



GAWDA COVID-19 Response Seminar—April 1, 2020

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Consultant

Four Items

- TSA Hazmat Endorsement Renewals for Drivers
- NYC Deliveries—CDC Advisory
- Discussion with FMCSA/CVSA over Inspectors Handling Contaminated Cylinders
- FFCRA Requirements for Sick Leave and Expanded FMLA Leave; Exemption Guidance

Expired CDL and Medical Exam Waiver

- On March 24, FMCSA issued a limited waiver for CDL/CLP renewals and medical exams
- Extends CDL validity to June 30, 2020 for CDLs due for renewal on or after March 1, 2020 (does not include Hazmat Endorsements)
- Extends CLP validity to June 30, 2020 for CLPs due for renewal on or after March 1, 2020 without having to retake general knowledge and endorsement tests
- Also waives requirement for CLP holder to wait 14 days to take skills tests
- Waives requirement that CDL/CLP holders and non-CDL drivers have medical exam and certification, provided they have proof of a valid medical cert issued for a period of 90 days or more and that expired on or after March 1, 2020

TSA Waiver for Hazmat Endorsements

- TSA (not FMCSA) sets standards for HME, which are issued by State driver licensing agencies
- TSA is finalizing a waiver to allow drivers with HME that expired on or after March 1, 2020 to continue to transport hazardous materials through June 30, 2020 (expect publication of the waiver in the next few days)
- Will use the same compliance dates as the FMCSA used for CDL/CLP and medical card expiration waiver

CDC Guidance on NYC Truck Deliveries

- CDC Guidance on self-quarantine for NYC area residents does not apply to “to critical transportation and delivery workers who are desperately needed for New York residents to continue their daily lives and respond to the COVID-19 outbreak”
- Truck drivers should stay in their vehicles as much as possible as supplies are loaded and unloaded, avoid being within 6 feet of others as much as possible when they exit their vehicles, and move to electronic receipts if possible
- If drivers need to spend the night in the greater New York City area, they should stay in their hotel rooms or sleeper cab, when available, to the extent possible and continue to practice social distancing
- Drivers who take these precautions should not need to self-quarantine when they leave the greater New York area, unless self-quarantine is recommended by state or local officials for all residents in the areas where they live
- Truck drivers who obtain or deliver needed supplies who live in the greater NYC area may continue to work both within and outside of the greater New York area but should stay at home and practice social distancing according to instructions of state and local officials when they are not working, and also follow CDC guidelines on self-care (washing hands, covering mouth when coughing, etc.)

FMCSA/CVSA Handling of Contaminated Cylinders

- CVSA Notice: “[R]oadside inspectors are stopping commercial motor vehicles (CMVs) transporting Class 2 gases. In many cases, these CMVs have just left a hospital or medical facility and are transporting empty cylinders that have been used at a facility where patients are being treated who have the COVID-19 virus. . . The cylinder companies are working to ensure the cylinders are decontaminated before they are refilled, but there is no guarantee they have been properly decontaminated before they leave the hospital.”
- GAWDA was contacted by FMCSA on how to address this concern

Handling of Contaminated Cylinders

- GAWDA provided Safety Alerts to FMCSA/CVSA describing best practices for protecting employees and others, decontaminating cylinders
- Also referenced CGA P-83, Guidelines for Cleaning Externally Contaminated Medical Gas Containers
- Advised federal and state governments that these documents have been provided to all GAWDA members and we have instructed them not to handle cylinders from medical facilities without assurance of cleaning and decontamination

FFCRA Requirements

- Goes into effect today, April 1 through December 31, 2020
- Applies to companies with fewer than 500 employees
- Must display poster to notify employees of available sick leave and expanded FMLA leave:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Send poster by email to all employees working at home
- Act grants employees up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage

FFCRA Leave Rules

- Paid sick leave allowance--employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick leave available under the Act
- Who is eligible? An employee:
 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (should not apply to GAWDA members as “Essential Businesses”);
 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 (2);
 5. is caring for his or her child whose school or place of care is closed (or child-care provider is unavailable) due to COVID-19 related reasons; or
 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

Hardship Exemption for Small Businesses

- Businesses may claim an exemption if the new leave requirements “jeopardize the viability of the small business as a going concern.” According to DOL, this means the entity:
- Employs less than 50 individuals;
- Has been asked for leave because a child’s school or place of care is closed, or child-care provider is unavailable, due to COVID-19 related reasons (#5 eligibility reason); and
- An authorized officer of the business has determined that at least one of the following three conditions has been satisfied:
 - The provision of paid sick leave or expanded family and medical leave would cause the small business’s expenses and financial obligations to exceed available revenues and cause the small business to cease operating at a minimal capacity;
 - The absence of the employee(s) requesting the 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(s) requesting the leave, and these labor or services are needed for the small business to operate at a minimal capacity.

FFCRA Rate of Pay for Leave

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19
- **For employees that it has employed for at least 30 days**, an employer must provide *up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

FFCRA Limits on Leave Pay; Tax Credits

- Limits for qualifying reasons 1-3, up to \$511 daily and \$5,110 total;
- For qualifying reasons #4 and 6, up to \$200 daily and \$2,000 total; and
- For qualifying reason #5, up to \$200 daily and \$12,000 total
- Dollar for dollar tax credits available for these payments
- See IRS Guidance and FAQs at:

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

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