



# Managing the COVID-19 Pandemic in the Workplace

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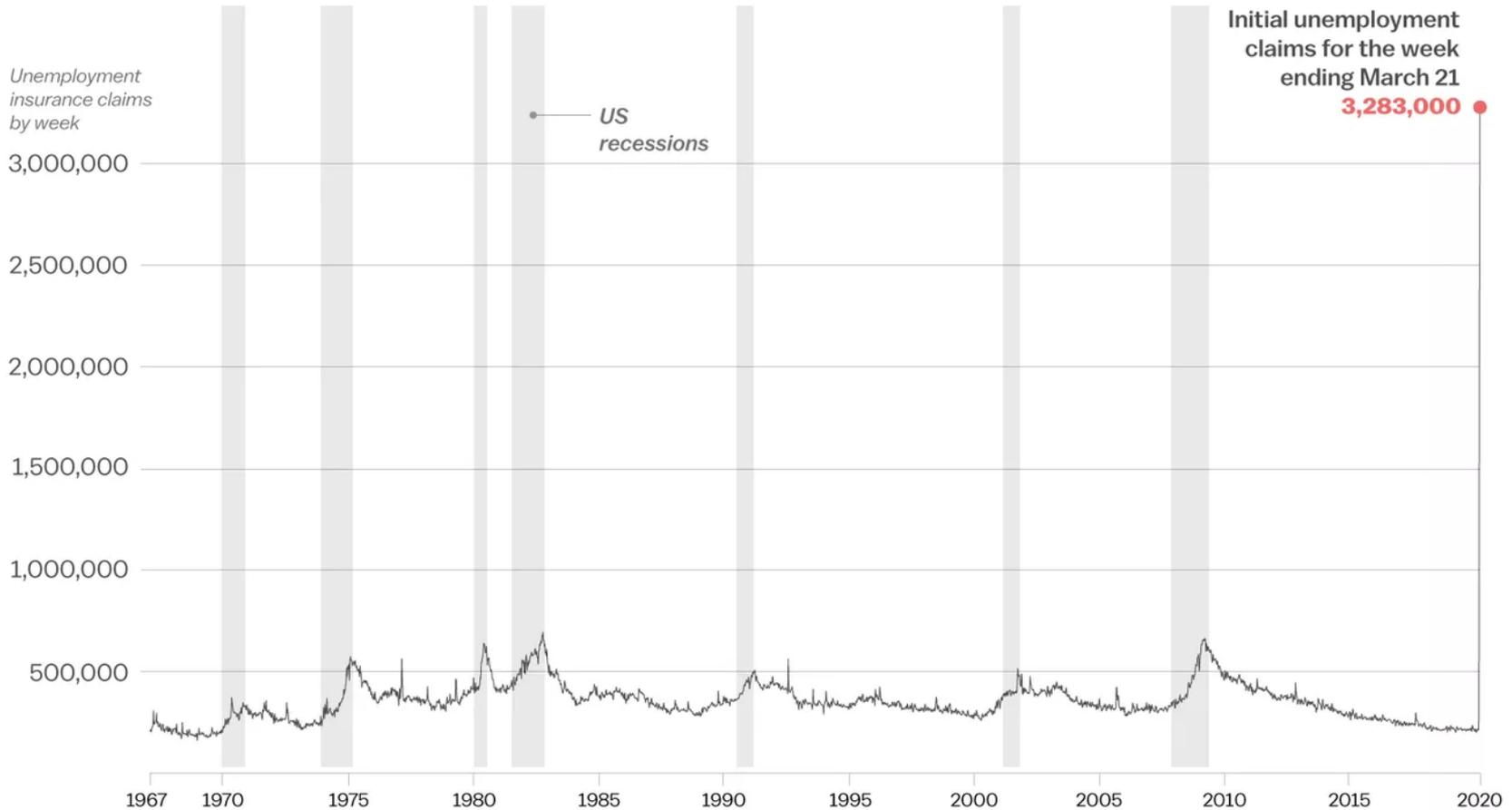


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# Agenda

- CARES Act
- Families First Coronavirus Response Act
- Business Closures, Layoffs, and Furloughs
- State Specific Considerations

## An unprecedented rise in unemployment



Source: US Employment and Training Administration



# CARES Act

- **Coronavirus Aid, Relief, and Economic Security Act**
  - **Relief by cash:** The IRS would send checks of \$1,200 and \$2,400 to individuals and joint filers, respectively. The payments would be reduced for those making above \$75,000/\$150,000 and eliminated for those making above \$99,000/\$198,000.
  - **Relief by payroll tax:** Employers would receive a payroll tax credit for half of wages where a company's operation was at least partially prohibited during the coronavirus crisis.

# CARES Act

- **Relief by retirement account access:** The 10% penalty on early withdrawal fees from retirement accounts would be waived up to \$100,000 for the duration of 2020.
- **Relief by tax-free student loan repayment:** Employers would be able to provide tax-free student loan repayments up to \$5,250 per year. These payments would not count as taxable income for the employee.

# CARES Act

- **Relief by expanded unemployment benefits:** The bill would expand eligibility for unemployment benefits and offer recipients an additional \$600 per week above what they already receive under state unemployment programs. These expanded benefits would last for four months.

# The Families First Coronavirus Response Act

- Enacted March 18, 2020; Effective April 1, 2020 through December 31, 2020
- Requires private insurance plans to provide free COVID-19 testing;
- Requires employers to provide emergency paid sick leave to workers affected by COVID-19 and expands family and medical leave; and
- Provides increased funding for state unemployment insurance programs, food stamp and nutritional programs and others

# The Families First Coronavirus Response Act

- DOL expects to issue regulations in April 2020
- DOL posted three information pages:

- Most recently a Q&A Guidance:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- Guidance concerning Employee Paid Leave Rights:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

- Guidance concerning Employer Paid Leave Requirements

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

# The Families First Coronavirus Response Act

- Expanded Employer Coverage
- Expanded Employee Eligibility
- Expanded Pay Benefits

# Emergency Family and Medical Leave Expansion Act

- FMLA applies to private sector employers with 50+ employees and public sector employers
- Expanded Employer Coverage under FFCRA
- Affords benefits to employees of all private employers with fewer than 500 employees and public sector employers (regardless of size)

# Emergency Family and Medical Leave Expansion Act

- Eligibility normally contingent on working at least 1,250 hours during the twelve months prior to FMLA leave
- Expanded employee eligibility under FFCRA
  - Eligible employee is anyone who has been employed for at least 30 calendar days
  - New reason for FMLA leave:
    - caring for a child under 18 years of age whose school or childcare provider has been closed, or is unavailable due to the COVID-19 emergency.

# Emergency Family and Medical Leave Expansion Act

- Expanded pay benefits
  - The first 10 days unpaid, but employees can use accrued PTO
  - After 10 days, employer obligated to pay full-time employees 2/3 of regular rate of pay for employee's regular weekly hours for up to 10 weeks
    - Part-time employees or those with irregular schedules paid at 2/3 of regular rate for average number of hours worked over prior 6 months of employment
    - Pay capped at \$200/day and \$10,000 total
  - Small businesses (<50 employees) can seek an exemption if compliance would jeopardize the business viability

# Emergency Paid Sick Leave Act

- Applies to all employers with <500 employees
- Requires 80 hours of paid sick time (pro-rated for part time employees)
  - Paid sick time in addition to already accrued sick time
- Upon the request of an employee, employer must permit an eligible employee to use paid sick time under FFCRA to cover initial 10-day period of unpaid leave under FMLA
  - Who is an eligible employee? Employees are eligible on day one of employment

# Emergency Paid Sick Leave Act

- Employers must provide paid sick time to extent employee is unable to work (or telework) because:
  1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
  3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

# Emergency Paid Sick Leave Act

4. Employee caring for an individual who is subject to quarantine or isolation order, or has been advised to self quarantine by a health care provider, due to COVID-19;
5. Employee caring for a son or daughter of such employee if school or place of care of son or daughter closed, or child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
6. Employee experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with Secretary of the Treasury and the Secretary of Labor.

# Emergency Paid Sick Leave Act

- Benefits
  - Full time employees receive full pay for leave due to reasons 1-3, and 2/3 pay for reasons 4-5
  - Part time employees – benefit calculated based on an average two week period
  - Employees that have worked <6 months: calculated based on regularly scheduled hours

# Emergency Paid Sick Leave Act

- Benefits (cont'd)
  - Emergency sick leave payments capped at \$511 per day (\$5,110 total) for employees who take leave because of reasons (1), (2), or (3), i.e., illness or quarantine. Payments capped at \$200 per day (\$2,000 total) for employees who take leave for reasons (4), (5), or (6), i.e., care for affected individuals or school closure
  - Paid sick leave provisions of the Act do not preempt state paid sick leave laws such as Connecticut's Paid Sick Leave Law
  - Paid sick leave provisions do not diminish an employee's existing rights under a collective bargaining agreement or existing employer policy

# Exceptions?

- Health Care Provider Employee Exception
- Emergency Responder Employee Exception
- Small businesses with fewer than 50 employees may seek an exemption from the expanded FMLA and PSL requirements if compliance would jeopardize the viability of the business as a going concern
- DOL's March 24 guidance instructs small businesses to "document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations."
- In the meantime, don't send the DOL any materials seeking an exemption.

# Tax Credits to Employers

- Employers who are required to provide Emergency Paid Family and Medical Leave and Emergency Paid Sick Leave under the Act shall be eligible to receive refundable tax credits to ease the financial burdens of these requirements
- IRS Guidance issued March 23, 2020: <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

# Unemployment and FFCRA

- FFCRA provides relief to state UI offices to handle the surge of claims and to expand UI coverage to as many claimants as possible
  - Technical assistance to states to help set up short-time compensation programs, which allow for partial UI benefits to workers whose employers have an approved program to reduce hours to avoid layoffs or furloughs, if states do not already have them.
  - Full federal funding for an additional 26 weeks of extended benefits (EB) for states that experience an increase of 10% or more in unemployment claims over the previous year, comply with beneficiary access provisions, and trigger EB under existing UI law. Normally, this requires a 50% match from states.

# Unemployment and FFCRA

- Grants to states totaling \$1 billion and paid out using the same formula used for regular state UI administrative funding
  - First \$500 million would be paid immediately to all states. These grants would come as long as states are doing basic things to ensure claimants can access their earned benefits, like having at least two ways applicants can contact the agency, and notifying applicants that their claims are being processed.
  - Second \$500 million would be reserved for states that have at least a 10% increase in unemployment claims, a threshold many states will meet very soon. Each qualifying state would receive an additional grant in the same amount as the first, as long as they use all the flexibility we provide under federal law.
- Interest-free loans to states to help pay state UI benefits through December 31, 2020.

# Notice Requirements

- DOL issued a model notice on March 25, 2020
- All covered employers must post in a conspicuous place, email, or snail mail to employees

# DOL Enforcement

- DOL announced it will observe a temporary “no enforcement” period of 30-days
- Employer must act in “good faith”
- “Good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the employer provides the DOL a written commitment to comply with the Act in the future

# State Orders Shuttering Non-Essential Businesses

- Connecticut, Massachusetts, and New York have all issued their own respective orders shuttering “non-essential” businesses

# CT DOL Issues

- March 2020 Unemployment Insurance Guidance FAQs about COVID-19 for workers and employers
  - Employers should issue Unemployment Separation Packet for separated employees, but employees may be able to file a claim faster with just the employer's FEIN
- Department offers SharedWork program as alternative to layoff
  - Allows reduction in hours by as much as 60% while employees collect partial unemployment benefits
  - Available to all employers with 2+ FT or permanent PT employees
  - Reduction of work not less than 10% or more than 60%

# CT Recovery Bridge Loan Program

- DECD launched an emergency relief fund for nonprofits and small businesses impacted by COVID-19.
- Provides short-term loans to businesses and nonprofits with fewer than 100 employees. 0% interest for up to 12 months, up to \$75k (\$25mm program).

# New York Paid Leave

- Effective March 18, 2020
- Employees of small employers (1-10 employees) with annual revenue under \$1 million receive **unpaid sick days and job protection**, and qualify for state-funded paid family leave and disability benefits.
- Employees of medium sized employers (11-99 employees) and small employers with annual revenue over \$1 million receive **5 paid sick days** and job protection, and qualify for state-funded paid family leave and disability benefits **upon expiration of paid sick leave**.

# New York Paid Leave

- Employees of large employers (100+ employees) and public employees receive paid sick days for the entirety of the quarantine – up to fourteen days, and full job protection.
- Disability and paid family leave benefits begin as soon as paid leave expires – purpose it to cover the entire quarantine period.
- If an employee receives federal COVID-19 benefits, NY benefits apply to the extent they are in excess of the federal benefits.

# Layoffs and Furloughs

- Furlough
  - Remains an employee
  - May still be eligible for health insurance benefits
  - Generally of shorter duration
- How is a furlough different than a layoff?
  - Layoff severs the employment relationship and benefits
  - Does not require “re-hire”
  - Eligible for unemployment benefits under both

# Business Closures and Layoffs

- If temporarily suspending operations, laying off groups of employees, or permanently closing, there could be WARN Act implications
- Exceptions to the normal notice requirements?
  - Yes – if caused by (a) business circumstances that were not reasonably foreseeable as of the time notice would have been required (b) a natural disaster, or (c) faltering business.
  - If less than six months duration.

# Other Issues

- Relaxed I-9 Rules
- Unionized employers
- Newly remote workforces
- Don't forget about regular FMLA / CTFMLA / CT PSL

# What's Next?

- More federal relief? State relief?
- “Opening” the country / economy?
- Shelter-in-place orders?
- Quarantine orders?
- Isolation orders?

# Resources

- <https://www.murthaemploymentlaw.com/>
- <https://portal.ct.gov/-/media/Coronavirus/COVID-19-FAQs.pdf?la=en>
- <https://www.dol.gov/agencies/whd/pandemic>
- <https://www.dol.gov/coronavirus>
- [https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)
- [https://www.osha.gov/Publications/influenza\\_pandemic.html](https://www.osha.gov/Publications/influenza_pandemic.html)