

# NONPROFIT NEW YORK

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## Nonprofit COVID-19 Policy Roundup

As of March 26, 2020

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### FEDERAL

#### Families First Coronavirus Response Act

Congress passed the [Families First Coronavirus Response Act](#) passed March 18th and will take effect April 1. The Department of Labor issued [preliminary guidance and FAQs](#) this week, and the National Council of Nonprofits created a [summary](#). The Act makes COVID-19 testing mandatory and free, expands paid sick leave and family medical leave, new emergency unemployment insurance stabilization provisions, unemployment insurance funding, and reimbursements to employers, including nonprofits.

#### *Reimbursements for sick leave and family medical leave*

- Refundable tax credit equal to the amount of qualified paid sick leave paid by the employer per quarter; \$511/day for some qualifying reasons, \$200/day for others
- Applied against social security taxes, but reimbursed if amount exceeds taxes owed

#### *Employer categories*

- Sick leave: 1 - 499 employees, any employee (full and part time)
- Family leave: 1 - 499 employees; 12 weeks; first 10 days must be unpaid;  $\frac{2}{3}$  regular rate; \$200/day cap; \$10,000/employee cap

#### *Exemptions*

- Certain healthcare providers
- Businesses with less than 50 employees can be exempted by the Secretary of Labor

#### *Timelines*

Employers must post a notice regarding the requirements of the law. The Secretary of Labor is required to make a model notice publicly available no later than 7 days after enactment of the new law. Businesses will have 15 days to comply following enactment on April 1, and the bill ends December 31, 2020.

## Federal CARE Act (Pending)

In a vote of 96-0, the United States Senate passed the **Coronavirus Aid, Relief, and Economic Security Act (CARES Act)** ([S. 748](#)) on March 25th, providing significant funding for businesses, hospitals, schools, social support programs, and nonprofits. **The House of Representatives is expected to pass the bill by the end of the week.** We are grateful to the [National Council of Nonprofits](#) for their tireless updates and analysis of the 1,000 page bill.

### Emergency Small Business Loans (emergency SBA 7(a) loans)

Provides roughly \$350 billion in funding for special emergency loans of up to \$10 million for nonprofits with 500 or fewer employees (both full and part time) and small businesses, permitting them to cover costs of payroll, operations, and debt service, and provides that the loans be forgiven in whole or in part under certain circumstances. **Title I, Section 1102.**

The final bill **does not include** a provision in earlier drafts that would have disqualified nonprofits that are eligible for payments under Title XIX of the Social Security Act (Medicaid). Nonprofit New York is grateful to Senators Schumer and Gillibrand for removing this provision which would disqualify many vital front-line nonprofits.

*Loan Use:* Loan funds could be used to make payroll and associated costs, including health insurance premiums, facilities costs, and debt service.

*Loan Forgiveness:* Employers that maintain employment between March 1 and June 30 would be eligible to have their loans forgiven, essentially turning the loan into a grant. **Section 1106.**

### Industry Stabilization Fund

Sets aside and creates a \$425 billion loan and loan guarantee program for “eligible business” which is defined as “a United States business that has not otherwise received economic relief in the form of loans or loan guarantees provided under” the legislation. It is expected, but unclear whether charitable nonprofits qualify under that definition for industry stabilization loans. **Mid-sized businesses, including nonprofits, that have between 500 and 10,000 employees are eligible for loans** under this provision. There is no loan forgiveness provision, but loans would be charged an interest rate no higher than two percent and would not accrue interest or require repayments for the first six months. **Nonprofits accepting the mid-size business loans must retain at least 90 percent of their staff at full compensation.** Nonprofit New York is grateful to Senators Schumer and Gillibrand for creating relief options for nonprofits with more than 500 employees. **Section 4003.**

### Economic Injury Disaster Loans (EIDL)

Eliminates creditworthiness requirements and appropriates \$10 billion to the EIDL program so eligible nonprofits and other applicants can receive \$10,000 checks within three days. **Section 1110.**

### Employee Retention Payroll Tax Credit

Creates a refundable payroll tax credit of up to \$5,000 for each employee on payroll when certain conditions are met. The organization had to be an ongoing concern at the beginning of 2020 and experience a revenue drop of at least 50 percent in the first quarter compared to the first quarter of 2019. The availability of the credit would continue each quarter until the organization's revenue exceeds 80 percent of the same quarter in 2019. For tax-exempt organizations, the entity's whole operations must be taken into account when determining the decline in revenues. **Employers receiving emergency SBA 7(a) loans would not be eligible for these credits. [Section 2301.](#)**

#### Charitable Giving Incentive

Includes an above-the-line deduction (universal or non-itemizer deduction that applies to all taxpayers) for total charitable contributions of up to \$300. The incentive applies to contributions made in 2020 and would be claimed on tax forms next year. **[Section 2204.](#)** The bill also lifts the existing cap on annual contributions for those who itemize, raising it from 60 percent of adjusted gross income to 100 percent. For corporations, the bill raises the annual limit from 10 percent to 25 percent. Food donations from corporations would be available to 25 percent, up from the current 15 percent cap. **[Section 2205.](#)**

#### Self-Funded Nonprofits and Unemployment

The bill only reimburses self-funded nonprofits for half of the costs of benefits provided to their laid-off employees. This is [explained in a recent blog article](#). **Nonprofit New York will monitor the impact of this provision on New York's nonprofits. [Section 2103](#)**

#### Direct Payments to individuals

Adults will receive \$1,200 or less and \$500 per child (\$3,400 for a family of four) to be sent out in weeks. The amount of the payments phases out based on earnings of between \$75,000 and \$99,000 (\$150,000 and \$198,000 for couples).

#### Expanded Unemployment Insurance

Includes coverage for workers who are furloughed, gig workers, and freelancers. Increases payments by \$600 per week for four months in addition to state unemployment programs. **Nonprofit New York commends the Senate for specifically including gig workers and freelancers.**

#### Amendments to the New Paid Leave Mandates

The bill lowers the amounts that employers must pay for paid sick and family leave under the [Families First Coronavirus Response Act](#) (enacted March 19) to the amounts covered by the refundable payroll tax credit.

#### Small Business Administration [disaster loans](#) extended to nonprofits

SBA announced it is extending disaster relief loans to small businesses, including nonprofits, to help alleviate economic injury caused by COVID-19. Working with state officials, SBA will be offering loans of up to \$2 million through the [Economic Injury Disaster Loan program](#). As SBA explains, "These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of

the disaster's impact. The interest rate is 3.75% for small businesses without credit available elsewhere; businesses with credit available elsewhere are not eligible. The interest rate for non-profits is 2.75%.”

### [Federal OMB instructions](#) on allowing federal agencies to issue exceptions to grant rules

The federal Office of Management and Budget has posted [instructions allowing federal agencies to issue exceptions](#) to the grants rules in the [OMB Uniform Guidance](#) to remove administrative impediments on services necessary to carry out the emergency response related to COVID-19. The Memo ([M-20-11](#)) encourages flexibility in processing renewals of grants, allows looser reimbursement and purchasing standards, and more.

### DHS defers I-9 review requirements

The Department of Homeland Security [announced](#) that it will defer the requirements for employers to review Form I-9 documents in-person with new employees. The change applies to employers and workplaces that are operating completely remotely.

## STATE

### [Moratorium on evictions](#)

New York officials have suspended eviction proceedings indefinitely throughout the state amid the novel coronavirus outbreak, according to a Sunday memo from the state's chief administrative judge.

### [Paid sick leave expansion](#)

On March 17 the Governor and legislative leaders came to an agreement to expand the state's mandatory paid sick leave policy. Employers with 10 or fewer employees and a net income less than \$1 million will provide job protection for the duration of the quarantine order and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.

Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million will provide at least 5 days of paid sick leave, job protection for the duration of the quarantine order, and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.

Employers with 100 or more employees, as well as all public employers (regardless of number of employees), will provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.

The state paid sick leave expansion **does not** include reimbursements for employers.

### [\\$40 million to address the COVID-19 public health crisis](#)

The state legislature passed an emergency bill ([S7919/A9953](#)) in early March providing the Governor authority to issue any directive necessary to respond to a state disaster emergency and \$40 million to address the COVID-19 public health crisis.

### [Existing paid family leave](#)

If an employee has an event that qualifies for leave under both FMLA and Paid Family Leave, and the employer is covered under both laws, the employer can require them to run concurrently. The newly passed paid sick leave expansion provides greater COVID-19 required leave protections.

### [Tax abatements for late filings and penalties](#)

Following the Governor's State of Emergency declaration, the Governor issued an executive order expanding the Tax Commissioner's authority to [abate late filing and payment penalties](#) to allow the Commissioner to abate interest on quarterly sales and use tax filings and remittances with a due date of March 20, 2020 for those who were unable to timely file and pay as result of the COVID-19 virus.

### [State bills to provide loans to small businesses and nonprofits \(\*\*Pending\*\*\)](#)

Two bills were introduced March 24th that, if passed, would provide loans to nonprofits and small businesses. [A10208](#) (Buchwald) **would establish** the coronavirus pandemic small business and not-for-profit organization loan program and be eligible for nonprofits with up to 100 employees. [A10212](#) (Otis)/[S02520C](#)(Harckham) would establish the state of emergency small business and not-for-profit organization loan program, eligible for nonprofits with up to 50 employees. **These bills have not passed.**

## **CITY**

### [Mayor's Office Guidance for Contracted Health and Human Services Providers](#)

The Mayor's Office of Contract Services (MOCS) has issued a number of guidance and letters for contracted human service providers. In a [letter](#) on March 20th, the City issued a letter on streamlining business compliance that allows for digital signatures, waives notary requirements, and extending proposal due dates. On March 18, MOCS released [guidance](#) that designated the human service contract workforce as essential, and committed to paying on City contracts with human services organizations who work with their contracting agencies to develop a plan.

**The City has not issued the same commitment to DCLA or DOE contracted providers.**

## [NYC employee retention grant program, applicable for nonprofits](#)

The City is offering small businesses with fewer than 5 employees a grant to cover 40% of payroll costs for two months to help retain employees.

## [Existing paid sick leave](#)

Under New York City's Paid Safe and Sick Leave Law, employers with five or more employees who work more than 80 hours per calendar year in New York City must provide paid safe and sick leave to employees. Employers with fewer than five employees must provide unpaid safe and sick leave. Accrual of safe and sick leave is at a rate of one hour of leave for every 30 hours worked, up to 40 hours per calendar year, and begins on the employee's first day of employment. Employees can begin using accrued leave 120 days after their first day of work. For those employers who do not frontload safe and sick leave on the first day of a new calendar year, employees must be permitted to carry over up to 40 hours of unused safe and sick leave from one calendar year to the new calendar year.

## [City Council \\$12 billion relief plan](#)

On March 19th the City Council proposed a [\\$12 billion relief plan](#) to help New York City businesses and workers impacted by the Coronavirus/COVID-19 pandemic. The multi-pronged proposal includes a temporary universal basic income for all New Yorkers, temporarily deferring fees and refunding business taxes, and up to \$250,000 to cover fixed costs for impacted businesses. It also includes unemployment protections for those who have had their hours cut, gig economy and freelance workers.

**This proposal has not been introduced as a bill.**