

FEMA's Public Assistance Program for COVID-19 Recovery

Months after COVID-19 first spread to the U.S., employers remain concerned about how to take care of their employees and the communities they serve with declining or nonexistent revenue. As one can see from the staggering number of Americans filing for unemployment, few are immune from the havoc COVID-19 has wreaked on our once booming economy.

While COVID-19 may not be the type of incident we traditionally associate with FEMA, it is, in fact, a covered emergency. Consequently, employers may be eligible to recoup some COVID-19-related costs through FEMA's Public Assistance Program. The following is intended to assist employers in analyzing whether they may qualify for public assistance from FEMA.

Eligibility Tiers

As explained in greater detail below, to qualify for public assistance, an employer must:

- be an eligible applicant;
- be legally responsible for a facility affected by COVID-19;
- have work to be performed as a direct result of COVID-19 to save lives, protect public health and safety, or eliminate the threat of significant damage to improved public and private property; **and**
- have incurred reasonable and necessary costs to accomplish eligible work.

Eligible Applicants

The following entities may qualify for partial reimbursement of eligible costs:

- Governmental entities (e.g., state agencies, counties, cities, towns, villages, school districts, local public authorities, special districts established under state law, etc.); and
- Private, Non-Profit entities (PNPs).

Eligible Facility

In general, applicants must show that they own or operate a facility (building, works, system or equipment) which has been affected by COVID-19; is the legal responsibility of the applicant; is located in an area covered by the emergency; has/had been in use during the emergency; and is not under the authority of some other federal agency, such as the U.S. Department of Health and Human Services (HHS). For many governmental entities, there may not be a facility involved in this event. Under such circumstances, the "facility" tier is not applicable to local governments.

An eligible PNP facility is one that provides "critical services" or "non-critical but essential social services to the general public," including, but not limited to primary/secondary education, higher education institutions that meet certain criteria,

utilities, emergency medical care facilities, emergency services, food assistance programs, health and safety services, homeless shelters, houses of worship, libraries, low-income housing facilities, museums, zoos and performing arts centers.

Eligible Work

To be eligible, work must be required as a direct result of COVID-19, the legal responsibility of the applicant, located in a declared county and completed within the regulatory time limits. The current deadline for completion of work is September 20, 2020, but that deadline may be extended.

Eligible Costs

Those seeking public assistance may be reimbursed for myriad costs, including, but not limited to the following, provided such costs total at least \$3,300:

- Labor (e.g., overtime for permanent employees performing eligible work or regular and overtime for temporary employees performing eligible work);
- Equipment/materials (e.g., PPE used by employees and volunteers to protect the public from the spread of COVID-19 and mileage or hourly rate associated with the use of certain vehicles);
- Cleaning services to disinfect common area to prevent the spread of COVID-19;
- Security and law enforcement;
- Administration/management costs (e.g., costs incurred to submit, process and manage FEMA projects);
- Contracts; and
- Accessible public service announcements (e.g., flyers, PSAs and newspaper campaigns used to disseminate information to the public to provide warnings and guidance about health and safety hazards).

Notably, the following costs are not eligible for reimbursement:

- Costs associated with telework, distance learning or arranging for video conferencing;
- Legal fees;
- Lost revenue, donations, income; and
- Costs covered by some other source, including, but not limited to insurance, HHS, CDC, Medicare, Medicaid or a pre-existing private payment agreement.

All costs must be documented and comply with federal, state and local procurement requirements. We cannot overemphasize the importance of documentation and recordkeeping. Insufficient documentation may lead to a denial of assistance. Examples of the types of documentation which may be needed include but are not limited to payroll records, timesheets, fringe benefit calculations, equipment usage information, records of materials taken from inventory or purchased, records of donated labor/materials/equipment, contracts and contractor bids, invoices/checks, correspondence and mutual aid agreements.

Amount of Assistance

If an employer qualifies for assistance, FEMA usually pays 75% of the eligible costs but may increase its share to 90% in limited circumstances.

Deadline

As of now, FEMA has not set a deadline for filing requests for public assistance, but FEMA only has so much money in its Disaster Relief Fund, so we urge eligible employers to apply as soon as possible. Unlike past disasters which have traditionally been limited to a specific region of the country, COVID-19 affects the entire nation and with every state and local government being eligible for assistance, there is no telling how long assistance will be available.

If you have any questions regarding this information memo, please contact [Emily Iannucci](#) or the Bond attorney with whom you are regularly in contact.



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