

MINUTES
Cheshire County Commissioners Meeting
Wednesday, March 31, 2020

Pursuant to Emergency Order #12
Pursuant to Executive Order 2020-04
This meeting will be conducted electronically.

Zoom Call-in Number: +1 646 558 8656
Meeting ID: 409 748 8803

Present: Commissioners: Chuck Weed, Jack Wozmak and Robert Englund (Charles Weed absent w/notice)

Staff: County Administrator Coates, Director of Finance Trombly, HR Director May, Assistant County Administrator Bouchard.

Guests:

At 9:09AM Commissioner Weed opened the meeting and Administrator Coates asked the Commissioners to review the following document:

The Commissioners asked a number of questions concerning the childcare coverage aspect of the document. A discussion of the cost and availability of childcare began.

It as learned that the Counties are being left out of the payroll reimbursement program under the Coronavirus Relief Fund because on Counties with populations above 500,000 residents can qualify. It was discussed that well over \$1B could be realized by the State when the funds are distributed.

Commissioner Englund moved to accept the motion and was seconded and upon rollcall vote the motion passed unanimously.

Coates then asked that an employee fund be created to allow the Administrator to compensate essential workers for childcare and possibly other costs when needed in order to continue to allow them to work. Commissioner Weed made a motion to approve the motion and Commissioner Wozmak seconded the motion. Discussion of who the funds would be used for were covered. He said that Department of Corrections, Nursing Home, Sheriff's Department, Dispatcher who are in 24X7 operations would be considered in the essential category. It was then decided that because of the extreme complexity of the administration of such fund no decision would be immediately made by the Commissioners.

A discussion of obtaining more Personal Protection Equipment for the staff was then discussed.

Commissioner Wozmak then asked about the status of the Tax Anticipated Note (TAN) and Trombly then provided a quick update and said that the money isn't needed until the beginning of May. A further discussion about municipal bond funding began and the urgency should be raised to ensure that the County can fund operations through the end of the year.

MINUTES
Cheshire County Commissioners Meeting
Wednesday, March 31, 2020

Pursuant to Emergency Order #12
Pursuant to Executive Order 2020-04
This meeting will be conducted electronically.

Zoom Call-in Number: +1 646 558 8656
Meeting ID: 409 748 8803

MEMORANDUM

To:	Board of Commissioners	From:	Chris Coates
		Date:	03-31-2020
Re:	Families First Coronavirus Response Act		

On March 18, 2020 President Trump signed into law **The Families First Coronavirus Response Act** (herein FFCRA) which takes effect Wednesday, April 1, 2020.

The FFCRA requires *certain employers* to provide their employees with Emergency Paid Sick Leave and Public Health Emergency Leave under temporary expansion of the Family and Medical Leave Act (FMLA) for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

Certain employers as defined in the FFCRA are all private sector employers with fewer than 500 employees overall and all non-federal public sector employers, regardless of the number of employees. As such, *the FFCRA applies to Cheshire County*. Please note, Cheshire County (Board of Commissioners) may elect to exclude an employee who is a *healthcare provider* or an *emergency responder* from the Emergency Paid Sick Leave and Public Health Emergency Leave provisions of the FFCRA, subject to future regulations which will be discussed towards the end of the memorandum.

Below is a very brief summary of each coverage and criteria related to the FFCRA which impacts Cheshire County.

Emergency Paid Sick Leave

Under the Emergency Paid Sick Leave provision of the FFCRA, Cheshire County must provide all full time and part time employees, regardless of the length of their employment (i.e., probationary employees) with up to eighty (80) hours of paid emergency sick leave for an absence related to COVID-19 if they are unable to work for any of the following reasons: (prorated for employees who work less than 40 hours)

1. The employee is subject to a COVID-19 related federal, state, or local quarantine or isolation order.
2. The employee's healthcare provider has advised the employee to self-quarantine due to COVID-19 related concerns.
3. The employee experiences COVID-19 symptoms and is seeking a medical diagnosis.
4. The employee is caring for a person who is subject to a federal, state or local quarantine or isolation order, or who has been advised by his/her healthcare provider to self-quarantine due to concerns related to COVID-19.

MINUTES
Cheshire County Commissioners Meeting
Wednesday, March 31, 2020

Pursuant to Emergency Order #12
Pursuant to Executive Order 2020-04
This meeting will be conducted electronically.

Zoom Call-in Number: +1 646 558 8656
Meeting ID: 409 748 8803

5. The employee is caring for the employee's son or daughter (as those terms are defined in the FMLA) if the son or daughter's school/place of care has been closed, or the son/daughter's child care provider is unable, due to COVID-19 precautions.
6. The employee is experiencing any substantially similar condition that has been specified by the U.S. Secretary of Health and Human Services.

The above Emergency Paid Sick Leave is available immediately; effective April 1, 2020, and no accrual rates or accrual waiting periods apply. It is not retroactive. Cheshire County may not require employees to use other types of paid sick leave that Cheshire County already provides before the employee uses Emergency Paid Sick Leave pursuant to the Act. Also, Cheshire County may not require the employee who needs Emergency Paid Sick Leave to find a replacement worker when the employee takes such a leave.

It is important to note, the following criteria apply to the Emergency Paid Sick Leave:

- Emergency Paid Sick Leave is to be paid at the employee's regular rate, with a cap of;
 - \$511 per day and \$5,110 in the aggregate for the types of leaves outlined in Nos. 1, 2 and 3 above.
- Emergency Paid Sick Leave is to be paid at the employee's two-thirds (2/3) regular rate of pay, with a cap of:
 - \$200 per day and \$2,000 in the aggregate for the types of leaves outline in Nos. 4, 5 and 6 above.
- Because this leave is expected to sunset at the end of 2020, unused Emergency Paid Sick Leave does not carry over to the next calendar year.
- Cheshire County is not required to pay Emergency Paid Sick Leave if an employee separates from employment with the County.
- After the first workday (or a portion of the first workday) that an employee receives Emergency Paid Sick Leave under the Act, Cheshire County may require the employee to follow reasonable notice procedures in order for the employee to continue to receive Emergency Paid Sick Leave.

Public Health Emergency Leave

Under the Public Health Emergency Leave provision of the FFRCA, FMLA is amended to include additional protections related to an employee's inability to work as a result of the COVID-19 public health emergency. Cheshire County must now allow an employee to take paid Public Health Emergency Leave *if they are unable to work/telework* due to a need to care for the minor child for the following:

MINUTES
Cheshire County Commissioners Meeting
Wednesday, March 31, 2020

**Pursuant to Emergency Order #12
Pursuant to Executive Order 2020-04
This meeting will be conducted electronically.**

Zoom Call-in Number: +1 646 558 8656
Meeting ID: 409 748 8803

1. to care for the employee's son or daughter (who is under 18 years of age) if the child's elementary school or secondary school has been closed due to a "public health emergency"; or
2. if child care is unavailable if the childcare provider has been closed due to a "public health emergency"

For purposes of the FFCRA, a "public health emergency" is an emergency declared by a federal, state or local authority regarding COVID-19. An employee who needs to take Public Health Emergency Leave must provide the employer with notice of leave "as is practicable." In contrast to the existing forms of FMLA leave which require an employee to have been employed for 12 (twelve) months, this Public Health Emergency Leave is available to all employees who have been employed for at least 30 calendar days.

It is important to note, the following criteria apply to the paid Public Health Emergency Leave:

- The first ten (10) days of this leave may be unpaid; however, the employee is allowed to use accrued paid leave during this period.
- The rate of pay for this leave is two-thirds (2/3) the employee's regular rate of pay.
- The cap on the pay is \$200 per day and \$12,000 in the aggregate.
- A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Which employees can Cheshire County exempt from the FFRCA?

The FFCRA is *generally* applicable to all public sector employees; employees are entitled to Emergency Paid Sick Leave and Public Health Emergency Leave if they work for a public agency or other unit of government. However there are exceptions which are noted below. "*Health care providers*" and "*emergency responders*" may be excluded by their employer from being able to take Emergency Paid Sick Leave and Public Health Emergency Leave.

For the purposes of the FFCRA, *a health care provider is 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. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.*

This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide serves or to maintain the operation of the facility. This also includes anyone employed by any entity that provides

MINUTES
Cheshire County Commissioners Meeting
Wednesday, March 31, 2020

**Pursuant to Emergency Order #12
Pursuant to Executive Order 2020-04
This meeting will be conducted electronically.**

Zoom Call-in Number: +1 646 558 8656
Meeting ID: 409 748 8803

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.

For the purposes of the FFCRA, *an emergency responder is anyone who is necessary for the provision of transport, care, health care, comfort and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and person with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.*

To minimize the spread of the virus associated with COVID-19, the United States Department of Labor encourages employers to be judicious when using this definition to exempt health care providers and emergency responders from the provision of the FFCRA.

For Cheshire County the Board of Commissioners may exempt the Nursing Home, Department of Corrections, Sheriff's Office from Emergency Paid Sick Leave and Public Health Emergency Leave.

You have previously been presented with a draft policy for your review and consideration. The policy as drafted would not exclude ANY Full time or Part Time employee from Emergency Paid Sick leave. However it would exclude all Nursing Home employees, Department of Correction Medical and Correctional Officer staff and Sheriff's Department. In addition to making arrangements for telework for many of our staff that are not excluded I have also worked with the City of Keene to identify licensed child care at the YMCA that specifically has been created ONLY for these essential workers.
How the FFCRA can be reimbursed to employers?

Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the FFCRA for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

It is important to note that as of the date of this memorandum, the dollar-for-dollar reimbursement through tax credits are not available to public sector employers, thus Cheshire

MINUTES
Cheshire County Commissioners Meeting
Wednesday, March 31, 2020

Pursuant to Emergency Order #12
Pursuant to Executive Order 2020-04
This meeting will be conducted electronically.

Zoom Call-in Number: +1 646 558 8656
Meeting ID: 409 748 8803

County does not qualify for reimbursement. The National Association of Counties (NACO) is looking to include the counties so they can take advantage of the dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA.

Penalties and Enforcement of the FFCRA

Employers in violation of the first two weeks' Emergency Paid Sick Leave or unlawful termination provisions of the FFCRA will be subject to penalties and enforcement described in Section 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions of the Public Health Emergency Leave are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the FFCRA takes effect, so long as the employer has acted reasonably and in good faith to comply with the FFCRA. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the FFCRA in the future. The Act expressly prohibits retaliation. An employer cannot discharge, discipline or discriminate against any employee who takes Paid Sick Leave or Public Health Emergency Leave or who engages in other protected activity relating to the leaves required under the Act.

If you have any questions on the above, please do not hesitate to contact me.
Respectfully,

Chris Coates
County Administrator

At 09:57AM there being no further public business to discuss, Commissioner Wozmak moved to adjourn the meeting and was seconded by Commissioner Weed and upon vote the motion passed unanimously.

Minutes recorded by:
R. Bouchard, Assistant County Administrator

Reviewed and submitted by:
R. Englund, Clerk