



Coronavirus Response Legislation

Nonprofits as Employers Overview

April 2, 2020

Congress has passed three laws in response to the novel coronavirus pandemic. This fact sheet provides an overview of the provisions contained in those bills that directly impact the operations of nonprofits, including Community Action Agencies and State Associations as

Congressional Coronavirus Actions	
Title	Signed
<u>Coronavirus Preparedness and Response Supplemental Appropriations Act</u>	March 6, 2020
<u>Families First Coronavirus Response Act</u>	March 18, 2020
<u>Coronavirus Aid, Relief, and Economic Security (CARES) Act</u>	March 27, 2020

employers. The Families First Coronavirus Response Act includes Emergency Sick Leave and Emergency FMLA Leave provisions. The CARES Act expanded three loan programs for nonprofits, created an Employee Retention Payroll Tax Credit, and allows employers to defer payment of payroll taxes.

Emergency Sick Leave & Emergency Family & Medical Leave

Emergency Sick Leave

- Requires public and private employers with fewer than 500 employees to provide up to 80 hours of emergency paid sick leave for full-time employees (part-time employee benefit based on average hours) for qualifying reasons.
- Employee qualifies if they are:
 - (1) subject to a government quarantine/isolation order;
 - (2) advised by a health care provider to self-quarantine;
 - (3) experiencing COVID-19 symptoms and seeking a medical diagnosis;
 - (4) caring for a quarantined individual;
 - (5) caring for a child due to school closure or unavailable childcare; or
 - (6) experiencing a substantially similar condition.
- Employees paid:
 - 100% pay rate for qualifying conditions (1), (2), or (3).
 - 66.6% pay rate for qualifying conditions (4), (5), or (6).
- Benefits capped at
 - \$511 per day and \$5,110 total for qualifying conditions (1), (2), and (3)
 - \$200 per day and \$2,000 total for qualifying conditions (4), (5), and (6).
- Exemptions for some small businesses if paid leave would jeopardize the financial viability of the business.
- Effective April 1, 2020 and leave must be taken before December 31, 2020 (temporary non-enforcement through April 17, 2020).

Emergency Family & Medical Leave

- Requires employers with fewer than 500 employees to provide employees who have been employed for at least 30 days with up to 12 weeks of job-protected leave for a qualified reason.
- Qualified reasons for emergency leave means leave to care for a child due to school closure or unavailable childcare because of a public health emergency.
- First 10 days may be unpaid, but employees may elect to substitute any accrued vacation, personal, medical, or sick leave (including Emergency Sick Leave) for unpaid leave.
- Pay for subsequent leave must be two-thirds the employee's regular rate of pay.
- Payments per employee are capped at \$200 per day and \$10,000 total.
- 12 week cap on all FMLA leave in a 12-month benefit period (Emergency FMLA Leave and other FMLA leave).
- Small businesses with fewer than 50 employees may be exempt if providing leave would jeopardize the financial viability of the business.
- Effective April 1, 2020 and leave must be taken before December 31, 2020 (temporary non-enforcement through April 17, 2020).

Paid Leave Resources

- [CAPLAW Guidance - Paid Leave in Coronavirus Response Bills: What CAAs Need to Know](#)
- [U.S. Department of Labor - Guidance on New Paid Leave Requirements in FFCRA](#)
- [IRS Guidance - COVID-19-Related Tax Credits for Required Paid Leave FAQs](#)

Loans Available to Nonprofits in the CARES Act

Paycheck Protection Program (Emergency Small Business Loans - SBA 7(a) Loans)

- Emergency loan program for organizations with 500 or fewer employees to pay staff and operating costs for two months.
 - Eligible uses include payroll costs, mortgage interest payments, rent, utilities and interest on prior debt.
- The loan amount is the lesser of \$10 million or 2.5 times the average total monthly payroll costs.
- \$350 billion available.
- Charitable nonprofits expressly eligible, but employees of affiliated nonprofits may count toward the 500 employee cap.
- Full loan forgiveness if employer maintains employment for 8 weeks after loan origination, or rehires employees by June 30, 2020.

Expanded Economic Injury Disaster Loan (EIDL) & Emergency Grants (SBA 7(b) Loans)

- \$10 billion appropriation with expanded EIDL program eligibility and expedited grant procedures
- Eligible entities: businesses with 500 or fewer employees and private nonprofits of any size (excludes religious institutions).
- Loan amounts up to \$2 million at 2.75% interest rate for nonprofits
- \$10,000 advance paid within 3 days, treated as a grant, and forgiven even if the prospective borrower is denied an EIDL loan.
 - Advance can be used for paid sick leave, payroll, disrupted supply chain costs, mortgage payments, and service on debts.

Mid-Size Loan Program (Emergency Stabilization Fund)

- Eligible for entities, including nonprofits, with between 500 and 10,000 employees.
- Borrowers must make a good-faith certification, including that: the funds it receives will be used to retain 90% of workforce at full wages and benefits through September 30, 2020; the recipient intends to restore 90% of its workforce with full compensation and benefits no later than 4 months after the termination of the public health emergency; the recipient will not pay dividends while the loan is outstanding; and the recipient will not outsource jobs for the term of the loan and for 2 years after that.

Loan Program Resources

- [National Council of Nonprofits - Chart of Loans Available to Nonprofits in the CARES Act](#)
- [U.S. Treasury - CARES Act Resources](#)
- [Small Business Administration - Paycheck Protection Program](#)
- [Paycheck Protection Program Application](#)
- [Apply for an Economic Injury Disaster Loan Online](#)
- [Locate Your Small Business Administration District Office](#)
- [U.S. Chamber of Commerce - Coronavirus Emergency Loans: Guide and Checklist for Small Businesses and Nonprofits](#)
- [The Kresge Foundation - Nonprofit Guide to Accessing Capital Through the CARES Act](#)

Employer Tax Policy & Unemployment Insurance (UI)

Employee Retention Payroll Tax Credit

- Refundable payroll tax credit of up to \$5,000 per employee.
- Eligibility attaches when gross receipts for a quarter of calendar year 2020 are less than 50% the gross receipts for that same quarter of calendar year 2019
- Eligibility ends when gross receipts for a calendar quarter are greater than 80% of gross receipts for the same calendar quarter of the prior year.
- Recipients of emergency SBA 7(a) loans, including the Paycheck Protection Program, are ineligible.
- For 501(c) organizations, the entity's entire operation is taken into account when determining quarterly revenue.

Employer Payroll Tax Deferral

- This provision would allow taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.
- Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.

Unemployment Insurance

- Self-insured nonprofits who reimburse the state for unemployment compensation will have 50% of their costs paid by the federal government.

Tax Policy & UI Resources

- [U.S. Senate Committee on Finance - Unemployment Assistance & Tax Policy in the CARES Act](#)
- [National Council of Nonprofits - Self-Insured Nonprofits & Unemployment Insurance](#)

General Coronavirus Response Legislation Resources for Nonprofits

- [National Council of Nonprofits - Analysis of Families First Coronavirus Response Act for Nonprofits](#)
- [National Council of Nonprofits - Analysis of Coronavirus Aid, Relief, and Economic Security \(CARES\) Act for Nonprofits](#)
- [Independent Sector Summary of CARES Act Provisions Impacting Nonprofit Organizations](#)