



dri

The Voice of the  
Defense Bar™

# The Voice

May 13, 2020

Volume 19, Issue 19

## This Week's Feature

COVID-19

DRI News

DRI Cares

## Upcoming Webinars

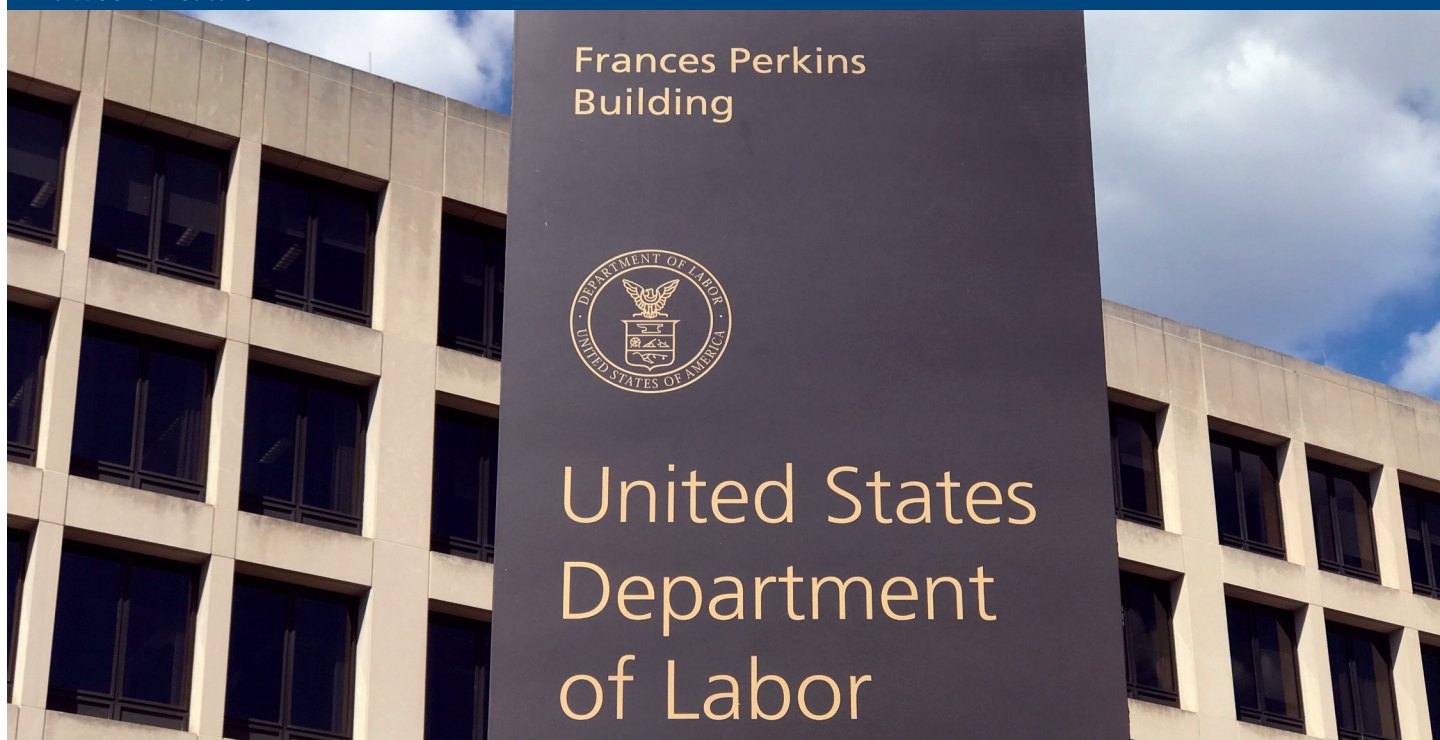
DRI Membership—Did You Know...

State Membership Chair/State  
Representative Spotlight

## New Member Spotlight

Quote of the Week

### This Week's Feature



## Temporary Rule Offers Guidance on the Families First Coronavirus Response Act

By Jill E. Hall

The United States Department of Labor issued a final temporary rule on April 1, 2020, related to the Families First Coronavirus Response Act (FFCRA). The new rule interprets the paid leave provisions of the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). The EPSLA and the EFMLEA require employers to provide paid leave to employees who are unable to work or telework for qualifying reasons related to COVID-19. Employers will receive a dollar-for-dollar tax credit to reimburse them for the cost of providing the paid leave.

[MORE](#)

**CED**  
TECHNOLOGIES INC.  
SCIENCE EXPLAINED

## CED Handles Product Liability

Use our app to  
submit case,  
review engineers,  
and more.

**Learn more!**

800.780.4221 | [www.cedtechnologies.com](http://www.cedtechnologies.com)

Finding the Nation's Most **EXPERIENCED**  
Mediators & Arbitrators Just Got Easier...

dri neutrals  
database

View Bios, Available Dates Calendars  
or rate your own local neutrals

### COVID-19

- Reacting in the Present with an Eye Toward the Future,  
By Gary L. Grubler, DRI Central Region Director

[MORE](#)

### DRI News

- DRI Call for Nominees: Annual Professional  
Achievement and Service Awards

[MORE](#)

### DRI Cares

- Set Up a Little Free Pantry
- Food Bank for New York City Birthday Fundraiser

[MORE](#)

### Upcoming Webinars

- Come on In!?! Managing the Risks of Opening Your Business to the Public, May 14, 2020, 9:00–10:00 am CDT
- Don't Shoot the Messenger: The Economic Impact of Ineffective Witness Testimony, May 14, 2020, 12:00–1:00 pm CDT
- Pandora's Box: Protecting Your Offices and Manufacturing Facilities by Ensuring a Safe Environment in a COVID-19 World, May 18, 2020, 12:30–1:30 pm CDT
- Preparing the Foreign-Born Witness for Testimony, May 21, 2020, 12:00–1:00 pm CDT
- Litigation Against Nursing Homes/ALFs Following the COVID-19 Pandemic: Three Things to Do Now to Prepare, May 22, 2020, 12:00–1:00 pm CDT
- Employers, Be Prepared: Top-Five COVID-19 Era Claims on the Horizon, May 27, 2020, 12:00–1:00 pm CDT
- Evaluating Talent: Best Practices for Screening and Onboarding New Talent, May 28, 2020, 12:00–1:00 pm CDT

[MORE](#)

---

**dri™**

**Upcoming  
WEBINARS**

- The Economic Impact of Ineffective Witness Testimony
- Best Practices for Screening and Onboarding New Talent
- And more!

***CLE in the comfort of your home!***

**LEARN MORE**

**dri™**

Legal Education

Explore DRI's

**On-Demand  
Programming**

Choose from  
hundreds of  
relevant topics

**Start  
Learning**

---

#### DRI Membership—Did You Know...

- Save More with Laurel Road

[MORE](#)

---

#### State Membership Chair/State Representative Spotlight

- New Jersey

Edward J. Fanning Jr., McCarter & English LLP

- Iowa

Kevin M. Reynolds, Whitfield & Eddy PLC

[MORE](#)

---

#### New Member Spotlight

Kevin Kennedy, Kalbaugh Pfund & Messersmith PC

[MORE](#)

---

#### Quote of the Week

“One distinguishing characteristic of really civilized men is foresight; we have to, as a nation, exercise foresight for this nation in the future; and if we do not exercise that foresight, dark will be the future!”

—President Theodore Roosevelt, “Conservation as a National Duty.” Opening Address at [Governors’ Conference on the Conservation of Natural Resources](#), May 13, 1908.

## This Week's Feature

# Temporary Rule Offers Guidance on the Families First Coronavirus Response Act

By Jill E. Hall



The United States Department of Labor issued a final temporary rule on April 1, 2020, related to the Families First Coronavirus Response Act (FFCRA). The new rule interprets the paid leave provisions of the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). The EPSLA and the EFMLEA require employers to provide paid leave to employees who are unable to work or telework for qualifying reasons related to COVID-19. Employers will receive a dollar-for-dollar tax credit to reimburse them for the cost of providing the paid leave.

This article provides an overview of these new leave laws and summarizes highlights of the final rule.

## Overview

The EPSLA affords employees up to 80 hours of emergency paid sick leave for one of six qualifying reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order due to COVID-19.
2. The employee has been advised by a health-care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order, as provided in qualifying reason (1), or for someone who has been advised to quarantine, in accordance with qualifying reason (2).
5. The employee is caring for a son or daughter because the school or place of care for the son or daughter has been closed, or the child care provider is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

Employees eligible for emergency paid sick leave are paid 100 percent of their regular rate of pay for qualifying

reasons (1)–(3), and two-thirds of their regular rate of pay for qualifying reasons (4)–(6). Paid leave is capped per day and in the aggregate.

The EFMLEA amends the Family and Medical Leave Act (FMLA) by permitting employees to take up to 12 weeks of partially paid leave to care for a son or daughter whose school or place of care has been closed due to COVID-19. This reason is identical to qualifying reason (5) for emergency paid sick leave. The first two weeks of EFMLEA leave are unpaid. An employee may choose, though, either to substitute other employer-provided accrued paid leave, or to use up to 80 hours of emergency paid sick leave for qualifying reason (5) during the first two weeks of EFMLEA leave. The last 10 weeks of EFMLEA leave are paid at two-thirds the regular rate of pay, and this pay is also capped per day and in the aggregate.

## Definitions and Highlights

The Department of Labor has issued dozens of FAQs since the FFCRA was signed into law on March 18, 2020. In issuing the final rule, the department bypassed the normal notice and public comment procedures for “good cause.” See Paid Leave Under the Families First Coronavirus Response Act, [85 Fed. Reg. 19,326](#) (Apr. 6, 2020); Correction, Paid Leave Under the Families First Coronavirus Response Act, [85 Fed. Reg. 20,156](#) (Apr. 10, 2020); [COVID-19 and the American Workplace](#), Wage & Hour Div., U.S. Dep’t Labor. This section of the article provides some crucial definitions and explains some highlights of the final rule.

## Definitions

First, “child care provider,” which is relevant to a request for leave to care for a child whose school or child care provider has been closed for a COVID-19-related reason, means a provider who receives compensation for providing child care services on a regular basis and is “licensed, regulated, or registered under State law.” However, if the child care provider is a “family member or friend, such as a neighbor,” the provider need not be compensated or licensed.



Second, “telework” means work that an employer permits or allows an employee to perform while at home (or another location other than the employee’s normal workplace). An employee is able to telework if (1) the employer has work for the employee; (2) the employer permits the employee to work from home; and (3) there are no extenuating circumstances that prevent the employee from performing that work. Telework may be performed during normal work hours or at other times agreed to by the employer and employee.

Third, the rule confirms that a “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age, and it also includes a child who is 18 years of age or older if the child is disabled and incapable of self-care.

### Eligibility

Employees are eligible for paid leave if they satisfy a qualifying reason and are not able to telework. An employee will not be able to telework if a circumstance prevents him or her from performing the work. An example offered in the rule is when an employee loses electricity while trying to work from home. In this case, the employee would not be able to telework, and if a qualifying reason is satisfied, the employee would be eligible for emergency paid sick leave under the ESPSLA.

Employees who telework must record and be compensated for all hours actually worked. Employers are not required to compensate employees for unreported hours worked unless they knew, or should have known, of the work.

Regarding qualifying reason (1)—an employee cannot report to work or telework because he or she is under a federal, state, or local isolation or quarantine order—a stay-at-home order that requires a business to close or causes a downturn in business resulting in a temporary or indefinite closure does not afford paid sick leave to an employee. In such situations, the rule explains, lack of work is the reason why an employee cannot come to work, not the order itself. Qualifying reason (1) appears directed at state and county health department quarantine orders or stay-at-home orders that prevent an *employee* from working when a worksite is open with sufficient work for the employee to perform. Employees who can telework despite an isolation or quarantine order do not qualify.

As for qualifying reason (3)—an employee is experiencing COVID-19 symptoms and seeking a medical diagnosis—

emergency paid sick leave is limited to the time that the employee is unable to work because he or she is taking steps to get a diagnosis. Paid leave is available for the time spent making, waiting for, or attending an appointment with a health-care provider. If, after seeking a diagnosis, an employee is advised to self-quarantine by a health-care provider, the employee would satisfy emergency paid sick leave-qualifying reason (2)—an employee has been advised by a health-care provider to self-quarantine for a COVID-19-related reason. A total of two weeks paid leave would be available during the time that the employee spends seeking a medical diagnosis under qualifying reason (3), and during the time that the employee is self-quarantining, as advised by a health-care provider under qualifying reason (2).

Emergency paid sick leave for qualifying reason (4)—an employee is caring for an individual subject to a quarantine order, or for someone who is advised by a health-care provider to self-quarantine—is available as long as there is a genuine need to care for the individual. The individual must be an immediate family member, roommate, or a “similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person.”

An employee may take emergency paid sick leave for qualifying reason (5)—to care for a son or daughter whose school or place of child care has been closed due to a COVID-19-related reason—only when the employee needs to, and actually is, caring for the child. Leave is not necessary if a co-parent or the usual child care provider is available to care for the child.

An employee is eligible for EFMLEA leave to care for a son or daughter whose school or place of child care has been closed for a COVID-19-related reason if he or she has worked for the covered employer for at least 30 days. There is an exception in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which amended the FFCRA. If an employee is laid off or terminated after March 1, 2020, but is later rehired, before December 31, 2020, that employee does not have to work another 30 days before being eligible for EFMLEA leave.

### Documentation

The rule explains the documentation that employees may be required to provide when requesting paid leave. Employees are required to provide the following before taking emergency paid sick leave or EFMLEA leave: the employee name; the dates for which leave is requested; the qualifying reason for the leave; and an oral or written

statement that the employee is unable to work because of the reason for the leave. To the extent that any information is provided orally, employers should document it.

Employees must provide additional information depending on the qualifying reason invoked to support the request for leave.

- If an employee invokes qualifying reason (1) (the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19), the employee must provide the name of the government entity that issued the order.
- If an employee invokes qualifying reason (2) (the employee has been advised by a health-care provider to self-quarantine due to COVID-19), the employee must provide the name of the health-care provider advising the employee to self-quarantine.
- If an employee invokes qualifying reason (4) (the employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order, *or* for someone who is advised by a health-care provider to self-quarantine), the employee must provide either the name of the government entity that issued the order, or the name of the health-care provider advising the individual to self-quarantine.
- If an employee invokes qualifying reason (5) (the employee needs to care for a son or daughter whose school or place of care has been closed due to a COVID-19-related reason), the employee must provide the name of the child being cared for; the name of the school or place of child care; and a representation that no other suitable person is available to care for the child. The IRS has noted that an employee seeking leave to care for a child older than 14 during daylight hours should provide a statement that special circumstances exist requiring the employee to provide such care.
- No additional information can be requested for qualifying reason (3) (the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis), or for qualifying reason (6) (the employee has a substantially similar condition as specified by the Secretary of Health and Human Services, to be defined at a later date).

Note that employees are not required to provide doctors' notes for any of the qualifying reasons. All documentation must be retained for four years whether the leave was granted or denied.

## *Interplay with Other Leave and Timing Specifications*

An employer may require that other, accrued paid leave—such as vacation and personal leave—be used concurrently with *paid* EFMLEA leave (the last 10 weeks of EFMLEA leave). If an employer chooses to require that accrued paid leave run concurrently with the last 10 weeks of EFMLEA leave, the employer must pay the employee a full day's pay for any day of EFMLEA leave, but the employer can claim a tax credit only for two-thirds of the pay. The rule cautions that employers should not require that accrued sick leave run concurrently with paid EFMLEA leave, but it is unclear how this would work if an employer has one category of paid leave available (e.g., paid time off that can be used for any reason).

Employers may not require that other, accrued paid leave run concurrently with emergency paid sick leave.

The EFMLEA leave runs concurrently with traditional FMLA leave. This means that eligible employees are entitled to a total of 12 work weeks of traditional FMLA leave and EFMLEA leave combined in a 12-month period.

The two weeks of emergency paid sick leave and the last 10 weeks of EFMLEA leave are paid at two-thirds the regular rate of pay. An employer, however, may permit an employee to supplement the two-thirds pay with other, accrued paid leave so that the employee receives the full amount of his or her normal pay. Employers may permit employees to supplement the two-thirds pay from emergency paid sick leave and EFMLEA leave with other, accrued paid time off, but they are not required to do so. Even if an employer allows supplementation of the two-thirds pay, the employer can claim a tax credit for only up to two-thirds of pay.

References in the FFCRA to the “first 10 days” of EFMLEA leave (the portion of EFMLEA leave that is unpaid) has been changed to the “first two weeks” of EFMLEA leave. This is a distinction without a difference for employees who regularly work Monday through Friday.

A written designation of EFMLEA leave is not required. The rule states that employers who are already accustomed to using the model designation forms for traditional FMLA leave may prefer “to apply existing practices” to EFMLEA leave, but there is no magic way to designate the leave. Employers should ensure that all requests for leave are granted or denied in writing.

### ***Small Employer Exemption***

The “small employer exemption” permits small, private employers with fewer than 50 employees to deny emergency paid sick leave or EFMLEA leave to an employee to care for the employee’s son or daughter whose school or place of child care is closed for a COVID-19-related reason. A small employer is exempt from the requirement to provide such leave when (1) the leave would cause the small employer’s expenses and financial obligations to exceed available business revenue and cause the employer to cease operating at a minimal capacity; (2) the absence of the employee requesting leave would pose a substantial risk to the financial health or operational capacity of the small employer because of the employee’s specialized skills, knowledge of the business, or responsibilities; or (3) the small employer cannot find enough other qualified workers who will be available at the time and place needed to perform the services that the employee requesting leave provides, and those services are necessary for the small employer to operate at a minimal capacity.

A small employer who denies such leave must document the facts and circumstances that meet the criteria to justify

the denial. Such documentation should be retained for four years after a leave denial.

### ***Liability***

Finally, an employee may not bring a private action against an employer under the EFMLEA if the employer is not otherwise subject to the FMLA.

---

**Jill E. Hall** is an attorney in the in the Charleston, West Virginia, office of **Jackson Kelly PLLC**. She is a member of the Labor and Employment Group and focuses her practice primarily in the areas of employment law, employee benefits, and ERISA litigation. She regularly advises clients on a wide array of human resources matters under state and federal law as well as all aspects of health and welfare plan compliance, including the requirements of the Affordable Care Act. Ms. Hall began her career as a law clerk for the Honorable Frederick P. Stamp Jr. in the U.S. District Court for the Northern District of West Virginia. She is a member of the DRI Women in the Law Committee.

## COVID-19

### Reacting in the Present with an Eye Toward the Future

By Gary L. Grubler, DRI Central Region Director



Since the moment I was asked to author this article, I struggled with what direction to take. As most of you reading this know, DRI's six officers, Executive Director (now Emeritus) John Kouris, and one other member of the DRI's Board of Directors have written previous articles about how the COVID-19 pandemic has affected them, and DRI's importance to them in these trying times. Coming up with something "new" and relevant has presented me with a challenge, despite spending over 30 years of practicing law writing and speaking to make a point. In an effort to learn about how this new world has directly affected others, I sent an email to approximately 50 attorneys and claims professionals employed in the insurance company for which I work. Several provided some excellent substantive ideas that could have easily served as a topic in this piece. Many commented on the "Stay at Home" orders forcing courts, attorneys, and law firms to "up their game" and become acquainted with twenty-first century technology. More than one commented on the potential effect on the image of attorneys, as claims are filed and defended during or in the aftermath of this crisis. Given my recipients' line of business, several commented about the COVID-19 litigation increasing by the day, particularly the "business interruption" lawsuits. As it always does, DRI immediately stepped up to the plate with a webinar on these claims several weeks ago, and on Friday as I was writing this article it published the *In-House Defense Quarterly* Spring issue with the cover proclaiming, "Coronavirus Litigation Has Begun—Steps to Take to Prepare." Thus, a focus in this article on "business interruption" claims (which keeps me up at night) seemed less timely and better left in the hands of commercial coverage attorneys now dealing with these claims on a daily basis.

I did find one prevailing theme. My email, intended to serve my own needs, gave people an opportunity

to express some personal thoughts that I believe had an unintended therapeutic effect. Unlike many fellow citizens these days, my audience had the good fortune of maintaining their jobs while working from home, but the stress level and need to vent was apparent. For the most part, the angst did not stem from working from home. In fact, a couple weeks ago a survey of the company's employees revealed that 89 percent of associates reported that working remotely had either no effect, a positive impact, or a significantly positive impact on their day-to-day performance. A partnership survey by *USA Today* and LinkedIn similarly reported that 54 percent of respondents

described increased productivity working from home, citing the lack of a commute, lack of interruption from coworkers, and lack of meetings as drivers. It may be that COVID-19 accelerated a "work from home" culture by five or ten years, and growing city skylines may be a thing of the past.

The greatest concerns voiced by those to whom I reached out was what the future holds, from not only a

litigation and claims perspective, but for the daily lives of all Americans. While no one has the answer to that question, providing a platform to voice concerns and to gain knowledge about how to face them head-on is key. For me, DRI has provided that platform, has provided that support, and has provided that knowledge. The webinars have been immediate and current. DRI has taken issues foreign to all of us and on a dime provided education and a venue through webinars and online resources for members and nonmembers to get answers to their questions. Through webinars, the organization immediately addressed working from home under "Shelter in Place" orders and defending the litigation this pandemic may breed. As businesses began the gradual reopening process, DRI orchestrated two free webinars with practical instruction for law firms and clients as employees return to their offices. DRI has the ability to bring together similarly situated attorneys to dis-





cuss methods to address and resolve common issues, and provides peace of mind that it will be there in the future to help professionals deal with issues related to COVID-19 issues as it progresses, as it surely will. I have personally relished the camaraderie of Emily Coughlin's noon coffee chats and, as I increasingly shy away from the news, have learned more about this pandemic's effect, both personal and business, across the country through those chats than perhaps by any other means. Likely as important as what we can learn from these DRI forums is the fact that they provide us with the opportunity to share, vent, and support each other. Networking has always been one of DRI's most meaningful benefits. The organization has proved that it is nimble and creative enough to figure out new ways to maintain that benefit in conformity with the "new normal." Let's hope that we will be able to see each other in person soon, but in the meantime we can all take advantage of DRI's virtual network.

These strange times also give us the opportunity to reconnect with family (albeit in a different manner) and reach out to those with whom we might not otherwise have contact. George Burns said, "Happiness is having a large, loving, caring, close-knit family . . . in another city." Even

with family nearby, we may now seem to be far apart. In the midst of an international health crisis, we can bridge that gap by calling and "Zooming." It's a pretty safe bet they'll be home to take the call. It's even a better time to reach out in a socially distant responsible manner to those you may not know well as they may now be struggling with loneliness. Beyond how doing so benefits those to whom we reach out, focusing on the good we are doing for others seems essential to avoiding our own stress.

I think it's fair to say that things may never be quite the same. Twenty years ago, no one would have ever thought we'd have to take off our shoes to board an airplane. A vaccine may get us close to "normal," but until then, and likely even after that, how we conduct our daily lives will be different. Dr. Martin Luther King, Jr., told us, "The ultimate measure of a person is not where he or she stands in moments of comfort and convenience, but where he or she stands at times of challenge and controversy." While we, as Americans, could have done better with some of the challenges and controversies we have faced in our history, we have made great strides with others. With patience and compassion for one another, I have no doubt we will soon safely see each other (not just virtually) again.



*Mabel "working" from home.*

## DRI Call for Nominees: Annual Professional Achievement and Service Awards

Do you have a colleague who deserves recognition for his or her professional contributions? **DRI's Annual Professional Achievement and Service Awards** celebrate and honor outstanding performance by state and local defense organizations, DRI law firms, and individual members, and we are looking for nominees.

These awards aim to recognize individuals for their achievements on behalf of the defense bar and the civil justice system or their involvement in community and public service activities that have a positive effect on society at large. Recognition enhances members' personal growth and accomplishments, provides us all with role models, and

strengthens members' images in the legal and business communities and with the general public.

Please [download](#) a copy of our awards brochure and read how you can nominate a deserving individual, your organization, and its members. We encourage you to submit an entry for each award by **July 1, 2020**. Winners will be announced at the Celebration of Leadership on Friday, October 23, held in conjunction with the DRI Summit in Washington, D.C., from October 21-24, 2020. In addition, DRI will recognize award recipients in *For The Defense* and through press releases to national and local media.

## DRI Cares

### Set Up a Little Free Pantry

With so many in need, and with many struggling themselves, what is the best way for you to give back to your community? This answer is different for each individual. For DRI member Melissa Roeder, it is setting up a “Little Free Pantry” for her immediate neighborhood. Each time Melissa goes on a Costco run, she tosses an extra case or

two of non-perishable goods in her cart and adds to the pantry that sits on the side of the street. Others are also welcome to donate items and often it is “take one/leave one in the future” pay it forward exercise. So, if you are looking for a way to support your neighbors, feel free to replicate this idea.



## Food Bank for New York City Birthday Fundraiser

From Gail Rodgers

Today I am thinking of the Hispanic lady who runs the taco truck outside my office in midtown Manhattan and laughs when I order in Spanish. I think of the ladies at my nail salon where I have been getting my mani/pedi for over 15 years. I think of one of my asylum clients who has almost nothing but runs a soup kitchen in Harlem. I think of oh-so-many taxi drivers who were barely getting by before all of this. I think of our “local,” the pub two blocks from home that has hosted birthdays, anniversaries, going away parties, reunions, even a private Thanksgiving dinner; and I think of every last employee there, some who are close friends.

There are so many hardworking New Yorkers who are suddenly out of jobs due to COVID-19 in an incredibly

expensive place to live. As soon as we got word of the stay at home order, I rushed out and stocked up like crazy on groceries (and possibly scotch). Yet, so many have no resources to stock up. And many are hungry. Many.

So, this year for my birthday I am doing a birthday fundraiser for the **Food Bank for New York City**. It is one of the country’s largest food banks with a mission to end hunger in New York City by organizing food, information, and support for community survival and dignity.

One dollar provides five meals. Twenty dollars provides one hundred meals. Here’s the link: <https://www.foodbanknyc.org/>. **PLEASE DONATE**. I would love to hear from you and personally thank you. [gail.rodgers@dlapiper.com](mailto:gail.rodgers@dlapiper.com)





## Upcoming Webinars

### Come on In?! Managing the Risks of Opening Your Business to the Public, May 14, 2020, 9:00–10:00 am CDT



As state and local governments discuss ending shelter-in-place restrictions, businesses need to plan for opening doors to their customers, even though some risk from the coronavirus remains. Experts will discuss how businesses can plan for reopening, with a particular focus on those that serve a high volume of public visitors, such as retail and hospitality companies. The panel will discuss what information can be shared with customers, franchisees, and employees; whether alternate schedules and enhanced cleaning or testing are appropriate; what theories and defenses could be used in lawsuits; and how government or medical guidance can play a role in decision-making. [Click here](#) to register.

### Don't Shoot the Messenger: The Economic Impact of Ineffective Witness Testimony, May 14, 2020, 12:00–1:00 pm CDT



In litigation, fact witnesses are the “messengers,” and jurors’ perception of their credibility, believability, and honesty is critical to success in the deliberation room. But time and again, attorneys and claims managers want figuratively to “shoot” witnesses when poor deposition and trial testimony increase financial exposure and decrease strategic leverage. The path to effective witness testimony starts early in a case and remains important at all points in the litigation timeline. During discovery, each deposition has an economic value to a client. Strong, effective depositions decrease a client’s financial exposure and costs, while weak, ineffective depositions result in higher payouts on claims during settlement negotiations.

Therefore, the deposition setting is a critical battleground with potentially heavy casualties for a client—a large check to the enemy. During a trial, attorneys and clients can only sit back and collectively grind their teeth and wince during poor testimony, as their leverage and money get sucked out of the courtroom. This program will discuss the most common types of witness testimony breakdowns, and how to prevent them before depositions and trials. [Click here](#) to register.

### Pandora's Box: Protecting Your Offices and Manufacturing Facilities by Ensuring a Safe Environment in a COVID-19 World, May 18, 2020, 12:30–1:30 pm CDT



As nonessential offices and manufacturing facilities reopen and essential businesses remain in operation, businesses must implement best practices to balance the health of their businesses with the health of their employees, contractors, and customers. This webinar will discuss anticipated claims, the status of legislation limiting liability, the science behind COVID-19, industrial hygiene practices, and best practices from an employment law perspective. [Click here](#) to register.

## Upcoming Webinars

### Preparing the Foreign-Born Witness for Testimony, May 21, 2020, 12:00–1:00 pm CDT



What is quite common in today's courtrooms is foreign-born, English-speaking witnesses whose role is to convey believable, persuasive (and critical) testimony to a panel of jurors. There is a misconception among trial attorneys and corporate counsel that the "language barrier" is the primary obstacle to effective courtroom testimony from foreign-born witnesses. The heart of the matter is that foreign-born witnesses are often very poor communicators in the courtroom, not because of the language barrier, but rather, because of deep cultural traits that hinder their ability to get their messages across to jurors.

With millions, if not billions, of dollars at stake in civil litigation matters, the unique verbal and nonverbal communication challenges associated with foreign-born witnesses can leave trial attorneys and their clients economically vulnerable in the courtroom. Therefore, as the country continues to diversify culturally, and the number of foreign-born witnesses continues to increase over time, trial teams will need to alter and supplement their witness preparation efforts.

This program will help explain who foreign-born witnesses are and in what types of cases their testimony is commonly seen. It will address the linguistic and cultural barriers that are likely to present themselves and will also offer practical advice about the key preparation steps that should be taken before a foreign-born witness testifies. [Click here](#) to register.

### Litigation Against Nursing Homes/ALFs Following the COVID-19 Pandemic: Three Things to Do Now to Prepare, May 22, 2020, 12:00–1:00 pm CDT



As some states begin to reopen, senior-living providers are beginning a new phase of this pandemic: widespread litigation. The media continues to focus on senior-living communities, implying a connection between loss of life and quality of care. Many in the media are ignoring the disparate impact that the virus has on those with chronic medical conditions, the limitations created by the lack of widespread testing, and how the early federal response limited the options available to senior-living operators to change outcomes.

This session will focus on the three most important things that providers and their counsel need to do over the next 90 days to prepare for the next wave of litigation. We will cover the practical effect of state and federal immunity provisions and the need for a uniform response; review the current legal environment, including the new lawsuits filed against senior-living providers; and discuss the need to document the pandemic experience now. [Click here](#) to register.

### Employers, Be Prepared: Top-Five COVID-19 Era Claims on the Horizon, May 27, 2020, 12:00–1:00 pm CDT



The current COVID-19 pandemic has seemingly changed the landscape of employment law overnight. As employers navigate their way through current and former employee situations related to COVID-19, it is certain that employee claims and litigation will arise. This course will outline five of the most likely types of claims that employers will see in this new environment. [Click here](#) to register.

### Evaluating Talent: Best Practices for Screening and Onboarding New Talent, May 28, 2020, 12:00–1:00 pm CDT



This webinar is intended to walk participants through the hiring process, from the application stage to the hiring process to onboarding your new employee. The webinar will cover common mistakes and risks that you may not be considering when screening your applicants. We will also address common employment policies, such as noncompete agreements, and when you should consider them. In essence, the webinar will cover best practices for every step of bringing on a new employee. [Click here](#) to register.

## DRI Membership—Did You Know...

---

### Save More with Laurel Road

Wouldn't it be great to save up to \$20,000 on your law school loan? What can you do with that money in your wallet? Buy a home or a car, invest in your business, cover health-care insurance for a year, or build up a savings account?

Did you know that DRI members receive an extra .25 percent discount when refinancing student loans with [Laurel Road](#), DRI's newest partner and endorsed student loan-refinancing provider? Those who select auto pay

receive an additional .25 percent discount. There are no origination fees or prepayment penalties.

Laurel Road's new Parent Plus Program allows you to refinance your child's Parent Plus Loan at reasonable rates.

DRI membership pays you back! Check out [Laurel Road](#).

If you don't ask, you won't receive.

## State Membership Chair/State Representative Spotlight

---

### New Jersey

#### State Membership Chair



#### **Edward J. Fanning Jr.,** McCarter & English LLP

Areas of Practice: Product liability, mass torts, and class action defense.

DRI member since 1999.

Edward's experience with DRI: "I have been actively involved with DRI for over 15 years, frequently participating in the DRI Drug and Medical Device Seminar and the DRI Product Liability Conference. After my term as president of New Jersey's SLDO, the New Jersey Defense Association, I served as the DRI New Jersey state representative from 2012 to 2015. I was recently appointed the New Jersey state membership chair for DRI."

Fun Fact: "I am a champion cornhole player, making me a valued guest at backyard barbeques and tailgates."

### Iowa

#### State Representative



#### **Kevin M. Reynolds,** Whitfield & Eddy PLC

Areas of Practice: Product liability defense, civil litigation, and trials and appeals.

DRI member since 1986.

Kevin's experience with DRI: "I am a long-time DRI member. I attended my first DRI seminar in New York City in 1986. I served as chair of the Product Liability Committee in 2000-2001. I also have regularly attended the annual DRI Product Liability Conference since the late 1980s."

Fun fact: "In high school, college, and law school, I worked summers bagging groceries and at a radio station as an announcer, news reporter, and DJ."



## New Member Spotlight

---

### Kevin Kennedy, Kalbaugh Pfund & Messersmith PC



**Kevin Kennedy** is a partner in the Norfolk, Virginia, office of **Kalbaugh Pfund & Messersmith PC**. He focuses on defense of construction defect and work place accident claims. Mr. Kennedy is admitted to practice in Virginia and in the federal courts for the Eastern District of Virginia.

Mr. Kennedy was a philosophy and political science major at Furman University in South Carolina, and then he attended law school at William & Mary in Williamsburg, Virginia. He loves American history and has great admiration for lawyers such as John Adams and George Wythe and their courage in the founding of our nation. Personally,

he was also inspired to join the legal field by his friendship with Rick Moore, who is now a judge in Charlottesville.

In Norfolk, Mr. Kennedy has been involved with the Norfolk Emergency Shelter Team (NEST), which coordinates with local churches and civic groups to provide meals and shelter to the homeless through the winter months. He loves playing sports with his three boys, cheering on the Atlanta Braves, and watching *Top Chef* with his wife. The best book that he has read in the past year is *The Path Between the Seas* by David McCullough, and his vote for best book of the decade would go to *Unbroken* by Laura Hillenbrand.

## Quote of the Week

---

“One distinguishing characteristic of really civilized men is foresight; we have to, as a nation, exercise foresight for this nation in the future; and if we do not exercise that foresight, dark will be the future!”

—President Theodore Roosevelt, “Conservation as a National Duty.” Opening Address at [Governors' Conference on the Conservation of Natural Resources](#), May 13, 1908.