



# WEEK THREE - Coronavirus Webinar

Wednesday, April 1, 2020

# PANEL OF EXPERTS



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# HR/LEGAL Q&A

Employer FAQs on Handling  
Common COVID-19-Related  
Situations and the Families First  
Coronavirus Response Act  
(FFCRA)

# HR/LEGAL Q&A

Disclaimer 1: These FAQ cover federal laws ONLY. Your state or local laws may impose additional obligations.

Disclaimer 2: The information in these slides is current as of 3/31/2020. DOL pushes out new guidance on a nearly-daily basis, and this presentation will be archived and not updated.

Disclaimer 3: This presentation assumes a basic understanding of the Families First Coronavirus Response Act (FFCRA). A good primer is here:  
<https://lehrmiddlebrooks.com/wp-content/uploads/FAMILIES-FIRST-CORONAVIRUS-RESPONSE-ACT-SIGNED-INTO-LAW.pdf>.

Disclaimer 4: This presentation is not comprehensive, but a reflection of the most frequently asked questions and interesting and likely-applicable to the present audience developments in the past two weeks.

# HR/LEGAL Q&A

## FFCRA is effective TODAY, April 1.

-Law said it would be effective not more than 15 days after enactment.

-DOL announced in its first Q&A publication that law would be effective on 4/1/2020 (the 14<sup>th</sup> day after enactment).

# HR/LEGAL Q&A

## What needs to be done today?

-FFCRA poster up.

([https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Posters\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Posters_WH1422_Non-Federal.pdf)) (for private, non-federal government employers).

-Prepare to provide leave today. <https://lehrmiddlebrooks.com/wp-content/uploads/DOL-ISSUES-UPDATED-GUIDANCE-ON-EMERGENCY-LEAVE.pdf>

# HR/LEGAL Q&A

## How do I evaluate an employee's reported exposure?

- Use CDC standards. What were the distance, duration, and shared surfaces of everyone in the chain of exposure?
- What mitigating measures are in effect?
- Yes, you can ask these personal questions!  
*Example: Prison Warden spouse*

# HR/LEGAL Q&A

**An employee presents to work with cough, shivering, and sweating. What can I do?**

- You may ask him to leave pending doctor's clearance.
- Goal is to turn this employee into an employee experiencing COVID-19 symptoms and seeking a diagnosis. (Emergency Paid Sick Leave)

# HR/LEGAL Q&A

## How do I handle informing employees of possible exposure?

- Follow public health authorities if applicable.
- Conduct risk assessment to determine scope of employees likely to be affected.
- Inform them of available benefits during employer-required quarantine. (May be able to get a health care provider to opine that employee should be in self-quarantine to entitle them to EPSL).
- Do not identify employee by name (It's okay if people guess).

# HR/LEGAL Q&A

## How do I handle pregnant employees?

- Don't assume they want different work, etc.
- At this time, there is no reliable scientific evidence that COVID-19 poses an additional exceptional risk to pregnant women or their unborn children.
- Thus, in the absence of an underlying complication, there is no ADA or PDA obligation to provide an accommodation. Additionally, any leave provided would not exhaust a pregnant employee's FMLA allotment since it would not correspond to an existing serious health condition.
- Your options if a pregnant employee requests a change or leave from work:
  - \* Alternate work
  - \* Compassionate leave
  - \* Clarification from physician
  - \* Resignation on good terms

# HR/LEGAL Q&A

## FFCRA Update

# HR/LEGAL Q&A

## Does leave have to be granted intermittently?

-No.

-Emergency Paid Sick Leave may not be granted intermittently for anything except childcare related leave.

-EFMLA leave may be granted intermittently with the employer's approval.

-DOL encourages flexibility.

# HR/LEGAL Q&A

## Are there model forms?

-None from the government yet.

-Model forms and policy from LMVT:

\*Forms: <https://tinyurl.com/rptn5op>

\*Policy: <https://tinyurl.com/urxux7x>

\* Instructions on Use (a must-read):  
<https://tinyurl.com/wz37gwz>

# HR/LEGAL Q&A

## What information may I seek to support an application for either kind of leave?

- DOL initially imposed a seemingly-strict burden on employers through its Q&A page, but much of that language was stripped.
- Model forms provide a guide for best-case-scenarios, but flexibility should be the watchword.

# HR/LEGAL Q&A

## How do EPSL and EFMLA interact?

- Shared rationale for use: school closure or loss of childcare (one of six reasons for EPSL; one of one reasons for EFMLA)
- Same pay scheme (2/3 pay up to \$200/day)
- EPSL is two weeks of coverage.
- EFMLA is 12 weeks of coverage, the first two weeks of which are unpaid unless the employee elects to apply some paid leave (including EPSL if it is available).
- In other words, EPSL and EFMLA may run concurrently if EPSL has not been used for another purpose and the employee requests to use it.

# HR/LEGAL Q&A

## How do I apply for small business exemption (under 50 employees)?

-Still no application process.

-DOL states that employers may qualify for the exemption if providing leave threatens viability of business as going concern because of any of the following:

- (1) Providing leave would result in expenses and obligations exceeding revenues;
- (2) Employee absences would pose a substantial risk to financial health or operational capabilities; OR
- (3) inadequate labor pool to temporarily replace employees requesting leave.

-Exemption applies to childcare/school closure leaves only.

# Questions?



## **Jeffrey Scott, MBA**

President, Jeffrey Scott!  
NALP Consultant Member

# Questions?



**Andrew Bray Esq.**  
NALP VP of Government Relations

# GOVERNMENT RELATIONS UPDATE

## CARES Act

[https://www.landscapeprofessionals.org/Coronavirus/Cares\\_Act\\_Financial\\_Resources.aspx](https://www.landscapeprofessionals.org/Coronavirus/Cares_Act_Financial_Resources.aspx)

# Questions?

# NEW & UPDATED RESOURCES

[Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#)

[COVID-19 Operating Guidelines for Landscape Companies](#)

[Letter Stating That Lawn and Landscape are Essential Services](#)

[DHS CISA Memorandum Listing Landscape Services as Essential](#)

[The Landscape Industry COVID-19 Statement](#)

[State by State COVID-19 Guidance](#)

[Facebook Landscape and Lawn Care Coronavirus Discussion Group](#)