



COVID-19 EMPLOYER AND EMPLOYEE OPTIONS

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EMPLOYER PERSPECTIVE

FFCRA and CARES Act Funding Options

COVID-19 Federal Spending Packages

Families First Coronavirus Response Act (FFCRA)

- [Public Law 116-127](#)
- Enacted 3/13/2020
- “This bill responds to the COVID-19 outbreak by providing paid sick leave, tax credits, and free COVID-19 testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding.”

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

- [Public Law 116-136](#)
- Enacted 3/27/2020
- “This bill responds to the COVID-19 outbreak and its impact on the economy, public health, state and local governments, individuals, and businesses. The bill provides FY2020 supplemental appropriations for federal agencies to respond to the COVID-19 outbreak. The supplemental appropriations are designated as emergency spending, which is exempt from discretionary spending limits. In addition, the bill funds various loans, grants, and other forms of assistance for businesses, industries, states, local governments, and hospitals; provides tax rebates of up to \$1,200 per individual and an additional \$500 per child, subject to limits based on adjusted gross income; temporarily expands unemployment benefits; and suspends payments and interest on federal student loans. The bill includes several other provisions that modify a wide range of programs and requirements, including those regarding oversight of the activities and funding authorized by this bill; the tax treatment of withdrawals from retirement accounts, business income, losses, and charitable contributions; medical product supplies; health insurance coverage for COVID-19 testing and vaccinations; the health care and aviation workforces; mortgage payments, evictions, and foreclosures for properties with federally backed mortgages; student loans and financial aid; aviation excise taxes; Medicare and Medicaid; the Food and Drug Administration drug approval process; the emergency paid sick leave program; banking and accounting rules; and the U.S. Postal Service's borrowing authority.”

Considerations. . .

Employer

- Pre-COVID workforce crisis
- Under FFCRA, employees may be at home sick, in quarantine, caring for a sick family member, or caring for a child for whom there is no school or childcare
 - *NC DHHS now has subsidized childcare options for **essential personnel****
- Employees afraid to come to work may resign
- Furloughed individuals from other industries may not be interested in DSP job vacancies (*see calculation*)

Employee

- Pre-COVID income: \$10/hr.
- **Pre-COVID** gross income per week: **\$400**
- NC unemployment benefits max \$350/wk. (last two quarters' total wages divided by 52)
 - In this example, would be \$185/wk.
- CARES Act Pandemic Emergency Unemployment Compensation \$600/wk. for up to 25 weeks through 7/31/2020
- Gross income per week in NC **with PEUC + State UI: \$785**

Healthcare and Public Health: Hospitals, clinics, dental offices, pharmacies, labs and lab service providers. . . Home healthcare service providers, LME/MCOs, mental health and substance use providers. . .

Human Services Operations. Human Services Operations includes, but is not limited to: long-term care facilities; child care centers, family child care homes; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs, including food, cash assistance, medical coverage, child care, child support services, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, social services, transportation and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Home-based care and services. Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery.

Residential facilities and shelters. Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, victims of domestic violence, people experiencing homelessness, substance use disorders, and/or mental illness.

EO #121

“Essential Businesses and Operations”

NC DHHS COVID-19 Childcare Assistance

- NC DHHS is providing financial assistance to help essential workers afford childcare
- NC DHHS is paying bonuses to childcare teachers and staff who provide care during the COVID-19 crisis.
- Emergency Child Care Subsidy Program for essential workers as defined in [Executive Order 121](#).
- Essential worker emergency childcare financial assistance offered through May and may be extended.
- To receive an emergency care subsidy, parents must complete the [COVID-19 Parent Application for Financial Assistance for Emergency Child Care](#) and submit it to their childcare provider.
- Financial aid available to parents and caregivers who:
 - earn income < 300 % of FPL;
 - are essential workers fighting COVID-19 or protecting the health and safety of communities; and
 - have no other viable childcare options available to them.

EEOC Guidance:

Disability-related Inquiries and Medical Examinations of Employees under The ADA

- Title I of the Americans with Disabilities Act of 1990 (the ADA) limits an employer's ability to make disability-related inquiries or require medical examinations at pre-offer, post-offer, and during employment.
- Disability-related inquiries and medical examinations of employees must be "job-related and consistent with business necessity."
- A "medical examination" is a procedure or test that seeks information about an individual's physical or mental impairments or health[excludes drug use, psychological, and physical fitness tests & polygraphs].
- An employer is entitled only to the information necessary to determine whether the employee can do the essential functions of the job or work without posing a direct threat due to a medical condition.
 - Okay to ask employees about social contacts (COVID-19 specifically)
 - Okay to take employees' temperatures before shifts begin
 - Okay to send symptomatic employees home
 - **No waiver of confidentiality protections:**
 - Cannot keep a paper log out, by name, with body temps.
 - May not tell other employees the name of an employee who tests positive.



RIF

NC Unemployment Insurance Filing for Employees and Employers

Section 3. Unemployment Insurance Changes

- (a) To provide the necessary unemployment benefits to those affected by COVID-19, the Department of Commerce is authorized, to the maximum extent permitted under federal law, and for so long as the Declaration of a State of Emergency regarding COVID-19, dated March 10, 2020, remains in place, to interpret flexibly or waive, as appropriate, the following:
- i. the one-week waiting period for benefits (N.C. Gen. Stat. § 96-14.1(b));
 - ii. the able to work and available to work requirements (N.C. Gen. Stat. § 96-14.9(b));
 - iii. the work search requirements (N.C. Gen. Stat. § 96-14.9(b));
 - iv. the actively seeking work requirements (N.C. Gen. Stat. § 96-14.9(e)); and
 - v. the “lack of work” requirement of the unemployed provisions of N.C. Gen. Stat. § 96-15.01(b)(2)(a).
- (b) The Department of Commerce is further directed not to allocate charges to employers’ accounts for individuals who are paid benefits for reasons related to COVID-19 (N.C. Gen. Stat. § 96-11.2 and 96-11.3(b)). The Department of Commerce shall separately account for these expenditures so that the State of North Carolina can seek reimbursement from the federal government.

EO #118

State Unemployment
Insurance Waivers

As of 4/14/2020:

579,724 unemployment
applications filed since
3/16/2020

NC Department of Commerce Employment Security Commission

If you have had to RIF or reduce employee hours by more than 40%, direct employees to this [Website](#) where they can file a North Carolina Unemployment Insurance Claim.

OR

You can submit a “batch” of “attached” claims if you have numerous former employees who need to file claims(*see next slide*)

The Division has taken a number of steps to more expediently process unemployment claims. These actions include:

- Hiring 50 new staff;
- Adding 100 staff from Division of Workforce Solutions Career Centers;
- Contracting with an additional 200-person call center;
- Adding computer servers to ensure capacity for large number of people filing online;
- Doubling printing and mail capacity to ensure timely delivery of documents; and
- Purchasing more than 500 new computers and other equipment so employees in the office and at home can work to process claim.

To obtain information on how file an attached claim on behalf of your employees, visit: <https://des.nc.gov/need-help/covid-19-information/covid-19-information-employers>. This page will be updated with the new process following the signing of the Order.

EO #131

FAQs Regarding Employer
Filing of Unemployment
Insurance Attached
Claims for Employees



STAFF RETENTION

FFCRA and CARES Act Loan and Grant Options for Employers

Program	Paycheck Protection Program (Emergency SBA 7(a) Loans) Secs. 1102, 1106	Expanded EIDL & Emergency Grants (SBA 7(b) Loans) Sec. 1110	Mid-Size Loan Program Sec. 4003
Description	Emergency loan program for nonprofits and for-profit entities to secure funds to pay staff and operating costs for two months, and secure full loan forgiveness under certain circumstances.	Existing Economic Injury Disaster Loan (EIDL) program expanded to more for-profit entities, applies looser credit standards, and creates a rapid grant procedure.	Largely undefined loan program to be created by the Treasury Department to fill the gap between the Paycheck Protection Program for smaller employers and the industry stabilization loans to big business.
Size Eligibility	500 or fewer employees	Existing EIDL limits for nonprofits*	Between 500 and 10,000 employees
Dollar Amount	The lesser of \$10 million or 2.5 times the average total monthly payroll costs from the one-year period (look back) prior to the date of application. Express 7(a) loans available up to \$1 million.	Normal EIDL loans available up to \$2 million. EIDL advances of \$10,000 paid within 3 days.	Unspecified
Loan Processor	Local financial institutions	Small Business Administration	Local financial institutions
Nonprofit Eligibility	Must have been in operation on 2/15/2020 and had paid employees and/or paid independent contractors. Expressly available for charitable nonprofits with 500 or fewer employees, but requires that employees of affiliated nonprofits may be counted toward the 500 employee cap, depending on the degree of control of the parent.	In operation before 1/31/2020. Loans can be based solely on credit score. Existing EIDL program applies to “private nonprofit organizations” that excludes religious institutions and some other charitable organizations.	Expressly applies to “nonprofit organizations”
Personal Guarantee	No collateral or personal guarantee required.	Waives personal guarantee up to \$200,000, and requirement of inability to obtain credit elsewhere.	Unspecified
Certification	Good-faith certification that need for the loan is based on economic conditions; funds to be used to retain workers and maintain payroll	Self-certification under penalty of perjury.	Good-faith certification that need is based on economic conditions; funds to be used to retain and restore employment, won't

Program	Paycheck Protection Program (Emergency SBA 7(a) Loans) Secs. 1102, 1106	Expanded EIDL & Emergency Grants (SBA 7(b) Loans) Sec. 1110	Mid-Size Loan Program Sec. 4003
	or make mortgage, lease, and utility payments; and no duplicate application or receipt of funds for same purposes.		abrogate collective bargaining agreements, and will remain neutral in union organizing efforts, among other things.
Loan Use	Payroll costs, mortgage interest payments, rent, utilities, and interest on prior debt during the 8-week period following loan origination.	\$10,000 advance: Paid sick leave, meeting payroll, increased costs due to disrupted supply chain, mortgage, debt service.	To retain 90% of workforce at full wages and benefits through 9/30/2020 and intention to restore 90% of workforce in place on 2/1/2020.
Loan Terms	1.0% interest rate; first 6 months of payments (principal and interest) automatically deferred. Maximum of 2 years.	Normal EIDL: 2.75% interest rate for nonprofits \$10,000 advance treated as a grant	Interest capped at 2% with no principle or interest paid for first 6 months.
Loan Forgiveness	Employers that maintain employment for the 8 weeks after origination of loan, or rehire employees by June 30, will have loans forgiven in whole or part, essentially turning the loan into a grant. Section 1106.	\$10,000 advance forgiven even if borrower denied EIDL loans.	Expressly prohibited in statute. Section 4003(d)(3)
Key Definitions	<p>Covered Period means the 8-week period following loan origination.</p> <p>Employee means an individual working on a full-time, part-time, or other basis.</p> <p>Payroll Costs include compensation (including benefits costs) paid to employees and contractors, capped at \$100,000 per year per individual (prorated over the “covered” period), and state/local payroll taxes.</p>	<p>Covered Period means 1/31/2020 through 12/31/2020.</p> <p>Eligible entity means a business with 500 or fewer employees.</p> <p>*Eligible private nonprofits include all charitable nonprofits, including faith-based organizations, per SBA FAQs published 4/3/2020.</p>	
Application & Documentation	SBA Instructions and sample application (posted 3/31/2020)	<p>For emergency EIDL Grant, apply here now.</p> <p>For normal EIDL loans, complete SBA Form 5 online.</p>	To be announced

Evolving Mid-Size Business Loan Program

- “Main Street Lending Program” announced 4/9/2020 by U.S. Department of The Treasury
- Up to \$600 billion in new financing for businesses with up to 10,000 employees or \$2.5 billion in 2019 annual revenues (earnings before interest, taxes, depreciation and amortization).
- No guidance on how to count employees, other than businesses must be created or organized in the U.S., have significant operations in the U.S., and have a majority of employees based in the U.S.
- An estimated 40,000 medium-sized businesses that employ 35 million Americans will be eligible.
- Loans must be originated on or after 4/8/2020 and will have 4-year terms.
- Minimum loan: \$1M; Maximum loan: lesser of \$25M or, added to additional debt, < four times EBITDA
- No collateral required but there is an origination fee
- Amortization of principal and interest deferred for 1 year; no penalty for prepayment.

Paycheck Protection Program

- \$350 billion appropriated for this program
- loan duration is 8 weeks
- First come, first served
- Already business have been approved for \$205 billion of what is available
- As of 4/14, Congress still negotiating a request for an *additional* \$250 billion for the program

Paycheck Protection Program

OMB Application

- 2 pages to complete for eligible non-profit, VA, Tribal, and self-employed
- State purpose of the loan (payroll, rent, mortgage interest, utilities)
- List owners with $\geq 20\%$ interest
- Answer questions about SBA loan history, criminal background of owners, and U.S. citizenship
- Certify that you agree to the terms of the loan

Required Documentation

- Application must be filed online with required digital attestations/signatures
- Articles of Incorporation
- Bylaws/Operating Agreement (including ownership information)
- Driver's Licenses
- Payroll Expense Verification Documents (IRS Form 940, 941, Payroll Summary, Benefits, etc.)
- Certification all employees are U.S. citizens
- 2019 Profit & Loss Statement
- Tax Returns – 2018 may be acceptable if 2019 hasn't been filed

Distinguish “Hazard Pay” and “Retainer Payments”

- No hazard pay in public sector yet, but [4/6 letter to Gov. Cooper](#) from State Employees' Association for time and a half for essential State employees for whom social distancing is impossible or impractical.
- Private sector hazard pay discretionary but some corporations are implementing it.
- Retainer Payments available now via federal and State authorities (*see next slide*).

Retainer Payments

- The CMS-approved Appendix K Emergency Preparedness and Response Waiver Request includes Innovations Waiver flexibilities.
- Vaya may provide retainer payments to provider agencies for direct care workers to address emergency-related issues.
- Providers and Employers of Record may request retainer payments for direct care workers who normally provide habilitation and personal care services to a Vaya plan member only if:
 - The direct care worker was providing Innovations Waiver services to the member prior to March 13, 2020; and
 - The worker is currently unable to provide services to the member due to complications experienced during the COVID-19 pandemic because the member is sick due to COVID-19 or because the member is sequestered and/or quarantined based on local, state, federal and/or medical requirements/orders. NC Medicaid stated the current "Stay at Home" order qualifies as "sequestered" for purposes of these retainer payments.
- Only Innovations services authorized as of 3/12/2020 in the member's approved Plan of Care are eligible.
- Retainer payments are for *primary staff* who provide regularly scheduled Innovations Waiver Community Living and Supports, Community Networking, Day Supports, Supported Living and/or Supported Employment services.
 - Paid or unpaid back-up staff are ineligible.
 - Primary staff currently receiving unemployment are ineligible.
- [COVID-19 Appendix K Retainer Payment Request Form.](#)

Additional Employer Assistance

Source: Parker Poe 4/13 Webinar

- **FFCRA Payroll Tax Credit**

- Employer payroll tax credit for qualified sick leave wages and allocable health care plan expenses (which include employer-paid health insurance plan premiums)
 - Example: Employer pays \$6,000 in sick leave. Otherwise required to deposit \$10,000 with IRS. Employer retains \$6,000, only deposits \$4,000 with IRS.
- Eligible employers have had a 50% revenue reduction

- **FFCRA Employee Retention Tax Credit**

- Effective 3/12/2020 – 1/2021
- For employers with >100 employees: for wages paid to employees who are not providing services
- For employers with <100 employees: for all wages paid while employee qualified
- **Cannot combine with the Paycheck Protection Program or the Payroll Tax Credit**

Additional Employer Assistance

Source: Parker Poe 4/13 Webinar

Accelerated and Advance Payment Program [[Medicare specific](#)]

- Must have billed Medicare for claims within 180 days
- Must not be in bankruptcy
- Must not be under active medical review or program integrity investigation
- Must not have outstanding delinquent Medicare overpayments
- Most providers can request up to 100% of Medicare of three-month period
- Re-payment: 120 days after issuance of payment
- 210 days to repay
- Offset against future Medicare claims
- Please review this [CMS Fact Sheet](#) if you are an eligible employer



EMPLOYEE PERSPECTIVE

NC Unemployment Insurance and Federal Supplements

FFCRA Expanded FMLA

Source: Parker Poe 4/13 Webinar

- Regular FMLA = employee entitled to 12 weeks of leave
 - This program may NOT be used in addition to Existing FMLA
- Eligible employees need leave for care of child if schools or childcare are closed
- Eligible employees employed at least 30 days prior to effective date of 4/1/2020
- Relation to Paid Leave:
 - First 10 days may be unpaid (employee can elect to use paid leave instead)
 - Paid leave after 10 days at 2/3 of regular rate with a cap of \$200 per day, \$10,000 aggregate
- Employers subject to Expanded FMLA have < 500 employees
 - Potential hardship if < 50 employees AND employees are not at work because they are taking care of a child because school and/or childcare are closed AND providing leave would jeopardize the viability of the business

FFCRA Emergency Paid Sick Leave

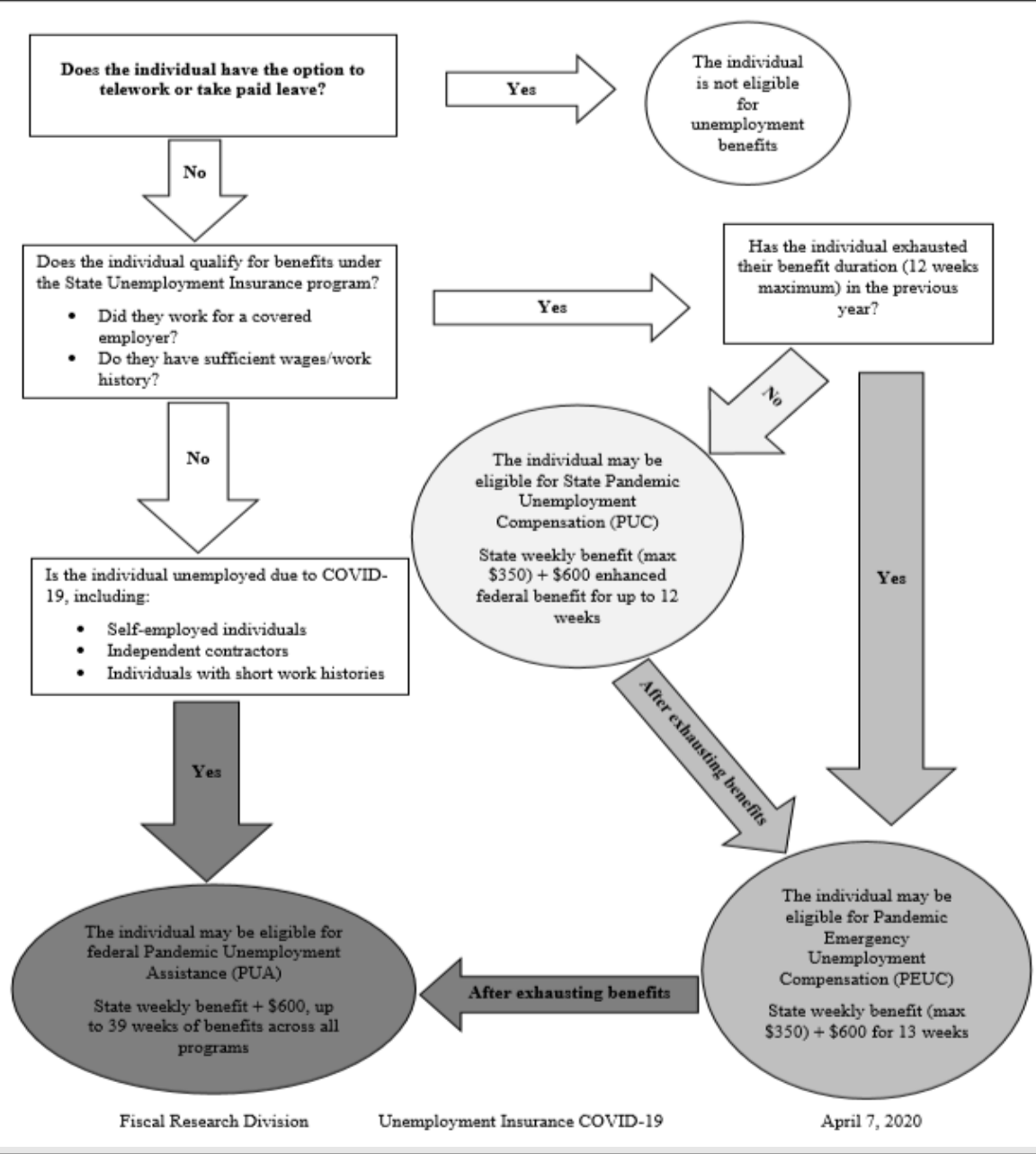
Source: Parker Poe 4/13 Webinar

1. Quarantine
2. Self-isolation
3. COVID-19 Symptoms
4. Caring for quarantined individual
5. Taking care of child if school closed
6. Other substantially similar condition specified by HHS

- **Duration:**
 - FT employees capped at 80 hours
 - PT employees capped at the equivalent of two weeks
- **Compensation:**
 - capped at \$511 per day and \$5,110 total for bullets #1 - #3
 - 2/3 (capped at \$200 per day and \$2,000 total) for bullets #4 - #6
 - *In addition to* employer's existing paid leave policy
 - Employer may not require use of other paid leave before Emergency Paid Sick Leave
 - Emergency Paid Sick Leave may be used in conjunction with Expanded FMLA
 - April 1, 2020

Pandemic Unemployment Assistance

- Please see this NCGA Fiscal Research Division 4/7/2020 [presentation](#) for additional details.
- Individual does not qualify for regular State UI benefits (e.g., self-employed or contractor)
- Individual does not qualify for any other UI programs
- Individuals who have the ability to telework with pay DO NOT QUALIFY
- Individuals who are receiving sick leave or other paid benefits DO NOT QUALIFY
- Provides *up to 39 weeks* of UI benefits at \$600 / week federal payment + State UI payment
 - *Only 25 weeks in NC*; most states have 26 weeks of UI but NC has only 12 weeks of UI
 - minus any other weeks claimed under regular UI or Extended Benefits.
 - Excludes Pandemic Emergency Unemployment Compensation weeks (which cover an additional 13 weeks of UI).



Flowchart Prepared by the NCGA Fiscal Research Division for the 4/7/2020 COVID-10 House Select Committee Working Group on Economic Support



QUESTIONS?

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