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Smaller Apples and Shifting Markets for 2020 Northeast Apple Crop

Last spring, there was a great deal of concern about the effect the COVID-19 pandemic might have on the Northeast apple industry. Thankfully, things have turned out better than expected in many ways, and the worst predictions seem to have been avoided.

One concern was that apples in storage weren't shipping fast enough and there could be significant stocks left come fall harvest time. While storage levels both nationally and in the Northeast remained elevated into the summer months, sales were adequate to clear most of the stored crop, which may help limit inventory overlap.

Fruit set early on was good for most growing areas in the Northeast, but subsequent insufficient rainfall resulted in significantly smaller-sized fruit for many growers. Drought conditions were most noticeable for growers in New England, but impacts were seen across the region. Smaller fruit has created some marketing challenges for growers as retail fresh markets generally require specific-sized fruit. Smaller fruit is often sold in pre-packed bags at lower price points, which can reduce grower margins.

The 2020 national apple crop is estimated to be 10.6 billion pounds, about 2% below the 5-year average. New York's apple crop is estimated at 1.3 billion pounds, less than 1% greater than the 5-year average.¹

The COVID-19 pandemic has impacted the apple market in a number of ways. While the loss of foodservice markets was detrimental, stay-at-home orders increased retail sales of shelf-stable produce items, including apples. The USDA also initiated several purchase programs for food banks, including the "food box" program, and some of these included apples in the mix.

For orchards marketing directly to the consumer, either through farm stands or pick-your-own operations, late summer and early fall customer traffic has generally exceeded expectations. The coronavirus has created operational challenges for these businesses as they try to manage both employees and customers safely, but customer interest and turnout has been strong. The desire of consumers for outdoor activities coupled with nice weather has resulted in a surge of traffic for many retail growers.

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¹ USApple, 2020 Apple Crop Estimate, September 2020.

There is no doubt the season has been challenging, but most growers report managing to work through it successfully. Many fruit growers use H-2A workers and keeping workers safe and free of COVID-19 has been a priority. However, this has required modifications to work practices, decreasing the efficiency of some operations. Providing safe housing conditions has been a particular challenge. Finally, harvesting a crop similar to last year's by weight, but comprised of smaller fruit, has required more hand labor and some operations had to add workers or hours.

The hope is that a slightly smaller national crop could boost wholesale pricing and product movement for growers going into 2021. 2019-20 pricing was fairly weak for much of the season, although some improvement was seen late in the season. However, smaller fruit sizes, coupled with concerns over exports, could limit the upside potential for the coming year.²

² Northwest Farm Credit Services, Apple Market Snapshot, September 30, 2020.

Updates to the Families First Coronavirus Response Act Paid Leave Requirements

As part of the legislative response to the coronavirus pandemic, Congress mandated paid leave requirements for employees. With multiple paid leave requirements from federal and state authorities and varying effective dates, it's hard to keep track of what's really required of employers. Here's a summary of the federal requirements as of September 30, 2020, including some modifications to the regulations based on recent court decisions.

Families First Coronavirus Response Act (FFCRA)¹

The FFCRA requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. This requirement, which is federal and applies in all states, is effective through December 31, 2020.

The paid sick leave and expanded family and medical leave provisions apply to private employers with fewer than 500 employees. There are provisions for small businesses with fewer than 50 employees to qualify for exemption from the requirement to provide "leave due to school closings or childcare unavailability" if the leave requirements would jeopardize the "viability of the business as a going concern."

The FFCRA requires employers to provide *all* employees with:

- 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 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 or care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19.

Additionally, employers must provide workers *employed for at least 30 days* with:

- 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 childcare provider is closed or unavailable for reasons related to COVID-19.

¹ This information is taken from US DOL and IRS websites, is abbreviated for publication, and should not be construed as legal advice. For more information, see the websites referenced at the end of the article.

Qualifying Reasons for Leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the 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 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.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.

Duration of Leave

For reasons 1-4 and 6: A full-time employee is eligible for up to 80 hours of leave and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason 5: A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay

For leave reasons 1, 2 or 3: employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons 4 or 6: employees taking leave shall be paid at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

For leave reason 5: employees taking leave shall be paid at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate. (Over a 12-week period, two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Tax Credits

The good news is that employers do not have to bear the financial burden of the leave requirements entirely. Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps.

The credit also includes the amount of the eligible employer's share of Medicare tax imposed on the qualified family leave wages and any qualified health plan expenses allocable to those wages. Qualified health plan expenses are amounts paid or incurred by the eligible employer to provide and maintain a group health plan to the extent that the amounts are excluded from the employee's gross income under section 106(a) of the Internal Revenue Code. The qualified family leave wages are not subject to the employer portion of social security tax.

Eligible employers will report their total qualified leave wages and the related credits on their federal employment tax returns, Form 943 for agricultural employers and reported quarterly on Form 941 for other businesses. Forms 941 and 943 are used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's portion of social security and Medicare tax.

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In anticipation of receiving the credits, eligible employers can fund qualified leave wages (and allocable qualified health plan expenses and the eligible employer's share of Medicare tax on the qualified leave wages) by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance from the IRS. For more information on how to claim the FFCRA tax credits, [click here](#).

Employee Notice

Finally, employers must post a notice of FFCRA requirements in a conspicuous place on its premises. A model notice may be obtained [here](#).

Recent Court Activity

In August, a federal court struck down several provisions of the FFCRA and in response, the US Department of Labor issued new rules to address the issues raised by the court. This created a few new wrinkles for businesses:

1. In situations where the employer does not have work for the employee, due to a slowdown or shutdown of business operations, FFCRA paid sick leave and expanded family and medical leave are not available under the regulations and an employer may not receive reimbursement of wage payments made.
2. *Intermittent leave* – under the existing FMLA, employees may, in some circumstances, take 'intermittent leave' (leave in short periods or a reduced schedule). There remains uncertainty whether intermittent leave must be granted under the FFCRA, so employers who wish to deny a request for intermittent leave should do so with caution and consult their legal counsel.
3. *Advance notice and documentation* – The court struck down the requirement that employees provide advance documentation of the need for FFCRA leave and instead declared that employees are required to give notice "as soon as practicable." Therefore, employers can still require documentation of the need for leave and "reasonable notice," but may not specify a specific duration of advance notice.

This information is abbreviated and simplified. For more information on the FFCRA, visit:

[The U.S. Department of Labor page on FFCRA](#)

[The IRS info page on tax credits](#)

For information specific to your firm or situation, consultation with your legal counsel is encouraged.

CONTACT INFORMATION

We look forward to your questions about Knowledge Exchange Partner and your feedback:

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