AGENDA
GRANT COUNTY PUBLIC UTILITY DISTRICT
Via Conference Call
+1 509-703-5291 Conference ID: 678 050 6#
COMMISSION MEETING
Tuesday, April 28, 2020

An Executive Session may be called at any time for purposes authorized by the Open Public Meetings Act

9:00 a.m.  Commission Convenes
Review and Sign Vouchers

10:00 a.m.  Reports from Staff

12:00 Noon  Lunch

1:00 p.m.  Safety Briefing
Pledge of Allegiance
Attendance
Public requests to discuss agenda items/non-agenda items
Correspondence
Business Meeting

1. Consent Agenda

   Approval of Vouchers

   Meeting minutes of April 14, 2020

2. Regular Agenda

   Resolution 8941 – Amending Grant PUD’s Strategic Plan Effective April 28, 2020.

   Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute Change Order No. 9 to Contract 430-3218 with Washington State Department of Fish and Wildlife (WDFW), increasing the not-to-exceed contract amount by $329,619.00, for a new contract total of $2,986,810.00, extending the contract completion date to June 30, 2021 and resetting the delegated authority levels to the authority granted to the General Manager/CEO per Resolution No. 8609 for charges incurred as a result of Change Order No. 9.  (3329)

3. Review Items For Next Business Meeting


   Resolution XXXX – Implementing the Families First Coronavirus Response Act (FFCRA) Policy.

4. Calendar

5. Reports from Staff (if applicable)

Adjournment
CONSENT AGENDA
REGULAR MEETING
OF PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY

April 14, 2020

The Commission of Public Utility District No. 2 of Grant County, Washington, convened at 9:00 a.m. via Microsoft Teams Meeting / +1 509-703-5291 Conference ID: 868 615 52# (a.m. session) and +1 509-703-5291 Conference ID: 678 050 6# (p.m. session) with the following Commissioners present: Tom Flint, President; Larry Schaapman, Vice-President; Judy Wilson, Secretary; Dale Walker, Commissioner; and Nelson Cox, Commissioner.

The Commission convened to review vouchers and correspondence.

The Commission recessed at 9:30 a.m.

The Commission resumed at 10:00 a.m.

A round table discussion was held regarding the following topics: COVID-19 Incident Command update; Grant PUD joint newsletter with Grant County Health District regarding county wide COVID-19 stay healthy efforts; notice of annual concert crowd management meeting scheduled for May 12; juvenile steelhead issue at St. Marie’s acclimation ponds; report from recent virtual GM Forum; April 1 Collective Bargaining Agreement fully implemented; crews working in split shifts to ensure adequate separation and minimization of risk as a result of COVID-10 response criticality protocol; March 25 bond transaction requested customer communication; irrigation deposit policy; additional information requested regarding driver behind Capital Press communication sponsored by Grant PUD; correspondence received from Paul Davies of Callahan Ag and residential customer Jerry Lee Redwine; and requested COVID-10 employee exposure report.

Ty Ehrman, Managing Director of Power Production, provided the Power Production Performance report.

Thomas Stredwick, Senior Manager of Leadership & Organizational Development; Sarah Sutton, Customer Service Representative IV; Brendali Vargas, Accountant; and Ben Pearson, Priest Rapids Dam Plant Manager, presented a Strategic Plan Objective 2 recommendation.

Shannon Lowry, Lands & Recreation Manger provided the Lands and Recreation Program Report.

Rich Wallen, COO, reported on Priest Rapids availability and outcomes. Mr. Wallen also provided additional information related to the St. Marie’s acclimation facility issue.
Jeff Bishop, CFO, reported on effort underway to analyze potential load forecasting and financial impacts associated with the COVID-19 event.

The Commission recessed at 11:50 am.

Due to technical difficulties, the Commission meeting was unable to resume at 1:00 p.m. and was delayed until 1:20 p.m. A modified Microsoft Teams Meeting link and call-in number was issued and posted.

Correspondence was noted as received from Paul Davies of Callahan Ag, residential customer Jerry Lee Redwine, and the Royal City School District.

Consent agenda motion was made Mr. Cox and seconded by Mr. Schaapman to approve the following consent agenda items:

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<td>Payroll Tax and Garnishments</td>
<td>20200326A through 20200409B</td>
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Meeting minutes of March 24, 2020.

After consideration, the above consent agenda items were approved by unanimous vote of the Commission and signatures were affirmed.

Motion was made by Mr. Schaapman and seconded by Mr. Cox to approve modifications to the Public Recreation Development Plans (PRDPs) for the communities of Desert Aire, Crescent Bar, Sunland and Vantage and to approve the recently developed PRDP for Columbia Cliffs. After consideration, the motion passed by unanimous vote of the Commission.

The Commission recessed at 1:30 p.m.

The Commission resumed at 1:35 p.m.

The Commissioners reviewed future agenda items.

The Commission calendar was reviewed.

Kevin Nordt, GM / CEO, provided follow-up information regarding educational intent of Capital Press communication outreach strategy.

Paul Dietz, Enterprise Risk Manager, provided the Enterprise Risk Program report.

Gene Austin, Compliance Manager, provided the NERC/WECC R&C Program report.

There being no further business to discuss, the April 14 meeting officially adjourned at 3:11 p.m.
Tom Flint, President

ATTEST:

Judy Wilson, Secretary

Larry Schaapman, Vice President

Dale Walker, Commissioner

Nelson Cox, Commissioner
REGULAR AGENDA
RESOLUTION NO. 8941

A RESOLUTION AMENDING GRANT PUD’S STRATEGIC PLAN EFFECTIVE APRIL 28, 2020

Recitals

1. On July 9, 2019, the Commission by Resolution No. 8920 amended Grant PUD’s Strategic Plan;

2. The Strategic Plan is a living document that will be systematically reviewed every six months with the Commission. During these sessions, the board will review progress made towards our goals and identify the strengths, weaknesses, opportunities, and threats facing the utility;

3. Slight variations to the document are anticipated regularly and will be reviewed with the Commission. When formal action is taken to revise the Strategic Plan, staff will propose those changes via formal resolution; and


NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that Grant PUD’s Strategic Plan dated April 28, 2020 is hereby adopted and said Strategic Plan replaces and supersedes Grant PUD’s Strategic Plan dated July 9, 2019.

BE IT FURTHER RESOLVED that Resolution No. 8920 is hereby superseded.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 28th day of April, 2020.

____________________________________
President

ATTEST:

____________________________________
Secretary

____________________________________
Vice President

____________________________________
Commissioner

____________________________________
Commissioner
OUR MISSION

To safely, efficiently, and reliably generate and deliver energy to our customers.

OUR VISION

EXCELLENCE IN SERVICE AND LEADERSHIP

We continually ask how we can improve service quality, reliability and stewardship of our resources in the most cost-effective manner.
OUR VALUES

- **SAFETY**
  We believe that employee and public safety is paramount.

- **INNOVATION**
  We make decisions that best serve present and future generations.

- **SERVICE**
  We are committed to excellent customer service.

- **TEAMWORK**
  We are one team with the same mission.

- **RESPECT**
  We honor the rights and beliefs of those we work with and serve.

- **INTEGRITY**
  We hold ourselves and others accountable to professionalism in our actions and words.

- **HERITAGE**
  We protect, preserve and perpetuate both the spirit of the Grant PUD and the Wanapum relationship.
OUR KEY OBJECTIVES

1. Achieve and maintain a zero-incident workplace
2. Design and sustain an engaging & fulfilling Grant PUD culture
3. Maintain a strong financial position
4. Provide long-term low rates
5. Provide outstanding service to our customers
6. Operate responsibly by attaining environmental, cultural resource and regulatory compliance
7. Completion and maintenance of a sustainable wholesale fiber optic network
OBJECTIVE 1

ACHIEVE AND MAINTAIN A ZERO-INCIDENT WORKPLACE

Safety shall encompass industrial safety, dam safety, together with physical security of our employees and the public. Every employee plays a role in this objective. By prioritizing safe work practices over job completion, speaking up when safety concerns exist, ceasing to proceed in the face of uncertainty together with a data-driven analytical approach to industrial safety, we will ensure all employees, contractors, and members of the public always remain free from harm.

STRATEGIES

• Employ a defense-in-depth approach to industrial safety.
• Ensure an industry leading Dam Safety Program exists with active engagement and awareness across all levels of the organization.
• Ensure rigorous root cause analysis and formal corrective action tracking programs exist.
• Develop a strong “see something, say something” culture with clear expectations that safety shall always preempt production.
• Employ a Lean / 6-Sigma management approach.

KEY METRICS

• Recordable incident rate.
OBJECTIVE 2

DESIGN AND SUSTAIN AN ENGAGING & FULFILLING GRANT PUB CULTURE.

Workplace culture is the infrastructure that guides how we function. Business outcomes, such as safety, compliance, financial results, operational excellence, all hinge on a healthy workplace culture that supports people. We continuously design our culture so every role has purpose and every employee has value. We make meaningful investments in our workforce. We encourage transparent and authentic communication, and engage our teammates with respect and empathy.

STRATEGIES

• Recruit, develop and retain a best-in-class workforce
• Translate organizational values into actionable behaviors
• Deliver a rigorous onboarding experience
• Sponsor a vibrant employee association
• Establish a deliberate, continuous learning strategy aligned to business outcomes
• Implement the ADDIE instructional systems design framework for training
• Articulate and reinforce our desired leadership culture
• Deliver industry-leading educational reimbursement programs

KEY METRICS

• Organizational Health Index
• Employee Engagement Assessment
• Educational Reimbursement Target
• Training Effectiveness Assessment
OBJECTIVE 3

MAINTAIN A STRONG FINANCIAL POSITION

Every employee plays a role in this objective. By making cost-conscious business decisions and watching out for our bottom line, we will maintain the funds necessary to get our work done and to keep the lights on for the people of Grant County at the lowest possible costs.

STRATEGIES

- Achieve cost efficiencies.
- Manage risk.
- Set retail rates that meet the retail revenue requirement.
- Enhance project prioritization.
- Increase process & method standardization.
- Optimize non-retail rate revenue.

KEY METRICS

- Liquidity threshold (liquid working capital + R&C fund balance).
- Consolidated return on net assets.
- Consolidated debt service coverage.
- Consolidated debt to plant ratio.
OBJECTIVE 4

PROVIDE LONG TERM LOW RATES

Our customers expect to receive high-quality service at the lowest possible costs. To do this, we monitor how we use power from our resources to maximize net revenue to the utility. We also encourage energy conservation to ensure that the low-cost energy from our hydropower projects meet the needs of our county for as long as possible. By planning for our energy needs, both now and in the future, we can achieve long-term low rates for our customers.

STRATEGIES

• Optimize Grant PUD’s generating resources.
• Perform long-term integrated resource planning.
• Develop effective and efficient conservation programs.
• Build, operate and maintain T&D system to optimal levels.
• Develop, protect and enhance Grant PUD / Wanapum interests in local, state and national forums.

KEY METRICS

• Retail operating ratio (adjusted).
• Grant PUD retail rate index (ASC) vs. “Peer group of excellence” retail rate index.
• Grant PUD credit rating.
OBJECTIVE 5

PROVIDE OUTSTANDING SERVICE TO OUR CUSTOMERS

Every action we take at this utility is in service to our customers. We continually ask ourselves how our performance aids in improving service quality and reliability. The concerns of people we impact and our fellow employees are important to us and we act quickly to resolve issues to exceed customer expectations.

STRATEGIES

• Optimize Grant PUD’s generating plant availability.
• Optimize critical spares inventory.
• Provide prompt response to customer inquiries and service requests.
• Provide convenient retail customer access to Grant PUD (physical & virtual).

KEY METRICS

• Electric system reliability indices – ASAI and CAIDI.
• Generating plant HLH availability.
• Retail customer satisfaction surveys.
OBJECTIVE 6

OPERATE RESPONSIBLY BY ATTAINING ENVIRONMENTAL, CULTURAL RESOURCE AND REGULATORY COMPLIANCE

We are one team with the same mission. We work together to find operational efficiencies and implement a common sense approach in our work. We care about the natural, cultural and financial resources that the public entrusts to us and diligently work to protect these resources in local, regional and national forums.

STRATEGIES

• Employ “defense in depth” philosophy in compliance arenas.
• Clearly define and communicate compliance requirements.
• Engage in active stakeholder collaboration.
• Employ process standardization and strong internal controls throughout Grant PUD.
• Actively engage in relevant industry issue forums.

KEY METRICS

• Internal and external audit outcomes.
• Compliance requirement satisfaction.
• Environmental and cultural goal achievement.
OBJECTIVE 7

DEVELOP A SUSTAINABLE FIBER OPTIC NETWORK

We are committed to expanding our wholesale fiber optic network to all the people of Grant County. We seek to identify and offer services that meet customers’ needs and increase network revenue for the utility. As with all utility services, we make decisions that best serve present and future generations of customers.

STRATEGIES

• Optimize Grant PUD’s wholesale fiber optic network expansion Grant PUD’s product and service offering (within limits of existing legal limitations and authorizing resolution).
• Optimize Grant PUD’s wholesale fiber optic service pricing.

KEY METRICS

• Achieve planned capital build for current year.
• Average system take rate.
Thank you for taking the time to familiarize yourself with our strategic plan. As Grant PUD continues to evolve, you will play a continuing role in our success. With that in mind, your feedback is essential. Please feel free to contact us with any questions or concerns.

KEVIN NORDT  
General Manager  
knordt@gcpud.org  
509-754-5699

RICHARD WALLEN  
Chief Operating Officer  
rwallen@gcpud.org  
509-754-6744

DAVE CHURCHMAN  
Chief Customer Officer  
dchurchman@gcpud.org  
509-754-5069

MITCHELL DELABARRE  
General Counsel  
mdelaba@gcpud.org  
509-793-1565

JEFF BISHOP  
Chief Financial Officer  
jbishop@gcpud.org  
509-754-6637
Motion was made by _______________ and seconded by ________ authorizing the General Manager/CEO, on behalf of Grant PUD, to execute Change Order No. 9 to Contract 430-3218 with Washington State Department of Fish and Wildlife (WDFW), increasing the not-to-exceed contract amount by $329,619.00, for a new contract total of $2,986,810.00, extending the contract completion date to June 30, 2021 and resetting the delegated authority levels to the authority granted to the General Manager/CEO per Resolution No. 8609 for charges incurred as a result of Change Order No. 9.
MEMORANDUM

March 26, 2020

TO: Kevin Nordt, General Manager

VIA: Rich Wallen, Chief Operating Officer
Ty Ehrman, Managing Director of Power Production
Ross Hendrick, Senior Manager of Environmental Affairs

FROM: Tom Dresser, Fish and Wildlife Manager
Deanne Pavlik-Kunkel, Fisheries Program Supervisor

SUBJECT: Contract 430-3218, Change Order No. 9

Purpose: To request Commission approval of Change Order No. 9 to Contract 430-3218 to increase the Contract Price by $329,619.00 for a new maximum Contract Price of $2,986,810.00 and extend the term of the Contract to provide services from the Washington Department of Fish and Wildlife (WDFW) for the Priest Rapids Hatchery Monitoring and Evaluation from July 1, 2020 through June 30, 2021.

Background: The Public Utility District No. 2 of Grant County, Washington (the District) entered into the Priest Rapids Salmon and Steelhead Settlement Agreement (SSSA) with multiple parties during 2005 and 2006. The SSSA included specific measures to protect, mitigate and enhance populations of non-ESA-listed salmon species that migrate through the Priest Rapids Project (coho, sockeye, fall and summer Chinook) and also included additional measures to protect, mitigate and enhance ESA-listed populations. The SSSA was adopted into the District’s Federal Energy Regulatory Commission (FERC) License Order in April 2008.

Under Part IX, Section 9.5 “Fall Chinook Artificial Production Goals” of this agreement and in accordance with the Priest Rapids Hatchery Genetic Management Plan’s Monitoring and Evaluation Plan, Grant PUD is required to conduct monitoring and evaluation (M&E) of the Priest Rapids Hatchery fall Chinook salmon program. The objective of the monitoring and evaluation plan is to evaluate the performance of the Priest Rapids Hatchery upper Columbia River fall Chinook program and its ability to meet the District’s hatchery mitigation requirements.

This Change Order (No. 9) to Contract 430-3218 provides an annual (July 1, 2020 through June 30, 2021) scope of work and budget for M&E studies performed by the Washington Department of Fish and Wildlife (WDFW) for the Priest Rapids Hatchery’s upper Columbia River fall Chinook hatchery mitigation program.

Washington Department of Fish and Wildlife was selected to conduct M&E activities for fall Chinook mitigation program because of their scientific and research experience and expertise. They have been good partners in ensuring M&E of the District’s fall Chinook program meets District obligations and PRCC Hatchery Subcommittee requirements. Additionally, working with WDFW has allowed us to partner with the United States Army Corp of Engineers (ACOE) in sharing the cost of conducting fall Chinook monitoring in the Project Area and the Hanford Reach.

The current Professional Services Contract is set to expire on June 30, 2020. Change Order No. 9 will extend the contract through June 30, 2021 (1 year) and increase the Not-To-Exceed by $329,619.00 for a new maximum Contract Price of $2,986,810.00.

Justification: In 2010, the District began monitoring the Priest Rapids fall Chinook program as required by the Priest Rapids Salmon and Steelhead Settlement Agreement, Part IX. Although Priest Rapids Hatchery has been operated since 1963, no comprehensive M&E plan was associated with its operation. Prior to 2010, monitoring by WDFW provided basic information on the age structure and origin of fall
Chinook both at the hatcheries and in the Hanford Reach but it was not sufficient to meet the tasks and objectives of the Priest Rapids Hatchery Monitoring and Evaluation Plan required by the District’s FERC license. Contract 430-3218 and subsequent Change Orders, including Change Order No. 9, fulfills the District M&E mitigation obligations for the fall Chinook salmon artificial propagation program and the associated Priest Rapids Hatchery Genetic and Management Plan’s Monitoring and Evaluation Plan as required under the Settlement Agreement for the contract period.

At this time, the FW Department does not have the biological staff or the expertise necessary to complete this work in-house. FW staff also believes that a continuation of this contract with WDFW is the most cost effective and biologically prudent option in meeting the District’s mitigation obligations for monitoring and evaluation of the upper Columbia River fall Chinook program, for the following reasons;

- WDFW has the biological staff with specific expertise in conducting the required monitoring and evaluation assessments present and available and;
- Through the WDFW M&E contract with the ACOE, the District will be able to share the cost of M&E activities for the Priest Rapids Hatchery fall Chinook program with the ACOE; the total cost of conducting monitoring and evaluation activities, including both WDFW and District expenses is budgeted at $421,539; approximately 37.08% ($91,921) of those costs are passed onto the ACOE through a direct contract between the ACOE and WDFW.

**Financial Considerations:** The District’s FW staff went through a rigorous line item review and negotiation process in an effort to hold costs in check and ensure that proposed tasks and the associated budget were tied to the District’s Priest Rapids Hatchery upper Columbia River fall Chinook program M&E requirements and aligned with the District’s long-term strategic goals related to program monitoring and assessment.

Contract costs under Change Order No. 9 increased 3.5% compared with the previous Change Order’s costs. In an effort to keep labor increases in check, FW staff reviewed all line item tasks and evaluated expected fish runs and potential workloads to ensure the number of crewmembers is necessary to complete tasks identified in the Statement of Work. The increase in total cost is primarily caused by increased indirect rate and staff costs; factors that cannot be controlled or adjusted by the District.

WDFW is uniquely qualified and positioned to perform the monitoring and evaluation tasks required under the fall Chinook program’s M&E Plan, and despite increases, FW staff believe that a Change Order for Professional Services Contract 430-3218 is the least-cost option. Additionally, using WDFW as the M&E contractor provides assurance to the PRCC Hatchery Subcommittee that M&E will be conducted without conflict-of-interest on behalf of the District. Other alternatives were contemplated but were not considered feasible or would result in increased cost to Grant PUD. Alternatives considered include:

1. Using Grant PUD staff to implement the fall Chinook program M&E activities. This option is not feasible at this time. The District does not have the biological staff necessary to complete this work nor the in-house expertise in monitoring and evaluating Chinook salmon populations. To implement the program, many staff would need to be hired and trained, at a likely higher cost than contracting with WDFW. There is not enough time prior to the end of the current contract to undertake such an extensive hiring process. The potential to use Grant PUD staff to conduct M&E tasks, however, is under investigation to determine if it is feasible and cost effective.

2. Other Contractors. This option is not feasible at this time. Grant PUD is unaware of another contractor that can provide the quality and comprehensive M&E services necessary to meet objectives in the Project Area. WDFW has extensive experience and, as a fisheries resource co-manager, a vested interested in operating a quality M&E program. Further, the ACOE plans to contract with WDFW to complete their share of the monitoring and evaluation for fall Chinook reared in Priest Rapids Hatchery and Ringold Hatchery. Cost sharing of M&E activities reduces
Grant PUD’s overall M&E costs through collaboration and data sharing conducted through multiple mitigation program in the Project Area and the Hanford Reach.

3. No Contract Implemented. By not entering into a new contract period with WDFW for this work, the District will be in violation of the terms and conditions of its FERC license.

If approved by the Commission, Change Order No. 9 would extend the contract through June 30, 2021 (365 days) and increase the NTE amount by $329,619.00 for a new maximum Contract Price of $2,986,810.00. This item is allocated in the District’s approved 2020 Operations and Maintenance budget and proposed 2021 budget under P-2000, Cost Center EB4220, and Initiative Fall Chinook Mitigation Program. Todd Pearsons is the Program Manager.

**Change Order History:** Since award of Contract 430-3218, eight Change Orders have been issued. There has been little change to the scope of these Change Orders. For additional information, see attached change order table.

**Legal Review:** See attached email.

**Recommendation:** Commission approval of Change Order No. 9 to Contract 430-3218 to increase the Contract Price by $329,619.00 for a new total revised maximum Contract Price of $2,986,810.00 and extend the term of the Contract from July 1, 2020 through June 30, 2021.
From: Tom Dresser  
Sent: Tuesday, March 24, 2020 5:16 PM  
To: Cindy Inch  
Cc: Deanne Pavlik-Kunkel  
Subject: FW: PR Hatchery M&E contract 430-3218 - CO#9. Draft memo for review

FYI

From: Tom Dresser  
Sent: Monday, March 23, 2020 3:44 PM  
To: Cindy Inch  
Cc: Todd Pearsons  
Subject: FW: PR Hatchery M&E contract 430-3218 - CO#9. Draft memo for review

FYI

From: Tom Dresser  
Sent: Monday, March 16, 2020 7:09 AM  
To: Cindy Inch  
Cc: Deanne Pavlik-Kunkel  
Subject: FW: PR Hatchery M&E contract 430-3218 - CO#9. Draft memo for review

Cindy;

Email approvals for CO#9 – Priest Rapids Hatchery Contract 430-3218

From: Ty Ehrman <Tehrman@gcpud.org>  
Sent: Sunday, March 15, 2020 4:54 PM  
To: Ross Hendrick <Rhendr1@gcpud.org>; Tom Dresser <TDresse@gcpud.org>  
Subject: RE: PR Hatchery M&E contract 430-3218 - CO#9. Draft memo for review

Ross and Tom, I’ve approved the change order to proceed. The memo looks good to me. Thanks.

Ty Ehrman  
DESK 509.793.1587  
CELL 509.361.8201

From: Ross Hendrick <Rhendr1@gcpud.org>  
Sent: Wednesday, March 11, 2020 8:48 AM  
To: Tom Dresser <TDresse@gcpud.org>; Ty Ehrman <Tehrman@gcpud.org>  
Subject: FW: PR Hatchery M&E contract 430-3218 - CO#9. Draft memo for review

Tom, looks good.

Ty – for your review. I note that the 1 yr extension allows us to continue figuring out the Corps contract question.

Thanks!
Ross;

For your review/editing and up the chain is a draft memo for the PR Hatchery M&E contract 430-3218 - CO#9.

Thanks

Tom Dresser  
Fish, Wildlife & Water Quality Manager  
Public Utility District No. 2 of Grant County, Washington  
30 C Street SW  
Ephrata, Washington 98823

Cell: 509-797-5182  
Office: 509-764-0500 ext. 2312
CHANGE ORDER
NO. 9

Pursuant to Section 5, the following changes are hereby incorporated into this Contract:

A. Description of Change: Increase the Contract Price and extend the Contract completion date to provide for the Priest Rapids Hatchery and Hanford Reach monitoring and evaluation activities from July 1, 2020 through June 30, 2021 in accordance with the attached 2020-2021 Priest Rapids Hatchery Monitoring and Evaluation Statement of Work and Budget.

B. Time of Completion: The revised completion date shall be June 30, 2021.

C. Contract Price Adjustment: As a result of this Change Order, the not to exceed Contract Price shall be increased by the sum of $329,619.00 plus applicable sales tax. This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised maximum Contract Price is $2,986,810.00, including changes incorporated by this Change Order.

D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2 of Grant County, Washington

Washington State Department of Fish & Wildlife

Accepted By: ____________________________  Accepted By: ____________________________

Name: __________________________________ Name: __________________________________

Title: _________________________________  Title: _________________________________

Date: _________________________________  Date: _________________________________
## Change Order Table

**Contract Title:** Priest Rapids Hatchery M&E/OLAFT Studies  
**Contract No.:** 430-3218  
**Award Date:** 6/24/2011  
**Project Manager:** Todd Pearsons  
**Original Contract Amount:** $2,116,671.00  
**District Representative (If Different):**  
**Original Contract completion:** 6/30/2012  
**Contractor:** Washington Dept. of Fish & W  
**Total CO Cost Change Amt:** $2,775,139.00

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<th>Cost Change Amount</th>
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**Total Change Order Cost Change Amount:** $2,775,139.00
RESOLUTION NO. XXXX

A RESOLUTION APPROVING AND ADOPTING A GREENHOUSE GAS ACCOUNTING METHODOLOGY CARBON CONTENT ESTIMATION CALCULATION

Recitals

1. Certain Grant PUD customers have requested information on the carbon content of the electric energy used to serve their load;

2. The current methodology and calculation were adopted in 2016 via Resolution 8833; however, the methodology and calculation need to be updated to more accurately reflect Grant PUD’s contractual and operating conditions.

3. Staff has refined the methodology and calculation to estimate carbon content based on the following:

   a. Grant PUD may sell its physical share and the associated attributes of Priest Rapids and Wanapum generation through Pooling and/or Slice contracts.

   b. The power purchased back to serve load through the Pooling and/or Slice contracts is considered unspecified source unless specifically deemed otherwise.

   c. Market Purchases to serve load will be considered unspecified source unless specifically deemed otherwise.

   d. The power purchased to serve load under Rate Schedule 13 Specified Source is non-emitting and will be separately disclosed.

   e. The assumption that any Grant PUD-specific or declared sources available, including but not limited to Wanapum, Priest, PEC, Quincy Chute, Nine Canyon (as appropriate) and zero carbon emission purchases, are used first to serve retail customers.

   f. The District will use the most current information available to estimate the carbon content of generation for specified and unspecified sources. Priority will be given to relevant information produced by the State of Washington.

   g. Consistent with Commission Resolution 8768, Grant PUD’s Core Customers are given preference in receiving the low carbon benefits from hydro resources.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, as follows:

Section 1. The Commission approves staff’s proposed methodology and calculation to estimate the carbon content of energy that serves Grant PUD’s retail electricity sales.
Section 2. This Resolution shall supersede Resolution 8833 and all other prior resolutions to the extent that they conflict with any action related to Grant PUD’s greenhouse gas accounting methodology and carbon content estimation.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this _____ day of ________, 20__.

__________________________________
President

ATTEST:

__________________________________
Secretary

__________________________________
Vice President

__________________________________
Commissioner

__________________________________
Commissioner
MEMORANDUM

April 15, 2020

TO: Kevin Nordt - General Manager
VIA: Dave Churchman - Chief Customer Officer
Rich Flanigan – Manager of Wholesale Power Supply
FROM: Phillip Law – Term Marketer
SUBJECT: Updates to Calculating Carbon Content of Grant County PUD Energy

Purpose:

Request Commission approval of modifications to the calculation of the carbon content of energy consumed by the District’s retail customers.

Discussion:

Background: The State Fuel Mix Report is the official report on the various sources of generation used to serve District Load. This information is used to estimate the carbon content of the energy consumed by the District’s retail customers. The State Fuel Mix Report is typically available nine months after the close of a calendar year. For many District customers, this delay is unacceptable. To address this issue, the Commission passed Resolution No. 8833 in October of 2016 which approved the method by which the District would estimate the carbon content of the energy used to serve our loads. The Washington State Department of Commerce recently discontinued disclosing the specific carbon content for various fuel sources in the State Fuel Mix Report.

District staff recommends an update to the carbon content estimation to more accurately reflect contractual and operating conditions of the District. The refined estimate would be based on the following:

1. Grant may sell its physical share and the associated attributes of Priest Rapids and Wanapum generation through Pooling and/or Slice contracts.
2. The power purchased back to serve load through the Pooling and/or Slice contracts is considered unspecified source unless specifically deemed otherwise.
3. Market purchases to serve load will be considered unspecified source unless specifically deemed otherwise.
4. The power purchased to serve load under Rate Schedule 13 is non-emitting and will be separately disclosed.
5. The assumption that any Grant specific or declared sources available, including but not limited to Wanapum, Priest, PEC, Quincy Chute, Nine Canyon (as appropriate) and zero carbon emission purchases, are used first to serve retail customers.
6. The District will use the most current information available to estimate the carbon content of generation for specified and unspecified sources. Priority will be given to relevant information produced by the State of Washington.
7. Consistent with Commission Resolution 8768, Grant PUD’s Core Customers are given preference in receiving the low carbon benefits from hydro resources.
EXAMPLE:

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**Justification:**

Adoption of this refined methodology will more accurately reflect the carbon content of District Load and is responsive to customer needs for timely information.

**Financial Considerations:**

There are no costs (other than internal analyst time) to implement this revised carbon calculation.

**Legal/Audit Review:**

See attached e-mail(s).

**Recommendation:**

Staff recommends that the Commission approve, through the attached resolution, the above-described methodology for calculation of the carbon content estimate of the power used to meet retail load.
Robbie Noga

From: Robbie Noga <Rnoga@gcpud.org>
Sent: Thursday, April 23, 2020 1:32 PM
To: Richard Flanigan <Rflanig@gcpud.org>
Subject: Please respond with your approval

Richard, please provide me your approval for this updated memo.

Thank you.
Robbie

Robbie Noga
Executive Assistant

OFFICE 509.793.1549
EMAIL rnoga@gcpud.org

grantpud.org

---

I approve. Thanks Robbie.

Rich Flanigan
Sr. Manager
Wholesale Marketing and Supply

OFFICE 509.793.1475
CELL 509.750.6552
EMAIL rflanig@gcpud.org

grantpud.org

---

From: Richard Flanigan
Sent: Thursday, April 23, 2020 1:37 PM
To: Robbie Noga
Subject: RE: Please respond with your approval

I approve. Thanks Robbie.

Rich Flanigan
Sr. Manager
Wholesale Marketing and Supply

OFFICE 509.793.1475
CELL 509.750.6552
EMAIL rflanig@gcpud.org

grantpud.org
RESOLUTION NO. XXXX

A RESOLUTION IMPLEMENTING THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) POLICY

Recitals

1. Grant PUD’s Strategic Plan includes core values that list Safety as a top priority; and

2. Grant PUD has responded to the COVID-19 pandemic of 2020 by implementing its Incident Command System, in addition to following Center for Disease Control (CDC) and Grant County Department of health recommendations to keep employees and the public safe during this pandemic; and

3. On March 18, 2020 the 116th Congress of the United States of America passed Public Law No. 116-127, known as the Families First Coronavirus Response Act (FFCRA) to assist employees impacted by the pandemic; and

4. The Senior Manager of Human Resources recommends adoption of the Families First Coronavirus Response Act Policy attached as Exhibit A to both comply with Federal law and support Grant PUD’s Health and Safety efforts.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that:

Section One: The Families First Coronavirus Response Act Policy attached as Exhibit A is hereby adopted.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 12th day of May, 2020.

__________________________________________
President

ATTEST:

__________________________________________  _______________________________________
Secretary                                      Vice President

__________________________________________  _______________________________________
Commissioner                                  Commissioner
HR-BEP-POL-305 – FAMILIES FIRST CORONAVIRUS RESPONSE ACT

1. Scope

This policy applies to all Grant PUD employees.

2. Policy Statement

This policy provides temporary protected leave and paid leave benefits for certain absences arising from the COVID-19 outbreak in accordance with the federal Families First Coronavirus Response Act (FFCRA). The benefits available under this policy are available beginning on April 1, 2020 and will end on December 31, 2020.

This policy will be administered in accordance with the FFCRA statute and forthcoming federal regulations and guidance.

3. Definitions

“Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or is 18 years of age or older and “incapable of self-care because of a mental or physical disability” at the time leave is to commence.

“Eligible employee” is a regular part-time or full-time employee, limited assignment, seasonal, temporary, or on-call employee who is scheduled to work and cannot due to a qualifying reason. Employees who are on-call and not scheduled to work will not be entitled to the leave provisions provide herein.

“Individual” is an employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, “individual” does not include persons with whom the employee has no personal relationship.
“Public health emergency” means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

“Quarantine” is pursuant to Federal, State, or local government order or advice of a health care provider.

Quarantine or isolation order includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the employee to be unable to work even though the utility has work that the employee could perform but for the order. This also includes when Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work even though the utility has work for them.

“Unable to work” means you are unable to work if Grant PUD has work for you and one of the COVID-19 qualifying reasons set forth herein prevents you from being able to perform that work, either under normal circumstances at our worksite or by means of telework.

4. Policy

Grant PUD will provide the eligible employees the following categories of leave if they are unable to work:

1. Public Health Emergency Leave ("PHEL"): Expands existing Family and Medical Leave (FMLA) coverage to provide up to 10 weeks of partially-paid Public Health Emergency Leave for eligible employees forced to miss work due to closure of their child’s school or the unavailability of the child’s childcare provider for reasons related to COVID-19.

2. Emergency Sick Leave ("ESL"): Provides up to 10 days of Emergency Sick Leave for various reasons related to the COVID-19 outbreak.

Details regarding each category of leave are provided in the sections below.
Public Health Emergency Leave (PHEL)

General Provisions:

- PHEL expands existing FMLA coverage to provide PHEL for eligible employees forced to miss work due to closure of their child’s school or the unavailability of the child’s childcare provider for reasons related to COVID-19.
- PHEL is part of an employee’s regular FMLA leave entitlement. Accordingly, if an employee has already used FMLA for other purposes during the FMLA leave year, the amount of available PHEL will be reduced by the amount of FMLA leave already taken.
- Employees may use PHEL for a covered reason before exhausting other accrued leave.
- PHEL may be taken intermittently, if Grant PUD and the employee agree.
- PHEL benefits expire on December 31, 2020.
- This policy will be administered consistent with the utility’s existing FMLA policy, except as modified by the FFCRA.

Eligibility:

Employees who have worked for Grant PUD for at least 30 calendar days are eligible for PHEL. An employee does not need to meet the eligibility requirements for regular FMLA (12 months of employment and 1250 hours worked in the prior year) to be eligible for PHEL. On-call and temporary employees are eligible for PHEL only if scheduled to work.

Leave Duration:

An eligible employee may take up to 12 weeks of protected leave if the employee is unable to work, or telework, based on a need to care for the employee’s child because the child’s school or place of care has been closed, or the child’s child care provider is unavailable due to a public health emergency.

Benefit Amount:

- The first 10 days of PHEL will be unpaid. Employees may elect to use accrued leave or Emergency Sick Leave (see below) during this period.
- For leave beyond the first 10 days, Grant PUD will pay two-thirds of the
employee’s regular straight-time base pay, up to a maximum of $200 per day or $10,000 in the aggregate.

- For on-call and temporary employees, hours will be determined based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work.
- Employees may elect to supplement the PHEL paid benefit with their accrued leave to receive up to 100% of regular wages.

**Notification and verification of leave:**

Employees who need to take PHEL should notify their supervisor as soon as practicable after the need for leave arises. The supervisor will then work with Human Resources to coordinate leave requirements as appropriate. The utility may require documentation to verify that leave is being taken for a PHEL-covered reason. Documentation may include a notice of closure from the child’s school, place of care, or child care provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider.

**Emergency Sick Leave (ESL)**

**General Provisions:**

- Employees are entitled to use ESL when they are unable to work, or telework, for any of the reasons stated below.
- Employees may use ESL for a covered reason before exhausting other accrued leaves.
- If an absence is covered by the ESL policy and the PHEL policy, the employee may elect to use ESL during the first 10 days of PHEL in order to remain in paid status. In such case, the leave taken under ESL will count toward the employee’s regular FMLA leave entitlement.
- ESL may be taken intermittently, if Grant PUD and the employee agree.
- Entitlement to ESL ceases beginning with the employee’s next scheduled work shift immediately following the termination of the need for ESL. However, to the extent an employee subsequently needed additional time off for an ESL-covered reason prior to December 31,
2020, the employee could use any remaining ESL available.

- Employees may not receive ESL and Short-Term Disability benefits concurrently.
- ESL benefits expire on December 31, 2020. Any unused ESL will not be cashed out, carried over, or converted to other paid leaves.

**Eligibility:**

All Grant PUD employees are eligible. Waiting periods do not apply for new hires. On-call and temporary employees are eligible for ESL only if scheduled to work.

**Types of leave covered:**

1) The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2) The employee has been advised by a health care provider to self-quarantine due to concerns (either exposure or employee symptoms) related to COVID-19.
3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

If the employee needs additional time beyond what is offered by ESL to recover (become fit for duty) and they fall into categories 1-3 above, the entire absence will be covered by Paid Administrative Leave.

4) To care for an individual who is self-isolating for one of the reasons described in (1) or (2) above.
5) To care for the employee’s child due to closure of the child’s school or unavailability of the child’s childcare provider due to COVID-19 precautions.
6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

**Leave duration:**

- Regular full-time, limited assignment, and seasonal employees are entitled to up to 80 hours of ESL.
- Part-time employees are entitled to ESL up to an amount equal to the
number of hours they typically work over a two-week period.

- Temporary and on-call employees are entitled to ESL up to an amount based on the average number of hours scheduled over the six-month period preceding the leave (including paid leave hours) or on a reasonable expectation at the time of hire as to the hours per day the employee would normally be scheduled to work.
- ESL available under this policy is in addition to accrued leave to which an employee was already entitled under existing utility policies or the Collective Bargaining Agreement.

**Benefit Amount:**

ESL taken due to the employee’s own health or quarantine (reasons (1), (2), and (3) listed above):

- Pay is at 100% of the employee’s regular straight time base pay.

ESL taken to care for another, to care for a child because of a school closure or unavailability of childcare, or where the employee is experiencing a substantially similar condition (reasons (4), (5), and (6) listed above):

- Pay is at two-thirds of the employee’s regular straight time base pay, capped at $200 per day, and $2,000 in the aggregate.

Employees may elect to supplement the ESL paid benefit with their accrued leave to receive up to 100% of regular wages.

**Notification and verification of leave:**

An employee who needs to take ESL should notify their supervisor as soon as practicable. The supervisor will then work with Human Resources to coordinate leave requirements as appropriate. After the first workday (or portion thereof) that an employee takes ESL, the employee must follow the notice requirements as established by the utility or in accordance with the Collective Bargaining Agreement. On a case-by-case basis, the utility may require documentation to verify that leave is being taken for an ESL-covered reason.
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**DISTRICTWIDE POLICY**

**Approved by:**

**Policy Owner:** Senior Manager HR

**Regulation:** FFCRA

**Policy Category:** Employment, Benefits, and Workplace

*Printed copies are for reference only. Refer to the electronic copy in PolicyTech for the latest version.*
**Employee benefits during PHEL and ESL**

While an employee is on leave, Grant PUD will continue the employee's benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. Under current utility policy, the employee pays a portion of the health care premium. While on PHEL or ESL, Grant PUD will continue to make payroll deductions to collect the employee's share of the premium as well as any other deductions in place prior to PHEL- or ESL-related leave.

**Return to Work**

In most instances, you are entitled to be restored to the same or an equivalent position upon return from PHEL and ESL. You may be refused to return to work in your same position if you are a highly compensated "key" employee as defined under the FMLA policy.

**5. Review/Revision History**

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M E M O R A N D U M

April 22, 2020

TO: Kevin Nordt, General Manager/Chief Executive Officer

VIA: Dave Churchman, Chief Customer Officer

FROM: Darla Stevens, Senior Manager, HR

SUBJECT: Implementation of Families First Corona Response Act (FFCRA) Policy

Purpose: To request Commission approval to implement the attached policy as written to both comply with Federal law and to support our Health and Safety efforts as a utility.

Discussion: The Families First Coronavirus Response Act (FFCRA) requires public employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor’s Wage and Hour Division (WHD) administers and enforces the new law’s paid leave requirements (see enforcement discussion below). These provisions will apply from the effective date through December 31, 2020.

Paid Leave Entitlements under FFCRA:

Generally, the Act provides that covered employers must provide to employees up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at 100% for the following reasons, up to $511 daily and $5,110 total.

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, 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 experiencing any other substantially-similar condition specified by the US Department of Health and Human Services

For employees that fall into the categories above, staff proposes using Paid Administrative Leave to cover the entire absence (beyond the limitations of 80 hours for pay under the FFCRA language if necessary) in order for the employee to fully recover (become fit for duty). This leave would be above what employees accrue annually as part of their Personal Leave (PL) or the benefits that they would receive under Short Term Disability. While this exceeds the requirement, staff believes it is a prudent approach for the following reasons:
Employee Safety is a key strategic plan objective. The PUD wants to remove any incentive for employees to report while symptomatic during this pandemic. This is important not only for the individual’s health, but also the health of coworkers.

Mitigating the risk of exposure, will reduce medical costs that would be associated with multiple exposures by an employee not reporting or self-identifying symptoms or illness.

The Act provides that covered employers must provide 2/3 pay for employees subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or is caring for an individual subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19 up to $200 daily and $2,000 total.

Additionally, employees are eligible for up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 pay for qualifying reason if they are caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons for up to $200 daily and $12,000 total.

For employees that fall into the categories above, the PUD will provide employees up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave. A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period. This required leave is in addition to current leaves available to employees.

The proposed policy meets the requirements of the FFCRA, and in some instances could potentially exceed the requirements. If an employee experiences symptoms or infection and uses leave for the above purposes that employee could exceed the 80-hour leave requirement under the FFCRA. The rationale for this potential expansion of benefits as mentioned above is both safety and economically motivated to remove any incentive for symptomatic employees to come to work.

Eligible Employees

Employees of public sector employers are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave if caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.

Under FFCRA, Commissioners are not designated as being eligible. Staff recommends making these benefits to be available to Commissioners. This is consistent with current PUD benefits policy in which Commissioners have similar benefits as staff.

Reasons for Extension of Federal Benefits: In limited cases, the PUD wishes to grant benefits that exceed the Federal requirements under FFCRA (as noted above):
Enforcement Activities - The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

**Recommendation:** Commission approval to implement the attached policy as written to comply with the FFCRA.

**Legal Review:** See attached e-mail(s).
Randi,

Attached is the draft policy and the associated Commission memo. I have also added some information from Alliant and a grid that the Commissioners might find helpful.

As part of this email, I am providing my acknowledgement and support of these documents.

Randi, thank you for your patience and assistance on this!

Darla Stevens  
*Senior Manager, HR*

**OFFICE**  509.793.1559  
**EXT.**    2186  
**EMAIL**  dstevens@gcpud.org

grantpud.org
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<th>STATE LEAVE LAW</th>
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**COVID-19 SCENARIOS – EMPLOYEE NOT WORKING DUE TO OWN HEALTH CONDITION, INCLUDING TELEWORK**

- **Employee is mildly ill with COVID-19 symptoms³ and seeks medical diagnosis⁴**: 
  - FFCRA: X
  - FMLA: ✓
  - PFML: X
  - Short Term Disability: X
  - PL/SICK LEAVE: X
  - ADMIN LEAVE: ✓

- **Employee is mildly ill with COVID-19 symptoms, but does not seek medical diagnosis**: 
  - FFCRA: X
  - FMLA: X
  - PFML: X
  - Short Term Disability: X
  - PL/SICK LEAVE: X
  - ADMIN LEAVE: ✓

- **Employee is ill with COVID-19, unable to work, incl. telework**: 
  - FFCRA: X
  - FMLA: ✓
  - PFML: X
  - Short Term Disability: ✓
  - PL/SICK LEAVE: ✓
  - ADMIN LEAVE: ✓

- **Employee is ill with COVID-19, but is able to telework part time**: 
  - FFCRA: X
  - FMLA: ✓
  - PFML: X
  - Short Term Disability: ✓
  - PL/SICK LEAVE: ✓
  - ADMIN LEAVE: ?

---

¹ The first four of the last five completed calendar quarters starting from the day you intend to take leave.
² Regular, straight-time base pay. Employee has the choice to supplement paid leave with accrued paid leaves.
³ COVID-19 symptoms: a fever that exceeds 100.4 degrees F, a cough or shortness of breath that cannot be attributed to another health condition.
⁴ Medical Diagnosis: Employee is taking affirmative steps to obtain a medical diagnosis, which includes making, waiting for, or attending an appointment for a COVID-19 diagnosis.
⁵ Limited to first day of reported symptoms. If the employee needs additional time beyond what is offered by ESL to recover (become fit for duty), the entire absence will be covered by Paid Administrative Leave.
⁶ Limited to first day of reported symptoms.
⁷ Employee must have been ill for 40 consecutive hours before becoming eligible for a partial disability benefit.
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<tr>
<td>Pay</td>
<td>2/3 of pay, max. $200/day</td>
<td>100% of pay</td>
<td>2/3 of pay, max. $200/day</td>
</tr>
<tr>
<td>Employee is directed by physician to self-quarantine (either exposure or employee symptoms)</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Employee is subject to federal, state, or local quarantine or isolation order(^\text{10})</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Employee wants to self-quarantine/isolate without medical advice</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Employee is considered at ”high-risk”(^\text{11}), no alternative work arrangement(^\text{12}) is available</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Employee is seriously ill and unable to work due to health conditions unrelated to COVID-19</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
</tbody>
</table>

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\(^8\) PUD can approve disability claim not medically supported

\(^9\) If the employee needs additional time beyond what is offered by ESL to recover (fit for duty), the entire absence will be covered by Paid Administrative Leave.

\(^10\) PUD is considered an essential business and exempt from Governor Inslee’s Stay-at-Home Order.

\(^11\) High-risk employee: Employee age 65 and older, or has underlying medical conditions, including chronic lung disease, moderate/severe asthma, serious heart condition, diabetes, severe obesity, chronic kidney disease undergoing dialysis, liver disease, any condition that compromises an individual’s immune system.

\(^12\) Alternative work arrangement: Telework, alternative/remote work locations, reassignment, social distancing measures
### COVID-19 LEAVE BENEFITS

<table>
<thead>
<tr>
<th>FEDERAL LEAVE LAWS</th>
<th>STATE LEAVE LAW</th>
<th>DISTRICT OFFERED LEAVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FFCRA</strong></td>
<td><strong>FMLA</strong></td>
<td><strong>PFML</strong></td>
</tr>
<tr>
<td><strong>Public Health Emergency Leave (PHEL)</strong></td>
<td><strong>Emergency Sick Leave (ESL)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Pay</strong></td>
<td>2/3 of pay, max. $200/day</td>
<td>100% of pay</td>
</tr>
</tbody>
</table>

### COVID-19 SCENARIOS – EMPLOYEE NOT WORKING TO TAKE CARE OF OTHERS

<table>
<thead>
<tr>
<th>Scenario</th>
<th>FFCRA</th>
<th>FMLA</th>
<th>PFML</th>
<th>Short Term Disability</th>
<th>PL/SICK LEAVE</th>
<th>ADMIN LEAVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To take care of child due to childcare or school closures, incl. intermittent leave(^\text{13})</td>
<td>✔️</td>
<td>✗</td>
<td>✔️</td>
<td>✗</td>
<td>✗</td>
<td>✔️</td>
</tr>
<tr>
<td>To take care of <strong>family member</strong>(^\text{14}) seriously ill with COVID-19</td>
<td>✗</td>
<td>✗</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✗</td>
</tr>
<tr>
<td>To take care of <strong>individual</strong>(^\text{15}) seriously ill with COVID-19</td>
<td>✗</td>
<td>✗</td>
<td>✔️</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>To take care of <strong>family member</strong> seriously ill due to health conditions unrelated to COVID-19</td>
<td>✗</td>
<td>✗</td>
<td>✔️</td>
<td>✔️</td>
<td>✗</td>
<td>✔️</td>
</tr>
</tbody>
</table>

\(^{13}\) Intermittent leave permitted if agreed between employer and employee.

\(^{14}\) Family member definition: FLMA: Spouse, son/daughter, and parent. PFML: Spouse, registered domestic partner, son/daughter/in-law, parent/in-law, grandchild, grandparent/in-law, sibling.

\(^{15}\) Individual definition: Employee’s immediate family member, a person who regularly resides in the employee’s home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. Individual does not include persons with whom the employee has no personal relationship.
DOL Releases Comprehensive FFCRA Regulations

Introduction
Effective April 1, 2020 (ending December 31, 2020), the Families First Coronavirus Response Act (FFCRA) requires private employers with fewer than 500 employees (and certain public agencies with one or more employee) to provide emergency paid sick leave (EPSL) for six COVID-19 related purposes and up to 12 weeks of emergency FMLA leave (EFMLA) for school closures or where childcare is not available as a result of the COVID-19 crisis. It provides tax credits to offset the cost of these two provisions. (See Alert 2020-10.) The FFCRA also mandates that any group health plan or health insurance issuer provide coverage without cost sharing for COVID-19 testing and any office or other visits that result in an order for COVID-19 testing. (See Alert 2020-05.) The Department of Labor (DOL) released a model posting on FFCRA leaves and clarified several key features of the law through a series of FAQs. (See Alert 2020-07 and Alert 2020-09.) On April 1, 2020, it released comprehensive temporary regulations. Much of the preamble to the regulations addresses how the DOL resolved numerous drafting issues and inconsistencies between EPSL and EFMLA provisions. However, the regulations clarify several other outstanding issues and reiterate or add to the basic FCRA framework. This Alert provides a summary of EPSL and EFMLA provisions and highlights significant clarifications. Notably, many key provisions and clarifications apply to both EPSL and EFMLA and are addressed together after EPSL and EFMLA specific guidance under Common EPSL EFMLA Provisions.

EPSL Act (EPSLA)

Basic Entitlement
The FFCRA requires covered employers to provide immediate EPSL to employees who are unable to work for six COVID-19 related reasons including where 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 (as defined by FMLA) to self-quarantine due to concerns related to COVID-19;
3. is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. is caring for an individual who is subject to an order as described in (1), or who has been advised as described in (2);
5. is caring for his or her son or daughter whose school or place of care has been closed or whose child care provider is unavailable due to COVID-19 related reasons; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The Regulations clarified a few key aspects in this list. Clarifications that apply jointly to EPSL and EFMLA are discussed below under Common EPSL EFMLA Provisions. Clarifications that are unique to EPSL are addressed here.

Covered Employers
Covered employers include private employers with fewer than 500 employees, as well as certain public agencies with one or more employee(s). There is, however, an exemption for employers with fewer than 50
employees that applies only to EPSL reason (5) that is addressed below under Common EPSL EFMLA Provisions. Counting employees is also addressed under Common EPSL EFMLA Provisions.

**Eligible Employees**
The regulations confirm that all employees of a covered employer are eligible to take EPSL regardless of their duration of employment, as long as their employer has work for them to do and they are prevented from working due to one of the six COVID-19 related reasons. The ability to exclude employees who are health care providers or emergency responders is addressed below under Common EPSL EFMLA Provisions.

Importantly, the regulations provide that *EPSL is a per person entitlement and not a per job entitlement* with an absolute upper limit of 80 hours. Should an employee change positions during the period of time in which EPSL is in effect, he or she is not entitled to a new round of paid sick leave. Once an employee takes the maximum 80 hours, he or she is not entitled to any EPSL from a subsequent employer.

**Hours Paid**
The regulations confirm the amount of EPSL compensation is the greater of the employee’s regular rate of pay or the applicable state or federal minimum-wage. Employees will only receive 2/3 of this amount to care for a family member who is self-isolating, to care for a child whose school or place of care has been closed, or if the employee is experiencing any other substantially similar condition (reasons (4)-(6)). Employees receive 100% of their wages for EPSL reasons (1) through (3). EPSL has a cap where sick leave may not exceed $200 per day and $2,000 in the aggregate when capped at 2/3 of wages (reasons (4)-(6)), and $511 per day and $5,110 in the aggregate when paid at 100% of wages (reasons (1)-(3)).

Next, DOL addressed several drafting issues and inconsistencies with respect to hours paid. The regulations confirm that a full-time employee is entitled to 80 hours of EPSL. An employee is considered full-time if normally scheduled to work at least 40 hours each work week. The regulations clarify that an employee without a normal schedule is considered full-time if the average number of hours per work week the employee was scheduled to work (including leave of any type), is at least 40 hours per workweek over a period of time that is the lesser of: (i) the six-month period ending on the date on which the employee takes EPSL; or (ii) the entire period of the employee’s employment.

An employee is considered part-time if normally scheduled (or actually scheduled) to work fewer than 40 hours each work week. DOL, however, needed to resolve several practical issues with respect to part-time employees with varying schedules and inconsistencies with EFMLA. Resolving these inconsistencies, the new rule is as follows:

(1) If the part-time employee has a normal weekly schedule, the employee is entitled to up to the number of hours normally scheduled for him or her to work over two workweeks.

(2) If the part-time employee lacks a normal weekly schedule, the number of hours is calculated as follows:

   (i) If employed for at least six months, the employee is entitled to up to the number of hours equal to fourteen times the average number of hours that the employee was scheduled to work each calendar day over the six-month period ending on the date on which the employee takes EPSL (including leave of any type).

   (ii) If employed for fewer than six months, the employee is entitled to up to the number of hours equal to fourteen times the number of hours the employee and the employer agreed to at the time of hiring that the Employee would work, on average, each calendar day. If there is no agreement, the employee is entitled to up to the number of hours equal to fourteen times the average number of hours per calendar day that the employee was scheduled to work over the entire period of employment (including leave of any type).
Quarantine or Isolation Order Defined
DOL broadly defined quarantine or isolation orders for purposes of EPSL reasons (1) and (4), ending questions about whether state and local stay-at-home orders are covered. A quarantine or isolation includes any quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the employee to be unable to work even though his or her Employer has work that the employee could perform but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., certain age ranges or medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those employees to be unable to work even though their employers have work for them.

Caveats on Being Advised by a Health Care Provider to Self-Quarantine
Reasons for leave (2) and (4) address when a health care provider has advised self-quarantine due to concerns related to COVID-19. The regulations clarify that leave for these reasons is limited to cases where the health care provider believes: (1) the employee has COVID-19; (2) the employee may have COVID-19; or (3) the employee is particularly vulnerable to COVID-19. Moreover, following the advice of a health care provider to self-quarantine must prevent the employee from being able to work.

Symptoms and Medical Diagnosis
With respect to reason for leave (3) (experiencing symptoms and seeking diagnosis), DOL clarified that symptoms of COVID-19 that could trigger this EPSL reason for leave are: fever, dry cough, shortness of breath, or other COVID-19 symptoms identified by the U.S. Centers for Disease Control and Prevention (CDC). Additionally, EPSL taken for this reason must be limited to the time the employee is unable to work because he or she is taking affirmative steps to obtain a medical diagnosis. Thus, an employee experiencing COVID-19 symptoms may take EPSL for time spent making, waiting for, or attending an appointment for a test for COVID-19. Employees may not take EPSL to self-quarantine without seeking a medical diagnosis.

Defining Who Qualifies as “an Individual”
With respect to reason for leave (4) (caring for an individual), DOL clarified that paid sick leave may not be taken to care for someone with whom the employee has no personal relationship. The individual being cared for must be an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined. Also, employees must have a genuine need to care for the individual.

Intermittent Leave
By clear and mutual agreement, leave may be taken intermittently to allow an employee to telework. At a work site, leave can be taken intermittently only for school closures or where childcare is not available as a result of the COVID-19 crisis (EPFML and EPSL qualifying reason (5)). Any other requested use of intermittent leave under EPSL is not allowed due to the unacceptably high risk that the employee might spread COVID-19 to other employees at a worksite. Additional details are discussed below under Common EPSL EFMLA Provisions.

Use of other PTO
EPSL will running concurrently with EFMLA where the reason for leave overlaps (school closures or where child care is unavailable as a result of COVID-19). In such cases, employers may require employees to take existing PTO or other appropriate paid leave concurrently with EPSL and EFMLA to bring wages from 2/3 to 100% of pay. Thus, an employee may elect to use, or an employer may require an employee to use, accrued leave that would be available to care for a child concurrently.

However, when an employee uses EPSL (or exhausts EPSL) for other qualifying reasons that do not overlap with EFMLA or where EPSL is already paid at 100% of wages (reasons (1)-(3) are already paid at 100% and (5) and (6) do not overlap with EFMLA), it appears that employers cannot require use of other PTO. Although the regulations lack clarity on this point (requiring use of other PTO to top of EPSL reasons (5) and (6)), they do
expressly provide EPSL mandates are provided in addition to any other right or benefit, including paid sick leave, to which the employee is entitled under state, local, or federal law or by policy or bargaining agreement. Further, an employee must be allowed to first use EPSL before using any other available leave.

**Notice and Documentation**

Employees must provide employers notice of their need to take EPSL as soon as practicable. It is reasonable for an employer to require notice after the first work day is missed (absent extenuating circumstances). Oral or written notice is acceptable and employers cannot require documentation beyond what is described below. Where employees fail to provide proper notice, employers should notify the employee and give them an opportunity to provide notice and documentation before denying leave.

Documentation must include a signed statement containing the following information: (1) the employee’s name; (2) the date(s) for which leave is requested; (3) the COVID-19 qualifying reason for leave; and (4) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason.

Additionally, an employee requesting EPSL must provide either: (1) the name of the government entity that issued the quarantine or isolation order; or (2) the name of the health care provider who advised him or her to self-quarantine for COVID-19 related reasons.

An employee requesting paid sick leave to care for an individual must provide either: (1) the government entity that issued the quarantine or isolation order to which the individual is subject; or (2) the name of the health care provider who advised the individual to self-quarantine, depending on the reason for the request.

An employee requesting to take EPSL or EFMLA to care for a child must provide: (1) the name of the child being cared for; (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave.

**Job Protection or Restoration**

The regulations confirm that upon return from EPSL an employee has a right to be restored to the same or an equivalent position. However, EPSL does not protect employees from employment actions, such as layoffs, that would have affected the employee regardless of whether he or she took EPSL. Employers that deny restoration must be able to show that an employee would not otherwise have been employed at the time reinstatement was requested.

**EFMLA**

**Basic Entitlement**

The FFCRA requires covered employers to provide up to 12 weeks of leave if an eligible employee is unable to work (or telework) due to a need for leave to care for a son or daughter if their school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency, defined as an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

The first two weeks of EFMLA are unpaid, with the intent that EPSL be available for this unpaid portion, and that the remaining potential 10 weeks are paid. Originally the FFCRA provided that the first 10 days of EFMLA are unpaid and the remaining potential 10 weeks were paid. The regulations changed the 10 days language in the law to two weeks with the understanding that this was likely the intent of Congress and to better coordinate with EPSL and existing FMLA entitlements.

Clarifications that apply jointly to EPSL and EFMLA are discussed below under Common EPSL EFMLA Provisions. Clarifications that are unique to EFMLA are addressed here.

**Covered Employer**
Covered employers include private employers with fewer than 500 employees, as well as certain public agencies with one or more employee(s). There is, however, an exemption for employers with fewer than 50 employees that is addressed below under Common EPSL EFMLA Provisions. Counting employees is also addressed under Common EPSL EFMLA Provisions. An exemption for certain federal workers is not addressed here.

**Eligible Employees**

Regulations confirm EFMLA covers all employees who have been employed by a covered employer for at least thirty calendar days. An employee is considered to have been employed for at least thirty calendar days if the employer had the employee on its payroll for the thirty calendar days immediately prior to the day that the employee’s leave would begin.

DOL also incorporated the eligibility break in service rule from the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). That rule provides that the thirty-day eligibility provision is waived if: (1) an employee was laid off on or after March 1, 2020, (2) prior to the layoff the employee worked for the employer for at least 60 days, and (3) the employee is later rehired.

Lastly, the regulations note that if an employee employed by a temporary placement agency is subsequently hired by the employer, days worked as a temporary employee for the employer count toward the thirty-day eligibility period.

The ability to exclude employees who are health care providers or emergency responders is addressed below under Common EPSL EFMLA Provisions.

**Hours Paid**

As noted above, the first two weeks of regularly scheduled hours of EFMLA are unpaid, with the intent that EPSL cover this unpaid portion, and that the remaining potential 10 weeks of regularly scheduled hours are paid. The regulations confirm the amount payable is not less than 2/3 of an employee’s regular rate of pay based on their normally scheduled hours of work. Importantly, there is a cap where paid leave may not exceed $200 per day and $10,000 in the aggregate per employee.

The regulations also offered calculations on regularly scheduled hours and what to do when hours vary. The regulations address regularly scheduled hours as follows:

1. If the eligible employee has a normal work schedule, regularly scheduled hours are the number of hours the employee is normally scheduled to work on that workday;

2. If the eligible employee has a work schedule that varies to an extent that an employer is unable to determine the number of hours the eligible employee would have worked on a day leave is taken, and has been employed for at least six months, the regularly scheduled hours are the average number of hours the employee was scheduled to work each workday over the six-month period ending on the date on which the employee first takes EFMLA (including leave of any type); or

3. If the eligible employee has a work schedule that varies to such an extent that an employer is unable to determine the number of hours the employee would have worked on the day for which leave is taken, and the employee has been employed for fewer than six months, the average number of hours the employee and the employer agreed to at the time of hiring that the employee would work each workday. If there was no agreement, the scheduled number of hours is equal to the average number of hours per workday that the eligible employee was scheduled to work over the entire period of employment (including leave of any type).
EFMLA and other FMLA Leave Interaction and Entitlement

The regulations also confirm prior guidance indicating that where an employee has already taken some of their 12 week FMLA leave entitlement in the current twelve-month leave year, the maximum twelve weeks of EFMLA leave is reduced by the amount of the FMLA leave already taken in that year. If an employee has exhausted his or her twelve workweeks of FMLA or EFMLA leave, he or she may still take EPSLA leave for a COVID-19 qualifying reason. Importantly, eligibility requirements for employees to take EFMLA differ from standard FMLA leave (12 months of employment and 1,250 hours worked) so not all employees who are eligible to take EFMLA will be eligible or have had the opportunity to take FMLA leave for other reasons. Employer coverage also differs under the EFMLA and the FMLA in that EFMLA applies to all employers with fewer than 500 employees, while the FMLA generally does not apply to employers with fewer than 50 employees.

Another significant difference between FMLA and EFMLA is that the EFMLA entitlement does not reset with the standard twelve-month FMLA leave year. Employees are limited to a total of twelve weeks of expanded family and medical leave under the EFMLA, even if the applicable time period (April 1 to December 31, 2020) spans two twelve-month leave periods as an employer defines under the FMLA.

Lastly, if an employee’s prior use of EPSL did not overlap with EFMLA, the first two weeks of EFMLA may be unpaid. For example, if an employee takes two weeks of paid sick leave for a qualifying reason under EPSLA section (1)–(3), the employee has exhausted available EPSL and may not take additional EPSL for any remaining qualifying reason. If the employee then needs to take leave under the EFMLA, the employee may do so, but the first two weeks will be unpaid.

Use of other PTO

As noted above, it is the intent of the FFCRA that EPSL reason for leave (4) (leave for a school closure or where childcare is not available) provide partial wage replacement during the first two week of EFMLA leave provided for this same purpose. EPSL and EFMLA will run concurrently for this overlap. As explained below, and somewhat surprisingly, employers can also require use of PTO concurrently to top off wages to 100%.

Under longstanding FMLA principles, employers may only require the use of PTO or other paid leave during FMLA leave that is completely unpaid. For unpaid FMLA leave an employer can require that employees use PTO or other paid leave concurrently. If, however, during FMLA leave an employee also receives benefits, in any amount, from another source, the FMLA leave is not unpaid and employers cannot require the use of other PTO. *The EFMLA regulations do not follow this rule and employers may require use of PTO concurrently with EPSL and EFMLA to bring wages from 2/3 to 100% of pay.* Thus, an employee may elect to use, or an employer may require an employee to use, accrued leave that under the employer’s policies would be available to care for a child concurrently with FFCRA paid leave to reach 100% of pay.

Alliant note: Employers may want to require employees top of wages using existing PTO to possible shorten the duration of leave. Leave entitlements can stretch when employees take statutory leave and then follow that up with time off from a vacation or PTO policy.

Notice and Documentation

Employees must provide employers notice of their need to take EFMLA as soon as practicable. It is reasonable for an employer to require notice after the first work day is missed (absent extenuating circumstances). Oral or written notice is acceptable and employers cannot require documentation beyond what is described below. Where employees fail to provide proper notice, employers should notify the employee and give them an opportunity to provide notice and documentation before denying leave.

Documentation must include a signed statement containing the following information to take EFMLA to care for a child: (1) the name of the child being cared for; (2) the name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons; and (3) a statement representing that no other suitable person is available to care for the child during the period of requested leave.
Employers are not required to use existing FMLA certification forms (or processes) for EFMLA, but may use practices they have in place. This includes notices of eligibility, rights and responsibilities, or written leave designations. For leave taken under the FMLA for an employee’s own serious health condition related to COVID-19, or to care for a family member with a serious health condition related to COVID-19, all normal FMLA certification requirements still apply.

**Job Protection or Restoration**

The regulations confirm that upon return from EFMLA an employee has a right to be restored to the same or an equivalent position. However, EFMLA does not protect employees from employment actions, such as layoffs, that would have affected the employee regardless of whether he or she took EFMLA. Employers that deny restoration must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested.

EFMLA includes another job restoration caveat. Specifically, employment restoration requirements will not apply to EFMLA for employers with fewer than 25 employees if the position held by the employee does not exist due to economic conditions or changes in the operations of the employer. Also, job restoration can be denied to key employees as has always been the case under the FMLA.

*Alliant note: The fewer than 25 employee threshold does not seem to add to the existing rule that FMLA does not protect employees from employment actions, such as layoffs, that would have affected the employee regardless of whether he or she took leave. Clarification would be welcome.*

**Common EPSL EFMLA Provisions**

**Covered Employers and Who to Count for the Fewer than 500 Employee Threshold**

Both EPSL and EFMLA leaves apply to all private employers that employ fewer than 500 employees. The regulations clarify several important aspects of determining this threshold.

First, the determination is based on the number of employees at the time an employee would take leave. For example, if an employer has 450 employees on April 20, 2020, and an employee is unable to work starting on that date because a health care provider has advised that employee to self-quarantine because of concerns related to COVID-19, the employer must provide paid sick leave to that employee. If, however, the employer hires 75 new employees between April 21, 2020, and August 3, 2020, so that the employer employs 525 employees as of August 3, 2020, the employer would not be required to provide paid sick leave to a different employee who is unable to work for the same reason beginning on August 3, 2020.

Next, the regulations confirm which employees to count. Employers must count all full-time and part-time employees, employees on leave, temporary employees who are jointly employed by the employer and another employer, and day laborers supplied by a temporary placement agency. Independent contractors do not count towards the 500-employee threshold, nor do employees who have been laid off or furloughed and have not subsequently been reemployed. Furthermore, employees must be employed within the United States, a U.S. Territory, or the District of Columbia.

The regulations do provide some clarification on applying the joint employer and integrated employer tests. The application of those tests, however, remains difficult because they are both fact specific and require a nuanced analysis. The regulations explain that joint or integrated employers must combine employees in determining the number of employees they employ for this purpose. The FLSA’s test for joint employer status applies in determining who is a joint employer for purposes of coverage, and the FMLA’s test for integrated employer status applies in determining who is an integrated employer, under both EPSL and EFMLA. In sum, both sets of rules establish when one employer may need to count employees they share. The definition of employer also includes successors in interest (generally where one entity acquires another and largely continues or maintains its prior business operations).
Alliant note: Under joint employer rules, an employer will typically count additional employees that it shares with another employer either through a shared work arrangement with related entities or where two entities have employment obligations to a single employee (e.g. staffing arrangements). The integrated employer test more broadly looks at whether two related entities must each count all of the employees of the other entity based on the degree of shared connectivity and control. These determinations require careful analysis by employment law counsel.

Small Employers
Under the regulations, employers with fewer than 50 employees are exempt from the requirement to provide both EPSL and EFMLA when: (1) leave would cause the small employer’s expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity; (2) the absence of the employee or employees requesting such leave would pose a substantial risk to the financial health or operational capacity of the small employer because of their specialized skills, knowledge of the business, or responsibilities; or (3) the small employer cannot find enough other workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the employee or employees requesting leave provide, and these labor or services are needed for the small employer to operate at a minimal capacity. The employer may deny EPSL and EFMLA only to those otherwise eligible employees whose absence would cause conditions in items (1) through (3) above. Employers should retain documentation supporting its determination for at least four years.

Intermittent Leave
The regulations make several important clarifications regarding the use of intermittent leave for both EPSL and EFMLA. One basic condition applies to all employees who want to take leave intermittently—they and their employer must agree (by clear and mutual understanding). The agreement must extend to the increments of time in which leave may be taken. Absent agreement, no leave under the FFCRA may be taken intermittently. A written agreement is not required but may be a best practice under certain circumstances. Next, telework allows for intermittent leave if agreed to, however, if performing work at a work site leave can be taken intermittently only for school closures or where childcare is not available as a result of the COVID-19 crisis (EPFML and EPSL qualifying reason (5)). Any other requested use of intermittent leave under EPSL is prohibited due to the unacceptably high risk that the employee might spread COVID-19 to other employees at a worksite. Only the amount of leave actually taken may be counted toward the employee’s leave entitlements.

Clarification on Son or Daughter Definition and Use of Leave
Under the regulations, both EPSL and EFMLA will now use the same definition of son or daughter as provided in existing FMLA regulations. Specifically, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence. This eliminates the narrower definition in the FFCRA applicable to EFMLA that limited the age of a son or daughter to under 18 regardless of whether the individual is incapable of self-care.

The regulations also clarify that leave is only available when the employee needs to, and actually is, caring for his or her child. Generally, an employee does not need to take such leave if another suitable individual (e.g., a co-parent, co-guardian, or the usual child care provider) is available to provide care for the child.

Telework Clarification
The DOL is waiving application of the continuous workday rule to teleworking for COVID-19 related reasons because the FFCRA encourages employers and employees to implement highly flexible telework arrangements. The continuous workday rule generally provides that all time between performance of the first and last principal work activities is compensable work time. With this limited waiver, an employee may
agree with an employer to perform telework for COVID-19 related reasons from 7-9 a.m., 12:30-3 p.m., and 7-9 p.m. on weekdays. Following this example, an employer must compensate the employee for 7.5 hours actually worked but not all 14 hours between the employee’s first principal activity at 7 a.m. and last at 9 p.m. This is designed to allow an employee to help teach children whose school is closed or otherwise work at times when there are fewer distractions.

An employee is able to telework if: (a) the employer has work for the employee to perform; (b) the employer permits the employee to perform that work from the location where the employee is quarantined or isolated; and (c) there are no extenuating circumstances that prevent the employee from working.

**There must be Available Work**

DOL has explicitly confirmed its prior guidance, and hopefully ended any remaining confusion regarding the ability of employees whose hours have been reduced or have been furloughed, that EPSL and EFMLA are only available if employees are unable to work *even though their employers have work for them*. For example, if a coffee shop closes temporarily or indefinitely due to a downturn in business related to COVID-19, it would no longer have any work for its employees. A cashier previously employed at the coffee shop who is subject to a stay-at-home order (EPSL example) or who needs to care for a child whose school has closed (EFMLA example) would not be able to work regardless of the stay-at-home order or school closure. State unemployment insurance provisions would apply instead of EPSL or EFMLA.

An important corollary to this clarification is that employees cannot take either EPSL or EFMLA if their employer has work for them that they can safely do while complying with a stay-at-home order (EPSL example) or while caring for a child whose school has closed (EFMLA example).

**Exemption for Health Care Providers or Emergency Responders**

The FFCRA allows employers to exclude employees who are health care providers or emergency responders from leave requirements under both the EPSLA and EFMLA. This exemption does not affect the use of any other accrued leave health care providers or emergency responders may have.

The DOL used the definition of health care provider from existing FMLA regulations as a starting point, but exercised its authority to expand the definition to include any individual who is capable of providing health care services necessary to combat the COVID-19 crisis. For purposes of this exclusion, DOL defined “health care provider” to include anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity (including any permanent or temporary institution, facility, location, or site where medical services are provided). This includes any individual employed by an entity that contracts with any of these institutions to provide services or to maintain the operation of the facility and anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.

Similarly, for purposes of this exclusion, DOL defined “emergency responder” broadly to include anyone necessary for the provision of transport, care, healthcare, comfort, and nutrition of such patients, or others needed for the response to COVID-19. This includes 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, child welfare workers and service providers, 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.
**Benefits Continuation**

Both EPSL and EFMLA require continuation of group health plan benefits (as defined under FMLA) during leave on the same terms (and cost) as active employees. Generally, employees do not lose eligibility for group health plan coverage when they take a limited amount of PTO or other paid sick leave. DOL confirms the application of this principle to EPSL.

The FMLA, and now EFMLA, also require continuation of group health plan coverage. Under both EPSL and EFMLA leaves, the employee’s share of premiums must be paid by the method normally used during any paid leave, which will generally be through payroll deductions. For unpaid leave, or where the pay provided by EFMLA or EPSL is insufficient to cover the employee’s premiums, the rule on payment of premiums refers back to existing FMLA practices (pay in advance on agreement, pay post tax as you go, or pay on return by agreement). Paying post tax as you go is a strong recommendation.

The regulations also address voluntary benefits, which can be facilitated by an employer but are not part of its group health plan. DOL provides that maintenance of individual health insurance policies purchased by an employee, is the responsibility of the employee.

Employees on ESPL or EFMLA leave must be given notice of any benefits changes during leave and an opportunity to respond accordingly. If an employee chooses not to retain group health plan coverage while taking EPSL or EFMLA, the employee is entitled upon returning from leave to have benefits reinstated on the same terms as prior to taking the leave.

**Recordkeeping Requirements and Required Posting**

All records regarding any aspect of EPSL and EFMLA must be retained for at least four years. Record retention will be critical to the receipt of any tax credits. For more information on EPSL and EFMLA tax credits, including forms and documentation, see Alert 2020-10.

The FFCRA also implemented a required workplace posting. In addition to posting the notice in a conspicuous place where employees or job applicants at a worksite may view it, an employer may distribute the notice to employees by e-mail or post the required notice electronically on an employee information website. An employer may also directly mail the required notice to any employees who are not able to access information at the worksite, through e-mail, or online. (See Alert 2020-07 DOL Releases FFCRA Poster and FAQs on Posting.) Multilingual versions are not required, but a Spanish version is available.

**Multiemployer Plans Option**

The regulations confirm existing guidance with respect to compliance options for multiemployer plans. Specifically, an employer that is a signatory to a multiemployer collective bargaining agreement may satisfy its obligations under both the EFMLA and the EPSLA by making contributions to a multiemployer fund, plan, or other program consistent with its bargaining obligations and its collective bargaining agreement. The contributions must be based on the amount of paid sick leave and expanded family and medical leave to which the employee is entitled under the applicable provisions of the FFCRA based on each employee’s work under the multiemployer collective bargaining agreement. The fund, plan, or other program must allow employees to obtain their pay for the leave to which they are entitled under the FFCRA. Alternatively, an employer that is part of a multiemployer collective bargaining agreement may choose to satisfy its obligations under the FFCRA by any other means consistent with its collective bargaining agreement.

**Conclusion**

We will continue to monitor this very fluid situation and provide the latest information on the COVID-19 pandemic, including emerging legal challenges and practical recommendations. Our full suite of resources is available on Alliant’s COVID-19 Resource Page.
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**Mar 30**
- 10:00am Randalynn Hovland Commission Meeting (Teams)
- 1:00pm Randalynn Hovland MODIFIED COMMISSION

**Apr 1**
- 1:00pm WPUDA April Association Meetings - Judy (TBD)

**Apr 2**
- 8:00am WPUDA April Association Meetings - Judy (TBD)
- 8:00am Energy Northwest Executive Board Meeting & Board of Directors Meeting (Tri-Cities, WA)

**Apr 3**
- 2:00pm Moss Adams Audit Discussion (Laurie to call Tom) - Commission Meetings

**Apr 12**
- 8:00am WPUDA April Association Meetings - Judy (TBD)

**Apr 19**
- 10:00am Randalynn Hovland Commission Meeting (Teams Meeting - info included in text below) - Randalynn

**Apr 26**
- 10:00am Randalynn Hovland Commission Meeting (Teams Meeting - info included in text below) - Randalynn
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<td>10:00am Concert Crowd Management</td>
<td>9:00am Shannon Lowry South RV Park HOA</td>
<td>10:00am Randalynn Hovland Commission</td>
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<td>9:00am Shannon Lowry North RV Park HOA Annual Meeting (NRVP Common Area) - Shannon Lowry</td>
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<td>1:00pm Randalynn Hovland HOLD - Industrial Site Tour (tbd) - Randalynn Hovland</td>
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<td>12:00pm Moses Lake Rotary Community Outreach (Pillar Rock, Moses Lake) - Commission Meetings</td>
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<td>10:00am Port of Moses Lake Community Outreach (7810 Andrews St NE Ste 200, Moses Lake, WA 98837) - Commission</td>
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<td>8:00am Energy Northwest Executive Board Meeting &amp; Board of Directors Meeting (Portland, OR)</td>
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