

Questions asked during the BCF Group Webinar on 3/20/2020

Q1 - Please provide more information on the Paycheck Protection Program (PPP)?

A1 – Please see the [PPP summary by National Law Review](#) for more information.

Q2 - How do you calculate the business size for the small business exemption?

A2 - The guidance provides rules on how to calculate the employer size regarding <500 employees, they do not address how to calculate the employer size for <50. We can only assume the same method would apply absent specific guidance. Employers should count:

- full-time and part-time employees within the United States;
- employees on leave;
- temporary employees who are jointly employed by the employer and another company (regardless of whether the jointly employed employees are maintained on only one employer's payroll); and
- day laborers supplied by a temporary agency (regardless of whether the employer is the temporary agency or the client firm if there is a continuing employment relationship).

Q3 – Does the FFCRA address seasonal part-time employees?

A3 - Guidance does not specifically address seasonal part-time, only part-time employees as those normally scheduled to work fewer than 40 hours per week.

Q4 - Do FFCRA tax credits include the employee portion of health insurance health insurance?

A4 – Yes, employers receive 100% reimbursement for paid leave pursuant to the act. Health insurance costs are also included in the credit.

Q5 - Should our employees file for UC or should we keep them on payroll with FFCRA or both?

A5 - Employees who are actively working but need time off for an FFCRA qualifying reason should be offered paid sick or paid FMLA if they qualify (and the employer is not exempted). Employees who are laid off or whose hours have been substantially reduced due to the Governor's order or a downturn in business should be directed to apply for UC. The Governor's order is not an order of isolation or quarantine and does not trigger FFCRA paid leave requirements for employees. Likewise, layoffs due to the Governor's order would not trigger FFCRA paid leave requirements.

Q6 – Is there any help for businesses who are essential and are still paying people, but alternating who is in the office, etc. Specifically, any financial help for businesses that are still paying people full-time, even though they aren't doing full-time work.

A6 - Tax relief under FFCRA is limited to employees who are not working (after April 1) due to the specified circumstances. A staggered schedule would not by itself qualify, unless the DOL specifies otherwise. An employer may seek assistance in the form of payroll loans under the CARES Act.

Q7 - How do we opt-in to the <50 employees' exemption?

A7 – This has not yet been addressed in the FFCRA or in any subsequent guidance yet. While the DOL guidance notes that employers should “document why your business with fewer than 50 employees meet the criteria...” no further information has been provided yet. We will continue to monitor this point and provide follow up guidance as it becomes available.

Q8 - To receive max UC, employees were recommended to use all their PTO. Some do not want to use all their PTO should they return to work. Is paying PTO out to employees considered payroll.

A8 - The FFCRA prohibits employers from requiring an employee to exhaust accrued paid-time-off (PTO) or state/local paid sick leave. Employees are entitled to utilize federal emergency paid sick leave before using state or local paid sick leave or accrued employer-offered PTO. Allowing an employee to use available PTO would not qualify for the tax relief available under FFCRA.