

# **FAMILIES FIRST CORONAVIRUS RESPONSE ACT: WHAT LRA MEMBERS NEED TO KNOW**

**Presented by:  
Michelle Anderson, Esq.  
Steve Cupp, Esq.**

**Fisher & Phillips LLP**

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# QUESTIONS YOU MAY HAVE

- Please email your questions to:
  - [manderson@fisherphillips.com](mailto:manderson@fisherphillips.com) and/or
  - [scupp@fisherphillips.com](mailto:scupp@fisherphillips.com)
- We will follow up with a post-webinar FAQ.
- You can also call us directly to answer specific questions.

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

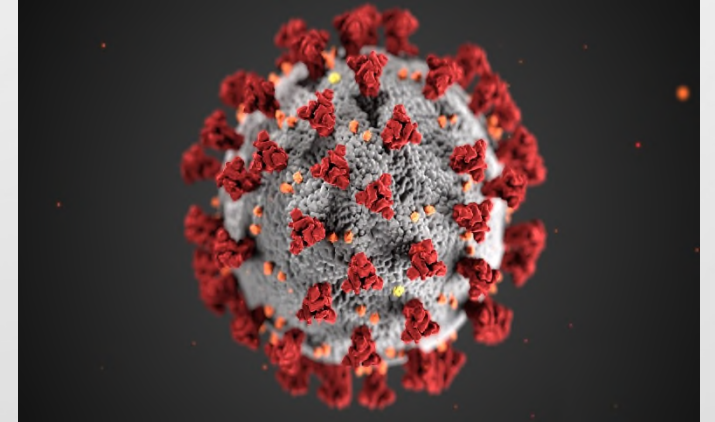
- Law goes into effect on April 1, 2020 and expires December 31, 2020
  - This effective date of the law was a major announcement made by the United States Department of Labor, Wage and Hour Division, on the afternoon of March 24, 2020. Until that publication, it was generally thought that the law would be effective on April 2, 2020. This is important for planning purposes, particularly if you are considering a reduction of your work force prior to the law going into effect.
- Paid Leave for Coronavirus-Related Reasons
  - “Bucket 1” – Emergency Paid Sick Leave for up to 80 hours
  - “Bucket 2” – Emergency Family and Medical Leave Act for up to 12 weeks
- Emergency Unemployment Insurance Stabilization And Access Act of 2020
  - “Bucket 3” – Unemployment Insurance Funding
- Reimbursement to Employers as Tax Credits in quarterly tax returns
- Applies to employers with “fewer than 500 employees.”

# **EMERGENCY PAID SICK LEAVE**

**“BUCKET 1”**

# EMERGENCY PAID SICK LEAVE Overview

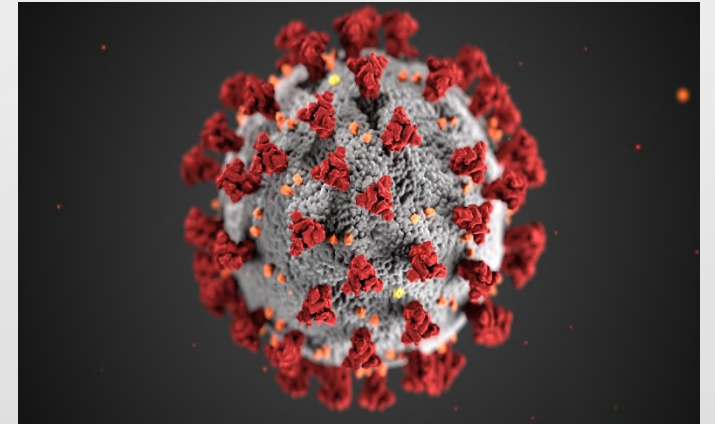
- **Any employee who works for the employer and who is on the payroll on April 1st is eligible.**
  - No minimum days/hours of employment
- **If the employee qualifies for this leave, the employee is entitled to:**
  - Full-time Employees – 80 hours of paid sick leave
  - Part-time Employees – Paid based on the average number of hours the employee worked for the six months prior to taking this paid sick leave
    - Or, if employed for less than 6 months, the average number of hours per week the employee would normally be scheduled



# EMERGENCY PAID SICK LEAVE Qualifying Reasons

Must provide paid sick leave “to the extent the employee is unable to work (or telework) due to a need for leave” because:

- (1) The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an **individual** who is subject to an order or self-quarantine as described above.
- (5) The employee is caring for a son or daughter if school or child care is closed/unavailable.
- (6) The employee is experiencing “any other substantially similar condition” specified by HHS (catch all).

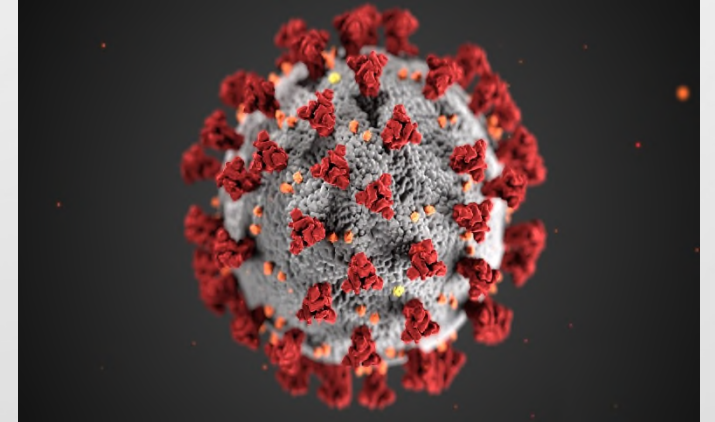


# “STAY AT HOME” ORDERS AND PROCLAMATIONS

- Many states and local jurisdictions are issuing “shelter at home orders,” requiring everything and everyone to stay at home except for essential businesses and essential employees of those businesses. These shelter at home orders vary by jurisdiction.
- Pursuant to Governor Edwards stay at home order, restaurant services (takeout/delivery) are deemed essential. Employees who are engaged in the cooking of food and takeout/delivery options are therefore essential employees.
- However, non-essential employees who cannot work from home and who are on your payroll on April 1st will be eligible for up to 80 hours of the emergency paid sick leave because they have been ordered into isolation (qualifying event #1 for the paid sick leave). Also, the daily cap is \$511 per day or \$5,110 in the aggregate per employee.

# EMERGENCY PAID SICK LEAVE

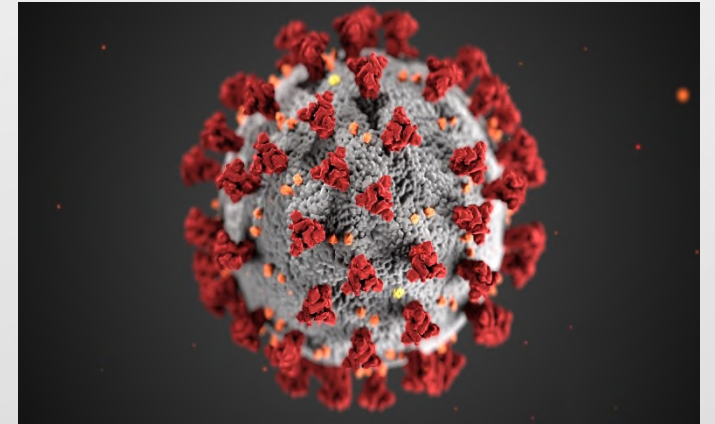
- **At employee's regular rate for qualifying reasons (1), (2) or (3)**
  - Compensated at **HIGHER** of their regular rate, federal minimum wage or local minimum wage
- **At 2/3 the employee's regular rate for qualifying reasons (4), (5) or (6)**
- **Capped at the following levels:**
  - \$511 per day and \$5,110 in the aggregate per person for qualifying reasons (1), (2) and (3).
  - \$200 per day and \$2,000 in the aggregate per person for qualifying reasons (4), (5) and (6).





# EMERGENCY PAID SICK LEAVE

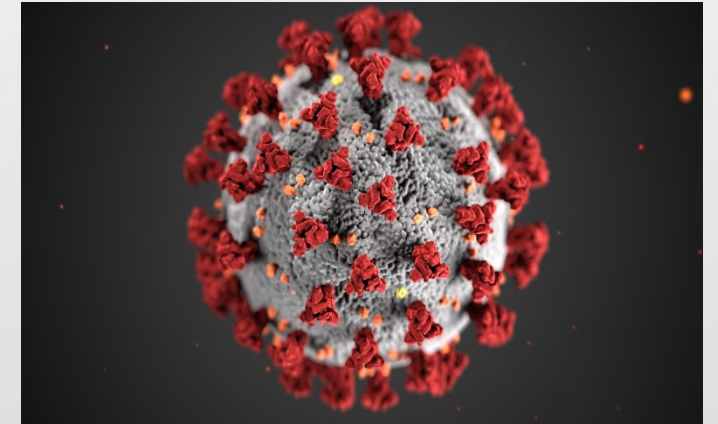
- Secretary of Labor (U.S. DOL) has the authority for good cause to issue regulations:
  - To exclude certain healthcare providers and emergency responders from the definition of “eligible employee”
  - To exempt small businesses with fewer than 50 employees from leave to care for a son or daughter if school or child care is closed/unavailable when the imposition of such requirement would jeopardize the viability of the business as a going concern
  - “As necessary” (catch-all)



# EMERGENCY PAID SICK LEAVE

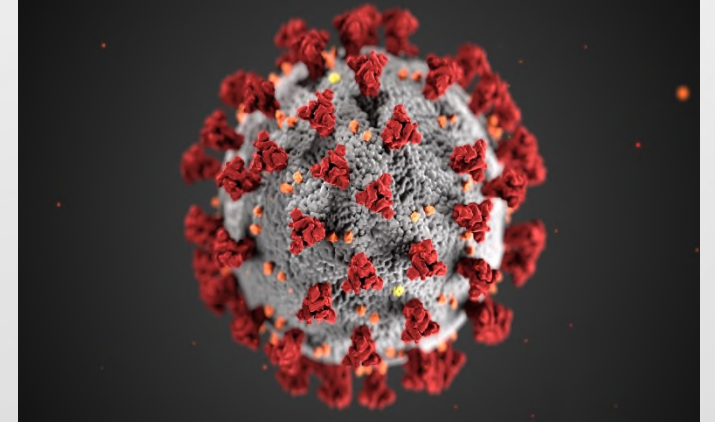
## Additional General Rules

- Sick leave does not carry over to 2021.
- 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 emergency paid sick leave.



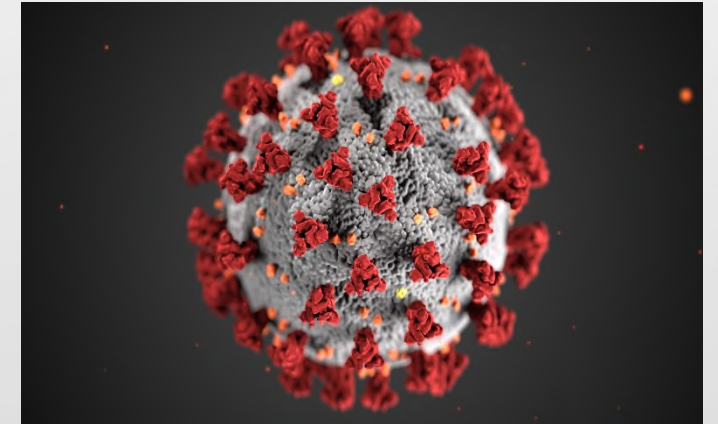
# EMERGENCY PAID SICK LEAVE Notice Requirements

- **Employers:** Employers must post a notice regarding the requirements of the law.
  - The Secretary of Labor is required to make a model notice publicly available by March 25, 2020
- **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.”



# EMERGENCY PAID SICK LEAVE Tax Credits

- Employers subject to the requirements are entitled to a refundable tax credit equal to the amount of the qualified paid sick leave requirements paid by the employer per quarter.
- The tax credits for qualified paid sick leave wages are capped at
  - \$511 per day per person for qualifying reasons (1), (2) and (3).
  - \$200 per day per person for qualifying reasons (4), (5) and (6).



# GUIDANCE FROM IRS ON TAX CREDIT

## MARCH 20, 2020

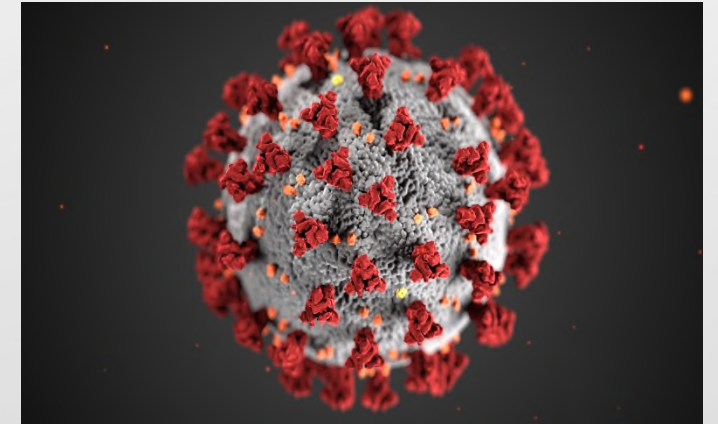
- Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.
- The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

# **EMERGENCY FAMILY AND MEDICAL LEAVE**

**“BUCKET 2”**

# EMERGENCY FAMILY AND MEDICAL LEAVE ACT - EFMLA

- Significantly expands FMLA on a temporary basis.
- Any employee who worked for employer for 30 days prior to leave and qualifies is eligible (no requirement of 12 months/1250 hours)
- Provides up to 12 weeks of paid, job-protected leave (paid after the first 10 days)

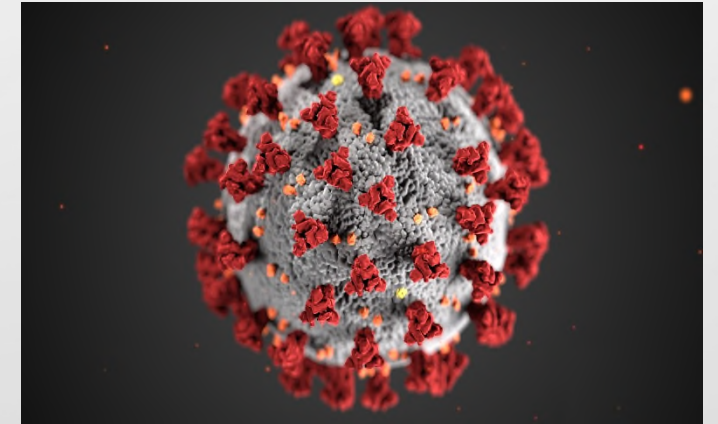


# EMERGENCY FAMILY AND MEDICAL LEAVE ACT

## Only One Qualifying Reason

12 weeks of job protected leave when:

- “The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”
- Regular FMLA definition of “son or daughter” applies.
- The 80 hours of paid sick leave and the E-FMLA are read in conjunction. An employee is not entitled to more than 12 weeks.

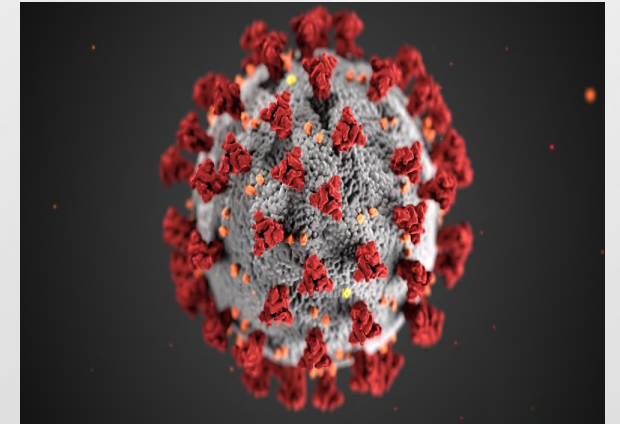




# EMERGENCY FAMILY AND MEDICAL LEAVE ACT

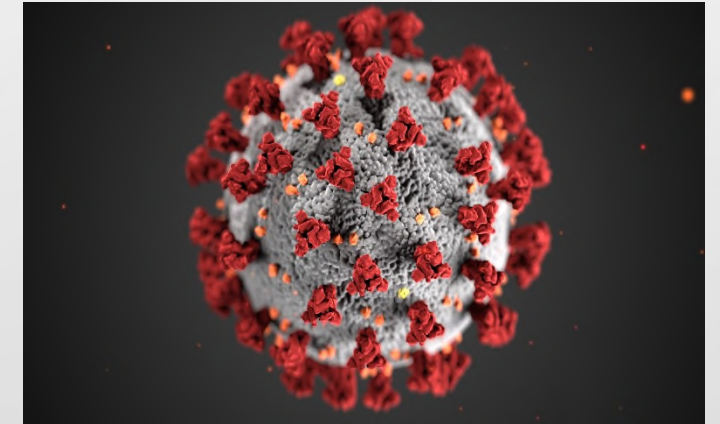
## How Does it Work?

- **First 10 days of EFMLA may be unpaid:**
  - An employee may elect to substitute accrued PTO, vacation, or sick leave to cover any portion of first 10 days.
  - An employee who qualifies for 80 hours of emergency sick leave can use this emergency sick leave as the first 80 hours of EFMLA.
  - Employer cannot require an employee to substitute such leave.
- **After the first 10 days:**
  - Compensated at 2/3 of the employee's regular rate.
  - Part-time employees/irregular schedule entitled to be paid based on average number of hours employee worked in prior 6 months, or if employed less than 6 months, average number of hours employee would normally be scheduled to work.
- **Pay capped at \$200 per day and \$10,000 in aggregate per employee**



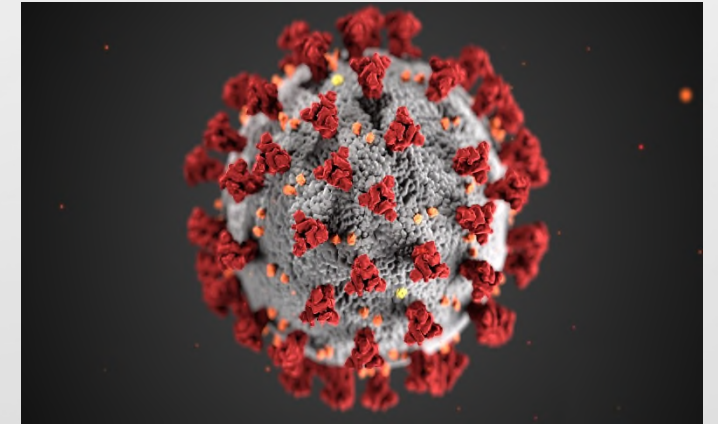
# EMERGENCY FAMILY AND MEDICAL LEAVE ACT Interplay with Other Paid Leave

- The USDOL publication issued on the afternoon of March 24, 2020 clarified that eligible employees can get up to 12 weeks of paid leave for qualifying reasons. After the first 80 hours of paid sick leave, the only way to get the additional 10 weeks of paid leave is if the employee has to stay at home because a son or daughter cannot go to school.
- It is unclear at this time whether this means the 12 weeks of paid EFMLA will extend beyond what would be the regular end of the school year.



# EMERGENCY FAMILY AND MEDICAL LEAVE ACT

- **Secretary of Labor has the authority for good cause to issue regulations:**
  - To exempt small businesses with fewer than 50 employees from certain portions of the new law (paid leave for caring for a son or daughter who cannot go to school) when the imposition of such requirements would jeopardize the viability of the business as a going concern.



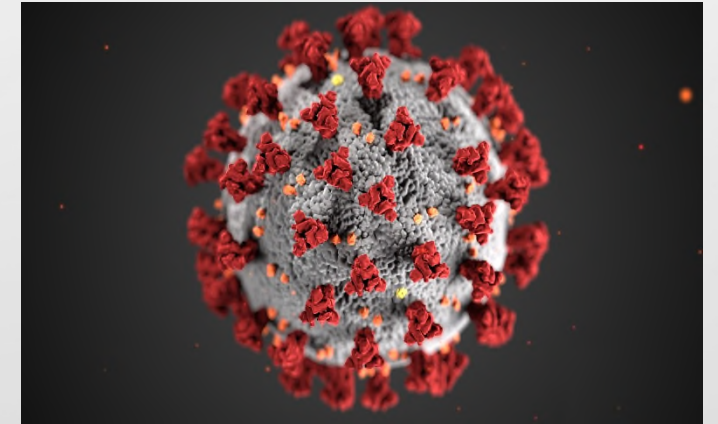
# EMERGENCY FAMILY AND MEDICAL LEAVE ACT

## Job Restoration/Reinstatement

- If 25 or more employees, traditional restoration obligation
- If **fewer than 25 employees**, the traditional job reinstatement provisions of the FMLA do not apply **IF** the following conditions are met (note this **does not excuse** providing the EFMLA):
  - The employee takes EFMLA
  - The position the employee held when the leave started does not exist due to economic conditions or other changes in operating conditions of the employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave
  - The employer makes reasonable efforts to restore the employee to an equivalent position, with equivalent pay, benefits, and other terms
  - If reasonable efforts to restore to an equivalent position fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the 1 year period beginning on the earlier of (A) the date on which the qualifying need related to a public health emergency concludes; or (B) the date that is 12 weeks after the date on which the employee's leave for E-FMLA commences.

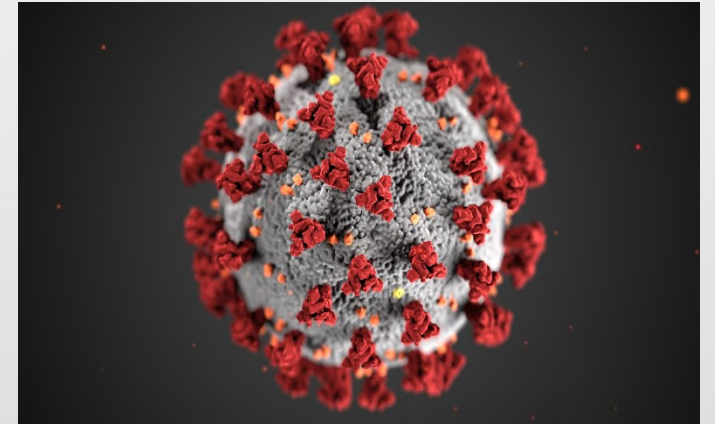
# EMERGENCY FAMILY AND MEDICAL LEAVE ACT Notice Requirements

- **Employers:** The Secretary of Labor will be issuing a model notice to post by March 25, 2020.
- **Employees:** Where the necessity for leave is foreseeable, an employee shall provide the employer with notice of leave “as is practicable.”



# EMERGENCY FAMILY AND MEDICAL LEAVE ACT Tax Credits

- Employers subject to the requirements are entitled to a tax credit equal to the amount of the paid family and medical leave requirements paid by the employer.
- The tax credits for qualified wages are capped at \$200 per day and \$10,000 per calendar quarter per employee.



# FREQUENTLY ASKED QUESTIONS

- How do I apply for an exemption if I have fewer than 50 employees?
  - The USDOL publication that was issued on March 24, 2020 states that an employee with 50 or fewer employees does not apply for the exemption. Here is the full answer: “To elect this small business exemption, you should 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. You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.”
- If I lay-off employees prior to April 1<sup>st</sup>, do I have to comply with the law?
  - No. The law goes into effect on April 1<sup>st</sup> and there is no retroactive effect. Laid off employees will be able to apply for unemployment insurance benefits. Louisiana has relaxed the rules for getting benefits for reasons related to this emergency.

# FREQUENTLY ASKED QUESTIONS

- How much in unemployment benefits will the laid off employees receive?
  - As of now, the regular Louisiana Workplace Commission rule applies: a max of \$247/week for 26 weeks. But, the Agency has waived the 1-week waiting period and employees won't have to comply with the "search for other employment" rules.
- How do I determine the "regular rate" of pay for employees who take leave?
  - The USDOL states that employers should use a six month "look back" period and then pay the weekly average of pay based on the look back period.
- What if an employee needs the leave to stay at home with a son or daughter but 2/3 of their daily pay is more than \$200?
  - You are obligated only to pay up to \$200 per day. You may pay more but it is doubtful you will get a tax credit for anything above \$200 per day for this qualifying reason.
- Can an employee refuse to come to work even if the employee does not qualify for any of the paid leave?
  - Generally, no. As long as you stay open, you have a right to expect that employees who do not need to take the leave or who are ineligible for the leave will continue to report to work as long as work is available.



# FREQUENTLY ASKED QUESTIONS

- If an employee does not need to take any leave, can I offer an incentive to the employee to come to work so I can stay open?
  - Probably yes. But, if an employee qualifies for any of the reasons for taking the leave, we do not advise offering an incentive for the employee to remain working in lieu of the paid leave that the employee is entitled to take. Also, incentives or bonuses paid to non-exempt employees are part of their “regular rate” for overtime purposes.
- Am I required to allow employees who can do so to work from home?
  - There is no requirement for this but we certainly encourage you to allow employees to work from home where it is practical. Non-exempt employees should carefully keep track of their time worked, and you should consider a remote work policy.
- What if an employee has the virus or we learn that a customer who visited the restaurant has the virus?
  - This question is multi-faceted and raises significant notification procedures to your other employees. If this occurs, call so that we can discuss the particulars and implement an action plan for you.

# Questions?

