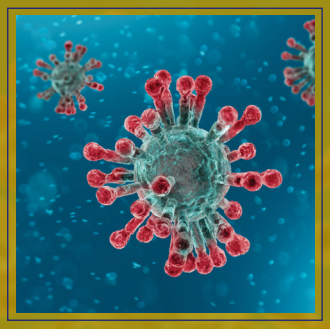

operations of the Applicant." Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

37 Question: Do businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

See response to FAQ #31.

B. Good faith written offer of re-hire sufficient for forgiveness

Late last week, the SBA promised an interim final rule that will provide additional clarity on loan forgiveness. As a preview, the SBA issued Question and Answer 40 below, which indicates that good faith efforts to re-hire employees will be count toward the forgiveness calculation for PPP loans at the June 30, 2020 deadline:

40 Question: Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

NECA will continue to monitor guidance and update its material as necessary.

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ELECTRI INTERNATIONAL
Research and Education for the Electrical Construction Industry

PANDEMICS AND CONSTRUCTION PRODUCTIVITY

QUANTIFYING THE IMPACT

INITIAL FINDINGS AND RECOMMENDATIONS - May 2020

COMMISSIONED AND FUNDED BY ELECTRI INTERNATIONAL

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Executive Summary

Overview

A pandemic can have far reaching impacts on the U.S. economy. Companies in once successful industries across the United States have felt the immediate impact of the current pandemic in the most devastating ways. Since March 2020, many companies have come to a complete and total shutdown, displacing more than 25 million Americans from their jobs. Other industries, such as the healthcare and medical research fields, have seen excessive stress placed on them not only in terms of resources and equipment, but also on the personal lives of the professionals who are administering these services. These are truly unprecedented times that were unforeseen just six months ago.

The federal government has tried to do its part to care for the unemployed, the small businesses and even some large industries that have been most noticeably impacted by the government-directed shutdowns and forced isolations of our population. The CARES Act has gone a long way to help to start bridging the gap from today toward recovery but it is not enough and cannot be the end of the support provided to corporations across this country.

The essential operations that have been asked to remain working during this pandemic are caught in the middle ground and left out of these often-discussed areas of our society and business. These industries are traditionally known to provide food, basic human necessities or some service that our government has deemed critical to the wellbeing of our citizens. These are the operations that keep our economy moving in some way that prevents a total collapse of our infrastructure.

The construction industry is one of those essential industries that has continued to deliver its services to both private owners and government agencies alike. It has done so while adapting to and adhering to a continuously updated and changing set of recommendations from our health, state and federal government officials. During this time of essential operation, our workforce continues to receive their paychecks; union pension and health funds are contributed to and not drawn from; and our building owners receive their buildings per the completion schedule for which they have asked. While these are all positives for the economy, the unintended consequence of being deemed essential and working under these new mandates has fallen directly at the feet of the corporations that employ this workforce.

Most of these construction companies work on fixed price contracts with limited (if any) financial relief per the terms of their owner agreements. So, the added costs and inefficiencies of being an essential business are directly taken from the corporate profits. Without financial aid from our government, this industry will also suffer from the impact of this pandemic, but it will look different from the early impact on the people and industries our legislative branch has tried to save in the pandemic.

It could be months or, in some cases, a few years from the start of this pandemic when you will see the failures of construction companies because they have no clear channel for equitable adjustment and have been contractually mandated to continue operations. The new normal being created from

pandemic-driven health and social modifications are being seen early in the construction industry. Congress should take note as to what the potential financial or profitability ripple looks like as we start to reopen America.

Construction sites are usually vibrant micro-communities that thrive on fast-paced teamwork and require the precision of large numbers of men and women working together in tight spaces. They all play their parts working together to erect massive buildings. Nearly every activity on a job site takes more than one person to complete, so the rule of social distancing creates a nearly impossible challenge. Hundreds of men and women line up daily to have their temperatures scanned prior to beginning work. They ride in elevators to and from their work areas in one-third the capacity that they once did in order to leave space from each other. This takes up hours that were spent productively installing construction materials. Instead, these hours are now spent simply getting to the work area. Every activity is spaced at six-foot distances. Safety toolbox talks, stretch and flex programs, and daily meetings are all impacted as communication and coordination of activities has diminished at job sites. Each site has created its own version of shelter-in-place habits that have slowed down the industry to reduce the potential spread of this virus while continuing to work.

The construction industry thrives on challenge and innovation and will continually improve to deliver products safely to owners. In time, firms will adjust to this new normal and price the contracted work appropriately. However, in the near term, the industry's financial burden from the social restrictions placed on it may be so great that many companies will not survive to compete in the future.

Preliminary Findings

Early measurements of the impact of this pandemic suggest that construction productivity has been impacted by nearly 20%. **A rule of thumb for self-performing contractors is that a 10% impact on productivity results in a 100% impact on profitability**. As such, contractors need to consider seriously the impact of this study on their profitability and seek equitable adjustments that adequately compensate them for the impact.

This study is divided into three distinct sections:

- Part I - Pandemic Mitigation Tracking - specifically quantifies hours associated with preventative measures such as training, health screenings, cleaning and disinfecting, job site access and administration instituted to minimize exposure.

- Part II - Productivity Benchmarking - specifically quantifies the reduction in direct work productivity related to social distancing rules, staggered shifts, reduced crew sizes, increased personal protective equipment requirements and related job site regulations.

- Part III - Business and Project Impacts - specifically quantifies ancillary impacts experienced by most contractors who participated in this study.

The following section provides a description of each of the three distinct parts.

Pandemics and Construction Productivity: Quantifying the Impact

Part I - Pandemic Mitigation Tracking

Based on a random sampling of over 75,000 labor hours, data collected to date suggest that 7% of labor hours is lost on pandemic mitigation activities. It is reasonable to expect that, if crews were not spending 7% of their available productive time working on pandemic mitigation, they would be putting work in place.

Contractors should prepare and submit change order requests to seek compensation for the impact of pandemic mitigation and prevention efforts instituted on their projects. Pandemic mitigation was never contemplated at the time of pricing a project and represents an unforeseen cost. Contained within this study is a change order calculator for contractors.

Part II - Productivity Benchmarking

The data indicate a 12.4% overall average impact on Vertical Construction productivity as a result of a pandemic. It is important to note that this impact is additive to the 7% loss experienced as a result of mitigation tracking. Based on the current data, we find 50 to 60 minutes of lost productivity per day per employee 8-hour work period.

The study clearly illustrates the need to file change orders to recover losses on out-of-scope work and losses in productivity. The current pandemic also demonstrates the necessity of implementing proper productivity controls. Contractors who are using accurate labor and productivity tracking systems are far better positioned to manage the crisis than those without. As a follow up to this study, the National Electrical Contractors Association (NECA) will conduct an outreach program to help educate contractors on "the how and why" of effective job cost-control systems.

Part III – Business and Project Impacts

To mitigate the impact of a pandemic on their field and project management staff, companies should focus on three specific areas:

1. Jobsite Impacts
    - Additional cleaning and the greater number of safety (PPE) requirements.
    - Distracted workers discussing the news.
    - Access issues (limited workers, temperature testing, single access).
2. Project Management Impacts
    - Less project review (fewer PM visits/ less rigorous monthly review meetings).
    - Additional time to track cost impacts (documenting pre-pandemic impacts on project that would be a potential change order from post-pandemic impacts).
    - Time spent in project re-start planning.
3. Business Impacts
    - Project cancellations or projects delays.
    - Additional meetings: internally, with clients, with vendors, contingency planning, job re-start procedures.
    - Understanding rules from various governmental agencies.

Part I - Pandemic Mitigation Tracking

Objective

The objective of Pandemic Mitigation Tracking is to quantify lost productivity directly associated with jobsite pandemic mitigation requirements such as training, health screenings, cleaning and disinfecting, job site access and administration, all instituted to minimize exposure.

Data Collection and Methodology

To collect project hours on a daily basis, the consultants provided participants with an application for iOS and Android smartphones and tablets. A Microsoft Excel-based worksheet for participants with bulk daily time data provided an additional data collection option. Data collection began on April 15, 2020 and continues at the time of writing.

A single data point for this research represents time reported to five standardized time codes, per project, per day. Standard definitions for each time code normalize the data across the range of participants in the sample. The time codes are:

- 100 - Total Hours Worked
- 200 - Hours lost to COVID Safety and Training
- 201 - Hours lost to COVID Distancing and Jobsite Access
- 202 - Hours lost to COVID Cleaning and Disinfection
- 203 - Hours lost to COVID Administration.

Detailed definition of types of activities per time code are available in Appendix A.

Definitions of activities for each time code category were drawn from:

- Local, state and federal government guidelines for social distancing
- OSHA's 'Guidance on Preparing Workplaces for COVID-19'
- OSHA's 'Interim Enforcement Response Plan for Coronavirus Disease 2019'
- Firsthand accounts provided by contractors.

Participants received instruction for using the data collection tools via a combination of methods:

- Webinar (live and recorded)
- PDF Instruction Manual
- Instructions and FAQ embedded in both of the data collection tools
- Direct access to the research project's consultants via phone, text or email for questions and technical support

Each day, the research team reviewed sample size and geographic coverage using a heat map linked to the sample data set.

The analysis of the data collected centers around a single question: *Is it reasonable to expect that the percent of labor hours, on average, that a contractor loses on jobsite pandemic mitigation requirements are hours not available to produce work at estimated rates of production and/or rates of production as defined in resources such as NECA's Manual of Labor Units 2019-2020?*

Sample Set

As shown in Figure 1, the sample data collected were geographically distributed across the United States and Ontario, Canada and contained many major markets.

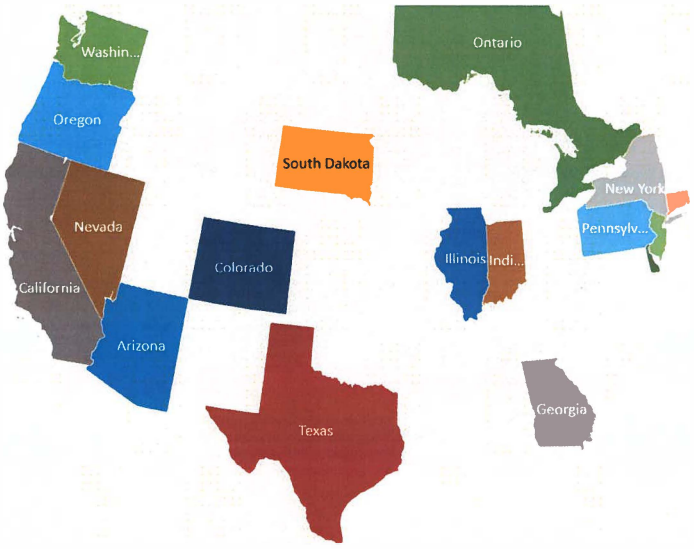


Figure 1: State Distribution of Mitigation Data.

Figure 2 shows the "heat map" distribution and relative number of samples from each geographic location.

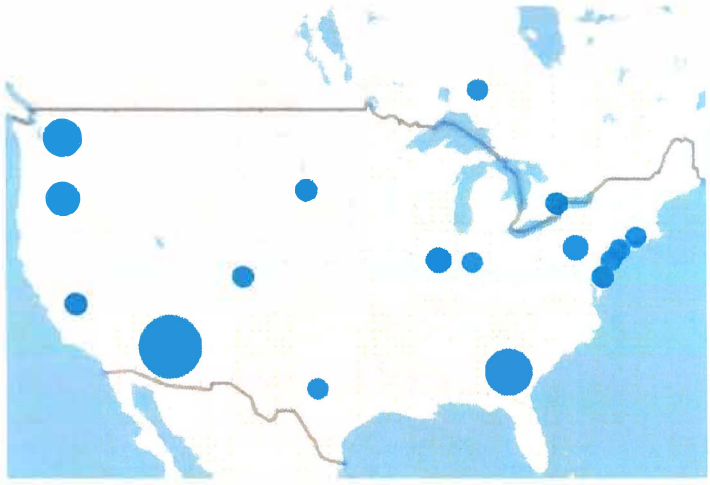


Figure 2: Concentration Heatmap of Sample Set Data Areas.

Pandemics and Construction Productivity: Quantifying the Impact

Figure 3 provides a table that depicts the breakdown of hours collected and tasks coded to mitigation related activities:

	Total Hours	% of Total Hours	% of Mitigation Hours
Total Hours Available	77,205		
Mitigation Safety & Training	1,598	2.1%	29.6%
Mitigation Distancing & Access Rules	1,865	2.4%	34.6%
Mitigation Cleaning & Disinfecting	1,400	1.8%	25.9%
Mitigation Administration	532	0.7%	9.9%
Total Mitigation Hours	**5,394**	**7.0%**	**100.0%**

Figure 3: Hours by Task Code for Mitigation Activities

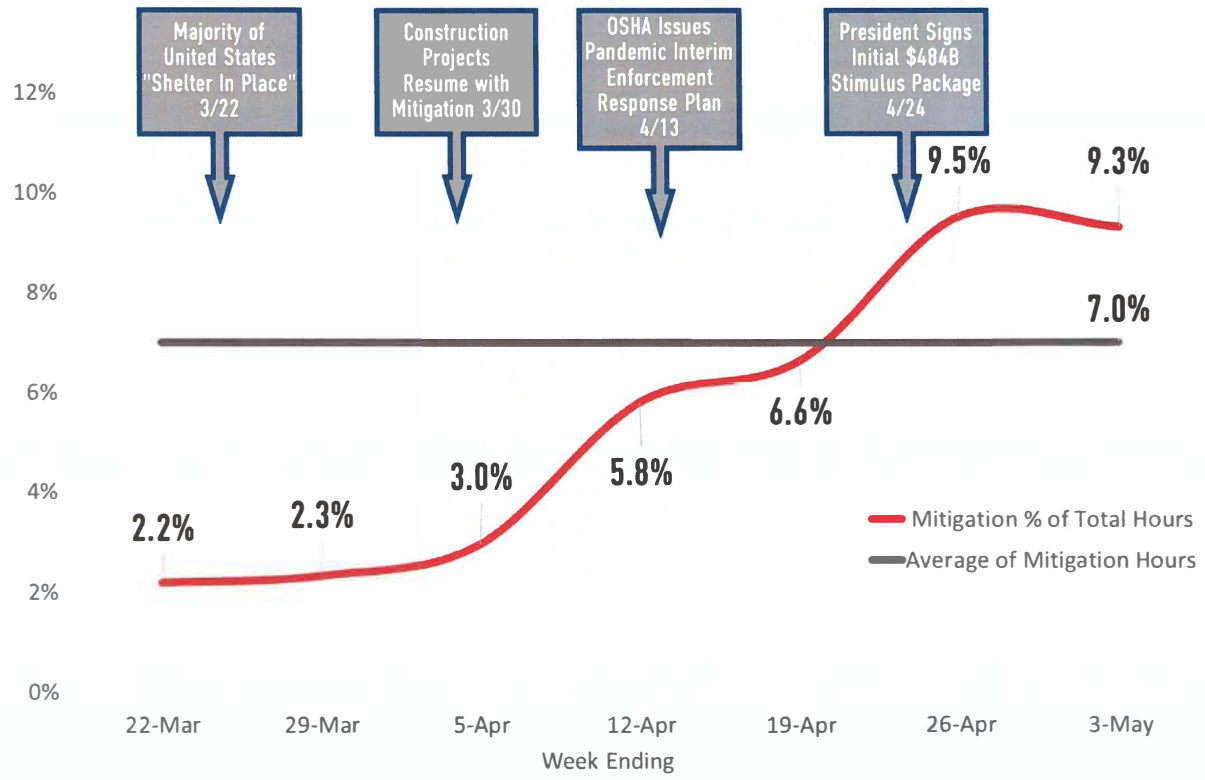


Figure 4: Mitigation Hours as a Percent of Total Hours by Week

Summary Findings

On average, electrical contractors experience a daily 7% loss of production due to pandemic mitigation activities. Approximately 60% of the loss is due to the combined effects of distancing, access, cleaning and disinfection activities. During an active pandemic, these are activities that crews manage throughout each day.

The next 30% of the loss is due to pandemic-specific safety and training meetings, toolbox talks, orientations, medical screenings, personal protective equipment fitting and training, etc. that occur on a more periodic basis.

The final 10% of lost time occurs due to pandemic-related administration such as additional paperwork, managing suspected cases and additional work coordination due to increased complexity in managing workflow. These activities are typically managed by onsite supervision.

In general, contractors should not be required to itemize the 7% loss into sub-categories since all categories require management on active projects during a pandemic. Federal distancing guidelines, OSHA requirements, and the resulting general contractor and subcontractor safety plans apply to most projects, regardless of region or type. For example, the following existing standards are referenced by OSHA as applicable in times of pandemic and apply to all projects across the country:

- 29 CFR § 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
- 29 CFR § 1910.133, Eye and Face protection.
- 29 CFR § 1910.134, Respiratory Protection.
- 29 CFR § 1910.141, Sanitation.
- 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- Section 5(a)(1), General Duty Clause of the OSH Act.

It is possible that local, state, owner driven, or contractor-specific mitigation requirements could affect the degree and complexity required to comply with mitigation requirements. In such cases, contractors should use the 7% loss as a baseline from which modifications specific to their situation are made. Factors to consider are provided in the section entitled "Roadmap" below.

Is the situation improving with time? It is too early to tell. It is reasonable to expect that early uncertainty surrounding the necessity and degree of mitigation requirements will ease as the specific disease is better understood and enforcement agencies more clearly define requirements? It is also reasonable to expect that contractors will improve their ability to cope with mitigation requirements as time goes on, provided they know what to expect. Until then, contractors should consider several factors to assess the degree of impact they will experience that will modify the current average including:

- GC/CM/Owner Site-Specific Safety Plans
- GC/CM Site Logistics Plans
- Quality of Work Coordination

- Local, state, or other modifiers to Federal Guidelines

With the number of hours and projects sampled, 7% is a solid calculation of the current average loss experienced daily by contractors across the country with a margin of error of plus or minus 1%.

Roadmap

Contractors should utilize the average loss in productivity in the following scenarios:

- Use the average provided and the calculator provided as backup to prepare change orders requesting relief for the time lost managing pandemic mitigation requirements.
- Use the average provided as a multiplier on active project to forecast financial projections, schedule impact, and resource availability.
- Use the average provided as a multiplier for estimating projects that will require pandemic mitigation factors as projects re-open and for future projects, assuming prolonged mitigation requirements.

Factors that should be considered as modifications to the baseline average include but are not limited to:

- Detailed knowledge of federal, OSHA, and CDC applicable guidelines and directives.
- Local and state modifiers or additions to federal, OSHA, and CDC guidelines and directives.
- Availability and clarity of owner, GC/CM project specific safety plans.
- Project specific characteristics that influence social distancing and logistics.
- Relationship with the GC/CM.

It should be noted that some traditional methods of schedule acceleration, such as additional manpower or overtime, are either not possible due to the nature of pandemic mitigation guidelines and directives or will compound the effects of activities such as waiting for access to work areas or gaining access to trailers for medical screenings, to name a few.

Contractors should look to their local NECA Chapters for news and information regarding additional training and education as well as updates to the data provided.

Part II - Productivity Benchmarking

Objective

The aim of the Productivity Benchmarking had three elements:

1. Measure electrical contractor companies' pre- and post-pandemic direct work productivity
2. Measure the impacted tasks by market segment, project/job type and geographic area
3. Provide analysis, summary findings and a roadmap to operationalize the results

In order to achieve the objective, the research consultants established a model to normalize data and provide a consistent and structured manner to collect and analyze the productivity data. More specifically, they:

- Documented specific tasks designed by an ELECTRI-designated Task Force. This enabled collection of percent completed and hours for common tasks across companies by market segment
- Constructed a formalized data gathering process from multiple electrical contracting companies across the US
- Defined specific critical dates that impacted contractor productivity (i.e. – Shelter in place orders)
- Measured, tracked, mapped and analyzed the data provided by contractors
- Built analytics models to generate insights into data and summarized the results
- Utilized a double-blind methodology with only the project leader (Maxim Consulting) knowing which contractor's data are aggregated in the results to ensure confidentiality
- Provided contractors who participated in the study an individualized profile of their results versus the national numbers to further assist in quantification

Data Collection and Methodology

The Collection Process

The data collection process involved the generation of large amounts of data from contractors who provided the information in a formalized template.

For each data point, the project consultants collected the following information from contractors:

- Market Segment
- Project ID
- Project/Job Name
- Project/Job Type
- Location City
- Location State
- Contact Person
- Contact Person Phone
- Week Start Date
- Week Date
- Task Code
- Percent Complete
- Hours
- Week of Data Collection

Contractors received a specific selection of options for the Project/Job Type based on the federal government's establishment of essential projects:

- Chemical
- Commercial Facilities
- Communications
- Critical Manufacturing
- Dams
- Defense Industrial Base
- Emergency Services
- Energy
- Financial Services
- Food and Agriculture
- Government Facilities
- Healthcare and Public Health
- Information Technology
- Nuclear Reactors, Materials, and Waste
- Transportation Systems
- Water and Wastewater Systems

- Other (in any instance in which a specific state had a departure from the federal list)

Contractors received specific selection options for the Market Segment:

- Vertical Construction (high rise, mid-rise, commercial, healthcare, etc.)
- Horizontal Construction (traffic signalization, streets and bridges, agriculture, etc.)
- Line Construction (power transmission and distribution, substations, etc.)
- Systems only Construction (i.e. – fire alarm, low voltage, etc.)
- Maintenance (facility maintenance, etc.)

Data were normalized by providing contractors with the specific definition for the Task Codes associated with each Market Segment:

Market Segment	Task Code	Definition
Vertical	Underground	Utility and Communication Conduits, Site Lighting, Pole Bases, Trenching, Utility Transformer Pad, Ductbank, Secondary Feeder Conduits to Service, Vaults.
Vertical	In Slab	Branch Distribution Raceways (power, lighting, equipment), BAS Raceways, Feeder/Power Distribution Raceways. Life Safety & Communication Raceways, if acceptable.
Vertical	Overhead Rough In	Power, Lighting, and Equipment Raceways, Life Safety Raceways, Communications Raceways, BAS Raceways, Feeder Raceways if Not in Slab, Branch Home Runs.
Vertical	In Wall Rough In	The "In The Wall" Portion of the Raceway That Needs to Be Concealed in a Wall for Switches, Receptacles, Communication, Life Safety, BAS Devices, any Miscellaneous Equipment That Needs a Wall Rough In.
Vertical	Wire Pulling	Wire & Cable Installations for all Systems Below Slab or Overhead. Feeder Wire, Branch Power, Branch Lighting and Equipment Wire, Life Safety, Communications, and BAS Cabling.
Vertical	Trim	Light Fixture Installation, Power and Lighting Device Installation, Life Safety, Communication, and BAS Device Installation.
Vertical	Electric & Equipment Rooms	Switchboards, Panelboards, Electrical Switching Devices, VFD's, Mechanical Equipment Connections (HVAC, Plumbing, Process, etc.)
Horizontal	Traffic Signals	Below Grade Work, Set Poles & Equipment, Wiring.
Horizontal	Street Lighting	Below Grade Work, Set Poles & Luminaires, Wiring.
Horizontal	Interconnect	Below Grade Work, Below Grade Wiring, Overhead Work (if applicable).
Line Construction	Mobilization/Demobilization	Mobilization/Demobilization of equipment, tooling and manpower to project. Includes warehouse support, trucking, on-boarding and establishment of laydown/office areas.
Line Construction	Drilling/Pole Setting	Drilling of pole holes including caisson foundations, setting of wood/steel poles, plump/backfill of pole, torqueing of bolts on steel monopoles.

Market Segment	Task Code	Definition
Line Construction	Framing	All framing of the poles including cross arms, insulators, attachment plates, grounding, riser material, equipment (cutouts, reclosers, transformers, cap banks, switches, etc.).
Line Construction	Anchors/Guys	Installation of anchor types and associated guying between the pole and anchor.
Line Construction	Wire Stringing	All tasks involved with the installation of wire including pulling ropes, pulling wire, clipping in and dead ending wire, and splicing.
Line Construction	Transfers	Moving wire or equipment from old pole to new pole (typical for distribution work)
Line Construction	Removals	Removal of any poles, framing, anchors/guys, wire, etc.
Systems	General Pathways	When included in our SOW this details cable tray (outside of TR's), sleeves, cable supports, etc.
Systems	ER/TR Buildout	Telecommunication room buildout includes ladder tray, racks, cabinets, patch panels, fiber panels, UPS/PDU's, and grounding associated with ER/TR's.
Systems	Horizontal Cabling	Includes category cabling to work area outlets. Depending on scope this can also include other systems type cable. Depending on project size the technical systems (AV, sound masking, paging, fire alarm, nurse call, etc.) would constitute a separate cost code.
Systems	Backbone Cabling	Includes copper, fiber, and coax type backbone cable between main ER and all associated TR's.
Systems	Horizontal Cable Termination & Testing	Includes terminating and testing both headend and station end cabling. This also can be broken out by floor, area, etc. depending on project size with separate cost codes for each. Also includes face plates and labeling.
Systems	Backbone Cable Termination & Testing	Includes termination and testing of all backbone cabling. This also can be broken out by floor, area, etc. depending on project size. Also includes patch panel labeling.
Maintenance	UPS Maintenance	Mobilize/Demobilize, Facility Check-in Process, OEM Operational Testing, Battery Access/Inspections, Load Bank Testing, Test Reports Data Gathering, OEM Supply Chain Scheduling.
Maintenance	Batteries Maintenance	Mobilize/Demobilize, Facility Check-in Process, Valve Regulated Battery Testing, Flooded Cell Battery Testing, Torque and Tighten Connections, OEM Supply Chain Scheduling.
Maintenance	Generator Maintenance	Mobilize/Demobilize, Facility Check-in Process, OEM Operational Testing, Load Bank Testing, Fuel Polishing, OEM Supply Chain Scheduling.

Sample Set

The data collected for Vertical Construction were normalized into seven distinct task types:

- Underground
- In Slab
- Overhead Rough In
- In Wall Rough In
- Wire Pulling
- Trim
- Electric and Equipment Rooms

As shown in Figure 5, the sample data collected were geographically distributed across the country and contained many major markets.

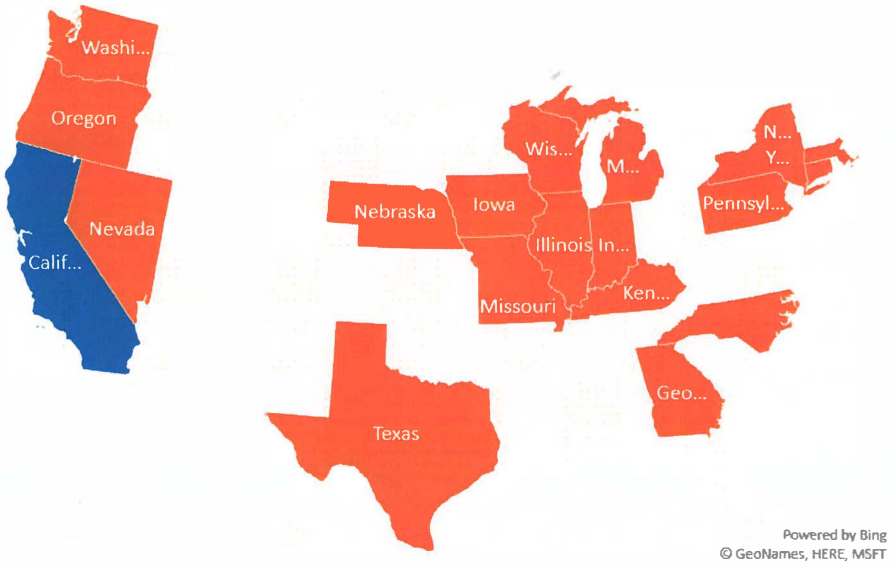


Figure 5: State Distribution of Productivity Data.

Figure 6 shows the "heat map" distribution and relative number of samples from each geographic location.

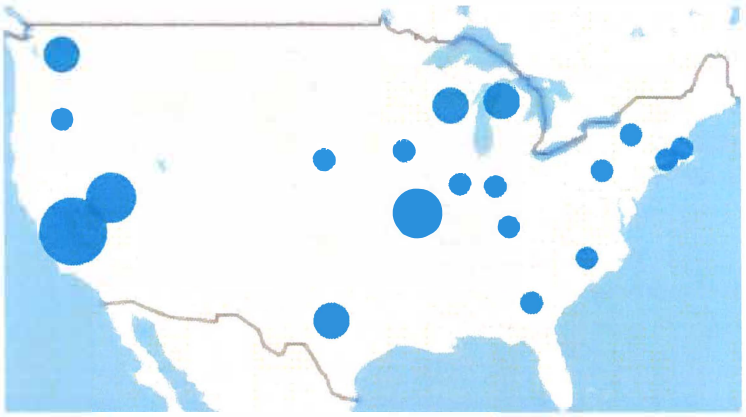


Figure 6: Concentration Heatmap of Sample Set Data Areas of United States.

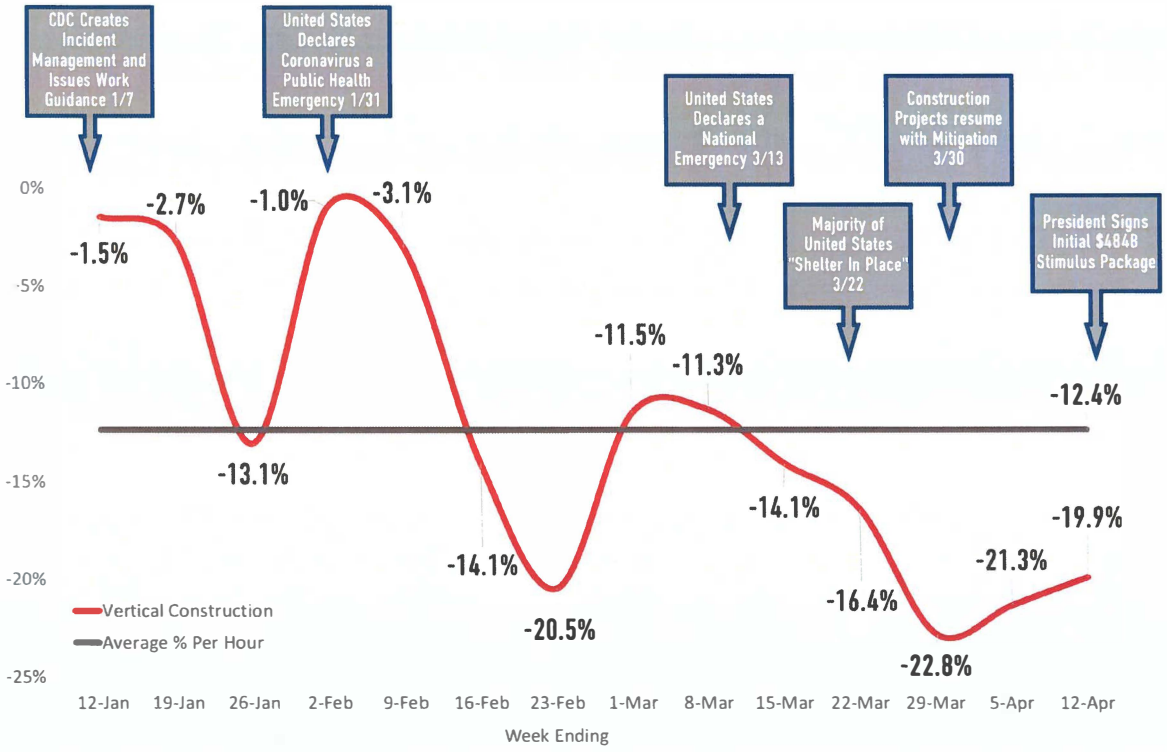


Figure 7: Vertical Construction Productivity Against Events

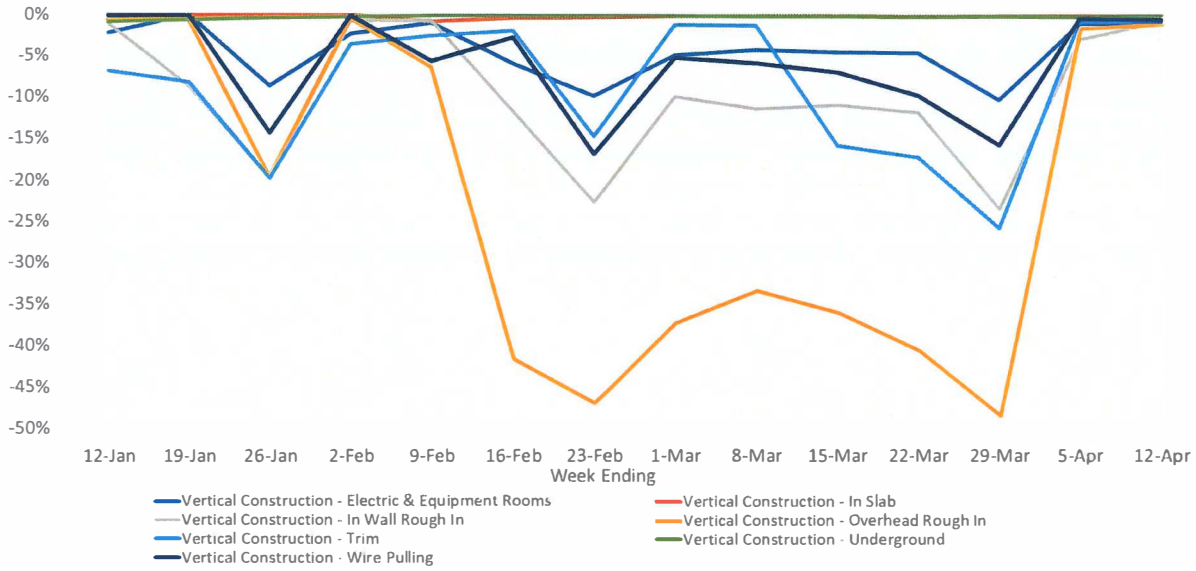


Figure 8: Vertical Construction Productivity by Project/Job Against Events

Summary Findings

This study indicates a 12.4% overall average impact on Vertical Construction productivity as a result of a pandemic. Based on the current data, the result is 50 to 60 minutes of lost productivity per day per employee 8-hour work period.

Roadmap

Companies that have trended lower in productivity losses have established, organized and trained their teams with new pandemic mitigation processes and procedures. Additionally, they have monitored and shifted work activities to accommodate required distance working between team members.

The baseline impact of 12.4% is substantial. Contractors should utilize this information to price an equitable adjustment properly utilizing this study's associated Pandemic Change Order Calculator provided and this study as backup for the impact.

Part III - Business Impact of a Pandemic

The current pandemic has had a dramatic impact on the productivity of field and office personnel in the Electrical Contracting industry. Over the past few months, this impact on project acquisition, pre-fabrication, the available pipeline of projects, project execution both for the field and project management, and the interactions and payment cycle of clients have created dramatic change.

Objective

The research for this portion of the project included representatives from all segments of the EC industry, both line and commercial. Data collection relied on discussion groups, case studies, and an industry Flash Survey to untangle and objectively characterize the relationship between productivity and this pandemic. The objective was to develop of a set of best practices and identify necessary education and training that would enable Electrical Contractors to better manage their projects and businesses and mitigate the impact of a pandemic on their field and project management staff.

Data Collection and Methodology

Using discussion groups, case studies and an industry survey, the researcher collected anecdotal data on the impacts that the pandemic had on electrical contractors beyond those impacts on their labor productivity. The four discussion groups and ten case studies focused on the way electrical contractors were able to adapt their business practices working remotely, allow for social distancing in the workplace, and identify new ways of interacting with suppliers and clients working from home.

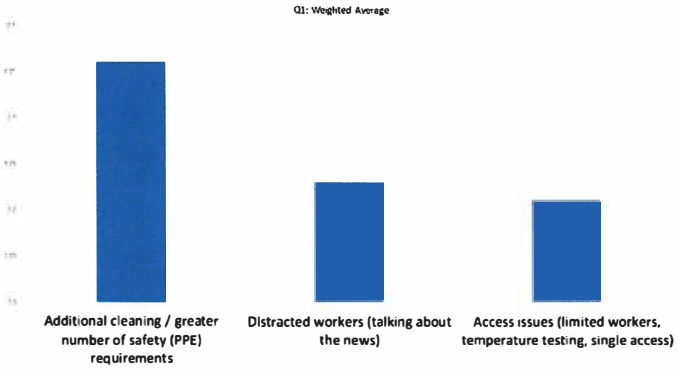
The survey focused on obtaining data that pertain to impacts on the jobsite, project management, overall business operations, and other items identified by participants themselves. Participants indicated the impacts in each of these four areas as High, Medium, Low or No impact. This format allowed the researcher to quantify the relative magnitude of the impact within each area.

As discovered in the discussion groups and case studies, impacts varied dramatically, based on the type of construction. Contractors mentioned that large HealthCare projects managed by National CM/GC firms seemed the most impacted. For some smaller work involving a crew of one, contractors actually reported improved productivity. In some instances, contractors used the absence of workers in client facilities to increase their sell-additional-work volume. This approach helped ECs take care of projects that, during normal times, clients might not have had the time or access to start.

While the survey remains active, the results for those surveys received by 2 pm on May 8th are reported below. Contractors identified their top three impacts using this scale 3 = High Impact = It has resulted in significant financial harm to your business; 2= Medium Impact = It has resulted in some financial loss to your business; 1= Low Impact = It has not impacted your financials in a meaningful way; and 0= No Impact = Absolutely no impact on your financials.

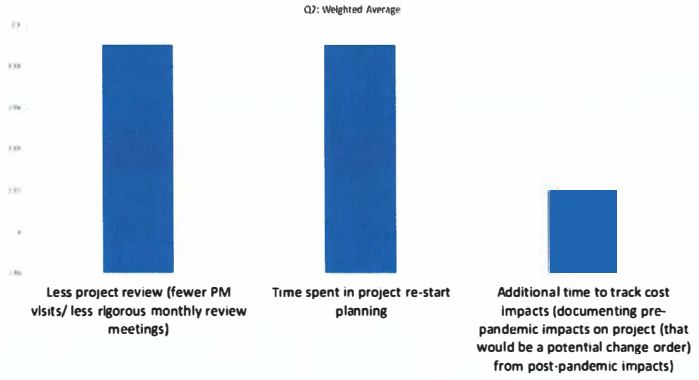
Jobsite Impacts

Contractors reported their three most significant jobsite impacts were a**dditional cleaning and the greater number of safety (PPE) requirements.** On this point, 89% of the participating contractors indicating this had a High or Medium financial impact, with an average of 2.32. The second highest impact was from **distracted workers discussing the news** with 80% of the contractors indicating this had a High or Medium financial impact, with an average of 2.26. Note: this topic had the highest number of contractors selecting this as High impact at 44%) The third highest impact area was **Access issues (limited workers, temperature testing, single access),** coming in at 83% of contractors indicating this had a High or Medium financial impact, with an average of 2.23.



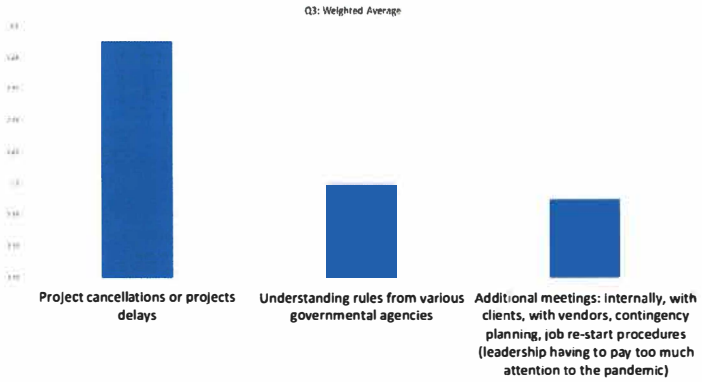
Project Management Impacts

Contractors reported their three most significant project management impacts were **less project review (fewer PM visits/ less rigorous monthly review meetings).** For this one, 73% of the contractors indicated this had a High or Medium financial impact, with an average of 2.15. The second highest impact was from **additional time to track cost impacts (documenting pre-pandemic impacts on project (that would be a potential change order) from post-pandemic impacts).** Here, 75% of the contractors indicated this had a High or Medium (selected by 2/3 of the contractors) financial impact, with an average of 2.04. The third highest impact area was **time spent in project re-start planning,** coming in at 71% of the contractors indicating this had a High or Medium financial impact, also with an average of 2.04.



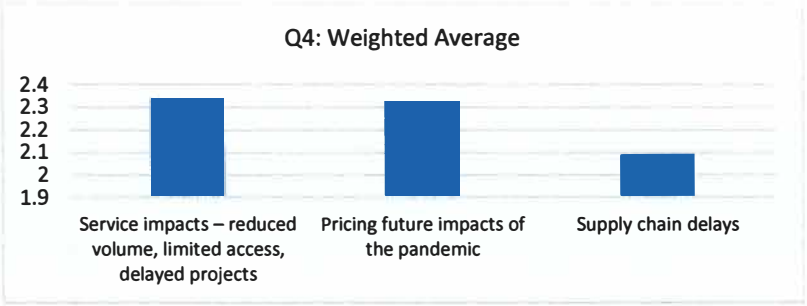
Business Impacts

Contractors stated their three most significant business impacts were **Project cancellations or projects delays.** For this topic, 86% of the contractors indicated this had a High or Medium financial impact. This particular impact also had the highest overall average of any item in the survey at 2.34. The second highest impact concerned **Additional meetings: internally, with clients, with vendors, contingency planning, job re-start procedures (leadership having to pay too much attention to the pandemic)**, for which 82% of the contractors indicated a High or Medium financial impact, with an average of 2.22. The third highest impact area was **Understanding rules from various governmental agencies**, with 76% of contractors noting this had a High or Medium financial impact, also with an average of 2.18.



Other Impacts

Contractors reported their top two most significant other impacts were **pricing future impacts of the pandemic** with 84% of the contractors indicating these had a High or Medium financial impact and an overall average of 2.34. Following closely was **Service impacts – reduced volume, limited access, delayed projects** with 83% of the contractors indicating these had a High or Medium financial impact and an overall average of 2.33. The third highest impact area was **Supply Chain Delays**, with 78% of contractors noting this had a High or Medium financial impact, also with an average of 2.09.



Operationalizing the Findings with Best Practices

Following the analysis of the interviews and case studies, these best practices are offered to help Electrical Contractors better manage a future pandemic. The argument can also be made that these are best practices – with or without a pandemic environment.

1. Follow notice requirements detailed in your contract. Do not give away your rights by not following the contract.
2. Rely on NECA for current information. Identify and assign one or more persons in your organization to keep up with changes that may be announced several times per day.
3. Include the cost of a pandemic in any quotation for future work. This would apply to both changes in field productivity and the cost of meeting pandemic requirements such as limited access, health documentation, temperature screening etc.
4. Understand and ensure that fair Force Majeure and delay clauses are included in your contract. Some contractors reported contracts specifically identifying this pandemic as a known item, thereby excluding known items from any possible Force Majeure clauses
5. Track accounts receivable and follow-up quickly. Due to the nature and timing of this project, many participating contractors had not yet experienced significant slowdowns in their accounts payable. They attributed that fact to the short horizon they are experiencing thus far during this pandemic. Most thought those financial impacts would be felt 60 to 90 days after a billing cycle had been completed.
6. Manage the firm's cash and learn whether there are governmental program changes that allow the company to borrow or defer payments. To "hoard" or keep cash, contractors reported the need to understand what programs can help with cash flow and how to use the firm's bank to negotiate better line-of-credit terms.
7. Small contractors especially must make sure to find the time to work "on" the business rather than just "in" the business. Many small business owners indicated that, after working in the field all day, it was difficult to keep up with rapidly changing information.
8. Ensure technology is sufficient to support remote work. Some contractors reported forced investment in technologies rather than planned investment. In those situations, they noted that cost inefficiencies occurred due to the need to purchase quickly, whether the item was communication technology/bandwidth or large numbers of laptops. For the longer term, some contractors are planning for a more robust payroll, purchasing, and job cost system.
9. Encourage diversification within market segments. Contractors who seemed most impacted were those heavily reliant on a single market segment that itself was significantly impacted. For example, in this pandemic, the automotive, hospitality, and retail markets all had a much bigger negative impact than other market segments.
10. Keep an appropriate stock of PPE equipment. For some electrical contractors, the purchasing manager spent the entire day for multiple weeks trying to locate needed PPE. Anticipate future changes and requirements (face shields, cleaning solutions, etc.) with which companies may be forced to comply.

11. Develop a communications plan for the workers. Some contractors reported that the action of holding weekly meetings helped to improve morale, reduce anxiety and improve the company's culture during this challenging time.
12. Use the time available to change interactions with clients. Schedule "lunch and learn" events for clients, suppliers and employees.

Many experts are concerned that future waves of the virus will occur after society returns to whatever new normal will exist later this year and beyond. Whatever the future holds, the old ways of doing business will ostensibly be altered into new ones. Both ELECTRI International and NECA will continue to monitor the situation and develop appropriate materials for contractors to use to survive and to prosper.

Appendices

Appendix A: Pandemic Mitigation Tracking Data Collection Definitions & Tools

Figure 9: Pandemic Mitigation App Data Collection Tool

Cost Code Definitions		
Cost Code	**Cost Code Name**	**Example activities in Cost Code**
100	Total Crew Hours Worked	Sum of all labor hours worked on your project for the day.
200	COVID Safety & Training	Any/all forms of time lost due to COVID specific safety huddles, orientations, respirator training & fitting, equipment handling, air flow equipment maintenance, sneeze shielding, etc.
201	COVID Distancing & Access Rules	Any/all forms of time lost due to site logistics, waiting to access work areas, waiting on medical screening, extra distance walking to lunch tents, additional coordination or reworking due to inaccessible work areas, etc.
202	COVID Cleaning & Disinfecting	Any/ all forms of time lost due to COVID related cleaning, disinfection, personal hygiene, filter management, disposal, etc.
203	COVID Administration	Any/ all forms of time lost due to COVID related administration, paperwork, management of suspect or positive cases, additional work coordination meetings, etc.

Figure 10: Pandemic Mitigation App Activity Definitions

Appendix B: Double-Blind Productivity Benchmark Participant Survey

The research study utilized a double-blind methodology to observe pre- and post-pandemic construction productivity impacted by behavioral interventions. Blinding or masking refers to the withholding of information regarding treatment allocation from one or more research study participants. It is an essential methodological feature of studies that helps maximize the validity of the research results.