

## LEGAL GUIDANCE ON COVID-19

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**This document provides guidance for public bodies related to the current COVID-19 related public health emergency and the laws and declarations associated with it. The guidance is specifically focused on Public Employees – Classification and Emergency Leave, the Public Bid Law, the Local Government Budget Act, Open Meetings Law, and other emergency related guidance for public entities.**

**This guidance is based on the LLA's Legal section's interpretation of the various COVID-19 related laws and proclamations. Further questions may be directed to 225.339.3871. However, this guidance is not a substitute for legal advice. No actions should be taken by a public entity without consultation with their attorney and/or the Attorney General.**

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## I. **Federal Acts**

### A. **The FFCRA**

On March 18, 2020, the U.S. Congress passed and the President signed the Families First Coronavirus Response Act (FFCRA). This new law goes into effect on April 1, 2020, and it will remain in effect until December 31, 2020. The FFCRA includes many provisions, including free coronavirus testing, food assistance and medical services' budget increases. It also includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. These two acts provides for broad changes for employers regarding paid sick leave, paid family and medical leave along with tax credits for the paid leave, and an expansion of unemployment insurance.

### B. **The CARES Act**

On March 27, 2020, the U.S. Congress passed and the President signed the “Coronavirus Aid, Relief, and Economic Security Act” — the “CARES Act.” The Act:

- Creates the Coronavirus Relief Fund, which allocates \$150 billion to state and local governments nationwide to assist in expenses associated with the COVID-19 outbreak. Louisiana will receive \$1.8 billion in funds, with the State then allocating 45% to local governments and retaining the remaining 55%. See [Q.67](#).
- Provides various forgivable loans and other loan programs for small and mid-sized businesses, but attaches conditions designed to encourage businesses to retain employee or re-hire laid off employees (the “Payroll Protection Program”);
- Extends and increases benefit levels for unemployment insurance payments, and makes unemployment insurance payments available to sole proprietors, independent contractors and workers with limited employment histories; and
- Makes certain clarifying changes to the Families First Coronavirus Response Act regarding the availability of paid sick leave for rehired employees (i.e., employees who were laid off by an employer after March 1, 2020, and then re-hired, may have access to paid family and medical leave in certain instances).
- Provides the CDC with an additional \$4.3 billion, available until September 30, 2024. (As noted below in Part C, previous federal action—enactment of CPRSAA—provided the CDC with \$2.2 billion.) About one-third of the additional CDC funding (\$1.5 billion) is for grants to and cooperative agreements with states, localities, tribes, and territories. Louisiana, through the Louisiana Department of Health (LDH), will receive at least \$8.6 million from the CDC pursuant to the CARES Act grant.

### C. Coronavirus Preparedness and Response Supplemental Appropriations Act

On March 6, 2020, the U.S. Congress passed and the President signed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123) (CPRSAA). The bill provides \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. Of the \$8.3 billion, \$6.7 billion (81%) is designated for the domestic response and \$1.6 billion (19%) for the international response. Key highlights are below.

#### Domestic Efforts:

Of the \$6.7 billion designated for the domestic response:

- The majority (\$6.2 billion) is for the Department of Health and Human Services (HHS) including:
  - \$3.4 billion for the Office of the Secretary – Public Health and Social Services Emergency Fund (PHSSEF), which includes more than \$2 billion for the Biomedical Advanced Research and Development Authority (BARDA) (for the research and development of vaccines, therapeutics, and diagnostics), \$300 million in contingency funding for the purchase of vaccines, therapeutics, and diagnostics to be used if deemed necessary by the Secretary of HHS, and \$100 million for the Health Resources and Services Administration (HRSA) for grants under the Health Center Program, which aims to improve health care to people who are geographically isolated and economically or medically vulnerable.
  - \$1.9 billion for the Centers for Disease Control and Prevention (CDC), which includes \$950 million for state and local response efforts, of which \$475 million must be allocated within 30 days of the enactment of the bill, and \$300 million for the replenishment of the Infectious Diseases Rapid Response Reserve Fund, which supports U.S. efforts to respond to an infectious disease emergency. Louisiana, through LDH, will receive at least \$7.8 million from the CDC pursuant to this CPRSAA grant.
  - \$836 million for the National Institute of Allergy and Infectious Diseases (NIAID), which conducts research on therapies, vaccines, diagnostics, and other health technologies, at the National Institutes of Health (NIH).
  - \$61 million for the Food and Drug Administration (FDA) for the development and review of vaccines, therapeutics, medical devices and countermeasures, address potential supply chain interruptions, and support enforcement of counterfeit products.

- \$20 million is for the Small Business Administration (SBA) disaster loans program to support SBA's administration of loan subsidies that will be made available to entities financially impacted as a result of the coronavirus.
- The bill also includes a waiver removing restrictions on Medicare providers allowing them to offer telehealth services to beneficiaries regardless of whether the beneficiary is in a rural community, at an estimated cost of \$500 million.

International Efforts:

Of the \$1.6 billion designated for the international response:

The majority, \$986 million, is provided to the United States Agency for International Development (USAID) including funding provided through:

- \$435 million for the Global Health Programs (GHP) account to support health systems responding to the coronavirus outbreak overseas.
- \$300 million for the International Disaster Assistance (IDA) account to support humanitarian assistance needs resulting from the coronavirus outbreak.
- \$250 million for the Economic Support Fund (ESF) account to support economic, security and stabilization efforts resulting from the coronavirus outbreak
- \$1 million for the Office of the Inspector General (OIG) for oversight of coronavirus response activities.

The State Department receives \$264 million to support consular operations, emergency evacuations, and other needs at U.S. embassies.

\$300 million is provided to CDC to support global disease detection and emergency response efforts.

Expenditure Period:

The bill specified that funding could be disbursed over a multi-year period, although the periods vary by agency and account. For instance, Congress specified funding provided through the CDC "to remain available until September 30, 2022," funding provided through the FDA "to remain available until expended," and funding provided through NIAID "to remain available until September 30, 2024."

## II. **Presidential Declarations**

### A. **National Emergencies Act Declaration and Stafford Act Declaration**

On March 13, 2020, President Trump announced a national emergency in response to the coronavirus outbreak. The announcement includes two types of emergency declarations: one under the National Emergencies Act (NEA) and one under the Stafford Disaster Relief and Emergency Assistance Act.

The NEA declaration marks the beginning of the national emergency as March 1, 2020. This declaration does the following:

- Empowers the Secretary of Health and Human Services (HHS) to exercise authority under Section 1135 of the Social Security Act (SSA) to waive or modify certain requirements of Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the emergency. These waivers will loosen restrictions on telehealth usage and certain requirements for hospitals and healthcare providers so they can better respond to the crisis.
- Requires the Secretary of HHS to provide advanced written notice of the waiver to Congress as required by the SSA. This notice must include a description of the specific provisions that will be waived, the health care providers to whom the waiver will apply, the relevant geographic area, and the period of time for which the waiver or modification will be in effect. The proclamation states that its directives are consistent with the SSA's requirements.
- It clarifies that nothing in the proclamation should impair or otherwise affect executive branch authority or the functions of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. It also states that it does not create any substantive or procedural right or benefit enforceable by law.

The Stafford Act Declaration

- Section 501(b) of the Stafford Act grants the president authority to declare a national emergency. Once an emergency is declared, the act allows state governments and tribal authorities to request disaster assistance from the federal government.
- In its March 13, 2020 letter to the director of the Federal Emergency Management Agency (FEMA) and the secretaries of the Department of Homeland Security, Department of the Treasury, and the Department of Health and Human Services, the White House outlines the legal basis for its emergency declaration in response to COVID-19. The letter states that the federal government has the power to respond to a pandemic that began abroad under its authority to regulate interstate matters and foreign commerce and to conduct foreign relations—citing 42 U.S.C.

§ 264, which concerns regulations to control communicable diseases, as an example of that authority. In addition, the letter states, the federal government is responsible for securing the nation's borders and controlling the entry of foreign nationals.

### **B. Major Disaster Declaration for Louisiana**

On March 24, 2020, the President approved Governor Edwards' request for a major disaster declaration in Louisiana. With this approval, federal emergency aid has been made available for the State of Louisiana to supplement the State, tribes and local recovery efforts in the areas affected by the COVID-19 pandemic beginning on January 20, 2020, and continuing.

Federal funding is now available to state, tribal, and eligible local governments and certain private nonprofit organizations on a cost-sharing basis for emergency protective measures, including direct federal assistance under Public Assistance, for all areas affected by COVID-19, at a federal cost share of 75 percent.

George A. Robinson has been named as the Federal Coordinating Officer for federal recovery operations in the affected area. Additional designations may be made at a later date if requested by the State and warranted by the results of further assessments.

## **III. Governor's Proclamations**

Louisiana Governor John Bel Edwards has signed several Proclamations related to COVID-19. Following is each with a brief summary and date signed:

1. [JBE 2020-25](#) (March 11, 2020) – declares a public health emergency related to COVID-19; empowers the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) and the Secretary of the Louisiana Department of Health (LDH) to take all actions necessary; provides for suspension of certain provisions of the State Procurement Code and Public Bid Law requirements for the procurement of services or supplies needed for the public health emergency; imposes travel restrictions for State employees; and implements the laws against price gouging.
2. [JBE 2020-27](#) (March 13, 2020) – provides additional measures related to COVID-19; limits public gatherings of 250 people or more; closes all public schools until April 13, 2020; suspends deadlines for administrative hearings; suspends fees and other licensing requirements of the Office of Motor Vehicles; authorizes State departments or agencies and political subdivisions the authority to extend non-essential deadlines for up to 30 days, if necessary; requests the Legislature to consider a suspension resolution for the suspension of certain legal requirements; prohibits any charitable gaming activities from March 13, 2020 through April 12, 2020; and suspends certain provisions of laws related to unemployment insurance.

3. [JBE 2020-28](#) (March 13, 2020) – reschedules elections, including absentee and early voting periods, due to COVID-19; reschedules the April 4, 2020 Presidential primary election to June 20, 2020; and reschedules the May 9, 2020 elections to July 25, 2020. Provides that the deadline for calling of special elections and proposition elections for the April 4, 2020 election and the May 9, 2020 election shall not be extended.
4. [JBE 2020-29](#) (March 14, 2020) – provides additional measures related to COVID-19; suspends certain provisions regarding the limit of hours operators of commercial vehicles may drive; provides for out of state health care providers to operate within the state; suspends certain fees of the Office of Vital Statistics; and suspends certain laws related to unemployment insurance.
5. [JBE 2020-30](#) (March 16, 2020) – provides additional measures to slow the spread of COVID-19 and to ensure uninterrupted supply chains; limits public gatherings of 50 people or more until April 13, 2020; closes all casinos, video poker establishments, movie theaters, bars, bowling alleys and fitness centers/gyms statewide; limits all food establishments to delivery or carry out service only statewide; provides for the participation in public meetings by telephone or teleconference; suspends certain legal deadlines; and suspends certain provisions of the State Procurement Code and Public Bid Law.
6. [JBE 2020-32](#) (March 19, 2020) -- waives some education requirements in the law; further suspends certain provisions of the Public Bid Law; authorizes the use of telehealth; and suspends some laboratory requirements to speed the process of coronavirus testing, among other things.
7. [JBE 2020-33](#) (March 22, 2020) – provides for a statewide Stay at Home order to slow the spread of COVID-19 beginning March 23, 2020 until April 13, 2020, except for essentials such as food or medical services; limits public gathers of 10 people or more until April 13, 2020. The provisions of the order do not apply to airports, medical facilities, office buildings, manufacturing facilities, or grocery stores; closes places of amusement, museums, malls, hair and nail salons, massage parlors and tattoo shops. Provides for the closure of all State office buildings to the public, except that essential State functions shall continue.
8. [JBE 2020-37](#) (March 26, 2020) – provides additional measures for COVID-19 response in Louisiana, including provisions related to first responders, law enforcement and granting emergency authority to the insurance commissioner. Provides for issues concerning notary publics during the COVID-19 Emergency.
9. [JBE 2020-38](#) (March 31, 2020) -- eases medical licensure laws to make it easier for health care professionals out of state to come to Louisiana to practice during the COVID-19 outbreak and directs funerals to occur as expeditiously as possible with limitations on attendance.



10. [JBE 2020-41](#) (April 2, 2020) -- extends Stay at Home order until April 30, 2020 to slow the spread of COVID-19, which extends the length of time that schools and some businesses are closed and continues limits on the size of gatherings; continues suspension of certain provisions of Public Bid Law; and extends closure of State office buildings to the public, except that essential State functions shall continue.
11. [JBE 2020-43](#) (April 7, 2020) -- provides for the renewal of the waiver of certain provisions of law related to unemployment and workers' compensation (See [JBE 2020-27](#) and [JBE 2020-29](#)), extends the suspension of legal deadlines to April 30, 2020 and also deems health care workers and first responders who work for the state as essential for purposes of the exclusion from Emergency Paid Sick Leave Act and Emergency FMLA Expansion Act under the federal Families First Coronavirus Response Act.
12. [JBE 2020-46](#) (April 14, 2020) – provides for the rescheduling of elections due to COVID-19. The presidential primary election is rescheduled from June 20, 2020 to July 11, 2020; the July 25, 2020 election is reschedule to August 15, 2020; early voting and deadlines to request absentee ballots are also rescheduled.
13. [JBE 2020-52](#) (April 30, 2020) – extends Louisiana's Stay at Home order until May 15, 2020, as the state continues to slow the spread of COVID-19 to meet the White House threshold criteria for reopening the State's economy. Businesses that previously were directed to be closed will remain closed, including salons, barber shops, bars and casinos. Businesses that are deemed essential under the third phase of federal CISA guidance will still be open. Non-essential retail and other businesses in Louisiana continue to be able to open with no more than 10 people total inside, including employees and customers. Noteworthy changes in the order include: (1) Malls will remain closed to the public, but stores may open for curbside delivery; (2) Restaurants will be allowed to open their outside areas for patrons to eat meals only, without tableside service; and (3) All employees of a business who have contact with the public must wear a mask or face covering.
14. [JBE 2020-58](#) (May 14, 2020) -- formally declares that Louisiana will enter into Phase One of its Roadmap to a Resilient Louisiana on Friday, May 15, when the Stay at Home order will be lifted and more businesses will be allowed to open with strict social distancing, enhanced sanitation and required masks for employees helping the public. **See [Q.85](#).**
15. [JBE 2020-59](#) (May 14, 2020) -- extends legal deadlines that had previously been delayed in March. The order also suspends other provisions, including the Public Bid Law, necessary to respond to COVID-19 and extends the provisions for the participation in public meetings by telephone or video conference in [JBE 2020-30](#). These deadlines, including the moratorium on evictions, will continue until June 5. **See [Q.86](#).**
16. [JBE 2020-74](#) (June 4, 2020) -- formally declares that Louisiana will enter into Phase Two of its Roadmap to a Resilient Louisiana on Friday, June 5, 2020. As with Phase One, High Risk individuals are encouraged to stay home during Phase Two and personal hygiene and social distancing requirements, including face coverings, remain the same.

The major changes in Phase Two include allowing churches, places of worship and many more businesses to operate at 50 percent capacity with social distancing, masks for public-facing employees and increased sanitization. In addition, the order strongly recommends that businesses consider offering temperature checks before a person can enter and posting the symptoms of COVID-19 outside with a request that symptomatic individuals not enter. See [Q.87](#).

17. [JBE 2020-75](#) (June 4, 2020) -- outlines extensions of legal deadlines and other administrative matters including extending the provisions for the participation in public meetings by telephone or video conference as set out in JBE 2020-30, as extended in JBE 2020-59. Some Office of Motor Vehicles and other deadlines remain suspended until July 31. Other legal and administrative deadlines are suspended until June 15, including evictions and foreclosure procedures. Legal prescription remains suspended through July 5. See [Q.88](#).
18. [JBE 2020-83](#) (June 25, 2020) – continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, July 24, 2020. The major change with this extension is that indoor gatherings are limited to 250 people. Otherwise, the same guidelines and restrictions outlined in JBE 2020-74 continue to apply.
19. [JBE 2020-84](#) (June 25, 2020) – continues the same extension of legal deadlines and other administrative matters, including the extension of provisions for the participation in public meetings by telephone and video conference as set out in JBE 2020-75.
20. [JBE 2020-89](#) (July 11, 2020) – supplements JBE 2020-83 with a mask/face covering mandate, closure of bars to on premises consumption and limits gathering sizes to no more than 50 people. See [Q.88](#).
21. [JBE 2020-96](#) (July 23, 2020) - continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, August 7, 2020.
22. [JBE 2020-97](#) (July 23, 2020) – continues the same extension of legal deadlines and other administrative matters as set out in JBE 2020-84.
23. [JBE 2020-101](#) (August 6, 2020) – continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, August 28, 2020.
24. [JBE 2020-102](#) (August 6, 2020) – continues the same extension of legal deadlines and administrative matters as set out in JBE 2020-84.
25. [JBE 2020-110](#) (August 26, 2020) – continues Louisiana being in Phase Two of the Roadmap to a Resilient Louisiana until Friday, September 11, 2020.
26. [JBE 2020-111](#) (August 26, 2020) – continues the same extension of legal deadlines and administrative matters as set out in JBE 2020-84, as extended by JBE 2020-102.
27. [JBE 2020-117](#) (September 11, 2020) -- formally declares that Louisiana will enter into Phase Three of its Roadmap to a Resilient Louisiana on Friday, September 11, 2020. High Risk individuals are still encouraged to stay home during Phase Three unless performing essential activities. Personal hygiene and social distancing requirements,



including face coverings, for all individuals remain the same. The major changes in Phase Three include allowing churches, places of worship and many businesses to operate at 75 percent capacity with social distancing, masks for public-facing employees and increased sanitization. Bars may reopen subject to certain restrictions in parishes that do not have high incidence of illness and only if local governments choose to opt in. See [Q.90](#).

28. [JBE 2020-118](#) (September 10, 2020) – renews the same extension of legal deadlines and administrative matters as set out in JBE 2020-111. See [Q.91](#).

## **IV. Questions and Answers**

### **A. Public Employees – Classification and Emergency Leave**

#### **Q.1. May public bodies compensate employees who are unable to work due to COVID-19 related office closures?**

- A.1.** The Attorney General has opined that public entities may compensate employees who are unable to work due to COVID-19 related office closures. See, AG Letter to the Louisiana Legislative Auditor (LLA) dated March 23, 2020. [[Click here](#)]. The Attorney General states that the payment of emergency leave is not gratuitous because of the reciprocal obligations of the parties, as the employees who are unable to work due to COVID-19 office closures must stand ready to return to work when emergency declarations are lifted. The Attorney General also states that the payment of this emergency leave does not relieve employees of their obligation under leave policies their agencies may have in place in regard to compensatory, annual or sick leave.

If you have any questions concerning compensation, these questions should be directed to: 1) your own attorney; 2) the Attorney General; and/or 3) LLA-Legal.

#### **Q.2. What are the rules regarding employee emergency paid sick leave under the Families First Coronavirus Response Act?**

- A.2.** Under the Families First Coronavirus Response Act (HR 6201), which takes effect as of **April 1, 2020**, employers with fewer than 500 employees, and public employers of any size, must provide 80 hours of paid sick leave to full-time employees who are unable to work or telework for specific reasons related to the COVID-19 virus. Additionally, such employers must provide part-time employees with sick leave based on their average hours worked over a two week period. Note that employers are prohibited from requiring employees to find a replacement worker or use other sick time before this sick leave. For more information, see Division E of the [Families First Coronavirus Response Act](#).

#### **Q.3. Can an employee be asked to leave work or stay home if they are showing symptoms of the coronavirus?**

- A.3.** Yes, employers are permitted to request that an employee leave work or stay at home if they show symptoms of the coronavirus. In a recent release from the US Equal

Employment Opportunity Commission (EEOC), the EEOC asserts that the Americans with Disabilities Act (ADA) does not conflict with employers following the advice of the Center for Disease Control (CDC) advising employees who become ill with symptoms of COVID-19 to leave the workplace. The EEOC has indicated that an ADA-covered employer may take the body temperature of employees during the COVID-19 pandemic as a precautionary measure. See What You Should Know About the ADA, the Rehabilitation Act, and COVID-19, March 19, 2020, from the EEOC [here](#).

For procedures regarding State Civil Service employees, please see the [Emergency Civil Service Rules, Chapter 27 - Response to Coronavirus Disease 19 \("COVID-19"\)](#) adopted by the Civil Service Commission on March 18, 2020.

**Q.4. Who are critical infrastructure workers?**

- A.4.** The Department of Homeland Security has issued guidance as to what may be considered the essential critical infrastructure workforce.

While this list is advisory in nature, and not considered to be a Federal law or standard, it provides some direction as to what workers and businesses may be considered critical.

Healthcare and public health workers of various types are described on the list, as well as law enforcement, public safety and first responders. Certain workers in the food and agriculture industry are listed, as well as certain workers in the energy, utility, transportation, communication, information technology, manufacturing, financial services and other related sectors.

More information can be found at the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security: <https://www.cisa.gov/>.

**Q.5. Are public entities entitled to seek reimbursement for paid sick leave and paid FMLA benefits through tax credits provided in the FFCRA?**

- A.5.** No. The provisions of the FFCRA regarding tax credits, specifically Section 7001(e)(4), exclude Federal, State, and local government public employers from receiving the credits. However, this section does apply to private employers and nonprofits and these employers may receive tax credits to cover their costs of providing employees with required paid sick leave and expanded family and medical leave for reasons related to COVID-19, from April 1, 2020, through December 31, 2020. Private employers and nonprofits may receive more information on these tax credits here:

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

**Q.6. Is an employer required to continue health coverage for an employee who is taking emergency paid sick leave or Emergency Expanded FMLA under the Families First Coronavirus Response Act?**

**A.6.** Yes, according to guidance from the U.S. Department of Labor, employees are entitled to continued group health coverage, including any family coverage, during their entitled leave under the FFCRA on the same terms as if they continued to work. The employee is responsible for continuing to make any required normal employee contributions for their health coverage.

**Q.7. May an employer require an employee to supplement or adjust the employee's pay mandated under the FFCRA with paid leave the employee may have accrued under the employer's paid leave policies?**

**A.7.** No, according to guidance from the U.S. Department of Labor, under the FFCRA, only the employee may decide whether to use existing accrued paid leave (i.e. vacation, annual, sick leave) to supplement the amount they receive from emergency paid sick leave or expanded FMLA leave. If the employee agrees to use their accrued paid leave, the accrued paid leave may be used to supplement the pay mandated under the FFCRA.

**Q.8. May an employer provide employees compensation beyond the amounts mandated for emergency paid sick leave and expanded FMLA leave under the FFCRA?**

**A.8.** Yes, an employer by formal policy may provide compensation beyond the amounts mandated by the FFCRA. However, any additional compensation will not be eligible for reimbursement through tax credits provided to employers other than government employers under the FFCRA.

Public employers should work with its legal counsel to ensure that any such formal paid leave policy comports with Article VII, §14 of the Louisiana Constitution and the AG's Guidance on pay during the declared COVID-19 Emergency.

**Q.9. If an employee has already utilized their 12 weeks of FMLA leave for the current 12 month period, may they still receive leave for COVID-19 related reasons?**

**A.9.** According to guidance from the U.S. Department of Labor, eligible employees are still entitled to emergency paid sick leave under the FFCRA, regardless of how much leave they have already taken under the FMLA.

However, for employers and eligible employees that were subject to the FMLA prior to April 1, 2020, the employee's eligibility for expanded FMLA leave under the FFCRA will depend on how much FMLA leave the employee has already taken for the 12 month period utilized by the employer for the purposes of the FMLA.

According to the DOL, the FMLA, including any expanded leave under the FFCRA, continues to be limited to 12 weeks for a 12 month period.

Employers should consult with their legal counsel and HR staff in determining an employee's remaining FMLA leave eligibility.

**Q.10. Are health care workers and first responders eligible for paid sick leave under the federal Emergency Paid Sick Leave Act or the expanded FMLA?**

**A.10.** No. JBE 2020-41 deems health care workers and first responders who work for the state as essential for purposes of the federal Family First Coronavirus Response Act. They are excluded from receiving paid sick leave under the federal Emergency Paid Sick Leave Act or expanded family and medical leave under The Emergency Family and Medical Leave Expansion Act

**Q.11. Do the paid leave provisions in the FFCRA apply to quasi-public non-profits?**

**A.11.** An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

**Q.12. How does the US Department of Labor require unscheduled hours be tracked and compensated when employees are teleworking?**

**A.12.** The U.S. Department of Labor, Wage and Hour Division, (WHD) issued a [Field Assistance Bulletin 2020-5](#) to assist employers' regarding their obligation to properly track compensable work performed by employees teleworking or otherwise working remotely away from the worksite. Even with telework or other remote work schedules, employers are obligated to track hours actually worked by employees, regardless of whether the employees were scheduled to work or not.

The standard rule under the Fair Labor Standards Act (FLSA) that employers are required to pay employees for all hours worked, including work not requested but "suffered or permitted" to be performed ([29 C.F.R. §785.11](#)) is more complex when dealing with flexible or non-traditional schedules, including telework or remote working. However, the employers' obligation remains the same; that is, when the employer has actual or constructive knowledge of additional, unscheduled hours worked by their employees, that work must be compensated. [29 C.F.R. §785.12](#). The employers are required to exercise control, or due diligence, to ensure that work is not performed that they do not want to be performed. [29 C.F.R. §785.13](#).

In [Bulletin 2020-5](#), the WHD notes that one way an employer may exercise due diligence to know the additional hours their employees worked is by providing a "reasonable reporting procedure for non-scheduled time and then compensating employees for all reported hours of work, even hours not requested by the employer." In order to be deemed "reasonable," a time reporting procedure cannot discourage employees from reporting unscheduled hours worked. An employer is not required to undertake further efforts to uncover unreported hours if an employee fails to report unscheduled hours worked through such a reporting procedure.

## **B. Public Bid Law/Emergency Purchasing**

**Q.13. What are the requirements for political subdivisions in documenting disaster-related procurement during the COVID-19 emergency?**

**A.13.** The public entity must ensure that every contract that is negotiated shall be supported by written determination and findings by the public entity justifying the emergency.

If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file.

The file of the public entity must contain:

- A minimum of the description of the work to be performed;
- The name and address of each offeror quoting; and
- The performance time and terms of each offer.

If quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file.

Records must be kept a minimum of 6 years.

For additional information on Emergency Procurement, please see the Section IV Emergencies, of [LLA's Public Bid Law FAQ](#).

**Q.14. Are public bid laws suspended?**

**A.14.** The Louisiana Public Bid Law (La. R.S. 38:2211, et seq.) and its corresponding rules and regulations relating to deadlines for advertisement for bids and public works contracts are suspended for any goods or services necessary to respond to the COVID-19 emergency. See Proclamation Number [JBE 2020-32](#), March 19, 2020 as extended by [JBE 2020-52](#) (April 30, 2020) [JBE 2020-59](#) (May 14, 2020) [JBE 2020-75](#) (June 4, 2020), [JBE 2020-84](#) (June 25, 2020), [JBE 2020-97](#) (July 23, 2020), [JBE 2020-102](#) (August 6, 2020), and [JBE 2020-111](#) (August 26, 2020).

**Q.15. How can an entity ensure it follows the proper procedures for FEMA reimbursement?**

**A.15.** To be eligible for FEMA reimbursement, an entity must follow the Procurement Standards for Disasters on or after December 26, 2014 found at 2 CFR Part 200 §200.317 – 200.326. Important aspects of these standards include:

2 CFR 200.319 requires

- Full and open competition
- Geographical preferences are not favored, unless Federal Law provides for one, or in the case of A/E services
- Written selection procedures identifying all requirements that offerors must fulfill
- Ensure all pre-qualified lists of persons, firms or products are current and include enough qualified sources to ensure maximum open and free competition
- FEMA considers “piggybacking” contracts non-competitive.

2 CFR 200.320 has significant conflicts with state small purchase thresholds and procedures

- 2 CFR 200.320(a) provides a threshold for micro-purchases of \$10,000, unless specified to another amount under 48 CFR 2.101
  - Must distribute equitably among qualified suppliers
  - Awarded without soliciting competitive quotations if the price is reasonable

- 2 CFR 200.320(b) provides a threshold of less than \$250,000 (or current Simplified Acquisition Threshold as defined in 48 CFR 2.101) for small purchases
  - Price quotes from adequate number of qualified sources
  - Must document

For more information regarding compliance with Federal FEMA guidelines please contact Louisiana GOHSEP at <https://gohsep.la.gov/> or go to the FEMA website here:

<https://www.fema.gov/media-library/assets/documents/111781>

### **C. Local Government Budget Act**

**Q.16.** Is a political subdivision required to amend its budget in order to expend State or Federal funds obtained to respond to the Covid-19 emergency?

**A.16.** Yes, the AG has opined that the political subdivision must amend its budget to appropriate these additional funds in order to expend them. See [AG Op. No. 10-0232](#).

**Q.17.** Is a political subdivision still required to adopt a budget during this emergency period?

**A.17.** Yes, the requirements for a political subdivision to adopt its budget have not been suspended.

**Q.18.** What if a political subdivision is unable to adopt its budget?

**A.18.** The political subdivision will continue to operate on 50% of its last adopted budget, as finally amended. See [R.S. 39:1312](#).

Political subdivisions operating under a Home-Rule Charter should also consult their charter's provisions. See [AG Op. No. 14-0024](#).

**Q.19.** Are FEMA funds considered revenue for budgeting purpose?

**A.19.** FEMA funds are not treated differently from other revenue for budgeting purposes and should be included in a political subdivision's annual budget even if only shown as an estimated amount. If the receipt of FEMA funds after the budget has been adopted results in a political subdivision having a change in operations, the budget must be amended to reflect receipt of the funds [AG Op. No. 10-0232](#).



## D. Open Meetings Law

### **Q.20. May public bodies hold meetings via teleconference or video conference during the COVID-19 public health emergency?**

**A.20.** Normally, the Open Meetings Law does not allow a member to attend a meeting remotely via teleconference or video conference. On March 16, 2020, however, the Governor issued Proclamation No. [JBE 2020-30](#), which provides that attendance at essential governmental meetings may be via teleconference or video conference during the pendency of the COVID-19 emergency for all state agencies, boards, commissions and local political subdivisions of the State. On May 14, 2020, these provisions were extended by [JBE 2020-59](#) for Phase 1 of the State's re-opening and again on June 4, 2020, by [JBE 2020-75](#) for Phase 2 of the State's re-opening.

See also Attorney General Memorandum of March 19, 2020 [[Click here](#)]

During the 2020 Regular Session, the Legislature enacted R.S. 42:17.1, which creates an exception to the Open Meetings Law when the governor declares a state of emergency when certain exceptions are met. See [Act 302 of the 2020 Regular Session](#).

R.S. 42:17.1 provides that a public body may conduct and its members may attend and participate in a meeting via electronic means (telephone or video conference) provided *all* of the following occur:

- (1) The governor has declared a state of emergency or disaster involving a geographic area within the jurisdiction of the public body and the nature of the emergency or disaster would cause a meeting of the public body conducted pursuant to the open meetings law to be detrimental to the health, safety, or welfare of the public.
- (2) The presiding officer of the public body certifies on the notice of the meeting that the agenda of the meeting is limited to one or more of the following items:
  - (a) A matter directly related to the public body's response to the disaster or emergency and which is critical to the health, safety, or welfare of the public.
  - (b) A matter that, if they are delayed, will cause curtailment of vital public services or severe economic dislocation and hardship.
  - (c) A matter that is critical to continuation of the business of the public body and that is not able to be postponed due to a legal requirement or other deadline that cannot be postponed or delayed by the public body.
- (3) No later than 24 hours prior to a meeting conducted under new law, the public body shall provide for all of the following:



(a) The notice and agenda for the meeting shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

(b) Detailed information regarding how members of the public may participate in the meeting and submit comments regarding matters on the agenda, which information shall be posted on the website of the public body, emailed to any member of the public or the news media who requests notice of meetings of the public body, and widely distributed to every known news media outlet that broadcasts or publishes news within the geographic area within the jurisdiction of the public body.

The telephone or video conference meeting under this exception must be conducted as follows:

- (1) The public body shall provide a mechanism to receive public comment electronically both prior to and during the meeting.
- (2) The public body shall properly identify and acknowledge all public comments during the meeting and shall maintain those comments in its record of the meeting.
- (3) The presiding officer of the public body shall ensure that each person participating in the meeting is properly identified.
- (4) The presiding officer shall ensure that all parts of the meeting, excluding any matter discussed in executive session, are clear and audible to all participants in the meeting including the public.

**Q.21. Are there any special notice requirements for meetings held via teleconference or video conference?**

**A.21.** Yes, a public body that does hold a meeting via teleconference or video conference shall provide written certification, signed by the agency head or chief executive officer, that the public body was otherwise unable to operate due to quorum requirements of [R.S. 42:19](#). All public bodies shall post this notice in the same time, manner and place as they would a normal agenda pursuant to [R.S. 42:19](#).

Sample language that a public entity may use for this written certification is as follows:

**Certification of Inability to Operate Due to Lack of Quorum**

In accordance with R.S. 42:17.1 this notice shall serve as certification of the [public entity's] inability to otherwise operate in accordance with the Louisiana Open Meetings Law due to such a meeting being detrimental to the health, safety, and/or welfare of the public as a result of the public health emergency, as declared by Governor John Bel Edwards on March 11, 2020 by JBE 2020-25.

The [public entity] will provide for attendance at its essential government meeting on [date] via [video or telephone] conference because it is unable to obtain a quorum. It is essential that the [public entity] continue to operate because [state reason].

Considering the foregoing, and in accordance with R.S. 42:17:1 and JBE 2020-25, the [public entity's] meeting on [date] at [time] will be held via [video or telephone] conference and in a manner that will allow for observation and input by members of the public, as set forth in the notice posted on [date].

The meeting may be observed at [meeting access information]. Members of the public may submit public comment on an agenda item by sending an email to [email address] or leaving a voicemail at [phone number] no later than [time] on [date]. All public comments will be properly identified and acknowledged during the meeting.

Certified this \_\_\_ day of \_\_\_\_, 2020

\_\_\_\_\_  
Signature of Agency Head/  
Chief Executive Officer

**Q.22. Are the quorum requirements of La. R.S. 42:19 applicable?**

**A.22.** Yes, the quorum requirements for a public body to convene a meeting are still applicable.

**Q.23. Are public bodies still required to keep minutes?**

**A.23.** Yes, public bodies are still required to keep minutes and make them available to the public within a reasonable time pursuant to [R.S. 42:20](#).

**Q.24. Do the public comment requirements change during an emergency?**

**A.24.** No, the provisions of [R.S. 42:14](#) that require public bodies to allow a public comment period before acting on an agenda item upon which a vote is to be taken are still applicable. School boards are additionally required to have a public comment period preceding each agenda item.

However, the Attorney General Guidance linked above [[Q.19.](#)] provides guidance on reasonable rules and restrictions that are allowed regarding such public comment periods. These reasonable rules and restrictions may include (1) limiting the amount of time for each speaker; (2) limiting the number of people in a meeting room to comply with Public Health Emergency Proclamation Number [JBE 2020-30](#) or guidance from the Centers for Disease Control and Prevention; or (3) establishing procedures to receive public comments via video, email, facsimile, telephone or other means for a certain period preceding the meeting and having an administrator read the comments to the members during the public comment period of the meeting. This will serve to adhere to the public comment requirement in [R.S. 42:14](#), and allow interested persons to socially distance themselves while still having a mechanism to participate.

**[Q.25.](#) Does the method of canceling a public meeting change during an emergency?**

**A.25.** No. The cancellation of a meeting is done in the usual manner, even during an emergency.

**[E. Donations and Suspension of Collections](#)**

**[Q.26.](#) Can a political subdivision donate the use of its equipment or personnel to another political subdivision in order to address the COVID-19 emergency?**

**A.26.** Yes, political subdivisions by written agreement, such as a Cooperative Endeavor Agreement (CEA), can allow for the donated use of their equipment or personnel to another political subdivision.

Authority for this is found in [Article VII, Section 14\(B\)\(14\)](#), which provides:

**(B) Authorized Uses. Nothing in this Section shall prevent. . .  
(14) pursuant to a written agreement, the donation of the use of public equipment and personnel by a political subdivision upon request to another political subdivision for an activity or function the requesting political subdivision is authorized to exercise.**

See also [R.S 33:4712.18](#).

For additional information on CEAs, please see the [LLA's Guidance on Cooperative Endeavor Agreements](#). This document includes discussions on Article VII, Section 14, various AG opinions discussing its application, and a sample CEA.

**[Q.27.](#) Can a public entity suspend cutting off municipal utilities for non-payment during the COVID-19 emergency? Can the public entity forgive any unpaid utility bills?**

**A.27.** Yes, it appears that the public entity can formally suspend cutting off utilities during the COVID-19 emergency. See Governor Edwards' Emergency Proclamation [JBE 2020-30](#),

as extended by [JBE 2020-43](#), [JBE 2020-52](#), [JBE 2020-59](#) and [JBE 2020-75](#) which provides for suspension of all legal deadlines.

The public entity may not waive or otherwise forgive unpaid utility bills, as this would violate Article VII, Section 14 of the Louisiana Constitution. However, the public entity can formally suspend any late fees during the emergency.

**Q.28. Can a privately owned utility company suspend cutting off municipal utilities for non-payment during the COVID-19 emergency?**

**A.28.** Yes, all privately-owned utilities subject to oversight by the Public Service Commission are prohibited from cutting off services to customers for non-payment pursuant to the [PSC's Executive Order issued on March 13, 2020](#).

All other privately-owned utilities may by resolution of its board suspend cutting off services to customers for non-payment.

**Q.29. May the utility company and/or public entity enter into a repayment plan with users for the deferred/missed utility payments?**

**A.29.** Yes, the provisions in Governor Edwards' Emergency Proclamation [JBE 2020-30](#) as extended by [JBE 2020-43](#), [JBE 2020-52](#), [JBE 2020-59](#) and [JBE 2020-75](#), allows suspension of the collection of utilities, but the public entity may not waive or otherwise forgive unpaid utility bills. Therefore, a written repayment plan may be implemented by the utility company and/or public entity for its utility customers. Any repayment plan should be crafted to provide for full repayment within a reasonable amount of time. The repayment plan should also provide for disconnection of utilities for non-payment following conclusion of the COVID-19 emergency.

**F. Assessments and Ad Valorem Taxes**

**Q.30. What impact will the COVID-19 emergency have on the 2020 Assessments?**

**A.30.** All questions regarding the 2020 assessments should be directed to the Parish Assessor or to the Louisiana Tax Commission (LTC).

**Q.31. What impact will the COVID-19 emergency have on payment of ad valorem taxes?**

**A.31.** All questions regarding the payment of ad valorem taxes should be directed to the taxing authority (the city, Parish, etc.).

## **G. Audit, Income Tax and Legal Deadlines**

### **Q.32. Are government or quasi-public agencies still required to submit their annual financial report by the regular statutory deadline?**

**A.32.** If a government or quasi-public agency cannot meet its deadline due to Covid-19 related delays, the agency may submit a disaster extension request through the LLA online portal at <https://www.lla.la.gov/local-government-entities/extension-request-form/index.shtml>. The LLA will accept disaster extension requests no earlier than one month before the statutory deadline. That is, please do not submit an extension request until June 1 for a June 30 deadline.

### **Q.33. If a quasi-public entity receives an SBA loan under the CARES Act and uses those funds to retain or re-hire employees, which under the provisions of the Act makes the loan forgivable, are those funds considered public funds for audit purposes? Must the quasi-public entity include the proceeds from an SBA loan under the CARES Act in determining its appropriate level of financial reporting under the Audit Law?**

**A.33.** No. The SBA loan funds, unless co-mingled with public funds, remain private funds even if the loan becomes forgivable under the terms of the Act. As private funds, these funds should be excluded in determining the quasi-public entity's required level of financial reporting under the Audit Law.

### **Q.34. Have the deadlines for State and Federal taxes been extended for individuals?**

**A.34.** Yes. The deadline for both income tax filings and payments has been pushed back from April 15, 2020 (Federal) and May 15, 2020 (State), until July 15, 2020.

On July 15, 2020, the State Department of Revenue issued Information Bulletin No. 20-014 extending the State deadline further to July 17, 2020. This extension was due to technical issues with the Department of Revenue's website that occurred on July 15, 2020.

### **Q.35. Have legal deadlines been extended?**

**A.35.** Yes, all legal deadlines have been suspended until June 15, 2020. See Proclamation No. [JBE 2020-41](#) as extended by [JBE 2020-52](#) [JBE 2020-59](#) and [JBE 2020-75](#).

Liberative prescriptive and preemptive periods applicable to legal proceedings, as well as tax legal proceedings, and legal proceedings of administrative agencies and boards, are suspended until July 5, 2020.

**Q.36. Does the legal deadline suspension extend to Public Records Requests?**

**A.36.** Yes, the Attorney General has opined that the suspension of legal deadlines by the Governor in [JBE 2020-30](#) includes deadlines in the Public Records Act. See <https://www.ag.state.la.us/Article/9745>

**H. Ethics**

**Q.37. How does the Code of Governmental Ethics apply to contracting during the COVID-19 emergency?**

**A.37.** Questions regarding the Code of Governmental Ethics and its application should be directed to the Louisiana Board of Ethics. [www.ethics.la.gov](http://www.ethics.la.gov)

**Q.38. Has the May 15th deadline for submitting Personal Financial Disclosure (PFD) forms to the Louisiana Board of Ethics been extended?**

**A.38.** No. The Louisiana Board of Ethics has advised that all 2019 PFD are due by May 15, 2020, in accord with R.S. 42:1124, et seq. If the official has not filed their taxes by May 15, 2020, they can leave that portion on the first page of the report unchecked. It will not be considered a “red” flag if a person files the report by May 15th and has not checked on of the boxes on the cover page.

If this changes, the Board of Ethics will post a notice on their website at <http://www.ethics.la.gov/>.

**I. Quasi-Public Qualification for the Payroll Protection Program**

**Q.39. What is the Payroll Protection Program?**

**A.39.** The CARES Act allocates \$350 billion for the Small Business Administration (SBA) to establish the Payroll Protection Program (PPP), which is designed to provide a direct incentive for small businesses to keep their workers on the payroll. Under the PPP, businesses can receive loans up to \$10 million per business. These loans become forgivable if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

**Q.40. What entities are eligible to participate in the Payroll Protection Program?**

**A.40.** The following entities affected by Coronavirus (COVID-19) may be eligible:

- Any small business concern that meets SBA’s size standards (either the industry based sized standard or the alternative size standard)

- Any business, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or Tribal business concern (sec. 31(b)(2)(C) of the Small Business Act) that meets the SBA size requirements;
- Any business with a NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs less than 500 per location; and
- Sole proprietors, independent contractors, and self-employed persons.

**Q.41. Are state and local governments eligible to receive SBA loans under the PPP?**

**A.41.** No. The PPP program does not apply to state and local government entities. However, certain quasi-public 501(c)(3) entities may be eligible.

**Q.42. What are the terms and conditions of the SBA loans under the PPP and are they forgivable?**

**A.42.** SBA loans under the PPP will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities.

No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease

Initially, the loans required that at least 75% of the forgiven amount must have been used for payroll; however, on June 5, 2020, PPP was amended by the PPP Flexibility Act, which now requires that at least 60% of the forgiven amount must have been used for payroll.

As amended, this loan has a maturity of 5 years and an interest rate of 1%. Borrowers now have 24 weeks to spend the loan proceeds instead of the original 8 weeks. This means borrowers have until December 31, 2020 to restore their workforce to pre-COVID-19 levels in order to obtain full forgiveness instead of the previous June 30, 2020 deadline.

And loan payments are deferred for six months from the date the borrower is told the amount of their forgiveness. Additionally, borrowers are now eligible to delay paying payroll taxes even if they received PPP loans.

Finally, the Amendment creates two new exceptions that allow borrowers to achieve full forgiveness even if they do not fully restore their workforce. These are in addition to

previous guidance that let companies exclude workers who turned down good-faith offers of re-employment. Borrowers can now also reduce workforce requirements based on the inability to find qualified employees or if they were unable to restore operations to Feb. 15, 2020, levels due to COVID-19 restrictions.

**Q.43. Are faith based organizations eligible to receive loans under the PPP?**

**A.43.** Yes. Faith-based organizations, including houses of worship, are eligible to receive SBA loans under the PPP.

**Q.44. May a CPA engaged to perform the audits and reviews of a quasi-public agency or body under the Audit Law, serve as the entity's "agent" for the purpose of SBA loan applications under the Payroll Protection Program?**

**A.44.** No. The AICPA, in a statement on this issue, has cautioned CPAs that, for assurance clients, being an agent impairs independence.

**Q.45. May quasi-public entities utilize funds obtained under the PPP to cover costs of providing paid leave to employees?**

**A.45.** Generally, yes. PPP loans cover payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified Emergency Paid Sick Leave and Expanded FMLA Leave wages for which a credit is allowed under Sections 7001 and 7003 of the Families First Coronavirus Response Act (FFRCA). Therefore, proceeds from PPP loans may be used to cover paid leave provided to employees other than Emergency Paid Sick Leave and Expanded FMLA Leave provided under the FFCRA.

**Q.46. Does the CARES Act exclude any employees from eligible payroll costs under the PPP?**

**A.46.** Yes. The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000.

This exclusion applies only to cash compensation, not to non-cash benefits such as:

- Employer contributions to defined-benefit or defined-contribution retirement plans;
- Payments for the employee benefits consisting of group health care coverage, including insurance premiums; and
- Payment of state and local taxes assessed on compensation of employees.



**Q.47. Do businesses or nonprofits with adequate sources of liquidity to support ongoing operations qualify for a PPP loan?**

**A.47.** Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers, including nonprofits, should review carefully the required certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

**J. EEOC COVID-19 Related Guidance**

**Q.48. How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?**

**A.48.** During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

**Q.49. When screening employees entering the workplace during this time, may an employer only ask employees about the COVID-19 symptoms EEOC has identified as examples, or may it ask about any symptoms identified by public health authorities as associated with COVID-19?**

**A.49.** As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. These sources may guide employers when choosing questions to ask employees to determine whether they would pose a direct threat to health in the workplace. For example, additional symptoms beyond fever or cough may include new loss of smell or taste as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.

**Q.50. When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?**

**A.50.** Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, this pandemic is considered a "direct threat" as defined by the EEOC. Therefore, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

**Q.51. May an ADA-covered employer send employees home if they display influenza-like symptoms during a pandemic?**

**A.51.** Yes. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to COVID-19 or symptoms associated with it. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat.

**Q.52. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?**

**A.52.** Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

**Q.53. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information?**

**A.53.** The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this confidential information. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

**Q.54. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results?**

**A.54.** Yes. The employer needs to maintain the confidentiality of this information.

**Q.55.** May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19?

A.55. Yes.

**Q.56.** May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?

A.56. Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

**Q.57.** If an employer is hiring, may it screen applicants for symptoms of COVID-19?

A.57. Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability. However, employers should be aware that some people with COVID-19 do not have a fever.

Additionally, an employer may delay the start date of an applicant who has COVID-19 or symptoms associated with it because under CDC guidance such an individual should not be in the workplace.

**Q.58.** May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

A.58. Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore, the employer may withdraw the job offer.

**Q.59.** May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19?

A.59. No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

**Q.60.** When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty?

A.60. Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation.

Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

**Q.61. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?**

**A.61.** The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus. Please note: the EEOC's guidance doesn't shed any light on the legality of businesses using antibody tests.

Based on guidance from medical and public health authorities, even if employees are tested, employers should still require - to the greatest extent possible - that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

**Q.62. May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic?**

**A.62.** No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than *de minimis* cost" to the operation of the employer's business, which is a lower standard than under the ADA)

**Q.63. If a job may only be performed at the workplace, are there reasonable accommodations for individuals with disabilities absent undue hardship that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19?**

**A.63.** There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

**Q.64. As government stay-at-home orders and other restrictions are modified or lifted in your area, how will employers know what steps they can take consistent with the ADA to screen employees for COVID-19 when entering the workplace?**

**A.64.** The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity. Inquiries and reliable medical exams meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety.

Direct threat is to be determined based on the best available objective medical evidence. The guidance from CDC or other public health authorities is such evidence. Therefore, employers will be acting consistent with the ADA as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time.

For example, this may include continuing to take temperatures and asking questions about symptoms (or require self-reporting) of all those entering the workplace. Similarly, the CDC recently posted information on return by certain types of critical workers.

Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

**Q.65. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests?**

**A.65.** An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

**Q.66.** Where can employers find more information on EEOC guidelines during a pandemic?

**A.66.** More EEOC guidelines can be found here:

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)  
[https://www.eeoc.gov/laws/guidance/upload/pandemic\\_flu.pdf](https://www.eeoc.gov/laws/guidance/upload/pandemic_flu.pdf)

## **K. Coronavirus Relief Fund Expenses**

**Q.67.** May governments use Coronavirus Relief Fund monies for payroll expenses?

**A.67.** The CARES Act requires that the payments from the Fund only be used to cover expenses that –

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
- (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

**Q.68.** How does a government determine whether payroll expenses for public health or public safety employees satisfy the “substantially dedicated” condition?

**A.68.** On May 4, 2020, the US Department of Treasury issued the following clarification to determine “substantially dedicated:”

“The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.”

**Q.69.** What would qualify as a “substantially different use” for purposes of the Fund eligibility?

**A.69.** Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health

precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty's ordinary responsibilities. Note that a public function does not become a "substantially different use" merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

**Q.70. What are examples of eligible expenses under Coronavirus Relief Fund?**

**A.70.** Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:

- COVID-19-related expenses of public hospitals, clinics, and similar facilities.
- Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
- Costs of providing COVID-19 testing, including serological testing.
- Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
- Expenses for establishing and operating public telemedicine capabilities for COVID-19 related treatment.

2. Public health expenses such as:

- Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
- Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
- Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
- Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
- Expenses for public safety measures undertaken in response to COVID-19.
- Expenses for quarantining individuals.

3. Payroll expenses for public safety, public health, health care, human services, and similar employees are presumed to be substantially dedicated to mitigating or responding to the COVID-19 public health emergency unless the chief executive (or



- equivalent) of the relevant government determines that specific circumstances indicate otherwise.
4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
    - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
    - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
    - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
    - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
    - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
    - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
  5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
    - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
    - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
    - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
  6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

**Q.71. What are ineligible expenses under Coronavirus Relief Fund?**

- A.71.** The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.
1. Expenses for the State share of Medicaid.
  2. Damages covered by insurance.



3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

**Q.72. May funds used for payroll expenses be used to cover an employee's entire payroll cost or just the portion of time spent mitigating or responding to the COVID-19 public health emergency?**

**A.72.** According to US Treasury guidance, as a matter of administrative convenience, the entire payroll cost of an employee whose time is spent substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply fund payments on that basis, but would need to do so consistently within the relevant agency or department.

**Q.73. Is there a specific definition of "hazard pay"?**

**A.73.** Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19. Under the guidance from the US Treasury, funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, *so Fund payments may only be used to cover hazard pay for such individuals.*

**Q.74. May "hazard pay" be granted retroactively?**

**A.74.** Yes. In [AG Op. No. 20-0074](#) the Attorney General opines that an entity may grant its essential critical infrastructure workers/front-line employees retroactive hazard pay for past performance of a quantifiable amount of hazardous work provide the public entity determines that the pay meets the *Cabela's* test. The *Cabela's* test requires that the public entity have the legal authority to make the expenditure of public funds and must show all of the following:

1. A public purpose for the expenditure that comports with the governmental purpose for which the public entity has the legal authority to pursue;
2. That the expenditure, taken as a whole, does not appear to be gratuitous;
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure.

In the specific circumstances involved in that Opinion, the entity determined that its critical care workers would have received hazard pay at the time the work was performed but for budgetary constraints involving the receipt of CARES Act funds. In that case, the Attorney General concludes that payment of the hazard pay would not be gratuitous, as the US Treasury guidelines allow for CARES Act funds to be used for hazard pay.

**Q.75. May funds be used to satisfy the non-federal matching requirement under the Stafford Act?**

**A.75.** Yes. According to US Treasury guidance, state and local governments may use these funds to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19 related costs that otherwise satisfy the Coronavirus Relief Fund's eligibility criteria and the Stafford Act. Please note: FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act. Currently, the non-federal matching share is 25%, but that percentage could change in the future.

**Q.76. May fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?**

**A.76.** Yes. According to US Treasury guidance, non-profits may be used by state and local governments to distribute assistance. State and local governments have discretion in tailoring their assistance programs but the financial assistance must relate to COVID-19.

**Q.77. May recipients use fund payments to remarket the recipient's convention facilities and tourism industry?**

**A.77.** Yes. According to US Treasury guidance, if the costs of such marketing satisfy the requirements of the CARES Act, this is an eligible expenditure. For example, expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to the COVID-19 public health emergency. However, expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would most likely not be incurred due to the public health emergency.

**Q.78. May fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?**

**A.78.** The CARES Act requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As stated in the US Treasury Guidance, a cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. If the cost of an employee was allocated to administrative leave to a greater extent than was

expected, the cost of such administrative leave may be covered using payments from the fund.

**Q.79. What is the Coronavirus Local Recovery Allocation Program (Allocation Program) created by SB189?**

**A.79.** The Legislature created the Allocation Program to assist local government units with Coronavirus Relief Fund eligible expenses as provided in the CARES Act. See Q.70. “Local government units” means parish, municipality, town, township, village or other unit of general government below the State level with parish wide jurisdiction, including, but not limited to, sheriffs, coroners and district attorneys.

Funding for the Allocation Program is \$511,178,704.00.

The Commissioner of Administration is administering the program. Local governments must submit an application for reimbursement for eligible expenses signed by the chief executive certifying that the proposed uses of the funds are consistent with the CARES Act. Within 15 calendar days after receiving the submission, the Commissioner and GOHSEP shall review. If approved, within 5 days thereafter, GOHSEP will disburse funds.

For more information, please contact the Division of Administration here: <https://louisianacares.la.gov/>

**Q.80. What is the Louisiana Main Street Recovery Program (Recovery Program) created by SB 189?**

**A.80.** The Legislature created the Recovery Program to assist “eligible businesses” with Coronavirus Relief Fund eligible expenses as provided in the CARES Act. See Q.70. An “eligible business” is a for profit corporation, a limited liability company, a partnership, or a sole proprietorship that meets the criteria set for in the statute.

Funding for the Recovery Program is \$300Million.

The Treasurer is administering the Recovery Program and must, no later than July 1, 2020, announce the start date of the program.

Eligible businesses may receive grants of up to \$15,000 each under this program. Businesses that have not received other federal assistance or compensation from an insurance company for business interruption will be given a priority in the first 21 days from the start of the program. Thereafter, the needs of other eligible businesses will also be addressed, according to the plan created by the Treasurer, as approved by the JLCB. The Treasurer is to submit that plan to the JLCB for approval no later than June 21, 2020.

Additionally, \$40 Million in grants must go to minority businesses, as defined in the statute, within the first 60 days from the start of the program.

Eligible businesses must submit an application to the Treasurer signed by the chief executive certifying that the proposed use of the grant funds are consistent with the CARES Act. Within 15 calendar days after receiving the submission, the Treasurer shall review. If approved, within 5 days thereafter, funds will be disbursed.

#### **L. Additional Emergency Related Guidance**

**Q.81. Where can information be found on the process for issuance of an emergency declaration for my parish?**

**A.81.** For information concerning issuance of emergency disaster declarations by Parish Presidents, please see the [LLA's Guidance on Emergency Declarations by Parish Presidents](#).

**Q.82. Where can the Governor's emergency proclamations be found?**

**A.82.** The latest proclamations by Governor Edwards can be found [here](#).

**Q.83. Where can additional guidance from the Attorney General on the COVID-19 emergency be found?**

**A.83.** The latest guidance from the Attorney General can be found [here](#).

**Q.84. Is there any additional emergency guidance available for local governments?**

**A.84.** Yes, please see the [LMA's Mayor's Guide to Emergency Management and Disaster Management](#).

**Q.85. Is there any additional accounting guidance available for local governments?**

**A.85.** The Governmental Accounting Standards Board (GASB) launched a portal with an "emergency response toolkit" to help cities and states quickly identify authoritative accounting guidance that could be relevant during the COVID-19 crisis. The toolbox provides rule references for a list of about 20 topics, including on debt extinguishment, disposals of operations, going concern, and mergers between governments.

Please see the GASB announcement [here](#) for more information.

## **M. Reopening “Roadmap to a Resilient Louisiana”**

### **Q.86. What are the provisions of 58-JBE-2020 to move Louisiana into Phase One of “Roadmap to a Resilient Louisiana?”**

**A.86.** 58-JBE-2020, signed on May 14, 2020, formally declares that Louisiana will enter into Phase One of its Roadmap to a Resilient Louisiana on Friday, May 15, when the Stay at Home order will be lifted. The order provides the following:

#### “New Normal” for All People:

- Everyone should wear appropriate face coverings in public except children under 2 and individuals with severe breathing issues
- Everyone should practice good hygiene
  - Wash hands with soap and water for at least 20 seconds; use hand sanitizer if soap and water not available
- Clean high-touch surfaces and high traffic areas frequently
- Avoid touching your face
- Sneeze and cough into tissue, elbow or mask
- Maintain physical distance of at least 6 feet from non-household contacts
- Sick individuals stay home, isolate from household contacts, and contact medical providers

#### Now Open with Limitations (25% occupancy, sanitation, spacing for physical distancing):

- Churches
- Solo and non-contact sports
- Barbers and salons
- Museums, zoos, aquariums (no tactile exhibits)
- Gyms and fitness centers
- In malls, only stores with exterior entrances
- Restaurants, coffee shops and cafes
- Bars and breweries with LDH food permit – takeout, delivery and dine-in seating only
- Theaters
- Casinos and Video Poker
- Racetracks (not open to spectators)

Limiting to 25% of normal occupancy allows for physical distancing. Occupancy capacity is based on both the gross square footage and the use of a building as well as the amount of space required for individuals to stay six feet apart. This occupancy capacity includes customers and employees. For more specific guidance and resources visit: [www.opensafely.la.gov](http://www.opensafely.la.gov)

The following businesses remain closed: massage establishments and spas, tattoo parlors, carnivals, amusement parks, water parks, trampoline parks, arcades, fairs, bars and breweries without LDH food permits, pool halls, bowling alleys, contact sports, children's play centers, playgrounds, theme parks, adult entertainment venues, and other similar businesses.

High-risk individuals are encouraged to stay home during Phase 1

- Individuals 65 years old or older
- Long-term care facility residents
- Vulnerable individuals: immunocompromised OR one or more of the following health conditions with poor control:
  - High blood pressure
  - Diabetes
  - Obesity
  - Chronic kidney disease
  - Heart disease

**Q.87. What are the provisions of 59-JBE-2020 for Phase One of “Roadmap to a Resilient Louisiana?”**

**A.87.** [59-JBE-2020](#), signed on May 14, 2020, provides the following provisions for Phase One:

- Extends legal deadlines that had previously been delayed in March to June 5, 2020.
- Suspends other provisions of law necessary to respond to COVID-19 including:
  - Public Bid Law
  - Procurement
  - Open Meetings Law (attendance by teleconference or videoconference to obtain quorum)
  - DMV and Vital Records fees
- Extends moratorium on evictions until June 5, 2020

**Q.88. What are the provisions of 74-JBE-2020 to move Louisiana into Phase Two of “Roadmap to a Resilient Louisiana?”**

**A.88.** [74-JBE-2020](#), signed on June 4, 2020, formally declares that Louisiana will enter into Phase Two of its Roadmap to a Resilient Louisiana on Friday, June 5. As with Phase One, High Risk Individuals are encouraged to stay home and guidelines regarding social distancing, personal hygiene (including frequent hand washing) and wearing face coverings remains the same. Major changes in Phase Two include allowing churches, places of worship and many more businesses to operate at 50 percent capacity with social distancing, masks for public-facing employees and increased sanitization. In addition, the order strongly recommends that businesses consider offering temperature checks before a person can enter and posting the symptoms of COVID-19 outside with a request that symptomatic individuals not enter.

[83-JBE-2020](#), signed on June 25, 2020, continues Phase Two until July 24, 2020. This new proclamation limits indoor gatherings to 250 people. Otherwise, the same restrictions and guidelines contained in 74-JBE-2020 apply.

[96-JBE-2020](#), signed on July 23, 2020, continues Phase Two until August 7, 2020.

[101-JBE-2020](#), signed on August 6, 2020, continues Phase Two until August 28, 2020

[110-JBE-2020](#), signed on August 26, 2020, continues Phase Two until September 11, 2020.

#### OVERVIEW OF BUSINESSES THAT CAN OPEN:

Businesses that will be able to open at 50 percent occupancy include:

- Restaurants, cafes and coffee shops
- Shopping malls (including food courts, following restaurant guidance)
- Gyms and fitness centers
- Barber and beauty shops and nail salons
- Movie theaters
- Racetracks (not open to spectators)
- Museums (including children's museums), zoos, aquariums (no tactile exhibits)
- Bars and breweries (take out service only per [89 JBE 2020](#) as extended by [96-JBE-2020](#), [101-JBE-2020](#) and [110-JBE-2020](#)).
- Massage establishments, spas, and tattoo establishments (under strict guidance from LDH), esthetician services (under strict guidance from the Cosmetology Board)
- Pool halls, bowling alleys and skating rinks (children must be accompanied by an adult)
- Event Centers and wedding venues
- Outdoor playgrounds and play centers (children must be accompanied by an adult)

Casinos and video poker establishments may open at 50 percent occupancy, but limited to 75 percent of their gaming positions, with spacing to allow for social distancing and with enhanced sanitation. Plans must be submitted to the Gaming Control Board which will issue guidance to these facilities.

No crowds of more than 50 people in any single indoor spaces at one time or outdoor spaces where individuals are in close proximity to one another who are not immediate family members. This crowd size limitation is not applicable to essential businesses.

([89-JBE-2020](#), as extended by [96-JBE-2020](#), [101-JBE-2020](#) and [110-JBE-2020](#))

Arcades and trampoline parks may open under approved plans by the State Fire Marshal, with minors accompanied by parents.

Summer camps were allowed to open with restrictions in Phase One, and additional guidance will be issued. Sleep-away camps are not allowed in Phase Two.



The following businesses remain closed: carnivals, amusement parks, water parks, fairs, contact sports, children's indoor play centers, theme parks, concert and music halls, and other similar businesses. Live entertainment is not permitted inside any building or indoor function.

The Governor encourages businesses that can allow employees to work remotely to consider doing so, especially if an employee is at high risk for becoming seriously ill from COVID-19 or shares a household with a high risk person.

Face Covering Order ([89 JBE 2020](#))

Every individual shall wear a face covering over the nose and mouth when inside a commercial establishment or any other building or space open to the public, whether indoor or outdoor, including public and commercial modes of transportation. This does not apply:

1. When social distancing can be maintained or when the only contact is with immediate family;
2. To any child under the age of 8;
3. Any individual with a medical condition preventing them from wearing a face covering;
4. Any individual consuming food or drink;
5. Any individual communicating with the hearing impaired;
6. Any individual giving a speech for broadcast or to an audience;
7. Any individual temporarily removing face covering for identification purposes.

All businesses or organizations, including all offices of the State, its political subdivisions and all other governmental offices, shall require persons who enter their premises to wear a face covering unless the above exceptions apply or the business is in a parish that has opted out of the face covering requirement.

**Q.89. What are the provisions of 75-JBE-2020 for Phase Two of "Roadmap to a Resilient Louisiana?"**

**A.89.** [75-JBE-2020](#), signed on June 4, 2020, provides the following provisions for Phase Two:

- Extends legal deadlines that had previously been delayed in March to June 15, 2020.
- Liberative prescriptive and preemptive periods applicable to legal proceedings, as well as tax legal proceedings, and legal proceedings of administrative agencies and boards, are suspended until July 5, 2020.
- Suspends other provisions of law necessary to respond to COVID-19 including:
  - Public Bid Law
  - Procurement
  - Open Meetings Law (attendance by teleconference or videoconference to obtain quorum) (See [Q.20.](#))

- Some Office of Motor Vehicles and other deadlines remain suspended until July 31.
- Extends moratorium on evictions until June 15, 2020.

The provisions of [75-JBE-2020](#) were extended by [84-JBE-2020](#), and subsequently by [JBE 2020-97](#), [101-JBE-2020](#) and [110-JBE-2020](#) which is set to expire on September 11, 2020.

**Q.90. What are the provisions of 117-JBE-2020 for Phase Three of “Roadmap to a Resilient Louisiana?”**

**A.90.** [JBE 2020-117](#), signed on September 11, 2020, formally declares that Louisiana will enter into Phase Three of its Roadmap to a Resilient Louisiana on Friday, September 11, 2020. High Risk Individuals are encouraged to stay home unless performing essential activities as follows:

- Obtaining food, medicine, and other similar goods;
- Obtaining medical care and treatment and other similar vital services;
- Going to and from an individual’s workplace;
- Going to and from the home of a family member;
- Going to and from an individual’s place of worship;
- Engaging in outdoor activity, providing individuals maintain a distance of at least six feet from one another.

For all individuals, the guidelines regarding social distancing, personal hygiene (including frequent hand washing) and wearing face coverings remains the same.

Major changes in Phase Three include allowing churches, places of worship and many more businesses to operate at 75 percent capacity with social distancing, masks for public-facing employees and increased sanitization.

In addition, bars may reopen for on-premises consumption in Phase Three but only in certain parishes and only if the parish “opts in.” Parishes with a positivity rate of 5 percent or lower for two consecutive weeks may opt-in to open bars for on premises consumption under the restrictions in the Governor’s order.

This two-week percent positivity will be updated every two weeks by the Louisiana Department of Health (LDH), with the next update scheduled for September 16, 2020.

When re-opened, bars will be able to open at 25 percent capacity, up to 50 people, indoors for customers seated for tableside service. They may have no more than 50 customers outdoors, socially distanced, seated for tableside service. No live music will be allowed. All drinks must be ordered at the table and delivered by bar staff to the table. Sale and service of alcohol at bars, when they reopen, must end at 10 p.m., with all patrons cleared from the building by 11 p.m. When re-opened, no one under the age of 21 is permitted in any bar.

Phase Three also prohibits the sale or service of alcohol for on premises consumption at all establishments, including restaurants and casinos, after 10 p.m.

Nursing home visitation will continue to be prohibited in Phase Three. LDH is working on a pilot program to begin to allow visitation at nursing homes with no new cases for 14 days and in parishes without high numbers of COVID-19. LDH will release details of this pilot program at a later date.

**Q.91. What are the provisions of 118-JBE-2020 for Phase Three of “Roadmap to a Resilient Louisiana?”**

**A.91.** [JBE 2020-118](#), signed on September 10, 2020, renews legal and administrative extensions as provided in 111-JBE-2020 including the suspension of provisions of the Public Bid Law and Procurement Code **when necessary to respond to** the COVID-19 public health emergency.

**N. School Reopening and Virtual Learning Expenses**

**Q.92. Do school boards have the authority to expend funds to provide computers, Internet services and equipment necessary for such services to students within its system who remain home due to the COVID-19 public health emergency?**

**A.92.** In [AG Op. No. 20-0077](#), the Attorney General opines that school boards do have the authority to expend funds to provide computers, Internet services and equipment necessary for such services to students within its system who remain home due to the COVID-19 public health emergency provided the school board is able to demonstrate that the purchase of the equipment and Internet services for its students will deliver a benefit generally commensurate with the expenditure of funds. Additionally, the Attorney General notes that the school system will be required by R.S. 17:100.7 to adopt a policy for the use of equipment and Wi-Fi access in conformity with the statutory requirements and must utilize both device-based and Internet service provider technology that limits the use of the system to educational purposes as described in the statute and that blocks access to harmful materials.

**This guidance is based on the LLA’s Legal section’s interpretation of the various COVID-19 related laws and proclamations. Further questions may be directed to 225.339.3871. However, this guidance is not a substitute for legal advice. No actions should be taken by a public entity without consultation with their attorney and/or the Attorney General.**