



@npconnect

COVID-19 - Legal Implications for Nonprofits

Presenter:

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CORONAVIRUS

NONPROFITS & THE LAW

OVERVIEW

FFCRA

CARES ACT

QUESTIONS

CONTRACTS



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OVERVIEW

HEALTH: As of 3/31/20, COVID-19 has infected more than 183,000 individuals and killed more than 3,700 in the US alone.

ECONOMY: The Fed estimates that the COVID-19 crisis could end with job losses of 47 million and an unemployment rate of 32%, *well above the Great Depression peak of 24.9%*.

LOCAL RESPONSES

LOCAL
NONPROFIT
IMPACT

LOCAL GOVERNMENT RESPONSE

CORE 4 (KC Metro)

- "Essential businesses" can stay open
- kcbizcare@kcmo.org if uncertain

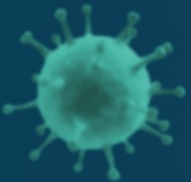
Kansas

- Governor Kelly issued a statewide stay-at-home order from March 30-April 19

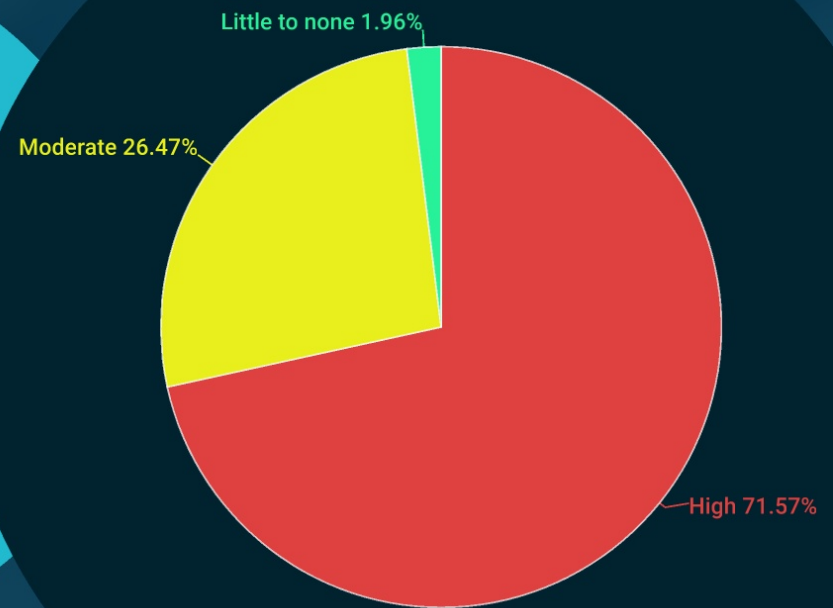
NONPROFIT CONNECT SURVEY RESPONSES

Impact
Severity

Financial
Impact



How severe is the impact on your organization?





What kind of financial impact is occurring?

What kind of financial impact is occurring?



80% anticipate a reduction in revenue



Average expected reduction: 31%



Some anticipate a 100% reduction in revenue



Meanwhile, 35% anticipate an INCREASE in expenses

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Families First Coronavirus Response Act

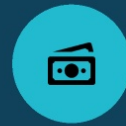
Highlights



Two weeks emergency paid sick leave



Twelve weeks family and medical leave



Reimbursable payroll tax credit



The FFCRA was signed into law on March 19.

PAID SICK LEAVE

- Employers with fewer than 500 employees required to provide two weeks paid sick leave due to employee's COVID-19-related health; or caring for a family member or for a child whose school or place of care is closed due to a public emergency.
- Pay capped at \$511/day for leave caused by employee's health, or \$200/day if caring for others
- All wages paid are refundable as payroll tax credits

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OVERVIEW

FFCRA

CARES ACT


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HIGHLIGHTS



Coronavirus Aid, Relief, and Economic Security (CARES) Act



The CARES Act was signed
into law on March 27.

HIGHLIGHTS

Paycheck Protection Program

Economic Injury Disaster Loans

Expanded Unemployment

Unemployment Reimbursement

Payroll Tax Payment Delays

Employee Retention Payroll Tax Credit

Direct Payments to Individuals

Charitable Giving Incentives



Coronavirus Aid, Relief, and Economic Security (CARES) Act



The CARES Act was signed into law on March 27.

Paycheck Protection Program

Emergency SBA 7(a) loans for small businesses and 501(c)(3) tax-exempt organizations.

Nonprofit organizations should consider all available types of relief available to them in addition to considering a Payroll Protection Program loan. Some types of aid/relief/loans are incompatible with obtaining a Payroll Protection Program loan or forgiveness of such a loan.

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EMPLOYER ELIGIBILITY

- 500 or fewer employees on a straight headcount basis (FT and PT each count as one - no FTE calculations)
- Special rules for affiliates
- Must be 501(c)(3) - will likely need to provide determination letter
- No apparent restriction for faith-based orgs

**Sample application now available at sba.gov*

LOAN AMOUNT

- 2.5x average monthly "**payroll costs**" for the one-year period preceding the date of the loan or \$10 million, whichever is less
- "Payroll costs" includes salaries and other wages, employer-paid health and retirement benefits, employer-paid state and local payroll taxes, and 1099-type payments to individual independent contractors
- Does NOT include: compensation > \$100k; federal payroll taxes; compensation for employees outside US; FFCRA payments

ALLOWABLE USES OF LOANS

- "Payroll costs"
- Paid sick, medical, or family leave
- Mortgage interest (but not principal)
- Interest on other debt obligations incurred before February 15, 2020
- Rent
- Utilities
- **Recommendation:** set up a separate checking account for loan funds

LOAN FORGIVENESS I

The amount eligible for forgiveness is the amount spent during the 8-week period beginning on the date of the loan for:

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- "Payroll costs"
- Mortgage interest payments
- Rent
- Utilities

**Initial guidance from the SBA is stating that no more than 25% of the forgiveness amount may be for non-payroll purposes*

LOAN FORGIVENESS II

Forgiveness amount is reduced by:

LOAN FORGIVENESS II

Forgiveness amount is reduced by:

- a formula that incorporates various factors intended to capture any reduction in employment
- for any employee salary reduced by more than 25%, forgiveness will be reduced by the amount of salary reduction over 25%

ECONOMIC INJURY DISASTER LOANS (EIDLs)

EIDLs are part of an existing SBA program;
the CARES Act greatly expands it

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ECONOMIC INJURY DISASTER LOANS (EIDLs)

EIDLs are part of an existing SBA program; the CARES Act greatly expands it

- EIDLs < \$200K can be made without a personal guarantee or real estate held as collateral
- A greatly simplified creditworthiness process
- \$10K cash advance/grant if spent on allowable uses

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CASH ADVANCE/GRANT

Borrowers can receive \$10K in an emergency grant cash advance that can be forgiven if spent on:

CASH ADVANCE/GRANT

Borrowers can receive \$10K in an emergency grant cash advance that can be forgiven if spent on:

-  Paid sick leave
-  Maintaining payroll
-  Increased cost of supplies
-  Rent or mortgage
-  Repaying obligations that cannot be met due to revenue loss

LOAN TERMS

- Loans up to \$2MM
- 30-year term
- Interest rate of 2.75% for nonprofits
- 1st payment deferred for a full year from the date of the promissory note

APPLICATION PROCESS

- Apply online: www.sba.gov/disaster
- Be sure to apply for ***Economic Injury for the Coronavirus***, rather than physical damage due to another disaster
- No loan fees, guarantee fees or prepayment fees
- **Recommendation:** given the likely high demand, apply ASAP

EIDL or PPP? BOTH?

Can I get loans under both programs?

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Can I get loans under both programs?

YES, but. . .

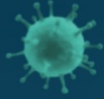
EIDL or PPP? BOTH?

Can I get loans under both programs?

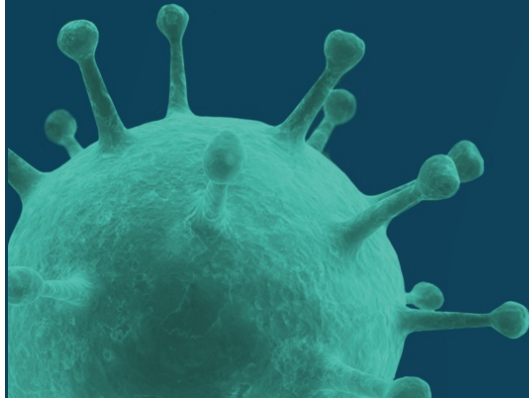
YES, but. . .

- Cannot be for the same purpose (i.e., cover the same expenses)
- The \$10K grant will be deducted from any PPP forgiveness amount
- An EIDL can be refinanced into a PPP

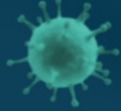
EXPANDED UNEMPLOYMENT



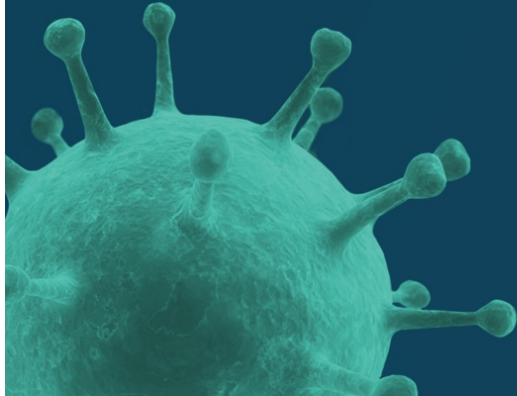
- Provides a flat \$600 per week over and above whatever the worker would normally be eligible for
- Expanded availability to breadwinners for a family who has died from COVID-19, individuals who quit their job as a direct result of COVID-19, and individuals whose employer closed as a direct result of COVID-19
- Expanded availability to independent contractors, sole proprietors, etc.
- Also covers unemployed workers from churches and religious orgs who are not normally covered



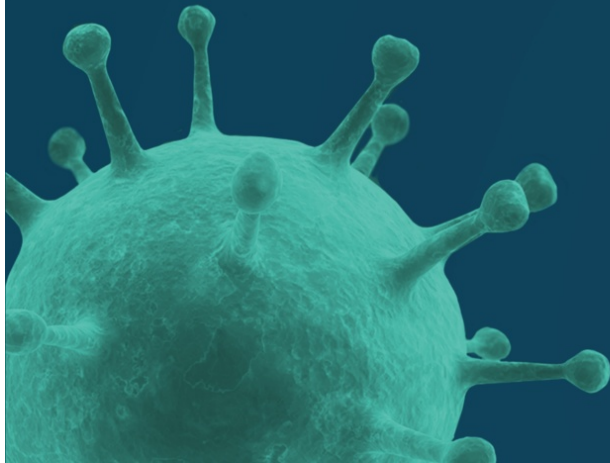
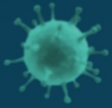
UNEMPLOYMENT REIMBURSEMENT



- Provides assistance for nonprofits that have elected the reimbursement method for participation in state unemployment coverage
- Will cover 50% of a nonprofit's costs



EMPLOYER PAYROLL TAX PAYMENT DELAY



- Payment of employer's share of Social Security tax due from 3/27/20 - 12/31/20 may be deferred
- Half is due 12/31/21 with remainder due 12/31/22
- Not available to employers who have had PPP loans forgiven

EMPLOYEE RETENTION PAYROLL TAX CREDIT

Provides eligible employers a refundable credit against the employer's share of payroll taxes.

The credit is available to employers whose (a) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (b) gross receipts declined by more than 50% when compared to the same quarter in the prior year.

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CREDIT AMOUNT

- Credit is 50% of the first \$10,000 in wages per employee (including value of health plan benefits)
- Credit is then reduced by any credits claimed for emergency sick pay or family leave pay under FFCRA
- *To the extent the credit exceeds the employers' Social Security tax due, the excess is considered a refundable overpayment*

QUALIFIED WAGES

Employers with more than 100 FT employees:

- wages paid to employees when they are not providing services due to COVID-19-related circumstances

Employers with 100 or fewer FT employees:

- wages paid to all employees

PAYCHECK PROTECTION PROGRAM

Employers that obtain a loan through the PPP are **NOT eligible** for the Employee Retention Payroll Tax Credit

DIRECT PAYMENTS TO INDIVIDUALS

- Rebates for individual taxpayers
- Taxpayers with AGI up to \$75,000 (\$150,000 married) are eligible for full amount of \$1,200 (\$2,400 married), plus \$500 per child
- Rebate phases out until \$99,000 (\$198,000 married)



Charitable Giving Incentives

Above the line deduction

- For 2020, all taxpayers may claim up to \$300 in charitable contributions as a deduction in calculating AGI (not required to itemize)

Deduction limits increased

- For 2020, individuals itemizers can deduct up to 100% of AGI (corporations can deduct 25%)

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What is a force majeure clause and how does it apply to COVID-19?

Examples

Force majeure is a French term meaning "overpowering force."

Strategies

What to do if you find yourself needing to cancel an event under a force majeure clause

APPLICATION OF A FORCE MAJEURE CLAUSE

The performance of this Agreement is subject to termination without liability to either party upon the occurrence of any circumstance or event that makes the parties' performance of this Agreement illegal or impossible, including without limitation, strikes, civil unrest, acts of God, material shortages or other supply interruption, lockouts, terrorist activities and war, damage or destruction to the urban transportation and utility infrastructure of the greater Kansas City metropolitan area and any other similar event beyond the reasonable control of the parties; provided, however, that to be considered a Force Majeure Event such event must actually directly, materially interfere with the operation of the Host or cause changes in the marketplace that directly, materially interfere with the operation of the Host.

Neither Party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed Party's reasonable control. This provision does not apply to Client's obligation to pay.

*The performance of this Agreement is subject to termination without liability to either party upon the occurrence of any circumstance or event that makes the parties' performance of this Agreement **illegal or impossible**, including without limitation, **strikes, civil unrest, acts of God, material shortages or other supply interruption, lockouts, terrorist activities and war, damage or destruction to the urban transportation and utility infrastructure of the greater Kansas City metropolitan area and any other similar event beyond the reasonable control of the parties**; provided, however, that to be considered a Force Majeure Event such event must actually directly, materially interfere with the operation of the Host or cause changes in the marketplace that directly, materially interfere with the operation of the Host.*

APPLICATION OF A FORCE MAJEURE CLAUSE

A two-step process:

First: is there a qualifying force majeure event?

- Look for a list of events
- You will want to find a catch-all phrase

Second: what effect does that event have on the ability of the parties to perform their obligations?

- You will want "commercially impractical" or something similar
- Venues will often include "illegal or impossible"

STRATEGIES FOR USING A FORCE MAJEURE CLAUSE

Ideally, venues and vendors are allowing cancellations due to the stay-at-home order, but what if the event is scheduled for after the order expires, or if the event is located in the next county over?

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Wait for the most strategic time to cancel



Provide evidence of speakers/attendees unable to travel - may satisfy the "impossibility" standard



Written cancellation notice specifically supporting enforcement of force majeure



Negotiate by rescheduling the event or scheduling another one

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OVERVIEW

FFCRA

CARES ACT

QUESTIONS

CONTRACTS



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OVERVIEW

FFCRA

CARES ACT

QUESTIONS

CONTRACTS



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