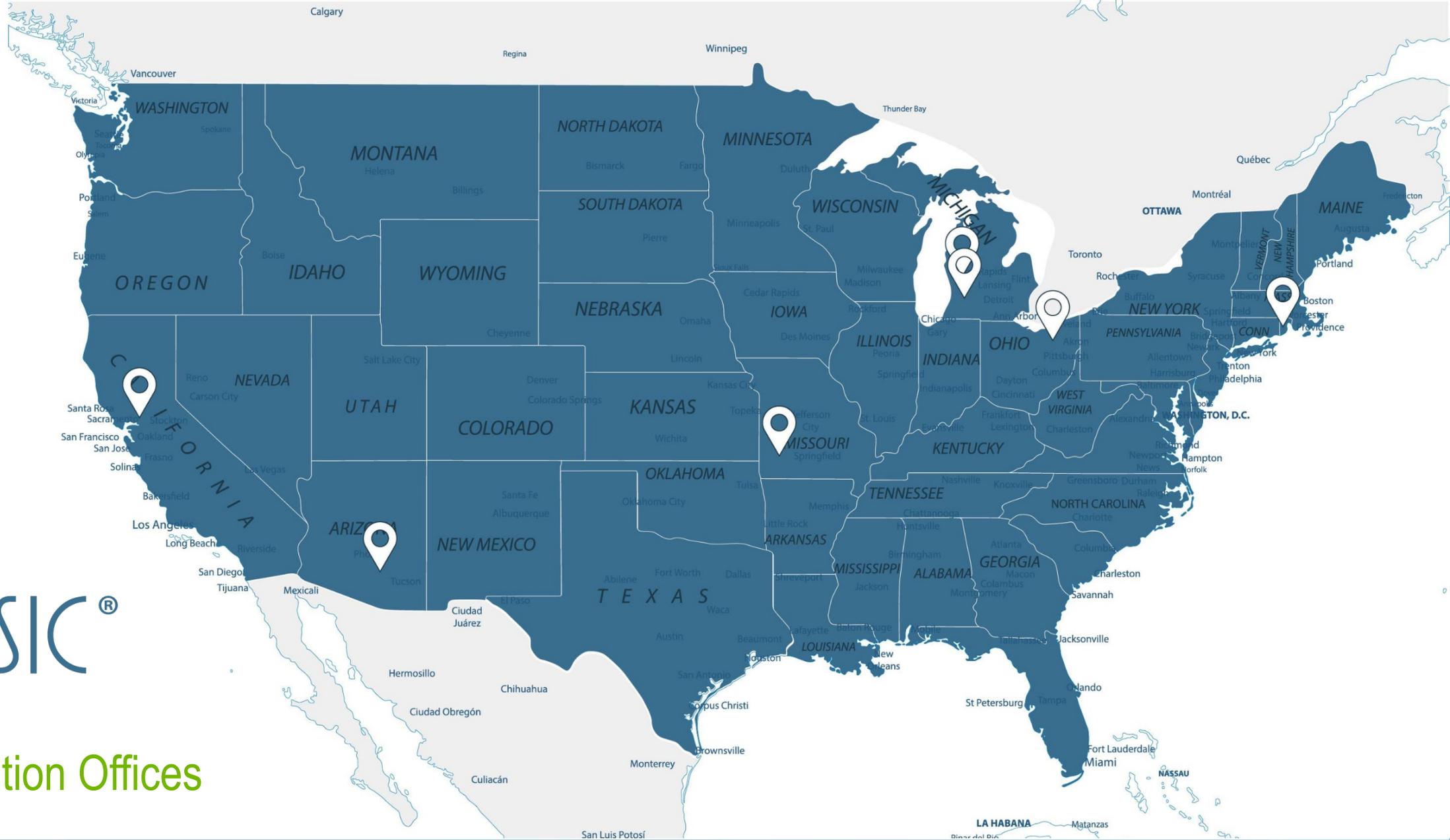




Emergency Paid Leave & FMLA Expansion Under Families First Coronavirus Response Act (FFCRA - H.R. 6201)



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➤ Presenter



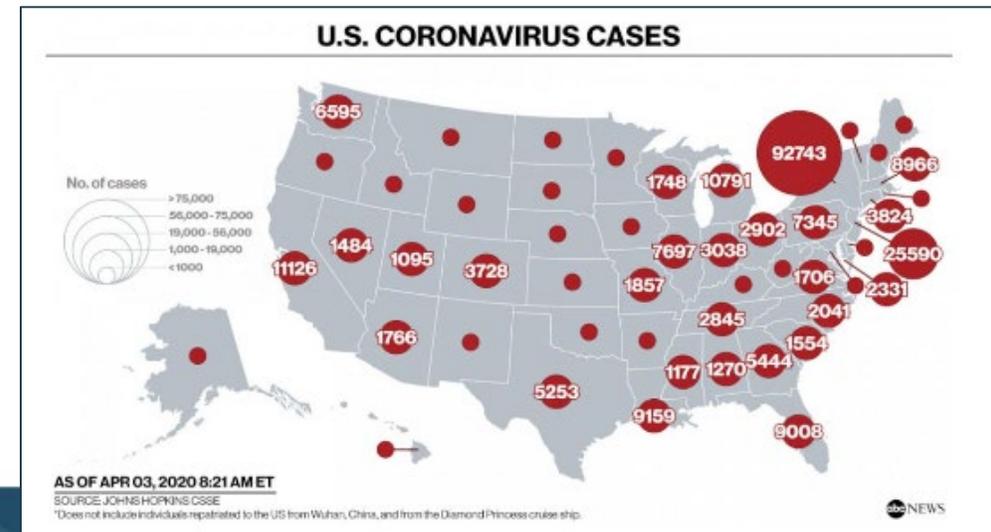
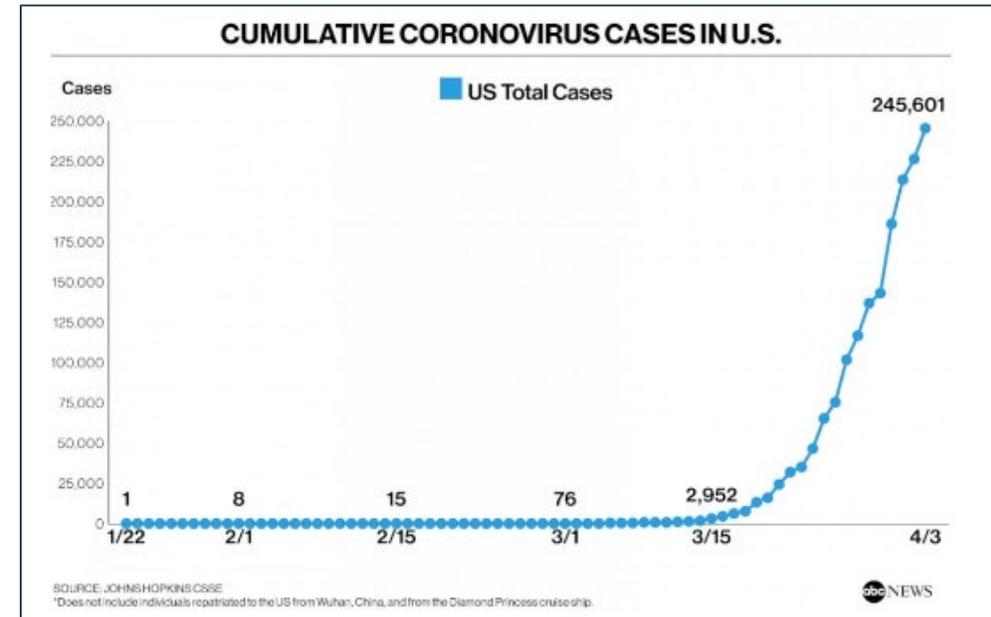
Joe Aitchison, SPHR, SHRM-SCP, CHRS - BASIC Vice President

Joe provides Business & HR client advisory services and HR outsource services nationally. He is a Human Resource professional with over twenty-five years business management and HR consulting experience. He has worked individual and multi plant manufacturing, retail, food processing, health care, legal administration and professional services.

Mr. Aitchison is recognized as a leader in human resources and has obtained a lifetime certification as a senior professional in human resource management, SHRM – Senior Certified Professional and Healthcare Reform Specialist by the Healthcare Reform Center & Policy Institute. Mr. Aitchison serves on several for profit and not for profit boards.

➤ COVID-19

- COVID-19 is an infectious disease caused by the recently discovered virus known as SARS-CoV-2 (or coronavirus). Before the outbreak in December 2019, there was no medical treatment information on COVID-19



➤ What We Will Cover

- Review of HR 6201 – what it is and who is covered
- Emergency Paid Sick Leave Act
- Emergency FMLA Expansion Act – Paid time to care for a child under the age of 18 (limited)
- How Does Emergency Paid Sick Leave work or Paid Emergency FMLA if I am laid off? Do I get money to support my family?
- How is an employer supposed to pay for this?

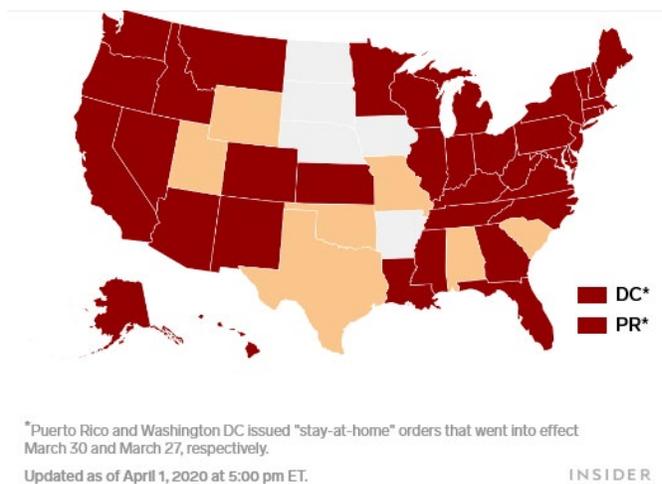


- **Just a few weeks ago**, employers nationwide were challenged, being creative, trying to fill positions during a time of record-low unemployment and Economic Boom.
- **Now:** Employers are concerned about Revenue Loss, Temporary or Permanent Shutdown, Paying Bills, Paying Employees, etc.
- **Many employers** are under A “State Executive Order” to Shut Down. Do I Layoff or Furlough Employees – what’s the difference? What about the WARN Act – will I get fined if I mess up?

➤ Families First Coronavirus Response Act

H.R. 6201

- Became law March 18, 2020
- **Effective Date: April 1, 2020**
- Key Point – “Typically” it can take up to 1 year or more to write regulations that pertain to a Law
- The DOL and other agencies had little time to “issue guidance” specifying how the law is applied and the “DETAILS”, or better said, Clarification and Guidance



Stay At Home Order
Over 190 Million People are under a stay at home order.

BLS March Unemployment Report
https://www.dol.gov/newsroom/economicdata/empsit_04032020.pdf/

➤ Changing Times Covid-19

Families First Coronavirus Response Act

2nd Bill Enacted March 18th is designed to provide aid and support to workers and industries during the Coronavirus outbreak.

• **What's Covered:**

- Appropriations
- Nutrition Waivers
- **Emergency Family and Medical Leave Expansion Act**
- Emergency Unemployment Insurance Stabilization and Access Act of 2020
- **Emergency Paid Sick Leave Act**
- Health Provisions
- **Tax Credits for Paid Sick and Paid Family and Medical Leave**
- Budgetary Effects

1st Bill Enacted March 6, 2020 - \$8.3 Billion **Coronavirus Preparedness and Response Supplemental Appropriations Act** (H.R.6074) for Emergency Health Supplies and Equipment.
H.R. 6074 Coronavirus Preparedness and Response Supplemental Appropriations Act

3rd Bill – \$2.2 Trillion **Coronavirus Aid, Relief, and Economic Security** (CARES)

Act Package was signed by the President on March 27th and includes **direct payments to individuals (\$1,200)** and aid to Small & Large Businesses
Bill includes up to \$600 Fed addition to State UI amount.

➤ First Family Coronavirus Response Act (FFCRA)

FFCRA requires certain employers to provide employees with paid sick or family leave for specified reasons related to COVID-19 and continues through 12/31/2020

The Act provides that employees of covered employers are eligible for:

*Two weeks (up to 80 hours) of **paid sick time at the employee's regular rate of pay** where the employee is unable to work (*or Telework) because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*

Two weeks (up to 80 hours) of paid sick time at two-thirds the employee's regular rate of pay because:

- the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider),
- to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19,
- the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and

Up to an additional 10 weeks of paid sick leave at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

➤ Covered Employers Under FFCRA

Employers are covered under the following definitions

- All Public Agencies (includes State, County, Local and Federal Divisions, Schools and other governmental entities)
- Private Employers having fewer than 500 employees
 - No Geographic Limits (as under FMLA)
 - Count all employees on payroll (FT, PT) and Temporary Workers
 - Count all employees that are on leave
 - Common ownership & Control rules apply

➤ FFCRA Employer Exceptions

Health Care Providers & Emergency Responders – Exception

- Employers who are health care providers or emergency responders may elect to exclude some (or all) their employees from the public health emergency leave provisions of the bill if the employees are in support of the Health Care Providers and / or First Responders – Employers are to use their discretion.

DOL Q&A – Q# 57 (R) “...as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.”

➤ FFCRA Employer Exceptions

Larger employers having more than 500 employees are excluded

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

➤ Small Employer Exemption

Employers having fewer than 50 employees will be able to apply for an exemption if complying with the requirements will jeopardize the viability of the business as a going concern.

Small businesses will be able to claim the exemption if they meet one of the following criteria:

- Providing the leave would cost more than the company's available revenue and cause the business to cease operating;
- The loss of workers would be a substantial risk to the company's finances or operations;
- There aren't enough available and qualified workers to replace employees who are out on leave.

➤ Layoff or Furlough

Layoffs are when an employer dismisses employees, i.e., *laid off* from their jobs.

- Typically for reasons beyond the control of the employee
- Often due to financial reasons – decline in revenue (lost contract, down trend in sales, cash flow decline)
- If a person is returned to their original job, they would typically have to be rehired

A furlough is “a temporary layoff” from work

- Usually return to their job after a furlough.
- Generally not paid during a furlough. **Often, the furloughed employee will retain some or all employee benefits.**
- Workers are not to perform any work-related activities while they are on furlough.

- Shelter in Place and Business Closure Orders Likely Do Not Support the Need for Leave (FAQ #27).
- Employees are not eligible for EPSL or FMLA+ during furloughs or temporary layoffs (FAQs #23-28).

➤ Summary Emergency Paid Sick Leave (EPSLA) & Emergency FMLA Expansion Act (“E”FMLA)

Emergency Paid Sick Leave (EPSL) – All employees employed on April 1, 2020

- Six Different Reasons
 - Reasons 1-3 paid at 100% subject to caps
 - Reasons 4-6 paid at 2/3 pay subject to caps

Emergency FMLA (“E” FMLA) – All employees (full & part-time) employed for 30 or more days

- Only reason for “E” FMLA - School closing or caring for child under the age of 18 when care provider is closed or unavailable due to a declared public health emergency
 - **12 weeks total:** Time under FMLA & “E” FMLA are all inclusive; Example – Employee had surgery and used 8 weeks of FMLA. The Employee only has up to 4 weeks remaining “E” FMLA time available.

➤ Emergency Paid Sick Leave Act (EPSLA)

EPSLA is **paid at 100% of wages** up to cap (if the employee cannot telework) when:

1. There is a state or local COVID-19 Quarantine or Isolation order
2. The employee has been advised to “self-Quarantine due to COVID-19 concerns
3. The employee is experiencing symptoms and is seeking medical diagnosis

➤ Emergency Paid Sick Leave Act (EPSLA)

2/3rds Pay subject to caps (EPSL)

4. The employee is caring for an “Individual” who:
 - Is under a quarantine or isolation order
 - Has been advised to self quarantine
5. When and employee is unable to work in order to care for a son or daughter (as defined under the FMLA) due to school or place of care / child care is closed or unavailable due to COVID-19 reasons. (*Child Care is said to include relatives who are paid*)
6. Employee is not able to work because they are experiencing **substantially similar conditions** as specified by the Secretary of Health & Human Services, in consultation with the Secretaries of Labor and Treasury.

Note: “Individual” is a broader term than Family Member which is defined under the FMLA – Pending clarification / Guidance from the DOL.

DOL Q&A - #73 When am I eligible for paid sick leave based on a “**substantially similar condition**” specified by the U.S. Department of Health and Human Services? (R) The U.S. Department of Health and Human Services (HHS) has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave. If HHS does identify any such condition, the Department of Labor will issue guidance explaining when you may take paid sick leave on the basis of a “substantially similar condition.”

➤ Emergency Paid Sick Leave Act (EPSLA)

Covers Full & Part Time (includes Union Employees) not able to work (or Telework)

- Full Time up to 80 hours
- Part Time up to two weeks of time
- **Variable Hour Employee** - average hours over most recent 6 month period. If no 6 month history – average hours expected to work at time of hire.
- Pays first (cannot require use of other Paid Time off prior to paying EPSL)

Amount Paid is “Capped”

- Maximum Daily Rate \$511 per day capped at \$5,110
- 2/3 Pay Maximum Daily Rate \$200 Dollars per day capped at \$2,000

➤ Emergency FMLA (“E” FMLA) Expansion Act

- Covers Full & Part Time Employees (includes Union Employees covered under a CBA)
- Eligible Employees – Employed for 30 or more days
- Up to 12 weeks of time
 - First 2 weeks are unpaid (reference EPSL)
 - Remaining 10 weeks are paid at 2/3 pay subject to caps (\$200 / \$12,000)
- **Only available for school closings** “and if not able to *telework”

➤ Emergency FMLA (“E” FMLA) Expansion Act

- Employers may “Cap Off” (add pay) to reach 100% of pay if above maximum amounts allowed, however, “Cap Off” amounts are not reimbursable under payroll tax credit / reimbursements.
- Question: Continuous or Intermittent use of “E” FMLA?
- Response: Leave is continuous, unless allowable by the employer.

➤ Job Restoration After Leave

- Eligible employees who take emergency paid leave are entitled to be restored to the position they held when the leave commenced or to obtain an equivalent position with their employer.
- **H.R. 6201 limits this rule** for employers with fewer than 25 employees. If an employee takes emergency leave, then the employer does not need to return the employee to their position if:
 - The position does not exist due to changes in the employer's economic or operating condition that affect employment and were caused by the coronavirus emergency;
 - The employer makes "reasonable efforts" to restore the employee to an equivalent position; and
 - If these efforts fail, the employer makes an additional reasonable effort to contact the employee if an equivalent position becomes available. The "contact period" is the one-year window beginning on the earlier of (a) the date on which the employee no longer needs to take leave to care for the child or (b) 12 weeks after the employee's paid leave commences.

➤ FFCRA Safe Harbor Implementation Period

Temporary 30-Day Non-Enforcement Period

The DOL states that it will observe a temporary period of non-enforcement for the first 30 days after the leave requirements take effect with respect to employers who have acted reasonably and in good faith compliance with the FFCRA. "Good faith" exists when:

1. The employer remediates the violations and allows the employee to take entitled leave as soon as practicable,
2. The violations were not willful, and
3. The employer provides the DOL with a written commitment of compliance in the future.

➤ Notices, Postings & Employee / Employer Rights

April 1, 2020

- EPSLA & “E” FMLA - DOL provided Notices & Postings

Employee Rights

- No discriminatory or disciplinary action against employees who take EPSL or file a claim under the EPSLA
- Restoration to position (exclusion small employer under 25 EEs)
- Reasonable effort by employer to employ same or similar position up to 1 year

Employer Rights

- Right to notice – Reasonable notice from Employee taking EPSL time away from work
- No carry over or pay out of EPSL at termination

➤ Small Employer Limited Liability

Employers having fewer than 50 Employees

- Exempts small employers from civil liabilities & damages
 - Excludes negligence

➤ CARES Act: Paycheck Protection Program

<https://www.irs.gov/pub/irs-pdf/f7200.pdf>
<https://www.irs.gov/pub/irs-pdf/i7200.pdf>

- Small employers, self-employed individuals, and workers
 - Administered through the SBA
 - Provides 8 weeks of cash-flow assistance through 100 percent federally guaranteed loans
- Must ,maintain Payroll during this time.
 - covers payroll costs, interest on mortgage obligations, rent, and utilities will be forgiven –
- Retroactive to February 15, 2020
<https://www.sba.gov/funding-programs/disaster-assistance/>

Form 7200 Advance Payment of Employer Credits Due to COVID-19
 (March 2020) Department of the Treasury Internal Revenue Service
 ▶ Go to www.irs.gov/Form7200 for instructions and the latest information. OMB No. 1545-0029

Name (not your trade name) _____ Employer identification number (EIN) _____

Trade name (if any) _____ Applicable calendar quarter (check one)
 (1) April, May, June
 (2) July, August, September
 (3) October, November, December

Number, street, and apt. or suite no. If a P.O. box, see instructions. _____

City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.) _____

Foreign country name _____ Foreign province/county _____ Foreign postal code _____

Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name. _____ Third-party payer's EIN (if applicable) _____

Tip: File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.

Part I Tell Us About Your Employment Tax Return

A Check the box to indicate which employment tax return form you file (or will file for 2020):
 (1) 941, 941-PF, or 941-SS (2) 943 or 943-PF (3) 944 or 944(SP) (4) CT-1

B Is this a new business started on or after January 1, 2020? _____ ▶ Yes No
 If "Yes," skip line C unless you've already filed Form 941, Form 941-PF, or Form 941-SS for at least one quarter of 2020.

C Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions. _____ ▶

D Enter the total number of employees you have. See instructions. _____ ▶

Part II Enter Your Credits and Advance Requested

1	Total employee retention credit for the quarter. See instructions	1
2	Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions	2
3	Total qualified family leave wages eligible for the credit and paid this quarter. See instructions	3
4	Add lines 1, 2, and 3	4
5	Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter	5
6	Total advanced credits requested on previous filings of this form for this quarter	6
7	Add lines 5 and 6	7
8	Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form	8

Third-Party Designee Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details. Yes. Complete below. No

Designee's name ▶ _____ and phone number ▶ _____

Select a 5-digit personal identification number (PIN) to use when talking to the IRS ▶ [][][][][]

Sign Here Under penalties of perjury, I declare that I have examined this form, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature _____ Date _____ Printed title _____

Printed name _____ Paid daytime phone _____

Paid Preparer Use Only Preparer's name _____ Preparer's signature _____ Date _____ PIN _____ Check if self-employed

Firm's name ▶ _____ Firm's EIN ▶ _____

Firm's address ▶ _____ Phone no. _____

How To File Fax your completed form to 855-248-0552.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 563920 Form 7200 (3-2020)

➤ Coronavirus Aid, Relief & Economic Stimulus Package

What is in the CARES legislation?

The Committee for a Responsible Federal Budget, a non-profit group that tracks US budget deficits, scored total spending under the rescue bill at approximately \$2.3 trillion.

Here is a look at where most of the money will go, according to the budget watchdog:

- \$510bn - Lending for large businesses, governments
- \$377bn - Small business loans and grants
- \$290bn - Direct payments to most Americans
- \$280bn - Cuts to business taxes
- \$260bn - Expanded unemployment benefits
- \$180bn - Funding for hospitals, healthcare
- \$150bn - Support for state, local governments

Other Stuff

- 100 million to the Federal Prison System
- \$75 million to the Corporation for Public Broadcasting, which helps fund National Public Radio (NPR)
- \$75 million each to the National Endowment for the Arts and the National Endowment for the Humanities
- \$25 million in additional salaries and expenses for the House of Representatives
- \$25 million to the John F. Kennedy Center for the Performing Arts.

➤ CARES Act - Direct Payments to Americans

- The full credit amount (\$1,200 individuals, \$2,400 couples, \$500 for children) is available for individuals with income at or below \$75,000 (\$112,500 for heads of household), and couples with income at or below \$150,000.
- If you have children, you will receive an additional \$500 per child.
- Your tax rebate amount will be reduced by \$5 for each \$100 your income exceeds the above income limits.
- That means for those without children, an individual will not receive any rebate if their income exceeds \$99,000; and the same is true for couples with more than \$198,000 of income.
- Direct payments of up to \$1,200 each to millions of Americans, with additional payments of \$500 per child. Payments are phased out for those earning between \$75,000 & \$99,000 annually.
- Does not need to be repaid (unless fraud)
- How does the FED know how much to pay me? Easy ~ Last filed tax return for 2019 or 2018

➤ CARES Act - Enhanced Unemployment

Expands coverage to more workers, including self-employed, contractors, and furloughed workers.

- Increases Americans' unemployment benefits by \$600/week for 4 months.
- Makes available 13 additional weeks of unemployment for those who need it.
- Waives the normal one-week waiting period.
- Includes funding to offset 50% of the costs of state and local government and non-profits for cost of paying unemployment to their workers.
- Supports short-time, work share programs as an alternative to layoffs.
- **Self-employed workers**, independent contractors and those who typically don't qualify for unemployment benefits would be eligible. The government would also partially make up wages for workers whose hours are scaled back.

➤ CARES Act

Tax Cuts

- A refundable 50 percent payroll tax credit for businesses affected by the coronavirus, to encourage employee retention. Employers would also be able to defer payment of those taxes if necessary
- Loosened tax deductions for interest and operating losses
- Suspension of penalties for people who tap their retirement funds early
- Tax write-offs to encourage charitable deductions and encourage employers to help pay off student loans
- Waiving of federal tax on distilled spirits used to make hand sanitizer

Increased Safety Net Spending

- \$42 billion in additional spending for food stamps and child nutrition
- \$12 billion for housing programs
- \$45 billion for child and family services

Other Elements

- A ban on foreclosing on federally backed mortgages through mid-May, and a four-month ban on evictions by landlords who rely on federal housing programs

➤ CARES Act

Small Business Loans and Grants

- Loans for businesses that have fewer than 500 employees could be partially forgiven if they are used for employee salaries, rent, mortgage interest and utility costs.
- The bill also includes emergency grants for small business.

➤ OSHA & COVID-19

- This is not a regulation
- Creates “no new legal obligations”
- Intended to provide recommendations and descriptions on to comply with **existing “mandatory safety and health standards”**

Employer’s General Duty Clause: Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards that are likely to cause death or physical harm.

- **“This guidance is intended for planning purposes.** Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available.”

Guidance on Preparing Workplaces for COVID-19

U.S. Department of Labor
Occupational Safety and Health Administration

OSHA 3990-03 2020



U.S. Department of Labor

➤ OSHA & COVID-19

Develop an Infectious Disease Preparedness and Response Plan

- If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19.

➤ OSHA & COVID-19 - Prepare to Implement Basic Infection Prevention Measures

All employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough [hand washing](#), including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to [stay home if they are sick](#).
- Encourage [respiratory etiquette](#), including covering coughs and sneezes.
- Provide customers and the public with tissues and trash receptacles.
- Employers should explore whether they can establish [policies and practices](#), such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others.
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

➤ OSHA & COVID-19

Workplace Controls to ensure safe work environment

- Engineering
- Administrative
- Safe Work Practices
- Personal Protective Equipment (PPE)

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19.

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures that involve aerosol generation or specimen collection/handling.

Occupational Risk Pyramid for COVID-19



Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) other people who may be infected with SARS-CoV-2.

➤ OSHA & COVID-19

Jobs Classified at Lower Exposure Risk (Caution):

- **Lower exposure risk** (*caution*) jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (i.e., within 6 feet of) the general public. Workers in this category have minimal occupational contact with the public and other coworkers.

➤ OSHA & COVID-19

Low Risk Employer

1. Develop an Infectious Disease Preparedness and Response Plan
2. Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if appropriate
3. Develop, Implement, and Communicate about Workplace Flexibilities and Protections
4. Implement Workplace Controls
5. Engineering Controls (not required) but, if it makes sense
6. Administrative Controls
7. Safe Work Practices
8. Personal Protective Equipment (PPE)

➤ Reference & Information Sites

DOL FFCRA Q&A

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

FFCRA Employer Fact Sheet

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

FFCRA Employee Fact Sheet

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave/>

DOL Posters - EPSL & “Emergency Family & Medical Leave Expansion Act

<https://www.dol.gov/agencies/whd/posters>

U.S. Government Ways & Means CARES

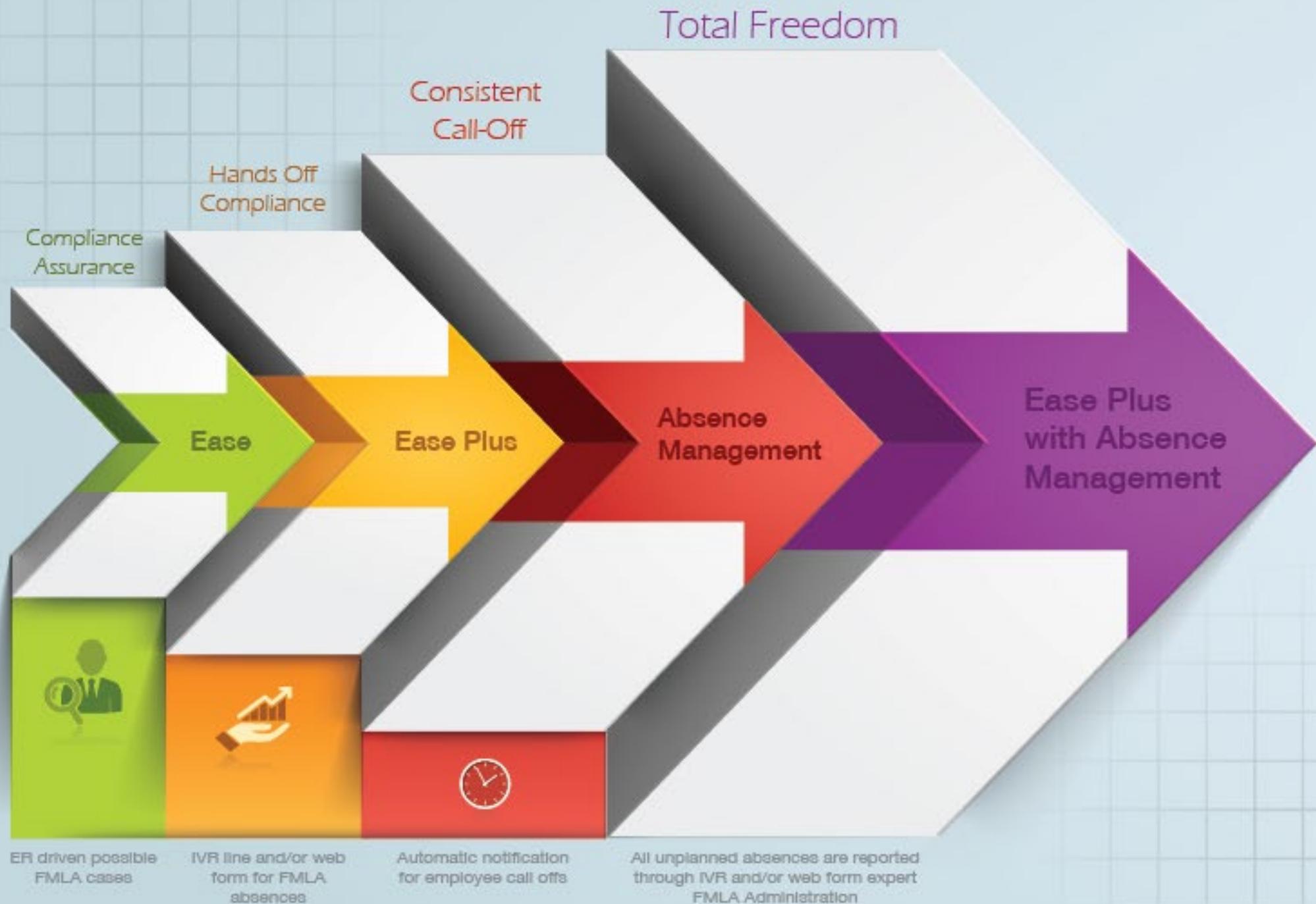
<https://gop-waysandmeans.house.gov/cares-act-coronavirus-relief-check-questions-answered/>

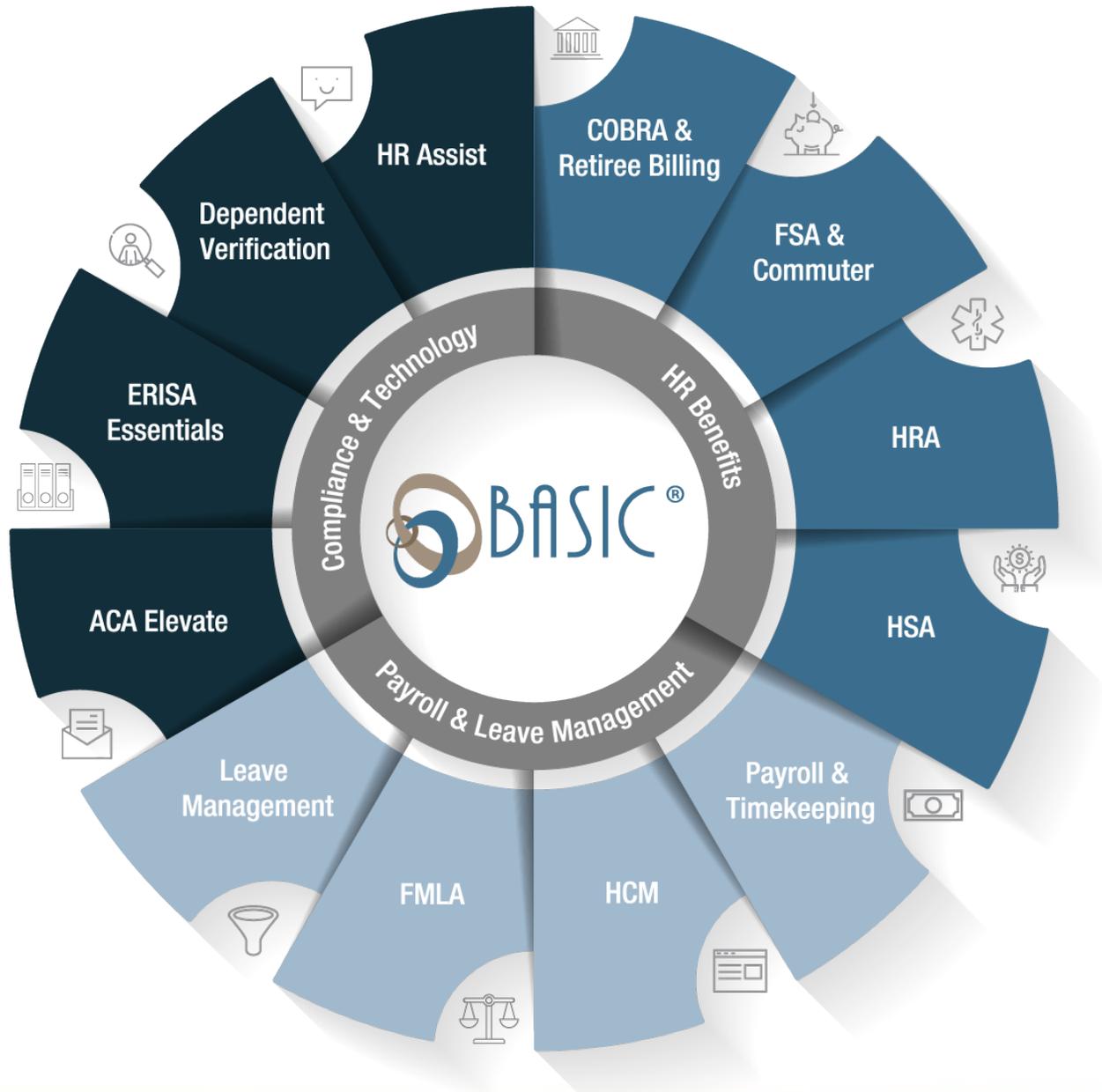
OSHA Guidance

<https://www.osha.gov/Publications/OSHA3990.pdf>

QUESTIONS







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<https://www.basiconline.com/request-a-proposal/>

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888-602-2742

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THANK YOU

View our current webinar schedule at
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