BEYOND THE MIC
with AEM

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FFCRA & CARES Act | Updated Information for Employers
Hosted by Leah Davis & Brenna Ramy

EPISODE 7

NOTE: Because the COVID-19 situation is dynamic, with new governmental measures each day, please reach out to us to discuss your organization's unique challenges so that we can provide you with up-to-date information and help you find the solutions.

It seems that new guidance is being released nearly every day regarding the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. For employers and Human Resources administrators, this requires an almost constant monitoring of regulations to ensure that the programs are being carried out accurately, documentation of employer actions is thorough, and compliance measures are being implemented appropriately.

In this episode of Beyond the Mic, Leah Davis and Brenna Ramy from the AEM Workforce Solutions team will walk you through updated guidance and new information that has been gathered over the last 60 days of the COVID-19 pandemic. Listen in for a comprehensive overview of what you need to know now as an employer - from what changes have recently taken effect to how you can anticipate further changes as the situation in our communities and our country continues to evolve.

Meet the Hosts

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As President of the AEM Workforce Solutions team, Leah uses her background in public accounting, business ownership, and Human Resources and payroll support to provide her team with a strong foundation of knowledge and experience. She enjoys helping clients grow and learn, no matter where they are in their HR journey.

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Brenna enjoys working with leaders to determine the most effective employment model to meet business needs and strategic direction. She has over fifteen years of Human Resources experience in the industries of hospitality, retail, multifamily housing, and consulting.

Brenna Ramy: Good afternoon, Leah, how are you today?

Leah Davis: I'm good. How are you doing Brenna?

Brenna Ramy: I'm well, thank you for joining us here again today. It is Friday, May 8th, and Leah and I are here from AEM Workforce Solutions on Beyond the Mic to talk about some updates and updated guidance and new information that we've received over the past 60 days on Families First.

So as I'm sure all of you have heard over and over on everything you've listened to, I will give our obligatory "It's 11:30 on May 8th, so this is accurate as of 11:30 on May 8th." And certainly, if you're listening to this after that date, you just want to check on any of the resources that we're going to be providing you today.

Leah Davis: I agree, Brenna, I think if I've harped on anything over the last six weeks to clients and employers, it's that what you thought was true yesterday - there's absolutely no guarantee it's true today. So have your resources, hopefully you're getting it straight from the horse's mouth with each of the respective agencies and be checking them often, daily even.

Brenna Ramy: Yeah, we had a couple of really fun (and I say fun loosely) scenarios where we give guidance to somebody at 8:00 AM, and we happen to check a website at noon, and it's already been changed just in that day. So the information is coming fast and furious, and I think what all of us in the field have taken away during this is that its good practice to just have your trusted resources. Know where you go to get the final answer. Don't leave it open to interpretation or somebody else's interpretation, but go back to that ultimate resource.

So, Leah, I thought what we'd do today is that a couple of our previous podcasts, we talked about Families First when it first came out and some of the new guidance that was there and a couple of the major questions we had from people that we were working with. And we know over the last 60 days that some of those things have been updated. So, I thought we could take time just to go through a couple of common questions like, "What things have changed?" and "How can employers, HR professionals, and business professionals be looking to the future to stay on top of how things will, of course, change in the future as well?" So if you're open, Leah, I'd love to just go through a couple of topics like, "Hey, tell me about this," and you can give us what's changed and how do we keep on top of things.

Leah Davis: Happy to help.

Brenna Ramy: Wonderful. Good. So if you could just at the 20,000 foot view, remind us all a little bit about Families First and CARES Act and why are those important to employers and HR professionals in the current date?

Leah Davis: Yeah, so this is like super high level because, at this point, I think we could spend half a day on each, the Families First and the CARES Act. So very, very high-level Families First Act among a lot of other provisions within that first piece of legislative action really set out for employers an obligation to provide paid leave to employees that are unable to work or because of COVID related reasons.

Now, those reasons are very clearly laid out, and I'm going to assume that a lot of people had a chance to look at those, but it's anything from personal illness to mandated quarantine to loss of childcare related to COVID-19. What was really sort of unique about this is it is a required paid leave. Employers are required to sort of front or cash flow that paid leave. And then the other sort of the back-end of that provision is credit opportunity, payroll tax credit opportunity for employers to relatively quickly get that cashback so that they can continue to operate. So, there's a lot of moving parts there. Department of Labor is regulating the leave requirement; the IRS is regulating the payroll tax credit, so a lot of hands in the pot there from a regulatory perspective. That's really kind of what Families First is all about.

On the flip side, the CARES Act was really focusing on providing relief to businesses and employers. And so while Families First was really kind of taking care of the individual or the intent was to sort of safety net, each individual employee, the CARES Act was set out on providing assistance to businesses. Things like the Payroll Paycheck Protection program, the PPP loans, that have the potential to be forgivable under certain circumstances. There's the employer retention credit. Another piece of the CARES Act was they provided some additional funding in grant money for all of these state unemployment agencies that all estimates indicate we'll completely be tapped out by the unemployment claim level. So that's where you're seeing a lot of these additional weekly payments being made available to those that are on unemployment because of the coronavirus.

Brenna Ramy: Great, and Leah, I think one of the questions that I've gotten a lot from people, even just in my own personal life, so people who live on my street with me you know, somebody I know very well is a photographer and does weddings and said, "Well, I haven't applied for unemployment because I know that self-employed individuals don't qualify." And so what you've been telling people is actually, there's a lot of people who qualify that never before have qualified because of the CARES Act and it's a big bucket, and each state is applying that differently.

And so is it safe to say that if somebody says, "Do I qualify for unemployment?" or they're wondering if they qualify for unemployment, that the best course of action is to just go to the website and apply? Because the website itself gives great guidance and really gives some broad general guidelines. But they also are clear, "Hey, apply. We'll work through the system with you. We'll give you the information. Even if you think I've never been eligible before, you may, because of the CARES Act, now be eligible." But looking to get a clear answer of if you'll be approved before you apply, is that still possible because the system is just so full and so busy and there are so many moving parts in it. So our recommendation, you're on the same page with this. Hey, just go to the website, apply, put your accurate information in there, and it will work itself through, and they'll, there may be coverage that you previously weren't eligible for.

Leah Davis: Yeah, no, I think that's the best advice we can give at this point. I think the other important thing to note too is some of the paid leave provisions under the Families First Act; self-employed individuals can be eligible for both the payments and the related tax credits as long as they meet that. They're applied differently if those owners aren't receiving W-2 wages, but that's an opportunity as well if they have qualifying leave related to illness, loss of childcare, and those types of things.

Brenna Ramy: Great. Wonderful. Thank you, Leah. A couple of things I'd like to talk about in the beginning when Families First first came out, we'll talk about that specifically maybe for a moment. I think what all of the HR professionals that I know we're looking for is we're really used to pretty clear guidelines and boundaries and processes that come with the Department of Labor regulations. So, for example, pre-COVID FMLA coverages, there were pretty clear interpretations, guidelines that came out, and most businesses still today are looking for a quick blanket answer to this. What's the answer to if this then that, can you give us a ten-second answer on why they can't have that?

Leah Davis: I think, well and we're all in the same boat. Right? If I hear one more time, somebody say "we are in uncharted territory," I could just about scream because the old rules don't apply in this circumstance. And I think we as employers and particularly HR people, I will admit to being guilty of I want a rule that I can apply consistently in all situations because it feels objective and like something I can really stick to and feel like I'm being fair. That just doesn't work in the current environment. We really just need to understand that these agencies have very clearly communicated that there's an expectation of maximized flexibility that employers are really obligated to provide. It doesn't mean you can't say no or negotiate if there's something very unrealistic that an employee is asking for. But I think that negotiation and having that conversation and dealing with each situation individually and based on a specific set of facts is really expected.

Brenna Ramy: So Leah, what I'm hearing is that really employers need to stay focused on what's your specific situation as an employee? What do we specifically need as an employer? Can we find a solution that works for everybody? And I think what's really a unique thing like you said, I'm gonna try not to use the words unprecedented or uncharted. What's very special about this regulation is that it actually says in the Department of Labor FAQs, "We want employers and employees to talk and try to find a solution that works." So we aren't going to be able to have in any scenario blanket yes's and no's and it's because we're just learning as we go. And the goal is to have these be short term solutions, so all of these regulations are just for the year and just related to COVID. We're not creating new paid leads that exist in perpetuity. This is just a very specific time.

Leah Davis: Yeah, that's accurate.

Brenna Ramy: Okay. So a couple of the things that we know have changed just in the last 60 days, so we looked back and listened to some of our original podcasts and information, and we know that initially there were some thoughts and interpretations about what if somebody was on furlough and they came back, would they be eligible for the FFCRA? What about preexisting conditions? Does that qualify for any of the emergency paid sick leave? Does the stay at home order in a state, qualify as a government order? And we know that somebody would have answered that 60 days ago, 30 days ago, and a day ago even has changed.

Brenna Ramy: We were joking around right before we started this, that just yesterday, the EEOC provided updated FAQs for preexisting conditions and how that participates in conjunction with the Americans with Disabilities Act and the reasonable accommodation process. Can we just put a big umbrella over that and say: stay up to speed, don't assume because you knew what the answer was 30 days ago that it remains the same, have your resources - things like the Department of Labor website, the EEOC and ADA updated FAQs, and have your resources such as an employment lawyer. We certainly are partnering with employment lawyers and clients and looking at these things all the time to say, has the answer today changed from 30 days ago? Probably it has. And to not get stuck on what you know. And part of this is interpretation as they're learning things, they're changing. Is that safe to say across the board?

Leah Davis: It is. Each request and situation, the set of facts, you're never going to run into an identical set of facts. And I think we're in an environment right now where the details really, really matter. So we really need to confirm what we think we know every time a new case or a new request or a new complaint comes in. Because not only is the situation different, but the guidance probably is as well.

Brenna Ramy: Yeah. Really fun, isn't it? Okay, so one of the things that have really changed since the beginning is that initially, we had guidance from the Department of Labor saying here's how Families First specifically should be applied in the workplace. And since then, we've gotten guidance from the IRS that on the flip side says, “Okay, here's how you should manage and document and track these Family First employer obligations that you can get your credits on the backside.”

This is new in the world of HR that you have an employment regulation that has partnering IRS tax guidelines. So that really, I'm going to say the word Leah, it's unprecedented. It is. It truly is. What should professionals understand about those two different regulations and not relying solely on the Department of Labor guidelines of FAQs because some of the IRS FAQs have a higher standard? And why does it matter that they understand both of those as business professionals, business owners, HR partners, to business owners?

Leah Davis: Yeah, no, I'll let you use unprecedented here this one time. I think what's important for employers to recognize is there's this conflicting motivation that's happening with these Families First payments. So there's no question employers have an obligation to offer, make available these paid leaves in circumstances where employees are eligible and that the Department of Labor is expecting them to be flexible in the way that employees can make requests to be flexible in the way that they document and receive communication about these requests from employees. Because the intent is to whenever possible, accommodate and get an employee to fall under these criteria to be eligible for this leave. The flip side and/or competing for motivation is the IRS has been tasked with managing the credit process. So by managing it's not only providing the credits back, but there will be an audit component of all of this when it's all said and done.

Leah Davis: So the IRS has come out and said, “Fine, but we require X, Y, and Z to substantiate this free money that employers are getting back as a result of these credits.” So the IRS has all kinds of additional documentation that the employer is going to be obligated to provide if they need to support the credits that they claimed during the year. So there are these two sides to the coin, and both are important to employers for different reasons. Both create a risk for employers for different reasons. Still, they really need to have a good understanding and really sort of default to probably meeting the IRS documentation standard because it's more robust than the Department of Labor. But recognizing that they still need to sort of appease the Department of Labor by being flexible on how they're pulling that information in from employees.

Brenna Ramy: Right. And I think a great example that I've used when clients have said, "Hey, help me understand an example of how are they different, what does it look like?" And one of the easiest ones that I tend to default to using is the standard for a child who needs a parent home.

So the Department of Labor would define it and say: if your child's school was closed due to a government order, then you would qualify, and you have to be home to watch them. You would qualify for both emergency paid sick leave and the emergency expanded FMLA under Families First. The IRS has a clarification that you have to be under 14 to qualify for that credit. So if you're over the age of 14 and if you're a child whose school was closed, they've clarified during daytime hours, you don't need an adult home. And so while you might qualify for the Family's First technical leave away, the organization wouldn't qualify for the tax credit to get that, and so there's, without going too far into the weeds, cause that could be a five-hour webinar podcast on its own. But it's just a great example of they're not conflicting. It's just the IRS is saying, "Hey, okay, if your child is 16 and a junior in high school and their high school is closed, well, we think they can be home alone during the day. And so we're not going to pay an employer to pay you to be home with your 16-year-old child if it's during the day." So there is just a great example of not necessarily conflicting information, but just the different level of information, which is very new to a lot of HR professionals because normally we don't really have regulations that partner like that.

Leah Davis: Yeah, I agree. I think another area that's super common where you see a little bit of that friction between the two agencies would be your high-risk individuals. So you've got employees that have conditions that put them at you know, in a particular risk bucket.

And so, you know, they're coming to you and saying, "I can't be in the workplace because my doctor has indicated I'm high risk." Well, from a DOL perspective, they want us to be providing, you know, this Family's First leave to those individuals for the 80 hours. However, we need to get something from that employee's physician, stating that the physician has ordered them to be quarantined or isolated during this time. And once we have that, now we can meet most of the DOL and the IRS standard. And that physician statement might be, the employee told us that they had a phone call with their physician and we took the date and the name of the physician, and that's going to potentially be the best we can get. But that we documented that so that if the IRS came back and said, "Hey, you provided this leave, that was wonderful, but you didn't meet the documentation criteria to actually be eligible for the credit." The employer still did the right thing, but it could put at risk their ability to get those funds back.

Brenna Ramy: Right, right. It's a dual-purpose piece of information.

So let's talk a little bit about tracking. So we know there's still a lot that we don't know, particularly when you look at the Paycheck Protection Program. So this role is a little bit into the CARES Act. So without diving into all of these programs, we have Families First because of that first legislative movement, we have the PPP and the Pandemic Unemployment Compensation Program (FPUC), which is under the second movement, the CARES Act. We have all these different things, and we know that, for example, Families First paid dollars can't be counted towards PPP forgiveness dollars. You know, that we don't know exactly how PPP, forgiveness hours are going to be tracked, and we know that payroll providers and software programs are looking at things they've never had to do before.

So what's your elevator speech to somebody who manages payroll, besides take a deep breath and maybe get into meditating? What would your elevator speech be to them about what they can be doing now to manage and track their data to set themselves up for when we do have more information?

Leah Davis: Yeah. A 10,000-foot statement as payroll professionals. This is your year to bring your A-game, and it's going to get really crazy, I think, this year.

So I think a couple of things between the payroll tax credits and how that's all going to be executed related to quarterly payroll tax filings and credit application. Payroll professionals really, really need to own the fact that they are going to need to be the expert. All of the payroll software companies, even your big ones, your ADP, your QuickBooks, all of these groups, they're doing their best. But it really is a data in data out. And so those people responsible for running payroll have to be sure that they understand how that information needs to be entered into the system so that it's flowing through and being filed and applied correctly. So that's at my very high-level statement there. We need to be able to separate out what are the FFCRA payments, what are the hours, the gross dollars? You're going to need all of that, whether it's for IRS purposes or if there's a DOL issue that comes up, and you need to prove that you were providing that leave to people appropriately. I think that's key.

From a triple P perspective today as of May 8th at 11:30, we still don't have good, clear information about how payroll changes are going to affect loan forgiveness for employers that are in that eight-week loan sort of maintenance period or measurement period. We just know that they're expected to retain full-time equivalent headcounts, and they can't reduce any individual employees' pay by more than 25%. There's still a lot of outstanding questions there and how that's going to be applied. From a tracking perspective, as it relates to payroll for triple P, my answer is more is better. Track it by week, track it by if you're in that eight week period, you should have a good idea of what was actually worked during that week per employee hours and dollars. You'll have an idea from your payroll reports what was actually paid during that eight week period. But I think we just have to track everything so that at the end of that eight weeks, which I would assume we should have more information by the time any employers start wrapping up their eight week loan period. They'll have all that information available and ready, but get as detailed as you can so that you can track all of those things individually.

Brenna Ramy: Right. And I think what we're saying to people over and over again is, own your data. So don't trust that your payroll system is doing everything correctly. If your bank who you have your triple P loan through has given you a spreadsheet and they say, "Hey, this is all you're going to need." This isn't a blind trust scenario, this is a situation where each organization should be saying, "I'm just going to track all the information because at the end of the day, this is my organization's tax liability - either tax credit or tax owed." What does it look like? We don't know what those answers are going to be. We've seen hundreds of banks give different answers for how different people should be tracking information.

So I think our real kind of charge and call to action for people is: if you run payroll or are in HR in any organization, now is the time to just grab the reins, take ownership of data management. So know what's happening. Know every day who's being paid what, who's furloughed, who's not? Who's returned to work, who's hasn't? Who has claimed Families First dollars, who hasn't? What dollars are a part of PPP? And to just track it all, because we don't know how that's gonna play out. And well-intentioned payroll providers or banking institutions might just have a piece of wrong information and give wrong guidance and so to really take ownership of it.

Leah Davis: I agree. It's a situation where there's going to be very, very few employer groups who have good outcomes from a triple P loan forgiveness perspective on accident. So the more proactive they are, the better the likelihood that they're going to be able to maximize that loan forgiveness.

Brenna Ramy: Great. And I will just say before I forget at the very end, because I have one more question and we'll wrap up today that if we're talking about Families First and you don't know what we're talking about, go to the Abdo, Eick & Meyers COVID Resource page. You don't need to connect with us, you can just click on the links and get a bunch of resources, one page flow charts, things that will tell you really quickly what do I need to know about families first. Similarly on the PPP front, if you know, your business has a PPP and you don't feel up to speed on it and you're not sure what that means for you, again, go to our resource page, the Abdo, Eick & Meyers COVID Resource page. There's resources available for you right on that website. You can just click on them and read them, so if you're not sure what we're talking about, the ship has sailed. You still have time to get that info and you don't have to listen to 15 podcasts. You can go right to that website and get that info.

Leah, in the last couple of minutes, I would love for you to talk about returning to work, right. So it's May 8th we're all hoping that between May 14th and May 18, Minnesotans will start to trickle back into the workforce, right? Related to hear what governor Wells has to say. We know that even if you're considered an essential worker and one of the earlier phases, phase one and two, you could already be back at work. What employers need to be thinking about and preparing proactively for is that unemployment $600 a week additional stipend that came from the CARES Act for any unemployed worker who'd been approved for unemployment. What do employers do and what can they be doing to take the reins and have an employed workforce again?

Leah Davis: Yeah, at a high level, we need to remember that a lot of our organizations, if they didn't stay open because they weren't considered critical infrastructure or essential, stopped operations, you know, either laid people off or sent them to work from home, very abruptly. The exit happened very quickly.

The creep back into work is going to be much more gradual than that. So very important things to remember: Minnesota is one of the first States - or one of the only States currently - that has come right out and said, “As soon as we open this back up and the stay at home order is lifted, all employers and workplaces will be required to have a COVID-19 preparedness plan in place.” There's a lot of great resources out at the Minnesota Department of Labor, and the Minnesota Chamber of Commerce has some great resources to help employers get ready to put together a plan like that and communicate that to their employees, but that's a requirement.

The other thing too is just like you said, an employee that earned $15 an hour working prior to COVID-19 is earning $22.50 an hour right now on unemployment. So we as owners, managers, HR professionals must own the fact that they're taking a pay cut to come back to work. So as much as people want the economy to, you know maybe get back to normal, there's a real personal economic impact to lots of people that are coming back into this, and it's going to affect morale. It's going to affect motivation, so making sure as employers that you're letting unemployment know right away when you're calling people back into the workplace if they've been laid off or furloughed.

Making sure you've got good documentation and that you're clearly communicating with employees. "This is when we're expecting you to return to work. Here's what we're doing to make sure the workplace is safe. Here's how refusing to return to work might or will impact your unemployment benefits. And here's you who you can reach out and talk to if you've got questions, concerns, need additional accommodation and those types of things." So we're just going to have to be flexible, communicate well and recognize that it's not going to be a flip the switch return.

Brenna Ramy: Right. Wonderful. Well, Leah, thank you for your time today. I really just appreciate you helping us get kind of up to speed on all the changes and why we can't just sit back and coast into the rest of 2020. As a reminder for us and for all of our listeners, there's great resources on the Department of Labor website, Unemployment Insurance Minnesota, DEED, the Chamber of Commerce, IRS FAQs - all of these resources are great. If you're looking for how to get to those, certainly the AEM Workforce Solutions or the Abdo, Eick & Meyers COVID Resource page has access and links to all of these things. We look forward to hearing all these great stories over the next couple of months as businesses and employers get back to work and we start focusing on being proactive again.

Leah Davis: Yeah, that sounds great. Thanks, Brenna.

Brenna Ramy: Thanks, Leah.

Thank you for Listening!

As always, please visit our COVID-19 Resource Center for the most up to date information from our industry experts and continual guidance regarding this topic and other topics related to COVID-19.

Other resources mentioned in this episode include:

» The Federal Department of Labor

» The Minnesota Department of Labor

» Minnesota Unemployment Insurance

» Minnesota Department of Employment and Economic Development (DEED)

» Minnesota Chamber of Commerce

» IRS Frequently Asked Questions (FAQs).

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