



# WEEKLY COVID-19 UPDATE:

FFCRA GUIDANCE, CARES ACT,  
CYBER RISK MANAGEMENT

# AGENDA

CURRENT  
CONDITIONS

LEGISLATIVE AND  
REGULATORY  
UPDATES

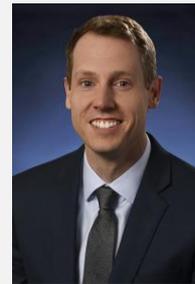
CYBER RISK



# PANELISTS



**KC Rippstein**  
Employee Benefits  
Compliance Practice Lead



**Craig Truitt**  
Employee Benefits  
Compliance Attorney



**Justin Jacobs**  
Vice President of  
Marketing



**Tim Burke**  
Director of Cyber Risk

# WHERE WE STAND

**1,464,852 CASES & 85,397 DEATHS WORLDWIDE**

**WEEK-ENDING MARCH 28<sup>th</sup> JOBLESS CLAIMS HIT 6.64 MILLION**

**COVID-19 PEAK DEATHS & RESOURCE USE EXPECTED THIS WEEK IN THE UNITED STATES**

**UNIVERSITY OF WASHINGTON MODEL REDUCES ESTIMATED U.S. FATALITIES BY 26%**

A photograph of three women in a professional office setting. The woman in the center, with blonde wavy hair, is smiling and gesturing with her hands as if speaking. To her right, a woman with dark curly hair is looking towards her. In the foreground, the back of a man's head and shoulder is visible, looking towards the women. They are seated around a table with a laptop and a tablet. A dark blue diagonal overlay covers the bottom half of the image.

**LEGISLATIVE AND  
REGULATORY UPDATES**



# FFCRA EMERGENCY PAID LAVE UPDATES (EPSL AND EFML)

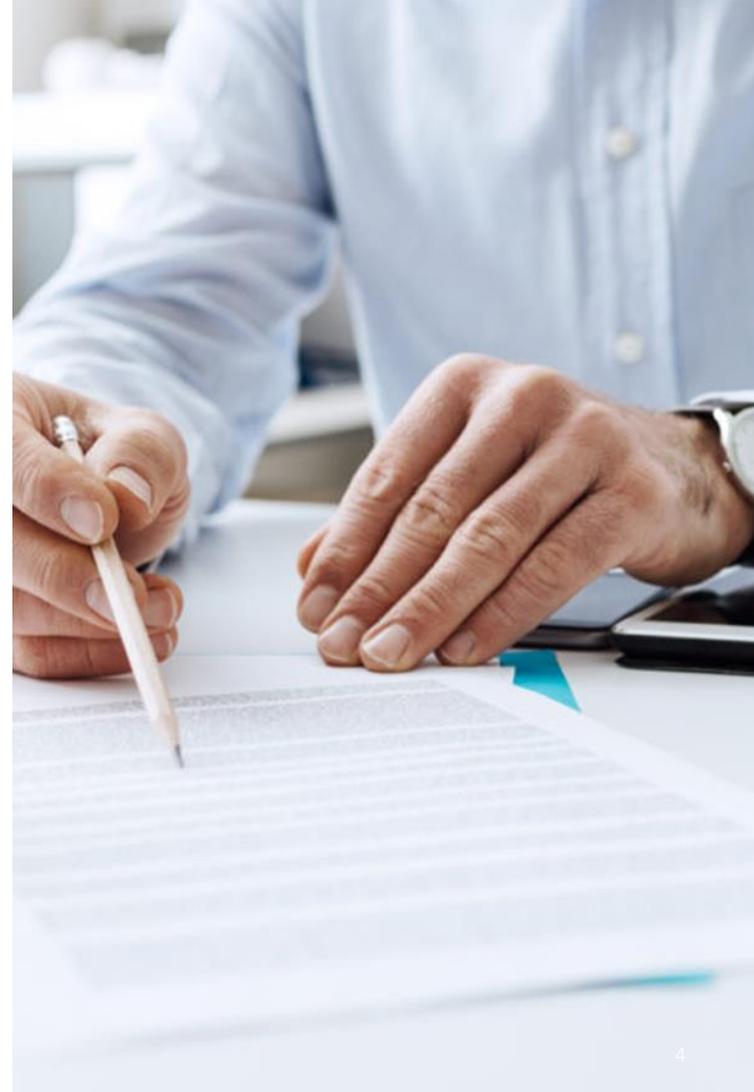
Remember, these are only for employees scheduled to work/telework

- Not to compensate reduced hours, and not for furlough/layoff

DOL issued a temporary final rule, updated FAQs to reflect details from that rule, and expanded to 79 total FAQs

IRS issued 66 total FAQs relating to claiming EPSL/EFML tax credits (remember, public sector employers cannot claim the tax credits)

HHS has not yet issued guidance for EPSL reason #6 (needing leave for “substantially similar” reasons)



# FFCRA DOCUMENTATION

Neither DOL nor IRS have issued a model form

- So we have created sample EPSL forms (one to accommodate the <50 hardship) and a sample EFML form
- ThinkHR has created a combined sample EPSL/EFML form
- None of these are model forms and should therefore be reviewed by your legal/tax counsel before use

You cannot request copy of public official or health care professional quarantine order

- Should ask for name of public official or name of health care professional to claim tax credit



# FFCRA DOCUMENTATION

Shelter-in-place is only available for reason #1 if the employee's position is not shut down by the order but the employee is ordered to shelter-in-place and cannot telework

- For example, if position is essential, employer cannot provide telework, and employee age 60+ is subject to an age 60+ shelter-in-place order, they can claim reason #1

If order is for an individual the employee must care for, should ask for name and relationship of that individual

- Individual should be an immediately family member or roommate, or someone with a relationship that expects the employee to provide care for them during their quarantine
- Should include a statement the employee is expected to care for this individual



# FFCRA DOCUMENTATION

For school/daycare closures, should ask for names and ages of children and names of schools and childcare facilities/providers

- Employee must represent no one else will provide care during EPSL/EFML time
- If child is over age 14, should include a statement that special circumstances exist making employee unable to work/telework during daylight hours

EPSL reason #6 has no guidance yet

Might be a violation of FFCRA to ask for more documentation than allowed, so exercise caution

Keep all documentation for four years



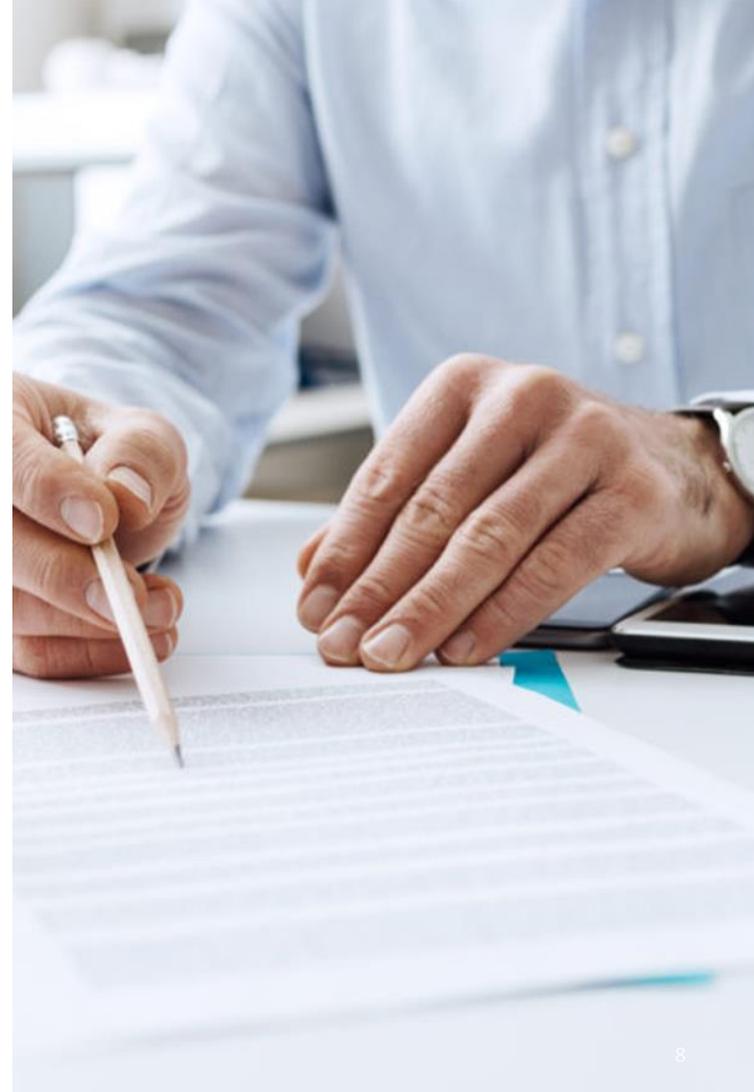
# OTHER FFCRA DETAILS

EPSL is only available to an employee up to 80 hours total from April 1 to December 31, regardless of number of employers during that time

- So employers need to know before honoring a request whether employee has taken EPSL hours since April 1

Employer cannot force employees to supplement missing income during EPSL or first two weeks of EFML with other accrued paid leave

- However, employer can offer employee the chance to use that accrued paid leave concurrently if they'd like
- In reversal of prior guidance, employer CAN enforce existing policies requiring use of accrued paid leave concurrently with final 10 weeks of EFML



## OTHER FFCRA DETAILS

Employee on personal non-FMLA leave that could qualify for EPSL/EFML reasons may end their leave early and claim EPSL/EFML instead

School/daycare closure can be for “son or daughter” employee serves “in loco parentis” for, including age 18+ with disability making them incapable of self-care



# WHAT CAN EMPLOYERS 500+ DO FOR PAID LEAVE CREDIT?

FFCRA might apply if reductions in force drop employer below 500

## MIGHT CONSIDER SECTION 45S PAID FMLA TAX CREDIT

- Was extended a year so it's still available for 2020
- Must offer at least two weeks of 50% paid leave for all FMLA purposes (not just COVID-19 illnesses)
- Starts at 12.5%, increases 0.25% for each percentage point over 50% of wages, to 25% cap
- Cannot claim on those earning more than \$78K
- Cannot claim retro prior to implementing written policy
- Paid leave under state or local paid leave laws cannot be credited
- Would not include special FFCRA terms (school/daycare closure, employed 30+ days, 50 in 75-mile radius, etc.)

## EXPLORE THE EMPLOYEE RETENTION CREDIT AVAILABLE UNDER THE CARES ACT

- If qualified, those 100+ can only claim 50% of paid COVID-19 leaves and benefits, up to \$10K per employee



# CARES ACT EMPLOYEE RETENTION CREDIT (ERC)

Employers not wanting to apply for an SBA loan can explore the ERC

**Available if:**

- Operations at least partially restricted by government order (such as limiting commerce, travel, group meetings, etc.), or
- Experiencing a calendar quarter 50% year-over-year reduction in gross receipts (can keep claiming until a quarter reaches 80%)

Allows a refundable tax credit of up to 50% of qualified wages, including allocable qualified health expenses and limited to \$10,000 per employee over all calendar quarters combined (Qualified Retention Wages)

For employers 100+, only applies to those employees not providing services for COVID-19 reasons

Not available to employers in the public sector



# OTHER SBA LOANS AND DEBT RELIEF

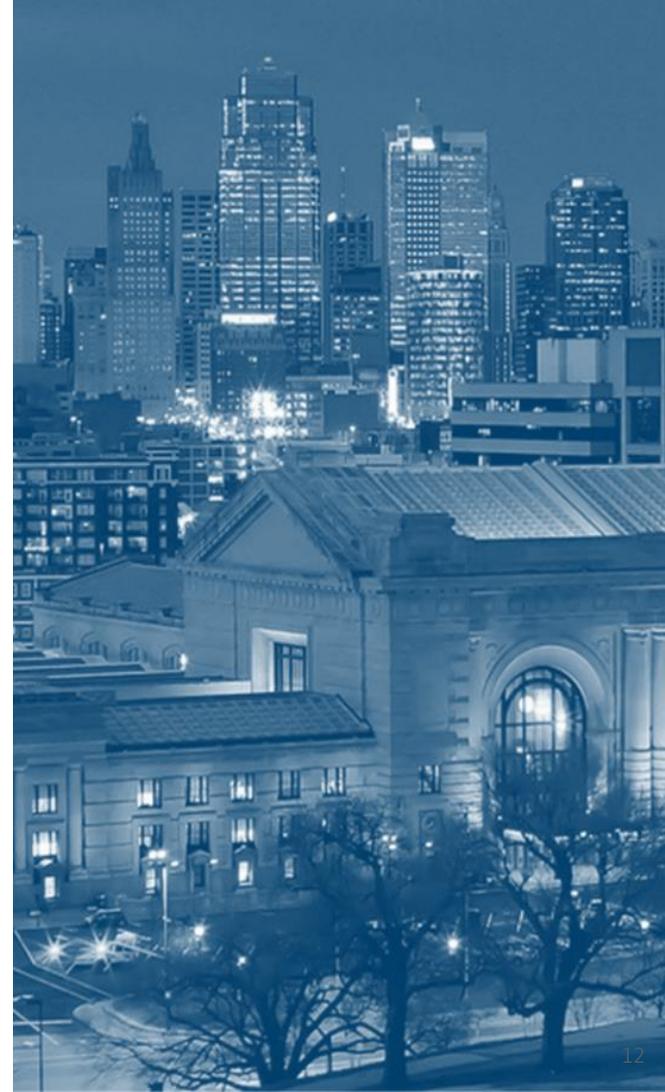
**SBA economic injury disaster loan program:**

<https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

**SBA enhanced debt relief:**

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-debt-relief>

- For next 6 months, SBA pays your principal, interest, and fees for certain existing loans
- Also debt relief for certain new loans prior to September 27, 2020
- Deferral for existing disaster loans



# CARES ACT UNEMPLOYMENT COMPENSATION (UC)

US House Ways & Means Committee published FAQs:

<https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/UC%20FAQ%20CARES%20Act.pdf>

# CARES ACT UNEMPLOYMENT COMPENSATION (UC)

Their final Q&A adds confusion, implying furloughed employees keeping active benefits are blocked from UC, and implying employer cannot subsidize a month or two of COBRA:

**Q:** Can workers on UC receive health insurance benefits from their prior employer?

**A:** Workers receiving UC are eligible to stay on employer-sponsored insurance through COBRA but will no longer receive employer contributions for the premium.

However, Senator Grassley of the Finance Committee provided clarity in his FAQs:

*“An employer can furlough workers, who will then be eligible for unemployment insurance payments. It is also possible for an employer to continue to pay an employee’s health benefits during a furlough, which would still allow the employee to receive unemployment insurance payments until they are called back to work.”*

<https://www.grassley.senate.gov/news/news-releases/cares-act-unemployment-insurance-faq>



# WHAT ARE STATES DOING?

State overall regulatory responses: <https://www.ciab.com/download/22049/>

State insurance regulatory updates: <https://www.ciab.com/download/21453/>

State insurance premium forbearance: <https://www.ciab.com/download/22642/>

Most states are enhancing unemployment to take advantage of CARES Act provisions

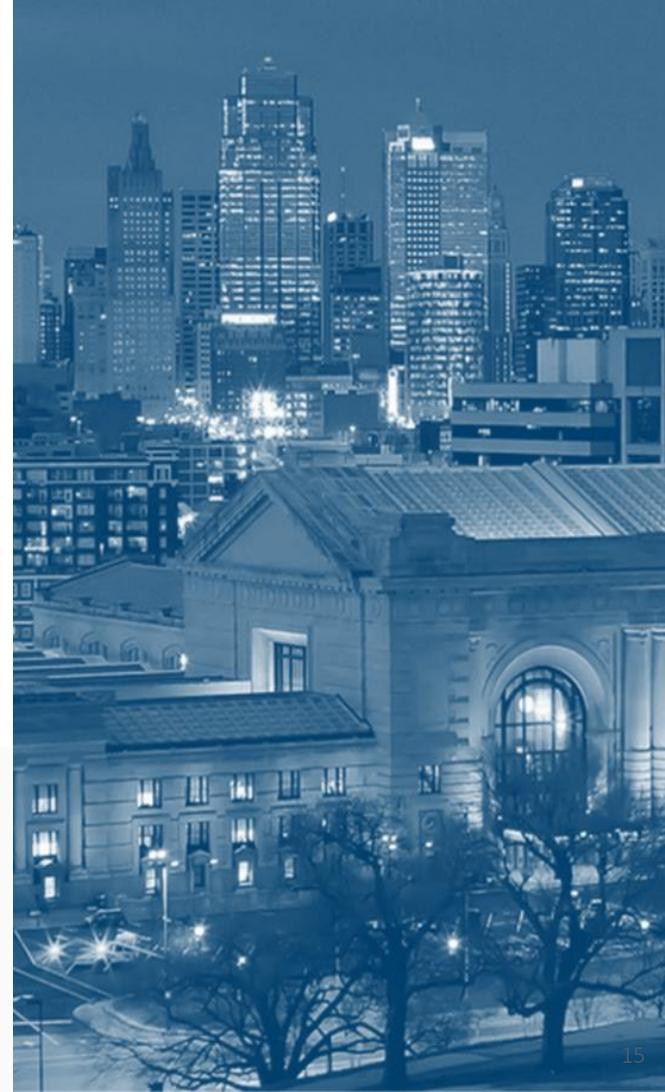
Almost all state-based exchanges opened special enrollment for the individual market

Appears the federal Exchange healthcare.gov will not have special enrollment

Indicated they'll instead have uninsured Covid-19 treatment paid by HHS

## CLOSING REMINDERS:

- Section 139 disaster debit cards could be offered tax-free to employees
- Educational assistance programs could be updated this year to include employee student loans in the list of reimbursable expenses



# CYBER RISK MANAGEMENT DURING COVID-19



# OVERVIEW



AWARENESS



RISK MITIGATION



TECHNICAL  
SAFEGUARDS



RESPONSE  
CAPABILITY



RISK TRANSFER  
SOLUTIONS

# THREAT ENVIRONMENT

- Fragmented workforce
- Attack surface has been widened
- Bad guys see an opportunity
- Social Engineering
- Maximize the value of the attack
- ROI
- Phishing and Ransomware

# CONSEQUENCES

- Theft of funds
- Disruption
- Investigative expenses (legal, forensics, crisis management)
- Downtime (loss of income)
- Re-creation of data
- New hardware
- Privacy breaches
- Litigation
- Regulatory investigation
- Customer churn
- Employee morale

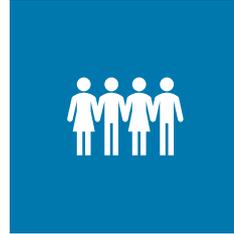
# RISK MITIGATION



REMOTE WORKERS  
POLICY IN FORCE



EMPLOYEE TRAINING



PROMOTE CULTURE OF  
VIGILANCE



DEFINED ESCALATION  
PROCESS

# COVID-19 SOCIAL ENGINEERING AWARENESS

Any coronavirus-related email with an attachment or link should be treated as highly suspicious and verified using known contact information before responding

Never give out company credentials in response to a coronavirus-related email

Check all links before clicking

Treat any email related to potential government checks as suspicious

Analyze the tone of the request



# TECHNICAL CONTROLS



Use of VPN for access to company resources



Multifactor authentication



Secure WiFi connection



Regular (at least monthly) backups of key server configurations and data



Disconnect backups from the organization network



Test the successful restoration and recovery of key server configurations and data from backups

# INCIDENT RESPONSE PLANNING

Greatest variable in the severity of a Cyber event is an effective response

Incident Response Plan is critical

Well defined plan will include:

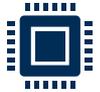
- Designated stakeholders
- Roles and responsibilities
- Resources available within Cyber insurance policy (as applicable)
- Service providers (contact information)



# CYBER RISK INSURANCE SOLUTIONS



Cyber Crime



Cyber Extortion/Ransomware

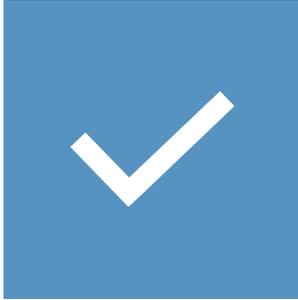


Network Business Interruption



Data Breach Expenses

# CYBER RISK INSURANCE CONSIDERATIONS



FLUID AND COMPETITIVE  
MARKETPLACE



KNOW HOW TO UTILIZE THE  
POLICY



ADDITIONAL COMPLIMENTARY  
RESOURCES AVAILABLE

# CYBER LOSS CONTROL RESOURCES AVAILABLE



Employee Cybersecurity eLearning and Phishing Simulations



Cyber Risk Score Report



Compliance Materials



Prioritized Recommendations For Fixing Key IT Vulnerabilities



Sample Policies



Access to Expert Cyber Risk Advisors



Vendor Agreement Templates



Preferred Vendor Partner Discounts



# QUESTIONS AND ANSWERS