

**CITY OF DELAFIELD  
(262) 646-6220**

**Common Council Meeting Agenda  
Special Meeting  
Tuesday, April 7, 2020  
6:00 P.M.**

**\*\*Virtual Meeting – Public Access Through Zoom\*\*  
Join Zoom Meeting: <https://zoom.us/j/509647856>**

**Or**

**Dial In: +1 312 626 6799 US (Chicago)**

**Meeting ID: 509 647 856**

Call the Common Council Meeting to Order.  
Pledge of Allegiance.  
Roll Call.

1.) City of Delafield Citizens' Comments.

2.) New Business

- a. Discussion and possible action regarding Resolution 2020-03, a Resolution to Ratify the Emergency Proclamation Approved by the Mayor Pertaining to the COVID-19 Pandemic and Declaration of State of Emergency.
- b. Discussion and possible action regarding Resolution 2020-04, a Resolution Designating Emergency Responders for Purposes of the Families First Coronavirus Response Act and Excluding Emergency Responders from Eligibility for the Leave Provided Under the Families First Coronavirus Response Act.
- c. Discussion and possible action regarding a Families First Interim Compliance Policy.

3.) Adjournment

Any person who has a qualifying disability as defined by the Americans with Disabilities Act shall not be excluded from participation at City of Delafield meetings. Please advise the City Clerk 5 days prior to the meeting for special accommodations. For additional information or to submit a request, please contact the City Clerk at 262-646-6220, stop by City Hall at 500 Genesee Street, or make your request online at [www.cityofdelafield.com](http://www.cityofdelafield.com) under the Clerk page.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the City may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice. This constitutes a meeting pursuant to State ex rel. Badke v. Greendale Village Bd., 173 Wis. 2d 553, 494 N.W. 2d 408 (1993), and must be noticed as such.



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500 Genesee Street, Delafield WI 53018

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To: Mayor & Common Council Members

From: Tom Hafner, City Administrator/Director of Public Works

Date: April 6, 2020

Subject: Special Council Meeting (4/7/20)

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**Agenda Item 2.a.**

On March 17, 2020, the Mayor signed a Proclamation declaring a State of Emergency in the City of Delafield due to the COVID-19 Pandemic. This declaration follows suit with what the state and county have done, and provides the City with the ability to possibly recoup emergency response expenditures as we move forward. The declaration of emergency also provides LCFR with the ability to possibly recoup emergency response expenditures (supplies, personal protective equipment, labor related costs, etc.) and provides access to national stockpiles of personal protective equipment. Our LCFR partner municipalities of Nashotah and Chenequa also declared a state of emergency. Procedurally, while the Mayor is empowered to make this declaration, it is subject to ratification, alteration, modification or repeal by the Common Council at the next Council meeting. However, any action taken by the Council does not affect the prior validity of the proclamation. Resolution 2020-03 is drafted to ratify the Mayor's declaration without alteration or modification. **I am recommending that the Common Council approve Resolution 2020-03 as drafted.**

Included in the packet for this item are the following documents:

1. Resolution 2020-03.
2. Mayor's March 17, 2020 Proclamation Declaring State of Emergency.
3. Article written by legal counsel of the League of Wisconsin Municipalities regarding local government emergency powers including Declarations of Emergency.

**Agenda Item 2.b.**

The Families First Coronavirus Response Act (FFCRA) was approved by the federal government on March 18, 2020. The FFCRA expands the existing Family and Medical Leave Act (FMLA) with the Emergency Family and Medical Leave Expansion Act. The FFCRA also creates a sick leave entitlement for certain eligible employees with the Emergency Paid Sick Leave Act.

Under the Act, employers have the discretion to exclude "health care providers" and "emergency responders" from the provisions of the FFCRA. The rationale behind this is to

ensure that health care providers and emergency response organizations can maintain adequate staffing capacity moving forward in an effort to ensure the ongoing ability to continue providing essential functions during this pandemic and time of emergency. Not excluding has the potential to impact our staffing and limit our ability to provide essential services. Not excluding could also result in significant negative financial ramifications due to increased overtime.

Based on guidance issued by the Department of Labor, my assessment of essential functions provided by the City staff, and discussions with our labor attorney and representatives from other municipalities in the state, **I am recommending that the Common Council designate the following positions as “emergency responders” for purposes of the application and implementation of the FFCRA and that the City specifically exclude these “emergency responders” from eligibility for the provisions of the FFCRA:**

- City Administrator/Director of Public Works
- All employees of the Police Department including the positions of Police Chief, Police Captain, Police Lieutenant, Police Detective, Police Officers, and Police Clerks.
- All employees of the Department of Public Works including the positions of Director of Public Works, Public Works Supervisors (Foremen), Public Works Maintenance Workers, including all full-time, seasonal and part-time Public Works employees.

**The above recommendation can be accomplished by Common Council approval of Resolution 2020-04 as drafted.**

Included in the packet for this item are the following documents:

1. Resolution 2020-04.
2. *Families First Coronavirus Response Act: Employer Paid Leave Requirements* – a summary of the FFCRA Employer Paid Leave Requirements from the U.S. Department of Labor.
3. Guidance issued by the U.S. Department of Labor regarding the definition of “emergency responder” under the FFCRA.
4. Spreadsheet of information I compiled regarding what numerous other municipalities in the state are doing with excluding certain employees from eligibility under the FFCRA. Note that most are taking action similar to what I’m recommending. The Lake Country Fire & Rescue Board excluded all of their employees earlier this week.
5. Legal Update from Buelow Vetter regarding the FFCRA.
6. Legal Update from Buelow Vetter regarding Tax Obligations and Credit for Governmental Employers under the FFCRA.

Document number 4 above provides evidence that many other municipalities are taking similar action to what I’m recommending. Some municipalities are applying the “emergency responder” definition much more broadly, and including positions such as Clerk, Treasurer, HR Manager, and Finance Officer. However, the Department of Labor guidance encourages employers to be “judicious” when exempting “emergency responders” from the provisions of the FFCRA.

Lastly on this item, document number 6 above identifies that although governmental employers do not qualify for the tax credits associated with the FFCRA, any paid leave required under the FFCRA is excluded from the definition of “wages” for purposes of an employer’s, including a governmental employer, Social Security tax obligations. This means governmental employers are not required to pay the 6.2% share of Social Security taxes on paid leave taken under the FFCRA.

**Agenda Item 2.c.**

Included in your packet is a draft *Families First Interim Compliance Policy*. This policy was drafted based on a template provided by our labor attorney and assumes that the Common Council approves Resolution 2020-04 as drafted, including the designation of “emergency responders” and excluding “emergency responders” from eligibility for the provisions of the FFCRA. This policy is intended to provide clear direction for our employees and for payroll processing. **It’s my recommendation that the Common Council approve the *Families First Interim Compliance Policy* as drafted.**

Note: a copy of Resolution 2020-04, the spreadsheet of what other municipalities are doing, and the draft *Families First Interim Compliance Policy* were provided to all department heads for review and feedback. As of now, I have not received any comments from department heads on this issue.

**RESOLUTION NO. 2020-03**

**RESOLUTION TO RATIFY THE EMERGENCY PROCLAMATION APPROVED BY THE MAYOR PERTAINIUNG TO THE COVID-19 PANDEMIC AND DECLARATION OF STATE OF EMERGENCY**

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THE COMMON COUNCIL OF THE CITY OF DELAFIELD, WAUKESHA COUNTY, WISCONSIN, DOES ORDAIN AS FOLLOWS:

**WHEREAS**, an emergency, namely the COVID-19 Pandemic, has impacted the City of Delafield; and,

**WHEREAS**, because of such emergency conditions, the Common Council was unable to meet with promptness; and,

**WHEREAS**, pursuant to sections 323.11 and 323.14(4)(b) of the Wisconsin Statutes, as the chief executive officer of the City of Delafield, Mayor Attwell proclaimed a state of emergency in effect from March 17, 2020 until the Common Council could meet.

**NOW THEREFORE, BE IT RESOLVED**, that the Common Council of the City of Delafield does hereby ratify Mayor Attwell’s Emergency Proclamation due to the COVID-19 Pandemic, and

**BE IT FURTHER RESOLVED**, that the Common Council of the City of Delafield hereby declares a State of Emergency, which continues and extends the powers granted by the Mayor’s Proclamation dated March 17, 2020, to May 16, 2020 or until modified by further proclamation or an action by the Common Council of the City of Delafield.

Dated this \_\_\_\_\_ day of April, 2020

**CITY OF DELAFIELD**

BY: \_\_\_\_\_  
Kent Atwell, Mayor

**ATTEST:**

BY: \_\_\_\_\_  
Michelle Luedtke  
City of Delafield Clerk  
Waukesha County



STATE OF WISCONSIN

WAUKESHA COUNTY

A CITY OF DELAFIELD PROCLAMATION

PROCLAMATION DECLARING STATE OF EMERGENCY IN THE CITY OF DELAFIELD REGARDING THE COVID-19

WHEREAS, in December 2019, a novel strain of the coronavirus now named Coronavirus Disease 2019 (COVID-19) was detected and has spread throughout many countries, including the United States; and

WHEREAS, the World Health Organization has declared a Public Health Emergency of International Concern and the United States Department of Health and Human Services has declared a Public Health Emergency; and

WHEREAS, on March 12, 2020, the State of Wisconsin has declared the existence of a Public Health Emergency, as defined in Section 323.02(16), Wisconsin Statutes; and

WHEREAS, on March 13, 2020, the Waukesha County Executive, Paul Farrow, pursuant to Sections 323.11 and 323.14(4)(b), Wisconsin Statutes has proclaimed a state of emergency for Waukesha County for a period of sixty (60) days or until modified by further proclamation or action taken by the Waukesha County Board; and

WHEREAS, the existence of confirmed cases of COVID-19 within Wisconsin, including Waukesha County, constitutes a condition within the County posing an imminent threat of disaster within the meaning of Chapter 323 of the Wisconsin Statutes that could impair medical care, health protection, and other critical systems of Waukesha County; and

WHEREAS, it is necessary and expedient for the health, safety, protection, and welfare of persons within Waukesha County, that reasonable and prudent steps be taken to treat those infected with COVID-19 and to prevent, limit and contain the potential community spread of COVID-19; and

WHEREAS, declaring a state of emergency will facilitate and expedite the use of resources to protect persons from the impacts of the spread of COVID-19 while ensuring continuity of critical operations within Waukesha County.

NOW, THEREFORE, pursuant to Sections 323.11 and 323.14(4)(b) of the Wisconsin Statutes, as Mayor, of the City of Delafield, Wisconsin, I hereby proclaim a State of Emergency, and hereby:

- Authorize emergency purchases of goods and materials
- Authorize emergency purchases of services
- Authorize emergency costs to the labor force

This Proclamation shall take effect immediately and shall continue in for a period of sixty (60) days or until modified by further proclamation or an action by the Common Council of the City of Delafield.

Dated this \_\_\_\_ day of March, 2020.

  
 \_\_\_\_\_  
 Kent Attwell, Mayor  
 City of Delafield

Attest:   
 \_\_\_\_\_  
 Michelle Luedtke - City Clerk





# Local Government Emergency Powers

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

Is your municipality prepared to deal with an emergency? Recent disasters in communities across the state, like flooding and explosions, highlight the importance of being prepared to cope with local emergencies. Such situations also highlight the significant contributions of, and our dependence on, safety and emergency personnel. They also demonstrate that the public looks to local officials for guidance and reassurance in such difficult times. Thus, preparation is key and local officials should be familiar with Chapter 323 of the Wisconsin Statutes which governs emergency management, and local emergency plans.<sup>1</sup> As horror writer Stephen King penned, “There’s no harm in hoping for the best as long as you’re prepared for the worst.”<sup>2</sup>

This legal comment provides a brief overview of Chapter 323’s provisions relating to local government. The purpose of the chapter is to “prepare the state and its subdivisions to cope with emergencies resulting from a disaster, or the imminent threat of a disaster.”<sup>3</sup> “Disaster” means a “severe or prolonged, natural or human-caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of this state or a portion of this state, or critical systems, including computer, telecommunications, or agricultural systems.”<sup>4</sup> The statutes

state that unless otherwise specified by law, the role of any state agency is to assist local units of government and law enforcement agencies in responding to a disaster or imminent threat of disaster.<sup>5</sup>

The adjutant general of the Wisconsin department of military affairs serves as the governor’s principal assistant for directing and coordinating emergency management activities and, subject to the governor’s approval, is responsible for developing and adopting a state plan of emergency management for the security of persons and property.<sup>6</sup> The adjutant general is also responsible for prescribing and carrying out statewide training programs and exercises, and furnishing guidance to and establishing standards for local government emergency management programs.

Under state law, the governing body of each municipality must adopt an emergency management plan compatible with the state plan of emergency management and appoint a head of emergency management services.<sup>7</sup> Governing bodies are authorized to appropriate funds and levy taxes for the emergency management program.<sup>8</sup> Local units of government may cooperate under Wis. Stat. sec. 66.0301 to furnish services, combine offices, and finance emergency management programs. Local governments may also contract

for emergency management services with political subdivisions, agencies, and federally recognized American Indian tribes and bands of this state, and, upon prior approval of the adjutant general, with such entities in bordering states. A copy of each agreement shall be filed with the adjutant general within 10 days after execution of that agreement.<sup>9</sup>

Each county must also adopt an emergency management program and appoint a head of emergency management. In counties with a county executive, the county board must designate the executive or his or her appointee as the head of emergency management. The county emergency management head is responsible for assisting municipalities within the county with developing emergency management plans and coordinating plans within the county, and integrating municipal plans with the county plan.<sup>10</sup>

The head of emergency management services in each municipality is required to implement the municipality’s emergency management plans consistent with state plans, direct the emergency management program and perform such other duties related to emergency management as the governing body and any emergency management committee of the governing body requires.<sup>11</sup> The head of emergency management is also

1. 2009 Wis. Act 42 moved the emergency management provisions that were previously in Chapter 166 of the Statutes to a newly created Chapter 323.

2. Stephen King, *Different Seasons*.

3. Wis. Stat. sec. 323.01.

4. Sec. 323.02(6).

5. Sec. 323.01(2).

6. Sec. 323.13.

7. Sec. 323.14(1)(b).

8. Sec. 323.14(2)(a).

9. Sec. 323.14(2).

10. Sec. 323.14.

11. Sec. 323.14(1).



responsible for directing local emergency management training programs and exercises, directly participating in emergency management programs and exercises ordered by the Wisconsin adjutant general and the county head of emergency management services, and must advise the county head of emergency management services on local emergency management programs and submit such reports to the county head as he or she requires.<sup>12</sup>

**If a municipality fails to establish and maintain an operating emergency management organization, the Wisconsin department of military affairs' adjutant general can refuse to approve grants of funds or equipment to the municipality until it complies.<sup>13</sup> If the municipality fails to use funds or equipment granted in accordance with the agreement under which the grant was made, the adjutant general may refuse to make additional grants to the municipality until it has complied with the conditions of the prior grant, and may start proceedings to recover the funds and equipment not used in accordance with conditions of the grant.<sup>14</sup>**

## Declarations of Emergency

Emergencies may be declared by the governor and also by local governments.

### *Declarations by Governor*

The governor may issue an executive order declaring a state of emergency for the state or any portion of the state if he or she determines that an emergency resulting from a disaster or the imminent threat of a disaster exists.<sup>15</sup>

During a state of emergency declared by the governor, the law provides as follows:

- Out-of-state businesses or out-of-state employees performing disaster relief work during the disaster period are exempt from applicable fees imposed by the state and local governments, and any applicable state or local government unit license, certificate, registration, permit or other credential or approval.<sup>16</sup>
- Any law enforcement officer legally engaged in traffic control, escort duty, or protective service may carry out the functions anywhere in the state but shall be subject to the direction of the adjutant general through the sheriff of the county in which an assigned function is performed.<sup>17</sup>
- The head of emergency management for each local unit of government, on behalf of his or her respective local unit of government, may contract with any person to provide equipment and services on a cost basis to be used to respond to a disaster, or the imminent threat of a disaster.<sup>18</sup>

### *Local Declarations of Emergency*

Wisconsin law empowers the governing body of any municipality to declare, by ordinance or resolution, an emergency existing within the city, village or town whenever conditions arise “by reason of a riot or civil commotion, a disaster, or an imminent threat of a disaster, that impairs transportation, food or fuel supplies, medical care, fire, health or police protection or other critical systems” of the municipality.<sup>19</sup> The ordinance or resolution must limit the emergency period to the time during

which the emergency conditions exist or are likely to exist.<sup>20</sup> The governing body’s emergency power includes the general authority to order, by ordinance or resolution, “whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property” within the municipality in the emergency and includes “the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the highways,” notwithstanding any contrary provisions of law.<sup>21</sup>

If the municipality’s governing body is unable to meet with promptness because of the emergency conditions, the chief executive officer or acting chief executive officer of any city, village or town shall exercise by proclamation all of the powers conferred upon the governing body which within the officer’s discretion appear necessary and expedient. The proclamation is subject to ratification, alteration, modification or repeal by the governing body as soon as that body can meet, but the subsequent action taken by the governing body does not affect the prior validity of the proclamation.<sup>22</sup>

During a state of emergency, if it becomes “imprudent, inexpedient or impossible” to conduct the affairs of local government at the place where it is usually conducted, a municipality’s governing body is authorized to meet at any place within or without the territorial limits of the municipality on the call of the presiding officer or his or her successor. The governing body must establish and designate by ordinance, resolution or other manner, alternate or substitute sites as the emergency

12. Sec. 323.15(1)(c).

13. Sec. 323.13(1)(dm).

14. *Id.*

15. Sec. 323.10.

16. Sec. 323.12(5).

17. Sec. 323.16.

18. Sec. 323.15(4).

19. Sec. 323.11.

20. *Id.*

21. Sec. 323.14(4).

22. Sec. 323.14(4)(b).

temporary locations of government where all, or any part, of the public business may be transacted and conducted during the emergency situation.<sup>23</sup> If practicable, they shall be the places designated as the temporary locations of government in the current emergency management plan.

While the public business is being conducted at an emergency temporary location, the governing body and other municipal officers shall have and exercise, at such location, all of the executive, legislative, administrative and judicial powers and functions conferred upon such body and officers under state law. Such powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and

pertaining thereto. All acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their municipality.<sup>24</sup>

The governing body of any municipality may enact ordinances and resolutions to provide a method by which interim appointments to public office are made during periods of emergency to fill vacancies in offices that result from enemy action. Such ordinances and resolutions must define the scope of the powers and duties that interim appointees may exercise and provide for termination of the interim appointments.<sup>25</sup> Each municipal officer for whom an interim successor is not determined by ordinance or resolution must, subject to such regulations as the municipality's executive head issues, designate by title, if feasible, or by named

person, interim successors and specify their order of succession.<sup>26</sup>

## Miscellaneous Provisions

In addition to the above provisions, Chapter 323 also contains, among other things, provisions governing reimbursement for various local government responses<sup>27</sup> as well as provisions governing liability and responsibility for workers' compensation and volunteers.<sup>28</sup>

## Powers of Municipalities 935

### About the Author:

Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire joined the League staff in 1992. Contact Claire at [cms@lwm-info.org](mailto:cms@lwm-info.org)

23. Sec. 323.52.

24. Sec. 323.52

25. Sec. 323.54.

26. Sec. 323.54(2).

27. See secs. 323.42 and 323.71 (hazardous substance emergency response)

28. Secs. 323.41.



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**RESOLUTION NO. 2020-04**

**RESOLUTION DESIGNATING EMERGENCY RESPONDERS FOR PURPOSES OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND EXCLUDING EMERGENCY RESPONDERS FROM ELIGIBILITY FOR THE LEAVE PROVIDED UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

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THE COMMON COUNCIL OF THE CITY OF DELAFIELD, WAUKESHA COUNTY, WISCONSIN, DOES ORDAIN AS FOLLOWS:

**WHEREAS**, in December, 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout the world, including every state in the United States; and,

**WHEREAS**, on January 3, 2020, the World Health Organization declared COVID-19 to be a Public Health Emergency of International Concern; and,

**WHEREAS**, on March 12, 2020, Governor Tony Evers declared a public health emergency to direct all resources needed to respond to and contain COVID-19 in Wisconsin; and,

**WHEREAS**, on March 13, 2020, President Donald Trump proclaimed a National Emergency concerning COVID- 19; and,

**WHEREAS**, on March 17, 2020, the Mayor of the City of Delafield declared a local state of emergency; and,

**WHEREAS**, on March 18, 2020, President Donald Trump signed the Families First Coronavirus Response Act (“FFCRA”), which expands the Family and Medical Leave Act (Emergency Family and Medical Leave Expansion Act), and creates a paid sick leave entitlement for certain eligible employees (Emergency Paid Sick Leave Act); and,

**WHEREAS**, the provisions of the FFCRA allows employers to exempt “emergency responders” and “health care providers” from provisions of the FFCRA; and,

**WHEREAS**, on March 24, 2020, the Governor of the State of Wisconsin issued a Safer at Home Emergency Order, Emergency Order #12, in response to the emergency; and,

**WHEREAS**, Paragraphs 1 and 12 of Emergency Order #12 recognize that all services provided by local governments to ensure the continuing operation of the government body and provide and support the health, safety, and welfare of the public are considered “Essential Governmental Functions” that must continue throughout the duration of Emergency Order #12; and,

**WHEREAS**, Emergency Order #12 categorically exempts broad categories of local government employees from the restrictions contained therein and otherwise provides local governments with broad discretion to identify employees and contractors necessary for the performance of a local government’s “Essential Governmental Functions”; and,

**WHEREAS**, the purpose of this Resolution is to identify the employees, categories of employment, positions and/or departments that are determined to be “emergency responders” employed by the City of Delafield under the FFCRA and, exclude such “emergency responders” from eligibility for the leave provided under the FFCRA.

**NOW THEREFORE, BE IT RESOLVED:**

1. The following positions in the City of Delafield are hereby designated as “emergency responders” for purposes of the application and implementation of the FFCRA:

- City Administrator/Director of Public Works

- All employees of the Police Department including the positions of Police Chief, Police Captain, Police Lieutenant, Police Detective, Police Officers, and Police Clerks.
  - All employees of the Department of Public Works including the positions of Director of Public Works, Public Works Supervisors (Foremen), Public Works Maintenance Workers, including all full-time, seasonal and part-time Public Works employees.
2. The City of Delafield is hereby electing to exclude emergency responders from eligibility for the leave provided under the FFCRA, as allowed by the FFCRA, in an effort to ensure the City's ongoing ability to continue providing Essential Government Functions during this pandemic and time of emergency.
  3. This Resolution is retroactively effective as of April 1, 2020.

Dated this \_\_\_\_\_ day of April, 2020

**CITY OF DELAFIELD**

BY: \_\_\_\_\_  
 Kent Atwell, Mayor

**ATTEST:**

BY: \_\_\_\_\_  
 Michelle Luedtke  
 City of Delafield Clerk  
 Waukesha County



# Families First Coronavirus Response Act: Employer Paid Leave Requirements

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.<sup>[1]</sup> The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:<sup>[2]</sup>

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work 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 leave** 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), or 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, and/or 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.

A covered employer must provide to **employees that it has employed for at least 30 days**:<sup>[3]</sup>

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee 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:** The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.<sup>[4]</sup> Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

### **Qualifying Reasons for Leave:**

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

### **Duration of Leave:**

**For reasons (1)-(4) and (6):** A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

**For reason (5):** A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**Calculation of Pay:**[\[5\]](#)

**For leave reasons (1), (2), or (3):** employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

**For leave reasons (4) or (6):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

**For leave reason (5):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).[\[6\]](#)

**Tax Credits:** Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury’s website.

**Employer Notice:** Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.[\[7\]](#)

**Prohibitions:** Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

**Penalties and Enforcement:** Employers in violation of the first two weeks’ paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole as soon as practicable by the



employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

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[1] Wage and Hour Division does not administer this aspect of the law, but notes that every dollar of required paid leave (plus the cost of the employer's health insurance premiums during leave) will be **100%** covered by a dollar-for-dollar refundable tax credit available to the employer. For more information, please see the Department of the Treasury's website.

[2] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[3] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[4] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

[5] Paid sick time provided under this Act does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[6] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

[7] The Department will issue a model notice no later than March 25, 2020.

**Q: Who is an “emergency responder” under the Families First Coronavirus Response Act (FFCRA)?**

A: “For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state’s or territory’s or the District of Columbia’s response to COVID-19.

To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.” (Provided by the Federal Dept. of Labor.)

**What other municipalities are doing: What Emergency Responders are they excluding from the FFCRA?**

Source	Municipality	Excluded Some Employees?		Which Employees Excluded?
		Yes	No	
Andrew Vickers	C. Oak Creek	X		All sworn police, sworn fire/paramedics, dispatchers and dispatch supervisors, and all health dept. staff.
Jay Shambeau	C. West Bend	X		All dept. heads, police, fire, public works, sewer, water, and parks workers.
Tim Rhode	V. Hartland	X		All dept. heads, police, fire, public works, sewer, water, and parks workers.
Doug Iverson	C. Ripon	X		All employees except library staff.
Inga Cushman	C. Milton	X		Sworn law enforcement personnel, DPW staff.
Eileen Suhm	V. East Troy	X		Sworn law enforcement and department heads.
Susan Schill	C. Wisconsin Rapids	X		Police, Fire, DPW (streets, wastewater, parks, engineering).
Andrew Kurtz	V. Marathon City	X		Police, water, sewer and their DPW backups.
Andy Pederson	V. Bayside*	X		Village Manager, police, dispatch, and DPW (but allowing reasons 1-3 for those classifications)
LCFR Board	Lake Country Fire & Rescue	X		All employees.
Steve Volkert	C. Hartford	X		Fire, EMT, Police, DPW, and utilities.
Mayor Reilly	C. Waukesha	X		Specific list not provided.
Sarah Weishar	V. Greendale	X		Specific list not provided.
Denise Pieroni	C. Delavan	X		City Administrator, HR Manager, Police Chief, all sworn law enforcement personnel, Fire Chief, all sworn firefighting personnel, all Fire EMS personnel, Public Works Director, Public Works Superintendent, Building & Zoning Administrator, Facilities Manager, Foreman, Mechanic, Mechanic/Maintenance Worker, Maintenance Worker, City Clerk, Finance Director, Treasurer (is separately providing 88 hours additional paid leave if any of these emergency responders test positive for COVID-19 or directed to self-quarantine due to COVID-19 exposure).
Scot Simpson	C. River Falls		X	
David Carlson	C. Lancaster		X	

\* Indicated that all of the North Shore Communities were doing the same.

\*\*Village Administrator for McFarland indicated that they are still on the fence regarding whether or not to exclude any emergency responders and indicated that most Communities he has heard from in the Dane County area appear to be leaning towards not excluding any employees.

**Michelle Luedtke**

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**From:** Buelow Vetter Buikema Olson & Vliet, LLC <alerts@buelowvetter.com>  
**Sent:** Thursday, March 19, 2020 3:04 PM  
**To:** Tom Hafner  
**Subject:** [BULK] Families First Coronavirus Response Act Signed into Law

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**Legal Update**

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**Families First Coronavirus Response Act  
Signed into Law**



**Summary**

On Wednesday, March 18, 2020, President Trump signed an emergency bill to expand FMLA leave as well as guarantee paid sick leave for certain U.S. workers. The expansion of the FMLA and the new paid sick leave requirements apply only to private employers who employ fewer than 500 employees and to all public employers with at least one employee. The bill takes effect on April 2, 2020 and will sunset on December 31, 2020.

**Provisions**

The law has two separate provisions applicable to private employers with fewer

than 500 employees and public employers with at least one employee. The first provision expands the situations under which FMLA leave may be used due to COVID-19 related conditions and provides that a certain portion of said leave be paid. The second provision provides for up to two weeks of paid sick leave for any employee unable to work in person or remotely under certain COVID-19 related conditions.

### **FMLA Expansion**

The first provision amends the FMLA for private employers with under 500 employees and public employers with at least one employee to recognize an FMLA-covered leave for coronavirus related child care.

For covered employers, the FMLA is temporarily revised to allow eligible employees to take up to 12 weeks of job-protected leave if the employee is unable to work or telework due to a need to care for a child under 18 years of age because that child's school or place of care has closed due to COVID-19.

The first 10 days of emergency FMLA leave may consist of unpaid leave, or the employee has the discretion to use any accrued paid leave (sick, vacation, PTO, etc.) during that period, but the employee must be paid for each subsequent day of leave thereafter. The rate of pay is calculated based on the number of hours the employee would normally be scheduled to work and cannot be less than two-thirds the employee's regular rate of pay. However, this amount need not exceed \$200 per day and \$10,000 "in the aggregate."

These new provisions apply to all employees who have been employed by the employer for at least 30 calendar days, so many employees might qualify for these benefits even if they would not otherwise qualify for FMLA.

The law exempts employers with fewer than 25 employees from the job-protection requirements of the FMLA when emergency leave is taken, provided

certain conditions are met. This would include elimination of the employee's position due to "economic conditions" or other changes resulting from the public health emergency. In addition, employers with fewer than 50 employees may apply to the Secretary of Labor for an exemption to the paid leave requirements "when the imposition of such requirements would jeopardize the viability of the business as a going concern."

### **Paid Sick Leave**

The second provision requires private employers with fewer than 500 employees and public employers with at least one employee to provide paid sick leave to any employee who falls under any of six specific situations. Full-time employees are entitled to 80 hours of such leave, while part-time employees are entitled to time equal to the number of hours they work on average over a two-week period. The leave does not carry over from one year to the next.

The employer may not require the employee to search for or find a replacement to cover for the hours during which the employee is using paid sick time. The payment is calculated based on the employee's "required compensation," which means the employee's regular rate of pay, and the number of hours the employee would have otherwise been scheduled to work.

The six scenarios under which leave could be provided to the employee under this Act are as follows:

1. A Federal, State, or local quarantine or isolation order because the employee is diagnosed with COVID-19.
2. A public health advisement that the employee self-quarantine due to concerns related to COVID-19.
3. The presence of symptoms of COVID-19 for the employee and a need to seek medical diagnosis.

4. To care for a family member described in numbers 1 or 2, above.
5. To care for a child because that child's school or place of care is closed or unavailable due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition as may be specified by the Secretary of Health and Human Services, Secretary of the Treasury, and the Secretary of Labor.

The maximum amount of pay required under these provisions depends on the reason for the leave. For sick leave taken under subsections (1)-(3), above, pay will not exceed \$511 per day or \$5,110 total. For sick leave taken under subsections (4)-(6), above, the employer is only required to pay the employee at two-thirds the regular rate of pay. When sick leave is used for reasons (4) or (5), above, the maximum amount of pay received will not exceed \$200 per day, or \$2,000 total.

Small businesses with less than 50 employees may apply to the Secretary of Labor for an exemption if paying this benefit would jeopardize the viability of the business as a going concern.

### **Employer Tax Credits**

To offset the cost of these new paid-leave requirements, the Act also includes a refundable tax credit for private-sector employers. Mechanically, each employer will receive a credit against the employer's Social Security tax obligation for any quarter when the employer pays mandated leave benefits. The tax credit itself will be considered taxable income to the employer.

The amount of the credit will, subject to limitations, be based upon the value of the wages paid and certain health insurance costs that the employer provides under these new leave requirements. The specific limits are different depending upon the type of leave and the purpose of the leave:

- **Qualified Sick Leave.**

- *Employee Sick Leave.* If the employee is absent for the employee's own health reasons, then the tax credit is limited to the lesser of the employee's daily wage or \$511 per employee, per day, for a maximum of 10 days.
- *Family/Child Care.* If the employees is absent to care for a family member or child, then the tax credit is the lesser of the daily wage or \$200 per employee, per day, for a maximum of 10 days.
- **Family Leave.** The tax credit is the lesser of the employee's daily wage or \$200 per employee, per day, to a maximum of \$10,000 per employee.

The tax credit can be claimed against the employer's Social Security tax obligation for each quarter. Because this is a refundable tax credit, the employer will also be entitled to a refund if the tax credit exceeds the amount of Social Security taxes that the employer owes that quarter.

We will need to wait for additional guidance from the Internal Revenue Service before we know the specific requirements for claiming the tax credit, possibly reducing employer payroll taxes and other ministerial matters. Employers will want to be proactive in asking for information and assistance from their payroll providers.

## **Conclusion**

All employers must keep in mind that the provisions of the FMLA not specifically addressed by this new law remain in full force and effect. In addition, the Department of Labor and the EEOC have issued guidance encouraging all employers to be liberal with their leave policies during this outbreak. Additional measures are being considered by Congress and there is a possibility of expansion of this new law. Please stay tuned for any further developments.



Please contact your [Buelow Vetter](#) attorney with any questions or concerns.



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**Sent:** Thursday, March 26, 2020 2:12 PM  
**To:** Tom Hafner  
**Subject:** [BULK] Tax Obligations and Credits for Governmental Employers Under the FFCRA

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## Legal Update

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### Tax Obligations and Credits for Governmental Employers Under the FFCRA



As employers prepare to implement the provisions of the Families First Coronavirus Response Act (the “FFCRA”), we have received a number of questions regarding the application of the tax credit provisions to governmental employers. While the paid leave credits provided under the FFCRA do not currently apply to governmental employers, the FFCRA does provide governmental employers, such as counties, cities, towns, villages, and school districts, with limited relief in that governmental employers are not required to pay the 6.2% share of Social Security taxes on the paid leave required by the FFCRA.

#### **Paid Leave Credits**

By way of background, the FFCRA requires all governmental employers with at

least 1 employee to provide up to 80 hours of paid sick leave for certain absences. The reasons for paid sick leave covered by the FFCRA are addressed in more detail in this [client alert](#). The dollar value of the leave depends on the reason for leave. If the employee is absent for the employee's own health reasons covered by the FFCRA, then the value of the leave is equal to the lesser of the employee's daily wage or \$511 per day. If the employee is absent to care for a family member or child, then the value of the leave is the lesser of two-thirds of the employee's daily wage or \$200 per day.

The FFCRA also expands the FMLA to cover absences to care for a child due to the closure of a school or a childcare provider. While the first two weeks of such leave need not be paid, unless an employee substitutes other paid leave, the remaining 10 weeks of such leave must be paid in amount equal to the lesser of two-thirds the employee's daily wage or \$200 per employee, per day, to a maximum of \$10,000 per employee.

Under the FFCRA, private sector employers are generally afforded a tax credit equal to the value of the required paid leave, in addition to certain health insurance costs that the employer provides under the new leave requirements. The IRS has indicated the credit is taken by allowing employers to retain amounts withheld from all employees for federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes.

These paid leave credits do not currently apply to governmental employers.

### **Employer Social Security Taxes**

Although governmental employers do not qualify for the tax credits, any paid leave required under the FFCRA is excluded from the definition of "wages" for purposes of an employer's, including a governmental employer, Social Security tax obligations. This means governmental employers are not required to pay

the 6.2% share of Social Security taxes on paid leave taken under the FFCRA.

### **Employee Social Security Withholdings**

Employers should still withhold the 6.2% from paid leave taken under the FFCRA for the employee share of Social Security taxes. The FFCRA only exempts the paid leave amounts from the employer's Social Security tax obligation.

### **Employee and Employer Medicare Tax Obligations**

Similarly, the employee withholding obligation for Medicare taxes does apply to paid leave required under the FFCRA. As a result, governmental employers will want to withhold Medicare taxes, which is 1.45% in most cases, from paid leave taken under the FFCRA. Governmental employers are also still required to pay the 1.45% employer share of Medicare taxes on leave taken under the FFCRA.

### **WRS Contributions**

Separately, governmental employers must also be mindful of their WRS obligations. Paid leave required by the FFCRA is considered wages for WRS purposes. Therefore, the employee and employer share of WRS contributions must be made on paid leave taken under the FFCRA.

This Client Alert is limited to the FFCRA. We continue to monitor legislative and regulatory developments, including new legislation passed by the Senate called the CARES Act. We will provide additional Client Alerts regarding the CARES Act and other developments.



If you have any questions or concerns regarding the notice or

need assistance in identifying the best possible ways to ensure compliance with the notice requirement, please contact [Matthew Flanary](mailto:mflanary@buelowvetter.com) at [mflanary@buelowvetter.com](mailto:mflanary@buelowvetter.com) or (262) 364-0253 or [Brett Schnepfer](mailto:bschnepper@buelowvetter.com) at [bschnepper@buelowvetter.com](mailto:bschnepper@buelowvetter.com) or (262) 364-0262 or your Buelow Vetter attorney.



Authors: [Matthew J. Flanary](#) and [Brett D. Schnepfer](#)

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**Families First Interim Compliance Policy**  
**Effective April 1, 2020 to December 31, 2020**

**Introduction**

The federal government has passed the “Families First Coronavirus Response Act” to assist employees during the current public health emergency. As a covered employer, the City will provide the temporary benefits required by the Act as summarized in this policy. This policy will expire upon the conclusion of the Coronavirus public health emergency or on December 31, 2020, whichever is earlier. This policy is subject to change in response to any new or revised guidance issued by the Secretary of Labor, other federal agencies, changes in applicable law, or at the City’s discretion.

**Eligibility**

All full-time and part-time employees, except emergency responders. Emergency responders include the following positions:

- City Administrator/Director of Public Works
- All employees of the Police Department including the positions of Police Chief, Police Captain, Police Lieutenant, Police Detective, Police Officers, and Police Clerks.
- All employees of the Department of Public Works including the positions of Director of Public Works, Public Works Supervisors (Foremen), Public Works Maintenance Workers, including all full-time, seasonal and part-time Public Works employees.

Staff who have been employed fewer than 30 days are not eligible for the temporary expansion of FMLA (section B). If you are eligible for leave under sections A and B, the total amount of leave available is capped at 12 weeks.

**A. Emergency Paid Sick Leave Benefit**

1. Full-time employees will receive up to two weeks (80 hours) of paid sick leave benefits to be used for Coronavirus-related absences. Part-time employees will receive a pro-rated paid sick leave benefit

based on the number of hours you work on average over a two-week period. The full benefit for which you are eligible is available for immediate use.

2. You are not required to exhaust other forms of paid leave before using this new Coronavirus paid leave. The Coronavirus paid leave is in addition to any paid leave you already have.
3. This benefit is available to you if you cannot work (in person or remotely) for any of the following reasons:
  - a. You are subject to a federal, state, or local Coronavirus quarantine or isolation order;
  - b. You are advised by a health care provider to self-quarantine for Coronavirus concerns;
  - c. You are experiencing symptoms of Coronavirus and seeking a medical diagnosis;
  - d. You are caring for an individual who is under a Coronavirus quarantine or isolation order or has been advised by a health care provider to self-quarantine;
  - e. You are caring for a child whose school or child care provider has been closed or is unavailable because of Coronavirus;
  - f. You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
4. The City may require you to provide a certification from a health care provider confirming the applicable circumstance of section 3 above.
5. The City will pay you the following amounts:
  - a. If you require leave for reasons 3(a), (b), or (c) above, The City will pay you your regular rate of pay, up to \$511 per day and/or \$5,110 in the aggregate.
  - b. If you require leave for reasons under 3(d), (e), or (f) above, you will receive two-thirds of your regular rate of pay, up to \$200 per day and/or \$2,000 in the aggregate.
  - c. If you do not have a set schedule of hours, paid sick leave is based on the average number of hours you were scheduled per day over the six-month period prior to use of the leave.
6. Your ability to use paid sick leave for purposes specified in the law will end upon termination of the qualifying event.
7. Paid leave provided under this law does not carry over year to year and unused leave is not paid out.

#### B. Temporary Expansion of Family & Medical Leave

Federal Family and Medical Leave is temporarily expanded to include a qualifying need related to the Coronavirus public health emergency, as declared by federal, state, or local authorities. The conditions of this expansion are outlined below.

1. You are eligible for the leave if you have worked at least 30 calendar days.

2. A “qualifying need” is limited to circumstances where you cannot work (in person or remotely) because of your need to care for a child under age 18 due to a Coronavirus-related public health emergency school or child care closing/unavailability.
3. Pay for the temporary FMLA leave will be as follows:
  - a. The first 10 days of the leave are unpaid. You may elect to use the Emergency Paid Sick Leave Benefit (section A above) or any accrued paid leave during this time if available.
  - b. After the first 10 days, The City will pay you two-thirds of your regular rate of pay, up to \$200 per day and \$10,000 aggregate.
4. You will be entitled to reinstatement to the same or equivalent position once your leave ends.
5. Your total annual FMLA leave entitlement for any qualifying reason remains at 12 weeks per calendar year.

#### Conclusion

Please contact Deputy Clerk-Treasurer Mary Green if you have questions regarding this policy.