

# ACSI Legal Update on CODVID-19 Issues for Schools

**Philip Scott – Legal Coronavirus Resource Webpage**

**Tom Cathey – FFCRA Update and New Information  
on the CARES Act**

**George Tryfiates – The CARES Act and Equitable  
Services**

March 30, 2020



## **Disclaimer**

This presentation is designed to provide accurate and authoritative information regarding the subject matter covered. It is distributed with the understanding ACSI is not engaged in rendering legal, financial or other professional services. The purpose of this presentation is educational. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

## Legal and Legislative Coronavirus Resources

ACSI Legal Legislative team is actively looking at issues related to the Coronavirus COVID-19 outbreak that impact Christian education. This page is designed to give you current, relevant information and is updated as new information unfolds.

If you have a question that is not covered here, please email [legal\\_legislative@acsi.org](mailto:legal_legislative@acsi.org).

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## Hot Issues / Legal Announcements

- **NEW 3/27/20** - [The Coronavirus Aid, Relief, and Economic Security \(CARES\) Act Update as of March 27, 2020](#)

### USA Federal Regulations

- **NEW 3/29/20** - DOL - [Families First Coronavirus Response Act Notice – Frequently Asked Questions](#)
- **3/25/20** - DOL - [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)
- **3/25/20** - DOL - [Families First Coronavirus Response Act: Questions and Answers](#)
- **3/25/20** - DOL - [Families First Coronavirus Response Act - Employee Rights Poster](#)

### ACSI Legal Resources

- **NEW 3/29/20** - [ACSI Updated Guidance on COVID-19 Coronavirus Response Act](#)
- **NEW 3/27/20** - [Early Ed & Child Care Waiver Release for Parents](#)
- **NEW 3/27/20** - [Options and Considerations: Tuition and Staffing Concerns During COVID-19](#)
- **NEW 3/25/20** - ACSI Legal Update on COVID-19 Issues for Schools  
Speakers: George Tryfiates, Tom Cathey, Philip Scott  
[Webinar recording](#)  
[Webinar transcript](#)  
Webinar Presentation Slides - *COMING SOON!*
- **3/15/20** - [Tuition and Staff: What Happens During a Pandemic Closure?](#)

### Live on Mondays!

Join our **Legal Legislative Brief for Educational Leaders** focusing on

- Impacts new legislation have on Christian Schools
- Clarify laws that are already in place
- Discuss rapidly evolving issues

*If you cannot join us live, the recordings will be available on this website*

**Monday, March 30 - 2:00 pm (MDT)**

Join [using this link](#)

**Monday, April 6 - 2:00 pm (MDT)**

*Link coming soon*



## USA State Regulations

Fisher Phillips - [State-by-State COVID-19 Issues to Consider for the Private Sector](#)

- NY - 3/26/20 - Seyfarth - [Paid Leave and Coronavirus — Part VII: New York Releases Updated FAQs On COVID-19 Leave](#)
- CA - 3/22/20 - Fisher Phillips - [California Under Stay-At-Home Order, Shutting Down Non-Essential Businesses](#)
- CT - 3/22/20 - Fisher Phillips - [Connecticut: Non-Essential Businesses Must Keep 100% Of Their Workforce At Home](#)
- PA - 3/22/20 - Fisher Phillips - [Pennsylvania Amends List Of Life-Sustaining Businesses And Outlines Procedures For Seeking Waivers](#)
- NJ - 3/21/20 - Fisher Phillips - [New Jersey Governor Orders Partial Business Shutdown, Statewide Consistency of Anti-COVID-19 Efforts](#)
- OR - 3/20/20 - Fisher Phillips - [Oregon Employers' Strategy Plan For Families First Coronavirus Response Act Compliance](#)
- GA - 3/19/20 - Fisher Phillips - [Emergency Changes To Georgia Unemployment With Harsh Penalties For Employers In Response To COVID-19](#)
- NC - 3/19/20 - Fisher Phillips - [Coronavirus-Related Executive Actions For North Carolina Employers](#)
- NV - 3/19/20 - Fisher Phillips - [COVID-19 FAQs For Nevada Employers As Businesses Ordered Closed](#)
- OH - 3/19/20 - Fisher Phillips - [Ohio Governor Requests Employers Take Worker Temps During COVID-19 Crisis](#)
- NY - 3/18/20 - Fisher Phillips - [New York Announces COVID-19 Protections For Employees](#)

## Third Party Legal Resources

- 3/26/20 - Sherman & Howard - [Where to Hang a Poster When Employees Work From Home](#)
- 3/26/20 - CAPE - [Congressional Response to COVID-19](#)
- 3/25/20 - Holland & Knight Alert - [EEOC Updates Published Guidance for COVID-19 Pandemic Preparedness in Workplace](#)
- 3/20/20 - Fisher Phillips - [Comprehensive COVID-19 Strategy Plan For Independent And Private Schools](#)
- 3/19/20 - CDC - [Considerations for School Closures](#)
- 3/17/20 - Liebert Cassidy Whitmore - [The Importance of Force Majeure Provisions in Light of the Coronavirus](#)
- 3/09/20 - Liebert Cassidy Whitmore - [Legal FAQs for Private Schools on Responding to the Coronavirus Outbreak](#) EMPLOYEE ISSUES
- 3/09/20 - Liebert Cassidy Whitmore - [Legal FAQs for Private Schools on Responding to the Coronavirus Outbreak](#) STUDENT ISSUES
- 3/02/20 - Fisher Phillips - [10 Steps Schools Should Consider Taking Now](#)

## ACSI Legal Legislative Twitter Feed

COMING SOON!

Follow us on **Twitter** @ACSILegalLeg/

# Families First Coronavirus Response Act (FFCRA)

- The intent of the bill
  - To provide those who are unable to work or telework due to various qualifying reasons to get EPSL and EFMLA
- The newest guidance from the DOL
  - Employees that have been laid off or furloughed and are not being paid on or before April 1 are **not** eligible for FFCRA.
  - If school closed on or before April 1 and employees are not working and not being paid, they are **not** eligible for FFCRA.
    - This could have been a voluntary closure or government forced closure.
- See new Guidance Paper updated March 29, 2020

# Families First Coronavirus Response Act (FFCRA)

- Exemption for Businesses under 50 Employees
  - New Guidance

A small business may claim this exemption if an authorized officer of the business has determined that:

1. 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;
2. 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
3. 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.

# Families First Coronavirus Response Act (FFCRA)

- Exemption for Businesses under 50 Employees
  - New Guidance

This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in the question just above is satisfied.

# CARES ACT

- Signed by the President on Friday, March 27, 2020
- Paycheck Protection Program
  - Employers with 500 or fewer employees are eligible for loans guaranteed by the federal government and facilitated by local banks and other authorized lenders; overseen by the Small Business Administration (SBA).
  - Loans can be made through June 20, 2020
  - Eligible recipients include 501(c)(3) tax-exempt orgs
    - No apparent restriction with respect to religious organizations
    - Maximum loan amount is 2.5x the average monthly payroll costs for the one-year period preceding the date of the loan or \$10 million, whichever is less
      - Payroll costs include:
        - Salaries and other wages
        - Employer-paid health care benefits
        - Employer-paid retirement benefits
        - Employer-paid state and local payroll taxes



# CARES ACT

- Paycheck Protection Program
  - Payroll costs do not include:
    - Compensation of an employee in excess of an annual salary of \$100,000
    - Federal payroll taxes
    - Compensation of an employee whose principal place of residence is outside of the United States
    - Emergency sick leave or emergency family leave payments that qualify for a credit under the Families First Coronavirus Response Act

# CARES ACT

- Paycheck Protection Program
  - Loan funds may be used for:
    - Payroll costs (see definition above)
    - Paid sick, medical, or family leave
    - Mortgage interest (but not principal)
    - Interest on other debt obligations incurred before February 15, 2020
    - Rent
    - Utilities
  - Loan forgiveness
    - Borrower is eligible for forgiveness of the loan
    - Amount eligible for forgiveness is the amount spent during the **8-week period** beginning on the date of the loan for
    - Payroll costs (see definition above)
    - Mortgage interest payments for loans (started before Feb. 15, 2020)
    - Rent for leasing arrangements in force before Feb. 15, 2020
    - Utilities (service began before Feb. 15, 2020)

# CARES ACT

- Paycheck Protection Program
  - Loan forgiveness
    - There are rules that would reduce the amount forgiven
    - There are dates of repayment which can be deferred at least six months and up to a year.
    - The big question yet to be determined? If the loan forgiveness is being considered a federal grant does that then make the Christian School a Direct Recipient of Federal Funding.
      - If so, there will be strings attached.
      - However, we just do not know at this time.

# CARES ACT

- Paycheck Protection Program
  - Loan forgiveness
    - Federal Financial Assistance (FFA)
      - Certain federal laws only apply to recipients of FFA
      - Some laws such as the Age Discrimination Act, Title VI of the Civil Rights Act, and Title IX of the Education Amendments, and section 504 of the Rehabilitation Act apply if an organization is the recipient of FFA under any program.
      - Other laws (like FERPA) apply if a school is a recipient of FFA from the U.S. Department of Education.

# CARES ACT

- Paycheck Protection Program
  - Loan forgiveness
    - Federal Financial Assistance (FFA)
    - ACSI continues to research and seek counsel on whether participation in PPA would make a school a recipient of FFA.
      - At this time, we believe schools who receive a PPA loan may not be recipients of FFA (as to Age Discrimination Act, Title VI, and Title IX), because there is an exception for loan guaranty contracts.
      - The law on section 504 is less clear.
      - PPP will not trigger the application of FERPA, because it is not a program administered by the Department of Ed.
      - **Note: The guidance on the bill is still evolving and we will continue to monitor and provide guidance on our LL Webpage.**



# CARES ACT

- Expanded Unemployment Benefits
  - Appears to provide a flat amount of \$600 per week in addition to what an individual may qualify for under state unemployment systems
    - Details TBD
  - Provides unemployment benefits to unemployed workers from churches, religious organizations, and small nonprofits where employment would not normally be covered under state unemployment law
    - Details TBD
  - Provides federal funding to assist nonprofits that have elected the reimbursement method for participation in state unemployment coverage
    - Details TBD

# CARES ACT

- Other programs that could benefit the Christian School
  - Deferral of Payment of Employer's Share of Social Security Taxes
  - Employee Retention Credit for Employers Subject to Closure or Substantial Revenue Loss
  - Above-the-Line Charitable Contribution Deduction

# The CARES Act & Equitable Services

## The Coronavirus Aid, Relief, and Economic Security (CARES) Act

*Provides \$30.75 billion for an Education Stabilization Fund comprised of three programs; one applies only to institutions of higher education.*

- ❖ Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)
- ❖ Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)
- ❖ Sec. 18004 – Higher Education Emergency Relief Fund (46.3%)

# The CARES Act & Equitable Services

- ❖ For the two funding streams applicable to K-12 and/or early education, the local educational agency (LEA/school district) must make equitable services available to non-public schools in the same manner as provided under section [1117 of the Elementary and Secondary Education Act \(ESEA\)](#).
- ❖ The LEA/school district is required to consult non-public schools and the “control of funds” is maintained by the LEA/school district.
- ❖ The funds are available through September 30, 2021.

# The CARES Act & Equitable Services

## **Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)**

Allows the Governor “to provide support to any other institution of higher education, local educational agency, or education-related entity within the State that the Governor deems essential for carrying out emergency educational services to students...the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.” (Sec. 18002(c)(3)).



# The CARES Act & Equitable Services

## **Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)**

- ❖ The allocation of funds to the states is based on the same proportion each state received under Title IA in the most recent fiscal year.
- ❖ The law authorizes twelve uses for funds.

# The CARES Act & Equitable Services

The twelve uses for funds under the Elementary and Secondary School Emergency Relief Fund include items such as:

- ❖ any activity under ESEA and IDEA
- ❖ supplies to sanitize and clean facilities
- ❖ planning for long-term closures
- ❖ purchasing educational technology
- ❖ mental health support
- ❖ summer learning
- ❖ meeting unique needs of low-income, minority, disabled, English learner, homeless and foster care children/students

# The CARES Act & Equitable Services

- It's a good idea to reach out to your LEA (local education agency) now about participating in either Emergency Relief Fund. Equitable services for both will flow through the LEA
- Equitable services requires consultation with non-public schools.
- We've advised the USDE that there may be far more interest in participating in emergency programs than under standard programs.

# The CARES Act & Equitable Services

**What if I have questions?**

**What if the LEA is not helpful/struggling?**

**USDE Office of Non-Public Education (ONPE)**

<https://www2.ed.gov/about/inits/ed/non-public-education/index.html>

**Ombudsman Directory** – each state is required to have an ombudsman to help non-public schools with equitable participation.

<https://www2.ed.gov/about/inits/ed/non-public-education/ombudsman-directory.html>