



## **U.S. GOVERNMENT SUBCONTRACTOR PRELIMINARY ASSESSMENT (SECTION 3610 OF THE CARES ACT)**

The attached questionnaire is intended to help Raytheon Technologies and its U.S. Government subcontractors develop an initial assessment as to what paid leave costs, if any, may be eligible for direct reimbursement by the U.S. Government under Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

If you would like to submit a request for reimbursement under Section 3610 of the CARES Act for eligible paid leave costs, please complete the attached questionnaire and contact your Raytheon Technologies counterpart.

*The following is for informational purposes only and not for purposes of providing legal or financial advice. You should contact your attorney or financial advisor to obtain legal or financial advice as needed.*

### **CARES Act (Section 3610) Overview**

Federal government contractors with employees, or employees of subcontractors, who are unable to work because of COVID-19 may be eligible for reimbursement of certain paid leave costs under Section 3610 of the CARES Act provided the claimed paid leave costs (i) meet certain conditions and (ii) are not being paid or reimbursed via any other source of funding. Additional information regarding Section 3610 of the CARES Act, including applicability and key requirements, is attached hereto as Exhibit 1.



**U.S. GOVERNMENT SUBCONTRACTOR PRELIMINARY ASSESSMENT –  
(SECTION 3610 of the CARES ACT)**

Date: \_\_\_\_\_ Company Name: \_\_\_\_\_  
Name: \_\_\_\_\_ U.S.G Contract: \_\_\_\_\_  
Title: \_\_\_\_\_ Subcontract: \_\_\_\_\_

1. Do you have employees who cannot perform contract specific work under a U.S. Government subcontract due to site closures or other restrictions and are unable to telework because their job duties cannot be performed remotely due to COVID-19 (includes childcare issues due to school closures, quarantining, or other COVID-19 related interruptions)?
  
2. If your answer to Q1 is yes, you may be eligible for reimbursement under Section 3610 of the Coronavirus, Aid, Relief, and Economic Security (CARES) Act. Please provide the following information to help assess potential eligibility. Additional information regarding Section 3610 of the CARES Act, including applicability and key requirements, is attached hereto as Exhibit 1.
  - a. Detailed explanation for each employee as to:
    - i. What Federal government approved site could the employee(s) not access and why not?
    - ii. Why could the employee(s) not telework?
    - iii. How does paid leave serve to keep the employee(s) in a ready state<sup>1</sup>?
    - iv. What is the minimum billing rate (excluding profit or fees) for 40 hours (one week) for each employee?
  - b. What is the total estimated weekly cost (excluding profit or fees) to maintain all of the employees referenced above at the minimum billing rate (not to exceed an average of 40 hours per week) for one week?
  - c. To date, for the time period between January 31 and September 30, 2020, what is the total cost (excluding profit or fees) at the minimum billing rate (not to exceed an average of 40 hours per week), dates of paid leave, and hours of paid leave you have incurred for the employees referenced above?
  - d. How long do you estimate you will be providing the employees referenced above with paid leave to keep them in a ready state due to COVID-19?

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<sup>1</sup> Ready state is defined as a contractor's ability to mobilize and resume performance in a timely manner.  
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RTX Proprietary Information  
(6-1-20)

3. Does the subcontract have a provision allowing reimbursement of paid leave, in whole or in part, for the circumstances described in Q1?<sup>2</sup> If yes, please explain.
4. Will your company receive, has your company received, or is your company eligible to receive any reimbursement for employee paid leave costs by other means, including any assistance from the federal, state, or local government (for example, the tax credit allowed by division G of the Public Law 116-127 or a Paycheck Protection Program (PPP) loan that is forgiven)?

If so, please identify the amount of any PPP loan that is forgiven, or any other reimbursements, tax credits, etc. from whatever source that your company received that may reduce the maximum reimbursement for allowable paid leave authorized by Section 3610. Also, explain why a request for relief under Section 3610 would not be a request for duplicate reimbursement where other bases for relief have been accepted.

5. Have you created a separate cost pool, accounting code, or some system to separately identify, track, and calculate the costs to keep covered employees in a ready state on paid leave if they cannot work or telework due to the COVID-19 crisis? The DoD recommends paid leave costs due to COVID-19 be charged to a newly created cost category, "Other Direct Costs (ODC) COVID-19."<sup>3</sup>

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<sup>2</sup> Question 8 in DOD's "Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Frequently Asked Questions," issued April 24, 2020, notes that although "some paid leave is an allowable cost under FAR 31.205-6(m), "it is likely contractors may not have an established provision in their compensation plans for granting leave for the specific purposes stated in section 3610 of the CARES Act and, without such a provision, leave of that kind would normally not be an allowable cost" absent Section 3610.

<sup>3</sup> See Question 10 in DoD's "Implementation Guidance for Section 3610 of the CARES Act, Frequently Asked Questions," issued April 24, 2020.

## EXHIBIT 1: OVERVIEW OF CARES ACT (SECTION 3610)

*The following is for informational purposes only and not for purposes of providing legal or financial advice. You should contact your attorney or financial advisor to obtain legal or financial advice as needed.*

### 1. Overview

Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136 (Mar. 27, 2020) permits agencies, subject to the availability of funds, to modify their contracts and other agreements, without consideration, to reimburse contractors at the minimum billing rates not to exceed an average of 40 hours per week for any paid leave, including sick leave, the contractor provides to keep its employees or subcontractors in a ready state,<sup>4</sup> including to protect the life and safety of Government and contractor personnel, through September 30, 2020. Relief under Section 3610 is permissive, not mandatory, and at the discretion of the contracting officer.

### 2. Applicability

A contractor may be eligible for reimbursement of paid leave costs incurred between January 31 and September 30, 2020 to keep its employees or subcontractors in a ready state due to the COVID-19 crisis if a contractor has employees or subcontractors who:

- a) Cannot perform contract-specific work on a site approved by the Federal Government due to facility closures or other restrictions; and
- b) Cannot telework because their job duties cannot be performed remotely (includes childcare issues due to school closures, quarantining, or other COVID-19 related interruptions);<sup>5</sup> and
- c) The claimed paid leave costs constitute the only reimbursement or payment received for this purpose -- i.e., the contractor or its subcontractor is not being paid or reimbursed for the same costs via any other source or funding.

### 3. Other Key Requirements

- a) Claimed paid leave should not exceed minimum applicable contract billing rates, up to an average of 40 hours per week, no fee or profit on allowed paid leave costs
- b) Proper segregation of charges related to the paid leave when employees are unable to be on site and cannot telework due to COVID-19
- c) Formal written concurrence or contract modification by the government Procuring Contracting Officer (PCO) prior to billing paid leave costs covered by Section 3610

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<sup>4</sup> Ready state is defined as a contractor's ability to mobilize and resume performance in a timely manner.

<sup>5</sup> See Question 7 in DoD's "Implementation Guidance for Section 3610 of the CARES Act, Frequently Asked Questions," issued April 24, 2020.

#### 4. Documentation

A key element for submitting allowable paid leave costs for reimbursement under Section 3610 of the CARES Act is documentation of inability to work and associated leave costs in sufficient detail to allow the government PCO to determine the reasonableness of the claimed paid leave costs.

The following summarizes guidance as to what would be considered appropriate documentation under Section 3610 based on the DoD Class Deviation 2020-O0013, "Class Deviation – CARES Act Section 3610 Implementation," issued April 8, 2020 and the DoD's "Implementation Guidance for Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Frequently Asked Questions," issued on April 24, 2020.

- a) Charges must be separately tracked and documented
- b) Identification of: (i) each employee paid leave for which the contractor is seeking reimbursement, (ii) the applicable contract(s) the employees are performing under, and (iii) the amount, dates, and hours of paid leave provided to the employees for which the contractor is seeking reimbursement (must be between Jan 31 – Sep 30, 2020)
- c) Explain: (i) what site the employee(s) could not access and why not; (ii) why the employee(s) could not telework due to COVID-19; and (iii) that the employees were provided paid leave, including sick leave, for up to an average of 40 hours per week at the rates calculated based on the rates the contractor or performer would have paid the employees it is providing paid leave to but for the COVID-19 pandemic
- d) Identification of any amounts the contractor/performer is eligible to receive under any other Federal payment, allowance, or tax or other credit allowed by law, including any State or local reimbursement received for employee leave, made available to mitigate impacts to industry from COVID-19, such as the tax credit allowed by division G of the Public Law 116-127 or a Paycheck Protection Program (PPP) loan that is forgiven (*The maximum allowable recovery under Section 3610 must be reduced by any other applicable credits a contractor is allowed to avoid duplicate reimbursement*)
- e) Provide a statement that: (i) the costs it is claiming are only for paid leave meeting the specified conditions and (ii) its claimed costs constitute the only reimbursement or payment it is receiving for this purpose and that it is not being paid or reimbursed for the same costs via any other source or funding

#### 5. Links

- [DoD Class Deviation 2020-O0013, "Class Deviation - CARES Act Section 3610 Implementation"](#) issued April 8, 2020, provides class deviation to FAR 31 and DFARS 231for contracting officers to use as a framework for implementing Section 3610 of the CARES Act
- [DPC's Implementation Guidance for Section 3610 of the CARES Act](#)
- [DPC's FAQs re: Implementation Guidance for Section 3610 of the CARES Act](#) provides guidance in the form of FAQs (as of April 24, 2020); guidance states FAQs will expand as new issues are asked and answered

## **Section 3610 of the CARES Act, Pub. L. No. 116-136**

### **FEDERAL CONTRACTOR AUTHORITY**

Notwithstanding any other provision of law, and subject to the availability of appropriations, funds made available to an agency by this Act or any other Act may be used by such agency to modify the terms and conditions of a contract, or other agreement, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, but in no event beyond September 30, 2020. Such authority shall apply only to a contractor whose employees or subcontractors cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020 for COVID-19: *Provided*, That the maximum reimbursement authorized by this section shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under this Act.