



# NACo ANALYSIS: PAID LEAVE AND UNEMPLOYMENT INSURANCE REQUIREMENTS FOR COUNTY EMPLOYERS UNDER THE COVID-19 LEGISLATION

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## COUNTY PERSPECTIVE

Across the country, counties everywhere have been impacted by the economic challenges associated with the coronavirus (COVID-19) pandemic, as unemployment levels reach new highs and local businesses face downturn and closures.

New legislation attempts to address the economic challenges of pandemic through new paid leave supports and unemployment assistance for impacted workers, as outlined under the *Families First Coronavirus Response Act* (FFCRA)([P.L. 116-127](#)) and the *Coronavirus Aid, Relief and Economic Security (CARES) Act* ([P.L. 116-136](#)).

NACo appreciates Congress' and the White House's efforts to address the issues of paid leave and unemployment benefits at a time of increased demand for these services. These measures, however, place substantial new requirements on counties as employers and are likely to impact counties as key players in local economic development and growth in our communities. **Across the country, counties employ 3.6 million – or 1 percent – of Americans.**

The following analysis provides an overview of new paid leave and Unemployment Insurance (UI) requirements for public employers – including counties – stipulated under the recent COVID-19 legislative rescue packages. This document also identifies key challenges for counties in meeting these requirements and federal action to remedy these issues in future legislative proposals to address the COVID-19 pandemic.

## OVERVIEW OF NEW PAID LEAVE AND UNEMPLOYMENT INSURANCE (UI) LANDSCAPE

### Paid Family and Medical Leave

The *Families First Coronavirus Response Act* (FFCRA) ([P.L. 116-127](#)) established two new laws around the issue of paid leave: the *Emergency Family Medical Leave Extension Act* (EFMLEA) and the *Emergency Paid Sick Leave Act* (EPSLA). [Recent guidance](#) issued by the U.S. Department of Labor (DOL) clarified that both laws apply to public agencies, including counties, with one or more employees, as well as to private companies with 500 or fewer employees. Both laws will remain in effect from April 1, 2020 through December 31, 2020.

*Emergency Paid Sick Leave Act (EPSLA)*: The EPSLA requires employers, including counties, to provide paid sick leave to employees who are unable to work for six qualifying reasons with respect to COVID-19:

- Employee is subject to federal or state quarantine or isolation order
- Employee has been ordered to self-quarantine by a health care provider
- Employee is exhibiting COVID-19 symptoms and is seeking a medical diagnosis

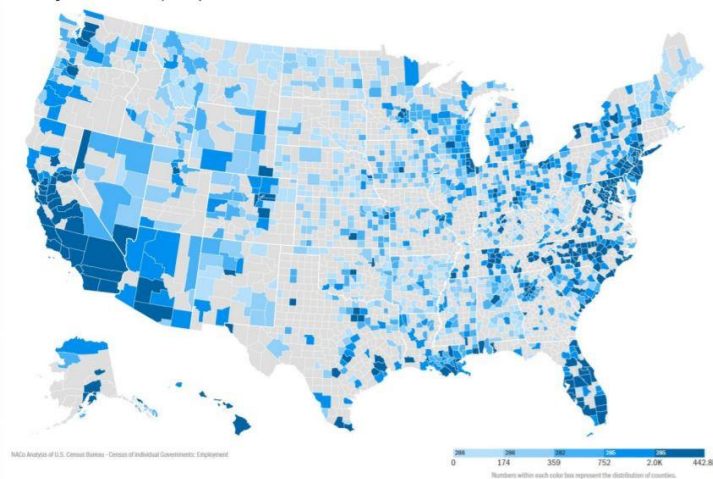
- Employee is caring for a child who has been ordered to quarantine
- Employee must care for a child whose school or child care provider has closed due to COVID-19 precautions, or
- Employer is exhibiting other similar conditions as specified by the Secretary of Health and Human Services.

Under the EPSLA, the rate of pay that an employee receives for sick leave varies on why the employee takes leave. If the employee takes leave for any of the first three reasons outlined above, the employee's leave time is capped at \$511 per day, or \$5,110 in the aggregate. If the employee uses sick leave for any of the other three reasons outlined under the EPSLA, their paid sick time is capped at \$200 per day and \$2,000 in the aggregate. The amount of paid leave an employee is entitled to also depends on whether they are classified as full- or part-time. For full-time employees, individuals are entitled to 80 hours of paid sick leave. For part-time employees, individuals are entitled to paid sick leave equal to the number of hours that the employee works on average over a two-week period.

The legislation also establishes guardrails for employees taking sick leave. Sick leave is available for immediate use regardless of an employee's tenure of employment. The employer cannot require the employee to use another category of paid leave (such as PTO) before using paid sick leave.

The legislation requires employers to post visible notices around the workplace to ensure information is communicated to employees. The U.S. Department of Labor (DOL) published a model notice for employers to post in their workplaces. DOL retains authority to issue regulations that would exempt small businesses from paying sick time to employees who are caring for a child whose school or child care provider has closed due to COVID-19 precautions, if doing so would harm the employer's ability to continue normal operations.

Across the country, counties employ 3.6 million, or 1 percent, of Americans. Additionally, counties serve as one of the largest purchasers of healthcare insurance, providing health insurance coverage to 5 million county workers, family members/dependents and retirees.



**Emergency Family Medical Leave Extension Act (EFMLEA):** The EFMLEA legislation provides a new *Family Medical Leave Act* (FMLA) leave entitlement to include 10 days of unpaid leave and subsequent days of paid leave in the event of a public health emergency.



Under EFMLEA requirements, the first 10 days of the employee’s leave may consist of unpaid leave, but an employee may substitute any accrued paid leave (vacation, personal or medical or sick leave) for their unpaid leave. After those first 10 days, employers are required to provide paid leave to the employee for each additional day of leave. The rate of pay for the employee would be calculated using a rate of not less than 2/3 of the employee’s regular pay and the number of hours the employee would otherwise normally be scheduled to work. This rate is capped for each employee at \$200 per day (or \$10,000 in aggregate).

The EFMLEA extends to a greater number of employers and employees than the current *Family Medical Leave Act* (FMLA) legislation. Under FMLA requirements, employees are not eligible for leave unless they have worked for their employer for at least 12 months and worked 1,250 or more hours in the 12-month period preceding their leave. However, the EFMLEA shortens the minimum employment period from 12 months to 30 days and does not place requirements around number of hours worked ahead of leave time.

The EFMLEA includes similar requirements to the FMLA with respect to job restoration. EFMLEA requires certain employers to make reasonable efforts to restore positions to employees, including equivalent employment benefits. If those reasonable efforts fail, the employer must make reasonable attempts to contact that employee to restore employment for one year following termination. The agency retains the authority to exempt employers with fewer than 25 employees from this requirement.

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**COUNTY PERSPECTIVE:** Counties appreciate the goals of the FFCRA in making public employees eligible for the new paid family and medical leave benefits. However, the legislation does not make public employers – including counties – eligible for the Emergency Paid Leave Payroll Tax Credit. Without this tax credit, the high costs of funding these benefits could harm counties’ ability to provide critical services that are necessary toward a successful pandemic response.

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**The U.S. Department of Labor (DOL) issued updated guidance on which employers qualify as a “health care provider” or “emergency responder” under the FFCRA legislation**

Important to counties, an employer who is classified as a “health care provider” or “emergency responder” may elect to exempt employees from the FFCRA’s paid family and medical leave provisions. On March 31, 2020, the U.S. Department of Labor (DOL) issued new guidance, shown below, defining the terms “health care provider” and “emergency responder.” **Governors also have authority to make determinations around whether an employer qualifies as a health care provider or emergency responder.**

**Who is a “health care provider” who may be excluded by their employer from paid sick leave and/or expanded family and medical leave?**

- A “health care provider” is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.



- This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.
- This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.
- To minimize the spread of the virus associated with COVID-19, DOL encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.

### **Who is an emergency responder?**

- An emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.
- This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

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**COUNTY PERSPECTIVE:** Counties should also be given the flexibility and authority to add definitions of employers that qualify as a health care provider or emergency responder, based on circumstances and needs at the local level.

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### **Unemployment Insurance (UI)**

Both the FFCRA and the *CARES Act* include measures that would expand Unemployment Insurance (UI) benefits for workers who have been laid off or furloughed as a result of the COVID-19 pandemic.

*Families First Coronavirus Response Act (FFCRA):* The legislation directs \$1 billion to states to provide unemployment benefits to laid off and furloughed workers, as well as to those workers who exhaust their allotted paid leave. Of this amount, \$500 million – or about half – is provided for immediate assistance to states for staffing, technology, systems and other administrative costs, so long as they meet basic requirements around ensuring access to earned benefits for eligible workers. The remaining \$500 million is reserved for emergency grants to states experiencing at least a 10 percent increase in unemployment.



CARES Act: The legislation includes new provisions to support workers who have been laid off or furloughed as a result of the pandemic:

- **Pandemic unemployment assistance:** The bill establishes pandemic unemployment assistance through December 31, 2020 to provide unemployment benefits for those individuals that lose job as a direct result of COVID-19 and are not eligible for other unemployment compensation such as self-employed, independent contractors, and those with limited work history.
- **Emergency unemployment relief for governmental entities and nonprofit organizations:** The *CARES Act* provides emergency unemployment relief for governmental entities and nonprofit organizations. The bill includes payments to states to reimburse government agencies, nonprofits and Indian tribes for half of the costs incurred through December 31, 2020 to pay for unemployment benefits.
- **Emergency increase in unemployment compensation benefits:** The legislation includes an increase in unemployment compensation benefits. The bill includes an additional \$600 per week payment to each recipient of Unemployment Insurance or Pandemic Unemployment Assistance for up to four months.
- **Provides emergency unemployment compensation:** The bill provides an additional 13 weeks of unemployment benefits through December 31, 2020, to help those who remain unemployed after the state unemployment benefits are no longer available in states that enter into federal-state agreements.

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**COUNTY PERSPECTIVE:** NACo is supportive of increased federal assistance to reduce local unemployment incurred as a result of the pandemic. However, given the significant increase in demand for state and local agencies to respond to new benefits claims, NACo urges Congress to make counties directly eligible for federal assistance in the next round of COVID-19 relief legislation.

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### Emergency Leave Payroll Tax Credits

The *Families First Coronavirus Response Act* (FFCRA) gives **private** employers with fewer than 500 employees with fully refundable tax credits to provide employees with paid sick and family medical leave incurred as a result of COVID-19. Leave can be used toward an employee's own health needs or to care for family members. Under the legislation, workers may receive up to 80 hours of paid sick leave for their own health needs or to care for others, and up to an additional ten weeks of paid family leave to care for a child whose school or place of care is closed or child care provider is closed or unavailable due to COVID-19 precautions. **The legislation, however, does not makes state or local governments eligible for this tax credit.**

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**COUNTY PERSPECTIVE:** Counties appreciate the goal of extending paid leave protections to additional employees. However, as employers of more than 3.6 million employees across the country, the new paid leave requirements outlined under FFCRA represent a **major new unfunded mandate for state and local governments**. NACo urges federal legislators to include a legislative fix in future COVID-19 response proposals that would extend the emergency leave payroll tax credit to state and local governments.

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## FEDERAL ACTION

### **With NACo's support, Congress introduced bipartisan legislation to make state and local governments eligible for emergency leave payroll tax credits outlined under the FFCRA.**

- In the U.S. House of Representatives, Reps. Bradley S. Schneider (D-Ill.), John Katko (R-N.Y.), T.J. Cox (D-Calif.), Peter King (R-N.Y.) and Diana DeGette (D-Colo.) are leading the effort to [recruit cosponsors for legislation](#) that would make state and local governments eligible for payroll tax credits for emergency paid sick and family leave.

### **Federal agencies have also issued new guidance on essential workers for states and localities.**

On March 28, the U.S. Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) issued [updated guidance](#) for states and localities around the question of essential workers in COVID-19 pandemic response efforts. Publication of the new guidance follows the agency's March 19 issuance of a [Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response](#). The guidance helps counties identify workers who support critical supply chains and enable functions for critical infrastructure. This includes employees operating call centers, construction, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement and public works.

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**COUNTY PERSPECTIVE:** State, local, tribal and territorial governments are responsible for implementing and executing response activities in their communities. NACo recently released an explainer on safer at home orders and essential services, which can be accessed at [this link](#).

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## COUNTY EXAMPLES

### **County employers are implementing solutions around paid leave and provision of essential county services:**

- **Dona Ana County, N.M.** mandated a fourteen-day self-quarantine for all employees that travel outside the state of New Mexico. They have also provided more flexibility for employees to telework or stay home if sick or needing to care for children.
- **Hamilton County, Ind.** is giving all employees up to two weeks additional paid leave for COVID impacts, including having symptoms or a positive test, childcare, recent travel to a foreign country, or elevated health risk.
- **Milwaukee County, Wis.** developed a "Public Health Emergency Supplemental Paid Leave Bank" of 120 hours for full-time employees that cannot perform their job duties remotely, in case they are unable to come in to work due to the virus. All other employees will telework.
- **Ramsey County, Minn.** issued a "Declaration of Essential and Priority Services" on March 25, which offered clarification around employees deemed essential in pandemic response efforts, after consultation with Minnesota Governor Tim Walz who enacted an Executive Order setting out procedures for local governments to define priority services integral to local communities.





## FEDERAL RESOURCES & GUIDANCE

- [COVID-19 and the American Workplace](#) (U.S. Department of Labor temporary rule)
- [Families First Coronavirus Response Act: Questions and Answers](#) (U.S. Department of Labor Questions and Answers)
- [COVID-19 and the Fair Labor Standards Act Questions and Answers](#) (U.S. Department of Labor question sheet)
- [COVID-19 and the Family and Medical Leave Act Questions and Answers](#) (U.S. Department of Labor question sheet)
- [Unemployment Insurance Program Letter \(UIPL\)](#) (U.S. Department of Labor guidance for states)

*NACo will continue to monitor federal policy movement and provide updates. Please visit [www.naco.org/coronavirus](http://www.naco.org/coronavirus) for additional resources.*