**Highlights: Employers Council COVID 19 Q&A**

The following are highlights from a Q&A session with Employers Council on March 23, 2020.

**Things to Consider for Furloughs vs. Laying Off Staff**

* If an employee is gone more than a week they can file for unemployment even if furloughed or working less than 32 hours in a week.
* Employees do not have to use PTO prior to using leave provided under the Families First Coronavirus Response Act and emergency rule State-based paid leave programs.
* If employee is COVID-19 positive, a self-attestation is recommended, that has an employee sign a document stating that they tested positive for the virus. No specific forms are available otherwise.
* If furloughing, explain to employees the conditions of furlough, details on benefits, and expectations around what will happen when it ends. In terms of benefits to employees during furlough, contact your service provider and examine plan documents.
* If furloughed, employees must wait a week prior to filing for unemployment.
* For laid off employees, benefits can be obtained through COBRA or the exchange.

**Details of the Families First Coronavirus Response Act (Families First)**

[IRS Tax Breaks for Employers](https://www.irs.gov/coronavirus)

* Small and midsize employers will be able to take advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees.

[Families First COVID-19 Response Act – Amendment to FMLA – Expire Dec. 31st](https://blog.employerscouncil.org/2020/03/19/families-first-act-signed-into-law/)

During the call with Employers Council, they shared that the Families First act has the following components. CCHN and NACHC are awaiting further regulatory guidance and will be sharing more information with CHCs soon.

* Reimbursements will not apply to leave taken prior to April 2, 2020.
* First 10 days are unpaid if leave is *not* connected to COVID-19.
* Applies to organizations with less than 500 employees even if not previously covered under FMLA. Exceptions may be created; however, these are not expected until early April when emergency rules are released.
* For organizations with 25 employees or less, if you lay off staff, you don’t have to bring employees back to the same position, but you do have bring them back to a similar position.
* Intermittent leave applies and they do not loose days provided under the law.
* Employers may want to allow for benefits under the laws prior to laying them off.
* Only covers 10 weeks of leave for childcare. Not other family members.
* Does not apply to independent contractors. Only to employees. Guidance is provided on the IRS website.
* Reimbursements to employers are likely to come through the Social Security Administration.
* This does not override state-based paid leave guidance. Employers do not have to pay twice for the same time off.

**Other Areas of Interest**

[Guidance on WARN](https://www.doleta.gov/programs/factsht/WARN_Fact_Sheet_updated_03.06.2019.pdf) (Worker Adjustment and Retraining Notification Act of 1988)

* In general, employers are covered by WARN if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months and not counting employees who work an average of less than 20 hours a week.
* Mass Layoff: A covered employer must give notice if there is to be a mass layoff which does not result from a plant closing, but which will result in an employment loss at the employment site during any 30-day period for 500 or more employees, or for 50- 499 employees if they make up at least 33% of the employer's active workforce.
* Job losses within any 90-day period will count together toward WARN threshold levels, unless the employer demonstrates that the employment losses during the 90-day period are the result of separate and distinct actions and causes
  + The exceptions to 60-day notice are: (1) Faltering company. This exception, to be narrowly construed, covers situations where a company has sought new capital or business in order to stay open and where giving notice would ruin the opportunity to get the new capital or business, and applies only to plant closings; (2) unforeseeable business circumstances. This exception applies to closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required; and (3) Natural disaster. This applies where a closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm. If an employer provides less than 60 days advance notice of a closing or layoff and relies on one of these three exceptions, the employer bears the burden of proof that the conditions for the exception have been met. The employer also must give as much notice as is practicable. When the notices are given, they must include a brief statement of the reason for reducing the notice period in addition to the items required in notices.

Other items of interest:

* If you can verify that staff are working from home, then they can still accrue PTO.
* Employers can ask employees to take a cut in pay however rules from the Fair Labor Standard Act (FLSA).
* Employers need to communicate with workers comp insurance providers to determine if coverage applies to work from home situations.