

The logo for Fisher Phillips, featuring the company name in white text on a red, folded-paper-like background.

**Fisher  
Phillips**

# **THE CORONAVIRUS AND YOUR WORKPLACE WEBINAR #2**

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# Agenda

- Essential Business Designations
- Navigating Shelter in Place Orders
  - CARES Stimulus Act
  - FFCRA Updates
    - FAQ's
  - Questions

# Essential Business Designations

- Various designations from state to state.
- The Cybersecurity and Infrastructure Agency (CISA) released guidance on 3/19.
- For marinas & boatyards, CISA suggest employees related to repair or maintenance of vessels and equipment operators are essential.
- Some States identifying facilities based on other criteria:
  - Support of First Responders (Police, Fire, Coast Guard, Fish & Wildlife).
  - Fuel Dock or Pump Out Operations.
  - Support of commercial fishing or aquaculture industry.

# EDUCATE THE CUSTOMER

Virginia Beach, VA on Sunday, 3/29



**Frank Guzman**

@fguzmanon7



**#BREAKING:** Responding to reports of large gatherings of people on boats today, Miami-Dade orders the closure of marinas and boat ramps.

concerning further restrictions, announcing shutdown of boat ramps and marinas

**MIAMI ( March 21, 2020 )** — Effective immediately, all boat ramps at Miami-Dade County parks will be closed until further notice. All marinas will be closed to all boating activities, with the exception of commercial fishermen who provide food for restaurants and markets. In addition, I am ordering the closure of all boat ramps and marinas countywide. And, the Miami-Dade Police Department will be out on the waters, ramping up enforcement of my "no rafting up" order to keep large group parties from taking place.

I am disappointed to see photos and videos on social media of boats close together and large groups of people congregating. And, to see this "sandbar party" flier circulating all over South Florida is truly disheartening, but mostly worrisome. We are in a state of emergency, and I cannot stress enough the need for personal responsibility. Current guidelines call for gatherings to be limited to groups of 10 or fewer. These sacrifices in our social lives are critical NOW in order to defeat COVID-19. Those of you not following these guidelines are putting others at risk, perhaps your own family and friends. And, you could be contributing to a much longer scenario and further shutdowns in our community.



♡ 25 11:40 PM - Mar 21, 2020



💬 25 people are talking about this



# EDUCATE THE CUSTOMER

- Communicate with your customer.
- A phone call or newsletter may be welcomed.
- Use Social Media.
- Explain the marina is open and boating is available.
- Highlight examples of boaters practicing social distancing.
- Explain the risk of boating becoming a restricted activity.
- Ensure your staff is leading by example when customers arrive.

# BE A RESPONSIBLE BOATER

Please work with us to keep your marina community happy, healthy, and open. Ongoing concerns about Coronavirus, social distancing, and boating have forced some lawmakers to restrict boater's time on the water and forced some marinas shut. We need your help to keep us open.

Your actions are essential to keeping fuel docks and marine service businesses open when we need them the most. Following a few simple rules will keep you safe, our employees safe, and allow you to enjoy your boat. Please adhere to CDC Guidelines on social distancing at this time. Thank you for doing your part to keep our boating community healthy and preventing the spread of Coronavirus. *Rules to follow:*

ASSOCIATION OF  
**MARINA  
INDUSTRIES**

**DO NOT raft-up  
with other boats**

**DO NOT congregate on dock**

**KEEP YOUR DISTANCE  
from other groups**

**LIMIT passengers to  
members of your household**



# SHELTER IN PLACE ORDERS

- Governors in CA, CT, DE, IL, LA, MA, NV, NY, OH, and Puerto Rico issued the first 'Stay Home' orders.
- Other states are quickly issuing similar orders or are opting for more limited restrictions.
- Local Mayors have ability to issue local regulations. Those local regulations may or may not conflict with statewide order.
  - Denver issued local order before the State of CO. Governor allowed local order to control.

# SHELTER IN PLACE ORDERS

- Activities permissible vary by state/ locality.
- Educate employees on the restrictions in your area.
- Pay attention to timelines. Restrictions may be extended.
- Violations to the orders may result in fines, possible imprisonment, or licensing penalties.
  - PA- \$50 fine
  - WA- gross misdemeanor max penalty 364 days in jail/ up to \$5,000 fine.

# EMPLOYEES WANT TO WORK

- In areas where marinas & boatyards are classified as essential, employees may continue to work.
- Maintain social distance, especially on break periods or lunch.
- Maintain hand washing.
- Consider using sanitizing wipes on tools/ equipment that may be shared.
- Increase sanitizing schedule in common areas (coffee pots, break rooms, etc.)
- Encourage employees showing signs of illness to stay home.

# HIGH RISK EMPLOYEES??

## Mini-Case Study

The marina has an employee who happens to be diabetic. The manager is aware of the employee's condition due to the fact the employee does not manage the condition well and there have been incidents at work. The manager sees a story on the news indicating diabetics are at a higher risk for COVID-19.

The manager would like to have the employee remain at home until the pandemic subsides. Is this proper and legal?

# HIGH RISK EMPLOYEES??

- Several factors influence a proper outcome of the case study.
  1. Is the employee the only employee being asked to stay home?
  2. Is the employee being paid or denied wages while away?
  3. Does the employee desire to continue to work?

Diabetes is a recognized medical condition that would be easily considered a disability under the Americans with Disabilities Act (ACT).

Forcing an employee to remain home with an adverse impact on wages or benefits could result in discrimination suit.

# President Signs CARES Act

- Coronavirus Aid, Relief, and Economic Security Act
  - Signed by President on 3/27.
  - Provides small & medium business loans .
  - Employee Retention Tax Credit.
  - Payroll Tax Holiday.
  - Expands Unemployment eligibility.
  - Direct Financial Assistance to Individuals.
  - Benefits/ Health Care Issues.

# CARES STIMULUS ACT

- Provides small & medium sized businesses loans to cover:
  - Payroll –“Paycheck Protection” Loans.
  - Other Expenses (healthcare, rent, utilities debts incurred by the business).
- Eligibility:
  - Business, non-profit, veteran organization, or tribal business with not more than 500 employees.
  - Special eligibility for Hospitality Industry (Marina Restaurants)
    - Sector 72 of NAICS code,
    - SBA franchisor identification codes, or
    - Receives financial assistance from a company licensed under section 301 of Small Business Investment Act.

# CARES STIMULUS ACT

- Provides small & medium sized businesses loans to cover:
  - Payroll – “Paycheck Protection” Loans.
  - Other Expenses (healthcare, rent, utilities or other debts incurred by the business).
- Payroll Protection Loan formula will be the lesser of two:
  - Avg. Monthly Payroll cost during prior year x 2.5, or
  - \$10 million.
- Loans may be subject to forgiveness unless:
  - Reduction in workforce in the first 8 weeks after loan, or
  - Reduction in salary of more than 25% during the 8 week period.

# CARES STIMULUS ACT

- Employee Retention Tax Credit.
  - Not available to businesses that receive the Payroll Protection Loan.
  - Provides a refundable payroll tax credit of 50% of wages paid between March 13, 2020 and December 31, 2020.
  - Available to those businesses where:
    - Operations that were fully or partially suspended related to a ‘shut-down’ order.
    - Gross receipts declined by 50% compared to same quarter of the prior year.

# CARES STIMULUS ACT

- Payroll Tax Holiday
  - Intended to assist employers with immediate cash flow.
  - Deferments of Employer portion of Social Security Tax.
  - Requirement payment of any deferred payroll tax by end of 2022.
    - 50% of deferred tax due by 12/31/21.
    - Balance of deferred tax due on 12/31/22.

# CARES STIMULUS ACT

- Expanded Coverage and Eligibility of Unemployment Benefits.
  - Unemployed, partial unemployment, or inability to work due to COVID-19.
  - Effective January 27, 2020 thru December 31, 2020.
  - Benefit expanded from 26 weeks to 39 weeks.
  - Based on state defined benefit plus an additional \$600 until July 31, 2020.

# CARES STIMULUS ACT

- Direct Financial Assistance to Individuals.
  - Based on income, provides payments directly to individuals.
  - Individuals earning less than \$75K or those filing jointly earning less than \$150K.
  - \$1200 per person, \$2400 for joint, and additional \$500 per child.
  - Reduction of 5% for each dollar for income exceeding \$75K & \$150K.
  - Phase-out when:
    - \$198K for joint with no kids, \$146.5K for HOH with a child, \$99K for singles.

# CARES STIMULUS ACT

- Benefits/ Health Care Issues
  - Provides revisions to healthcare coverage for virus testing, preventative services, and benefits.
  - Requires health plan to cover testing.
  - Requires posting of cash price for testing.
  - Requires coverage of any ‘qualifying coronavirus preventative service’.

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT OVERVIEW

- President Trump signed 3/18/2020.
- DOL has started issuing guidance, some of which clarifies gray areas and other aspects of which are very different than what was first believed. **Keep up to date!**
- Leave Provisions Go Into Effect 15 Days After Enactment **(DOL Says April 1)**
- Leave Provisions are temporary **(Sunsets 12/31/2020).**
- Paid and Unpaid Leave for Coronavirus-Related Reasons
  - Emergency Paid Sick Leave Act (EPSLA)
  - Emergency Family and Medical Leave Expansion Act (EFMLA)
- Reimbursement to Employers as Tax Credits

# EMERGENCY PAID SICK LEAVE

## Additional General Rules

- Sick leave does not carry over.
- Employer may not require employee as a condition of paid leave to find a replacement to cover scheduled hours.
- Employer may not require employee to use other paid leave provided by the employer before using this paid sick leave.

# EMERGENCY PAID SICK LEAVE

## Notice Requirements

- **Employers:** Employers must post a notice regarding the requirements of the law.
  - The Secretary of Labor created a [model notice](#) to give to employees. You can also find it on our website under Alerts.
- **Employees:** After the first workday (or portion thereof) an employee receives paid sick leave, the employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”

# FFCRA ACT

- Posting Requirement of April 1, 2020.
- Posting may include physically mounting in facility, emailing, or direct mailing to notice to employees.

## EMPLOYEE RIGHTS

### PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

**PAID LEAVE ENTITLEMENTS**  
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.


A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**ELIGIBLE EMPLOYEES**  
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

**QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**  
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:


<ol style="list-style-type: none"> <li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li> <li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li> <li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li> <li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li> </ol>	<ol style="list-style-type: none"> <li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li> <li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li> </ol>
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**ENFORCEMENT**  
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



WH1022 REV 03/20

# FFCRA ACT

- New guidance on FFCRA Act issued on 3/29/20.
- Suggest employees who cannot work due to shut down or shelter at home order may not qualify for Emergency Paid Sick Leave or Emergency FMLA.
- Suggest if an employer sends a worker home and stops paying the employee, the employee is not entitled to paid sick leave or expanded family and medical leave if the “employer closes [the] worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.”

# FFCRA ACT

- **Furlough v. Layoff: Distinction Without A Difference?**
- DOL equates “furlough” to any layoff where employees are no longer working. And, as explained above, furloughed employees are not entitled to Emergency Paid Sick Leave or Emergency FMLA regardless of whether their employment has officially ended.

# A FEW THINGS TO KEEP IN MIND

## State and Local Laws

- Many states and local jurisdictions have their own paid sick days and family and medical leave laws, which may be in addition to these new federal requirements.
- Many states and locals are working quickly to amend their laws and/or add new requirements as well.

# Frequently Asked Questions

# FREQUENTLY ASKED QUESTIONS

## Exemptions for Small Employers

**Q: Our Company has fewer than 50 employees, is there an exemption for our Company?**

**A:** According to the most recent Q&A from DOL, an employer with fewer than 50 employees is exempt from providing (a) paid sick leave due to school or place of care closures or childcare provider unavailability and (b) expanded family and medical leave due to school or place of care closures or childcare provider unavailability when doing so would jeopardize the viability of the small business as a going concern.

# FREQUENTLY ASKED QUESTIONS

## Exemptions for Small Employers

- According to DOL, a small business may claim this exception if an authorized officer of the business had determined that:
  - The provision of paid sick leave or expanded family and medical leave would result in the small business' expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
  - The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
  - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

# FREQUENTLY ASKED QUESTIONS

## Government Mandated or Voluntary Closure

**Q: If our Company is required to shut down due to a government order mandating the closure of our business, would the employees be covered by the new law? What if the Company closes voluntarily for lack of business?**

**A:** The most recent DOL guidance issued March 26, 2020 appears to say that if the employer closes its business (in whole or in part) for lack of business or due to a government mandated shutdown (before or after April 1), employees who are impacted by the closure are not entitled to benefits under the Emergency Paid Sick Leave Act or the EFMLA.

# FREQUENTLY ASKED QUESTIONS

## Government Mandated or Voluntary Closure

**Q. If the employer closes the worksite while an employee is on paid sick leave or expanded family and medical leave, what happens?**

**A. If the employer closes while employee(s) are on paid sick leave or expanded family and medical leave, the employer must pay for any paid sick leave or expanded family and medical leave employees used before the employer closed. As of the date the employer closes the worksite, employees are no longer entitled to paid sick leave or expanded family and medical leave, but may be eligible for unemployment insurance benefits.**

# FREQUENTLY ASKED QUESTIONS

## Furloughs

**Q. If the employer remains open but furloughs (reduces an employee's hours or days of work) on or after April 1, 2020 (the effective date of the FFCRA), can the employee receive paid sick leave or expanded family and medical leave?**

**A. No. If the employer furloughs employees because it does not have enough work or business for employees (even if the reason is due to a government mandated closure), employees are not entitled to take emergency paid sick leave or EFMLA.**

**\*If you have 100 or more employees and are doing a layoff, RIF, or reduction in hours that will impact 50 or more employees, you need to work with counsel regarding potential WARN Act obligations.**

# FREQUENTLY ASKED QUESTIONS

## Temporary Closures; Intent to Rehire

- Q. If an employer closes its worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells employees that it will reopen at some time in the future, can employees receive paid sick leave or expanded family and medical leave during the period of closure?
- No, not while the worksite is closed. If the employer closes the worksite, even for a short period of time, employees are not entitled to take paid sick leave or EFMLA.

# FREQUENTLY ASKED QUESTIONS

## Calculating Pay for Employees Who Work Overtime

**Q:** In calculating pay due to employees, must overtime hours be included?

**A:** Under the Emergency FMLA, the law requires you to pay employees for hours the employee would have been normally scheduled to work, even if that is more than 40 hours per week.

Under the Emergency Paid Sick Leave Act, employees receive only 80 hours of pay (if they are a full-time employee). Thus, if they are normally scheduled to work 45 hours per week, you would pay them for 45 hours of sick leave the first week and 35 hours the second week, for a maximum of 80 hours. Remember that either way, the amount of pay is capped as discussed below.

# FREQUENTLY ASKED QUESTIONS

## Retroactive Application

**Q: Is the legislation retroactive? Do employers have to pay employees for time already taken off before the law goes into effect?**

**A: No it is not retroactive. Employers should follow policies and practices for time taken off before the law goes into effect.**

**The law takes effect on April 1, 2020.**

# FREQUENTLY ASKED QUESTIONS

## Medical Certification

**Q: Can employers require employees to provide certification?**

- A: According to the most recent DOL guidance, if an employee takes paid sick leave, the employee must provide to the employer supporting documentation as specified in applicable IRS forms, instructions, and information for purposes of the refundable tax credit.
- A: According to the most recent DOL guidance, if an employee takes expanded family and medical leave to care for a child whose place of care is closed/unavailable due to COVID-19, the employer may require the employee to provide documentation in support of the leave such as a notice that has been posted on a government/school/daycare website. However, this should be relatively easy for the employer to verify without requiring the employee to provide documentation.

# Questions?



# Thank You



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