

A title card for a webinar series. The background is dark blue with a pattern of light blue virus particles and geometric shapes. The text is white and blue.

CORONAVIRUS
WEEKLY WEBINAR SERIES

 **BOND** SCHOENECK
& KING ATTORNEYS

January 5, 2021

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An introduction slide with a blue and orange header bar. The text is blue and black.

Introduction



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Final Relief Package PPP II



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Relief Package – Final Employment Provisions



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Stimulus Bill – December 2020 Refresher & Update

- **Consolidated Appropriations Act, 2021**
 - Passed December 21, 2020,
 - Signed by President on December 27, 2020



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FFCRA – Paid Sick & EFMLA Leave

- **Paid Sick and Extended Family and Medical Leave**
 - No extension of FFCRA paid sick and EFMLA leave benefits
 - FFCRA Leave benefits ended December 31, 2020
- **Recall:**
 - FFCRA applies to employers with less than 500 employees
 - Private employers
 - Public employers were never able to claim the tax credit (still unable to)



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FFCRA – Paid Sick & EFMLA Leave

- **However**, extension of tax credits for employers voluntarily continuing FFCRA style leave benefits
 - As of January 1, 2020, *covered* employers who voluntarily provide who continue to provide paid sick leave or EFMLA leave under the FFCRA framework may take advantage of the tax credit!
 - **Read:** FFCRA leave not required, BUT employers who continue to provide it can reap the benefits of the tax credit through March 31, 2021
 - **Note:** Does not “renew” the entitlement/allotment



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Updated DOL FAQs – Added 12/31/2020

- FAQ No. 104: “I was eligible for leave under the FFCRA in 2020 but I did not use any leave. Am I still entitled to take paid sick or expanded family and medical leave after December 31, 2020?”
 - Employer is not required to provide FFCRA leave after December 31, 2020
 - Refers employers to IRS for questions about claiming the refundable tax credits



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Updated DOL FAQs – Added 12/31/2020

- FAQ No. 105: “I used 6 weeks of FFCRA leave between April 1, 2020 and December 31, 2020 because my childcare provider was unavailable due to COVID-19. My employer allowed me to take time off, but did not pay me for my last two weeks of FFCRA leave. Is my employer required to pay me for my last two weeks if the FFCRA has expired?”
 - Yes. WHD will enforce FFCRA for leave taken or requested during effective period of April 1, 2020 through December 31, 2020 for complaints made within statute of limitations
 - SOL for both paid sick leave and EFMLA is 2 years from date of the alleged violations, 3 years for cases involving alleged willful violations



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Common Questions

- Can employers pick and choose how long to offer FFCRA framework leave between January 1, 2021 and March 31, 2021 and receive the tax credit, or does it have to be for the whole time?
 - Language in statute is unclear – but maybe?
 - Awaiting clarity or guidance from IRS
- Can employers pick and choose to only offer paid sick leave and not EFMLA (or vice versa), and still claim the tax credit?
 - Language in statute is unclear – but maybe?
 - Awaiting clarity or guidance from IRS



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What's the Risk?

- Offer leave but then unable to qualify/claim the tax credit
- Discrimination – arbitrary selection of who can take leave, when, for how long
 - Consistent policy, clearly articulated



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Key Highlights for Employers - UI

- **Unemployment Insurance (PUA and PEUC)**
 - \$300 Federal UI benefit/supplement (half of previous federal UI benefit)
 - Extends UI benefits for an extra 11 weeks
 - December 26, 2021 through March 14, 2021
 - Certain provisions that allow for certain benefits to continue through April 5, 2021 if individual has not already exhausted maximum benefit amount



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Notable Provisions for Employers – Other (Tax)

- **Qualified Disaster Employee Retention Credit**
 - Extended through June 30, 2021
 - Increases refundable payroll tax credit
 - Changes calculation from 50% of wages (up to \$10,000 total), now 70% of wages (up to \$10,000 per quarter)
 - Max \$5,000 credit → Max \$14,000 credit (\$7,000 for each of Q1 and Q2)
- **Paid Family and Medical Leave (IRC Section 45S) Credit**
 - Section 119 of the Disaster Relief Act extends credit available for employers who pay for paid family and medical leave (NOTE: Separate from FFCRA), was set to expire December 31, 2020 – Extended through December 31, 2025
- **Employer Paid Student Loans (IRC Section 27)**
 - CARES Act amended section to temporarily treat employer payment of principal or interest on employee's student loans as excludable employer-provided educational assistance (payments made after March 27, 2020 and before January 1, 2021) – Extended until January 1, 2026
- **Business Meals**
 - Section 210 of Disaster Relief Act temporary full deduction for expense of business meals provided by a restaurant if paid or incurred after December 31, 2020 and before January 1, 2023



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Update from Albany



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Vaccine Update

- NY has 895,925 doses distributed; has administered 274,713 (31%).
- Press conference featured chart of the highest and lowest performing hospital systems in terms of dosages administered.
 - Highest performing administered 99% of vaccines.
 - Lowest performing administered 15% of vaccines.



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Executive Order 202.86

- Individuals receiving a vaccine must fill out an attestation that they are a member of a priority group to receive the vaccine.
- If a healthcare provider administers a vaccine to an individual who (1) does not fill out the attestation or (2) is someone the provider knows is not a member of a priority group, provider may face fines of \$1 million/dose and/or revocation of any state-issued license.



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Executive Order 202.88

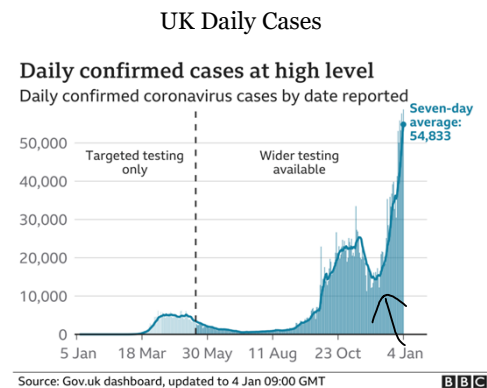
- All healthcare facilities must administer all vaccines distributed to them within one week of receiving them.
 - Vaccines on hand at healthcare facilities as of Jan. 4 must be administered by Jan. 8.
 - Failure to do so: penalty of up to \$100,000 and/or elimination or reduction of future allocations.
 - Also enforceable by Public Health Law § 12 – fines of up to \$10,000 if violation directly results in serious physical harm to any patient; otherwise, fines of \$2,000 which may increase to \$5,000 if subsequent violations.



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UK Strain In NY

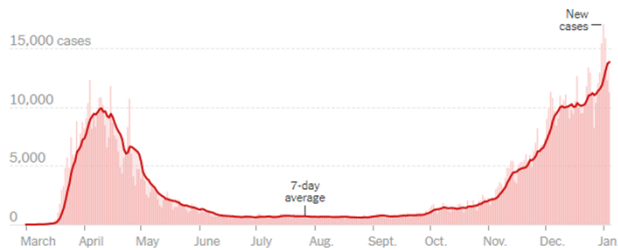
- 60-year-old in Saratoga Springs working at a jewelry store.
 - Had not traveled; suggests community spread.
 - 3 other cases at the jewelry store, unclear if they are the new strain.
- 70% more contagious.
- Important: UK ordered a six-week shutdown yesterday after days of dramatic increases in cases.



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New York Coronavirus Map and Case Count

Updated January 5, 2021, 8:11 A.M. E.T.



The New York Times

	TOTAL REPORTED	ON JAN. 4	14-DAY CHANGE
Cases	1 million+	11,242	+36% →
Deaths	38,167	166	+22% →
Hospitalized		8,251	+29% →

Hospitalization data from the Covid Tracking Project; 14-day change trends use 7-day averages.

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Quarantine Requirements – Where Are We?



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FFCRA and NYS COVID Leave



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