Small Business Council: Navigating the Uncertainty of COVID-19

Mariel Giletto, Esq.  
Susan Hodges, Esq.
6 Key Takeaways

• Trusted Resource for Accurate & Timely Information.
• Plan for Employees
• Business Interruption Insurance
• Contract Review
• Corporate Governance
• Analyze Cash Flow and Prepare Paperwork

Mariel Giletto
Shareholder and Chair Corporate Law
Parker McCay
P: 856-810-5829
E: mgiletto@parkermccay.com
SBA Loans and Grants

- Paycheck Protection Program
SBA Loans and Grants

• Economic Injury Disaster Loans

• Emergency Economic Disaster Grants
EDA Programs

- Small Business Assistance Grant Program

- Small Business Emergency Assistance Loan Program

- Small Business Emergency Assistance Guarantee Program
EDA Programs

- NJ Entrepreneur Support Program

- Small Business Development Centers and Women Business Centers
Tax Credits

• Employee Retention Credit

• Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Credit

• Delay of Employer Payroll Taxes
(1) Emergency Paid Sick Leave:

- Effective April 1, 2020
- Fewer than 500 employees
- No minimum length of employment for eligibility
- Full-time employees: 80 hours
- Part-time employee: pro-rata amount
(1) Emergency Paid Sick Leave: (continued)

- Unable to work due to:
  
  1. Government quarantine/isolation order related to COVID-19;
  2. Advised by a healthcare provider to quarantine due to COVID-19,
  3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  4. Caring for a family member with a COVID-19 diagnosis; or
  5. Caring for a child whose school or daycare has closed as a result of COVID-19 concerns.
  6. Other similar conditions set forth by the Secretary of Health and Human Services.

- Rate of pay
  
  • Regular rate up to $511; or
  • 2/3 regular rate up to $200.
(2) **Emergency Family and Medical Leave Expansion Act:**

- Effective April 1, 2020
- Fewer than 500 employees
- Minimum employment length: 30 calendar days
- ONLY REASON: Unable to work or telework because employee must care for a minor child if the child's school or daycare is closed due to COVID-10.
- 12 weeks job-protected leave
- First 2 weeks unpaid
- Remaining 10 weeks at 2/3 pay, capped at $200/day
Federal CARES Act

- Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") made minor clarifications/changes to Families First Coronavirus Response Act ("FCCRA")
  - Advance tax credit for paid-leave provided pursuant FFCRA
  - Eligible employee under Emergency FMLA Expansion includes rehired employees.
  - Clarifies monetary caps on paid leave under FCCRA are per person.
New Jersey Earned Sick, TDI, FLA, FLI

- S2304 signed by Governor Murphy on March 25, 2020
- NJ Earned Sick Leave Law
  - Expanded to include when an employee cannot work due to Governor declared state of emergency and instances of quarantine.
- NJFLA
  - “Serious health condition” definition expanded during emergency declared by the Governor or public health authority to include illnesses caused by an epidemic of a communicable disease, known or suspected exposure to such disease, or efforts to prevent the spread of the disease.
- TDI/FLI
  - Same expansion of “serious health condition”
  - Expansion of “compensable disability” to include leave to care for a family member suffering from an accident or sickness.
    - Sickness similar to definition of “serious health condition”
  - Eliminates TDI 7-day waiting period for expanded part of “serious health condition” definition if for the employee
# NJ DOL Chart

## COVID-19 Scenarios & Benefits Available

### Worker needs time to care for others

1. **Employee unable to work because must care for child(ren) at home due to school closure**
   - Federal Emergency Leave
   - Paid Sick Leave

2. **Worker is caring for family member who is diagnosed, or in isolation or quarantine with suspicion of exposure**
   - Federal Emergency Leave
   - Paid Sick Leave

### Worker is sick or loses work

3. **Worker has COVID-19, or symptoms of COVID-19**
   - Federal Emergency Leave
   - Paid Sick Leave

4. **Person is out of work because employer voluntarily closed**
   - None

5. **Person is out of work because employer was ordered closed**
   - None

6. **Person is out of work because employer was ordered closed**
   - None

7. **Employer stays open in defiance of State closure or public health order, and worker refuses to work**
   - None

8. **Employer permits employee to work in shop or to work outside of the workplace**
   - None

9. **Worker is exposed to COVID-19 at a jobsite, and employer has not provided personal protective equipment**
   - None

10. **Health care provider exposed at work and recommended by medical professional to self-quarantine**

11. **Employee, independent contractor or "gig" worker has no work or lost hours due to public health emergency**

12. **Worker received 12 weeks of unemployment, and worker remains unemployed**

### Paid Sick Time

- Federal Emergency Leave
- Paid Sick Leave
- NJ/Law
- Family Leave

### Unemployment Insurance

- NJ/Law
- Temporary Disability Insurance

---

**NJ DOL Chart**

NJ.GOV/LABOR

**Note:**

- Effective April 1, 2020: New state law requires employers to provide emergency paid sick leave to certain employees to care for themselves or a family member due to coronavirus illness, suspect illness, quarantine or school children closure. The Federal Family and Medical Leave Act (FMLA) has been amended to provide job-protected emergency paid leave to employers who are unable to work because their children do not have school or childcare due to coronavirus. See NJ Labor for details.

The U.S. Department of Labor will be issuing further guidance and this document may be updated as more information becomes available.

A person who has, because of their employment, contracted COVID-19 at work and is eligible for Workers’ Compensation and would file through their employer.

The information on this flyer is meant to give a general picture of benefits and rights available in certain COVID-19 work-related situations. Documentation may be required.
EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

> PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide 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, paid at:

- 100% for qualifying reasons #1-3 below, up to $511 daily and $5,510 total;
- 50% for qualifying reasons #4 and 6 below, up to $200 daily and $2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to $200 daily and $12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

> ELIGIBLE EMPLOYEES
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

> QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, 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 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.

> ENFORCEMENT
The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

Susan Hodges
Counsel and Chair
Employment and Labor Law
Parker McCay

P: 856-985-4045
E: shodges@parkermccay.com