

Welcome! While we're waiting for everyone to join, please introduce yourself in the chat to panelists and attendees :

- name
- school
- district/program/location
- role(s):

Audio Settings ^



Chat



Raise Hand



Q&A

Leave Meeting



Folio

COLLABORATIVE

Town Hall #5

Current COVID-19 Employment Concerns

Harriet Cooperman, Esq.

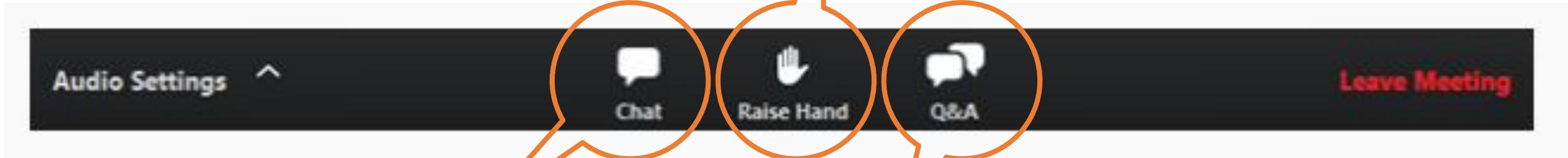
Kathryn Beaumont Murphy, Esq.

Saul Ewing Arnstein & Lehr, LLP

SAUL EWING
ARNSTEIN
& LEHR^{LLP}

Participation and Interaction

The raise hand feature if we ask a question and need a quick response or if you need us to pause for a minute.



The chat is a backchannel for attendees to use for sharing links and resources that everyone on the call might benefit from having/seeing. **Be sure to make sure you are sending your messages to all panelists and attendees.**

The Q&A feature for webinars allows attendees to ask questions during the webinar and for the Folio team to answer their questions.

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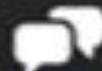
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Chat



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The Folio Community:

- We exist to facilitate professional learning conversations
- We draw from the collective wisdom of the our community of leaders to strengthen school culture around professional learning and conversation

Roles

- Participants
 - Share experience & expertise (We each come with a lot!)
 - Ask questions
 - Challenge assumptions
 - Transfer ideas to your own context
 - See this Town Hall as a “first step”
- Brad Rathgeber and Meredith Ford
 - Provide promising research to inform and transform your current thinking about distant learning
 - Present options/solutions
 - Facilitate idea sharing and the backchannel

A Bit of Housekeeping:

- We will send a follow-up email with...
 - A copy of the recording
 - A copy of the slide deck
 - A summary document with notes and comments from the “backchannel”/Zoom chat



A little about us...



Harriet Cooperman

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Harriet focuses her practice on representing management in a wide variety of labor and employment law matters. She has litigated numerous labor and employment cases, both jury and non-jury, before courts and administrative agencies around the United States, covering a wide variety of issues, such as non-competition and trade secrets, employment discrimination, sexual harassment, NLRA matters, wage and hour and wage payment, employment torts, and ERISA. She currently is Chair of the Maryland State Higher Education Labor Relations Board, appointed to this position by Governor Larry Hogan. She has served on the Board as its Vice Chair and Member since the Board's inception in 2001. She has taught courses in labor law and employment discrimination as an adjunct professor at the University of Baltimore School.



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Kathryn advises independent K-12 schools, colleges and universities in an outside general counsel role on day-to-day transactional matters, as well as complex issues related to investigations, litigation, and organizational risk management. Prior to joining the Firm, Kathryn was in-house counsel and compliance manager for a K-12 school in Massachusetts with boarding students at the upper school level. Independent schools look to her for counsel on employment issues, sexual misconduct investigations, contract review, policy review and drafting, student discipline, 501(c)(3) compliance, board governance, and proactive advice on the legal and risk matters that heads of school and administrators face daily. Prior to law school, Kathryn taught high school English at an independent school.

Today's Agenda

What legal concerns related to employees should schools be focusing on right now?

1. Federal legislation
 - Family First Coronavirus Response Act (**FFCRA**) and Emergency Family Medical Leave Act (**EFMLA**)
 - **CARES Act** – quick overview and employment-related concerns (**PPP loans**)
2. Paying employees: Salary vs. furlough vs. FFCRA/EFMLA pay
3. Employee performance expectations: baselines and boundaries
4. Next steps and takeaways

Families First Coronavirus Response Act (FFCRA)

- Covers all private employers with less than 500 employees
- Provides for 2 weeks (10 days) of Paid Sick Leave (EPSL) for specified COVID-19 reasons
- Provides for 12 weeks of emergency family leave (EFMLA) to care for child whose school has been closed or caregiver unavailable due to COVID-19
- If employee is able to telework FFCRA leave – not entitled to FFCRA paid leave
- If employee is unable to work due to a reason not covered by EPSL or EFMLA, not entitled to FFCRA paid leave
- Documentation from employee required under DOL regulations
- Employers will receive refundable tax credits for the leave provided
 - Tax credits increased by qualified health plan expenses and employer's share of Medicare allocable to qualified leave wages

Emergency Paid Sick Leave (EPSL)

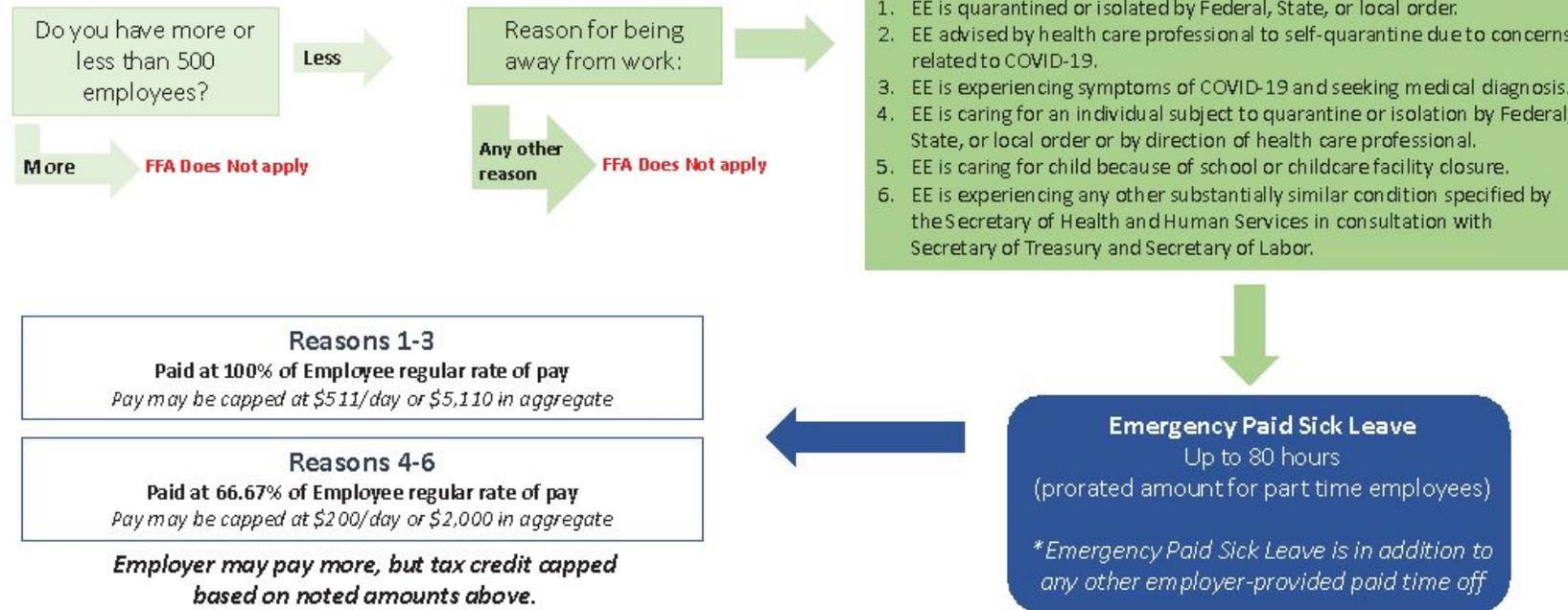
- Covers all employees regardless of length of service
- Requires employer to pay employee up to 10 days of paid sick leave if employee:
 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
 2. has been advised by a health care provider to self-quarantine related to COVID-19
 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis
 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in No. 2
 5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
 6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- Employee is unable to telework
- 80 hours of EPSL for full-time employees (40 hours/week); Pro rata for part-time employees receive pro rata
- EPSL for leave reasons 1-3: pay is greater of employee's regular rate or minimum wage, not to exceed \$511/day and \$5110 in the aggregate for the 2-week period
- EPSL for leave reasons 4-6: must pay at least 2/3 of employee's regular pay rate, not to exceed per day, and \$2,000 in the aggregate for the 2-week period

Families First Coronavirus Response Act (FFA)

Effective April 1, 2020 – December 31, 2020

Emergency Paid Sick Leave

Start



Emergency Family Medical Leave Act (EFMLA)

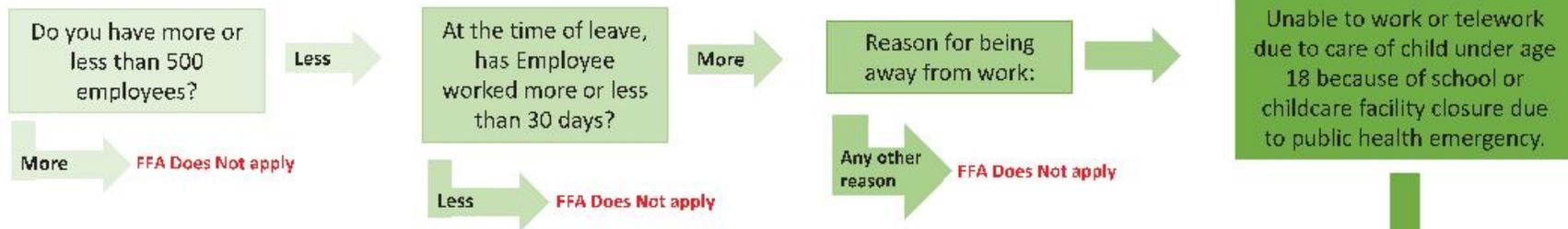
- Covers employees who have been employed for at least 30 calendar days
- Provides **up to 12 weeks** of leave to care for employee's child under 18 years old if:
 - Child's school (including elementary or secondary school) or place of care is closed; or
 - Childcare provider is unavailable due to public health emergency with respect to COVID-19 (as declared by federal, state or local authority), and
 - Employee is unable to telework or work during hours required by employer
- **First 10 days** of EFMLA leave is **unpaid**. Employee may receive pay for this period by using:
 - Employer-provided paid leave, or
 - EPSL
- **For remaining 10 weeks** of FMLA, employer must pay at least 2/3 of employee's regular pay rate, not to exceed \$200 per day, and \$10,000 in the aggregate for the entire 10-week period
- Employer and employee may agree to take leave intermittently, work flexible hours
- Employer can require employee to use accrued PTO to cover difference between EFMLA pay and employee's regular pay

Families First Coronavirus Response Act (FFA)

Effective April 1, 2020 – December 31, 2020

Emergency FMLA

Start



Job restoration at end of Emergency FMLA

Applies if employer has 25+ EEs; employers with less than 25 EEs are generally excluded from this requirement if position no longer exists following Emergency FMLA due to economic downturn or other circumstances.

Up to 10 weeks
(paid at 66.67% of Employee regular rate of pay)

Pay may be capped at \$200/day (or \$10,000 in aggregate). *Employer may pay more, but tax credit capped based on \$200/day or \$10,000 in aggregate.*

10 Days
(unpaid)

May use emergency paid sick leave

Emergency FMLA
Up to 12 weeks of job-protected leave.

Employers with less than 50 employees normally are not subject to FMLA but now under the Emergency FMLA they are included. Therefore, Employers with less than 50 employees will need to apply to the DOL for hardship relief if this expansion of Emergency FMLA will put the employer at risk of going out of business.

Interplay of EFMLA and FMLA

- EFMLA amends FMLA:
 - Provides another reason for family leave
 - Pay for 10 weeks of EFMLA, whereas FMLA for other reasons is unpaid
 - Extends coverage to employers with fewer than 50 employees
- Leave for EFMLA use is limited to FMLA's maximum of 12-weeks of leave in the applicable 12-month period
 - If employee used other FMLA leave during 12-month period, EFMLA will be available only for remaining weeks
 - If FMLA 12-month period is rolling and ends prior to 12/31/20, a new 12-week FMLA entitlement will commence, and employee may use EFMLA until 12/31/20
- EFMLA ends on 12/31/20
- Use of FMLA forms not required, but advisable

What does this mean for
schools?

CARES Act

Paycheck Protection Program (PPP) - \$349 billion (high demand)

- Covers Employers with up to 500 employees
- SBA loan equal to the lesser of \$10 million or 2.5x employer's annual payroll costs during prior 12-month period, to be used to pay payroll costs, rent, utilities, and other expenses
 - Payroll costs include salary, wage, commissions, cash tips or equivalents, payments for vacation or parental, family or medical leave, group health insurance premiums, retirement benefits, and state and local taxes on such compensation
 - For calculating salary, only \$100,000/per employee can be included
- **Loan Forgiveness.** Up to Principal Amount of Loan may be forgiven if the borrower maintains payroll at pre-crisis levels, eight weeks of eligible costs
 - For maximum amount of loan forgiveness, payroll costs must be at least 75% of loan amount
 - The amount of the loan eligible for forgiveness will be reduced if, during 8-week period after receipt of loan, the average number of FTEs declines or if or the pay of employees who earn less than \$100,000 is reduced by more than 25%.
- Employees who were terminated or had compensation reduced after 2/15/20, may be rehi pay reinstated by 6/30/20, and initial termination or reduction will not affect amount elig forgiveness

CARES Act

Employee Retention Credits

- Employer who reduced or suspended operations due to COVID-19 can claim a refundable tax credit of 50% of qualified wages paid to employees, up to \$10,000 of wages per employee (for a maximum credit of \$5,000/employee)
- Retention credit applied against employer's share of Social Security taxes
 - If credit exceeds social security taxes paid by employer, the remaining credit will be refundable
- **Employers who employed 100 or fewer FTEs in 2019**, credit may be claimed whether or not the employees are still providing services
- **Employers who employed more than 100 in 2019**, credit is based on qualified wages paid to employees who are not providing services
- Retention Credits not available if employer obtained a PPP Loan

CARES Act

Enhanced Unemployment Benefits

- CARES Act increased unemployment benefits by \$600/week until July 31, 2020
- Employees, independent contractors, and self-employed individual will be eligible for benefits if they are out of work for various COVID-19 reasons, including if they have been furloughed or temporarily laid off
- Federal government will provide an additional 13 weeks of benefits on top of state program, up to a cap of 39 weeks

Payroll Tax Deferral

- Payroll tax payments due in 2020 for employer portion of Social Security tax (6.2%) may be deferred until 2021 and 2022
- Payroll tax deferral cannot be used in conjunction with PPP loans that are intended to be forgiven

What does this mean for
schools?

Paying Employees

- Exempt vs. non-exempt employees
- Furloughs
- How does EPSL/EFMLA affect whether and how you pay your employees?
 - Telework
- How does the CARES Act and PPP funding affect whether and how you pay your employees?
- Workers Comp issues

Employee Performance

- What does your current agreement say?
- What expectations are you setting for your employees?
 - Teachers: grading, check-ins, boundaries
 - Staff: checking in, work product, responsiveness
 - Safe working environment
- Where are you setting them?
 - Amended handbook? New policy? A simple letter?
 - Stress that this is fluid and iterative
- Why is this important?
 - Evaluations
 - Quality control, value

Learning Objectives: After participating in this Town Hall I will...

1. Review employees' status based on federal law
 - Can workers who might otherwise be eligible for FFCRA leave telework?
 - If applying for PPP loans, can you continue to pay employees (as opposed to furloughs)
2. Review any applicable state laws (i.e. wage payment laws, mandatory paid sick leave, unemployment)
3. Communicate distance expectations to employees (different for teachers and staff)
4. Revise employment contracts to ensure flexibility

Questions?



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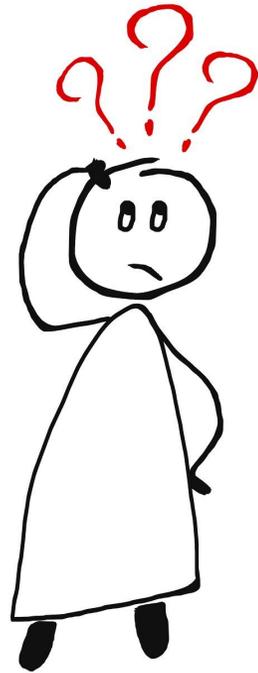
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**After this Town Hall what will
you**

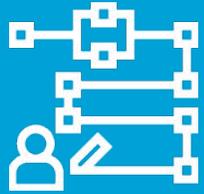


Keep - Stop - Tweak - Start



Folio's Upcoming Events

- **Town Hall #6**
 -
- **Folio Co-Lab:** Using the Folio goal setting process to support faculty and staff in remote learning
 - [Tuesday, April 7th 12:00-1:00 PM](#)
- **Folio Member Spotlight: St. Mark's School**
 - [Wednesday, April 8: 12:00-12:30 pm \(EDT\)](#)
- **Folio Leadership Coaching calls with Abigail Wiebenson**
 - [Wednesday, April 8: 1:00-2:00 pm \(EDT\)](#)



We need your feedback

Please take 3 minutes to complete the survey at the end of this call. It will help us to develop additional resources to support you.

Thank you!



Thank
You



Folio

COLLABORATIVE

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(800) 452-5078

ADDITIONAL RESOURCES

<https://foliocollaborative.org/resources/>