



# **COVID-19: Navigating legal and business issues in the workplace**

Presented by

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# Workplace laws in play

- Occupational Safety and Health Act
- Fair Labor Standards Act
- Family and Medical Leave Act
- Americans with Disabilities Act

# FLSA pay considerations

- Non-exempt employees
  - Do **not** have to be paid for time not working (whether voluntary or involuntary)
  - However, they must be paid for any hours worked (whether at the worksite or remotely)
- Exempt employees
  - Generally, entitled to full salary, unless they have been completely relieved of all duties
  - Narrow exemptions exist for reducing salary based on low quantity of available work

# **Families First Coronavirus Response Act**

# Families First Coronavirus Response Act

- Act becomes effective April 1, 2020
- Applies to public employers of all sizes, as well as private employers with less than 500 employees
- Highlights for employers:
  - Provides paid sick leave for affected employees
  - Expands Family & Medical Leave Act (FMLA) leave
  - Provides tax credits to help offset cost of paid leave requirements
  - Requires free coronavirus testing

# FFCRA – Paid Leave

- Separate and above any existing sick leave
- Up to 80 hours of paid sick time for affected employees
- Employers with less than 50 employees may seek exemption
- Right to paid sick leave expires December 31, 2020

# Who's entitled to paid leave?

- Available under following conditions:
  - Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19
  - Employee has been advised by a healthcare provider to self-quarantine due to COVID-19-related concerns
  - Employee is experienced symptoms and is seeking a medical diagnosis
  - Employee is caring for an individual who is subject to a quarantine order or who has been advised by a health care provider to self-quarantine

# Who's entitled to paid leave? *(cont'd)*

- To care for the child of such employee if the school or place of care has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions
- Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor

# Pay requirements

- For employee's own exposure – 100% of employee's regular wages, up to \$511 per day
- For leave related to employee's family member or school and/or childcare closings – 2/3 of employee's regular wages, up to \$200 per day
- Full-time employees receive up to 80 hours of leave
- Part-time employees entitled to number of paid sick time hours equal to the average number of hours worked over a two-week period

# Employer dos and don'ts

## ■ DO

- Post new DOL poster and provide notice explaining employees' rights to paid sick leave
  - Poster and Notice available at [dol.gov](http://dol.gov)

## ■ DON'T

- Require employees to find a replacement to cover their time
- Take disciplinary action or discriminate against employees who take leave

# Expanded FMLA

For absences related to school and daycare closures

- Unlike regular FMLA leave, employee must have been employed for only 30 days, and there are no work hours requirement
- Up to 12 weeks of job-protected leave
- After first 10 days, employees eligible for paid leave at 2/3 of their regular pay, up to \$200 per day
- Employees may choose to use previously available sick, vacation or PTO leave; Employers, however, cannot require them to do so

# Tax credits for leave

- Refundable tax credits available to offset cost of paid leave requirements
- Credit amounts:
  - Up to \$511 per day for employee's own sickness or self-isolation
  - Up to \$200 per day for leave related to care for ill family member or child after school/daycare closure
- Caps and limits apply

# Document, document, document

- Employees required to provide employers with appropriate documentation in support of paid leave or expanded FMLA leave
- Documentation necessary to claim tax credit under FFCRA
- Employers wishing to elect small business exemption need to document why they meet criteria

# Penalties for noncompliance

- Noncompliance with Act considered violation of Fair Labor Standard Act
- Willful discrimination or retaliation considered a violation of Section 15(a)(3) of FLSA
- Employer subject to financial penalties for lost wages, liquidated damages, attorneys' fees, and costs

# CARES ACT

- The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which was signed into law on March 27, provides assistance, including Tax relief and new SBA loan programs, to small businesses during the COVID-19 outbreak.

# Business Tax Assistance

- A refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis is available to employers whose operations were suspended or gross receipts were reduced by more than 50% compared to the same quarter in 2019.
- Certain limitations apply if the employer has more than 100 full-time employees, but for those with fewer than 100 employees, all wages apply for the credit.
- The credit is provided for the first \$10,000 of compensation paid to the employee, and the wages must be paid between March 13, 2020, and December 31, 2020.

# Business Tax Assistance

- Employers with multiple related entities should consider the application of aggregation rules.
- Because the bill also defers the employer side of Social Security payroll taxes this year (discussed below), qualifying companies can receive payments in advance since this credit is refundable.

# Business Tax Assistance

- Employers and self-employed individuals can defer their portion of Social Security tax deposits owed in 2020 and can delay such payments of Social Security tax over the following two years, with half payable by the end of 2021 and the other half payable by the end of 2022.

# Business Tax Assistance

- Net operating losses are allowed to offset income without the 80% taxable income limitation enacted by the Tax Cut and Jobs Act, and in addition, net operating losses can be carried back five years to offset income from prior years. These temporary changes apply to net operating losses that arose in tax years 2018, 2019, or 2020.
- Certain loss limitations are modified for pass-through entities to permit them to utilize some losses previously disallowed.

# Business Tax Assistance

- Alternative Minimum Tax (AMT) credits that became available after the passage of the Tax Cut and Jobs Act (TCJA) that had to be allocated over future years and ending in 2021 can be accelerated to allow for current use of those credits.
- Interest expense deduction limitations are increased from 30% of EBITDA to 50% of EBITDA for tax years beginning in 2019 and 2020.

# Business Tax Assistance

- “Qualified improvement property” fix of error contained in TCJA. Accelerated depreciation is permitted with respect to certain improvements made by businesses – generally any improvement made to the interior portion of a nonresidential building any time after the building was placed in service – to allow for current depreciation on items that would otherwise have to be depreciated over a 39-year life. The fix is retroactive, which will allow taxpayers to file amended returns to obtain the benefit of this provision if applicable to them.

# Business Tax Assistance

- Employers may provide a benefit to employees in the form of student loan repayments on behalf of employees, subject to certain limitations, that will not be included in income of the employee.
- The federal excise tax on distilled spirits used with respect to the production of hand sanitizer produced and distributed in accordance with regulations of the Food and Drug Administration is waived for the calendar year 2020.

# Business Tax Assistance

- It is important to note that some of the tax benefits in the CARES Act are not available if certain other benefits available under the CARES Act are utilized, such as “payroll protection loans.”

# Small Business Loans

- **Paycheck Protection Program**
- These loans are going to be made by banks, credit unions and some other lenders, guaranteed 100% by the SBA.
- Eligible borrowers are any business concern, nonprofit, veterans organization or tribal business concern with not more than 500 employees or such higher number as the Administration may set for the industry. Certain sole proprietors, independent contractors and self employed persons are also eligible.

# Small Business Loans

- Terms will be as for other SBA §7(A) loans, but with no personal guarantees and no recourse to principals except for misuse of proceeds.
- These loans are eligible for forgiveness. Remaining balances after forgiveness can have a maximum term of 10 years and a maximum rate of 4%.
- Complete payment deferrals are available for six months to one year pursuant to a deferment process set by the SBA in guidance due out in late April.

# Small Business Loans

## Loan Forgiveness

- The borrowers that qualify for small business loans will be eligible to have only those portions of their loans forgiven ONLY for the amounts spent during an 8-week period after the origination date of the loan for payments related to specific identified expenses.
- There are certain limits on the amount of forgiveness for which the loan will not be forgiven.

# Small Business Loans

## Loan Forgiveness eligible expenses:

- Payroll costs
- Interest payments on a mortgage if the mortgage was incurred prior to February 15, 2020 (does not include principal or prepayment)
- Rent payments under a lease that was in effect prior to February 15, 2020
- Utility payments made on utility services if such services were in use prior to February 15, 2020

# Small Business Loans

- **Economic Injury Disaster Loans**
- Eligible borrowers are small and private non-profits who have suffered substantial economic injury as a result of a declared disaster (in this case, COVID-19).
- Substantial economic injury means the business is unable to meet its obligations and to pay ordinary and necessary operating expenses.

# Small Business Loans

- **Economic Injury Disaster Loans**
- In most cases, loan amounts are up to one half of the prior year's gross profit not to exceed \$500,000, but if more is needed there is a more detailed calculation that may allow for up to \$2,000,000.
- Permissible uses are for working capital needs. This includes fixed debt payments, payroll, accounts payable, and other bills that cannot be paid because of the impact of COVID-19.

# Small Business Loans

- **Emergency Relief Loans**
- These loans are going to be made or guaranteed by the Federal Reserve.
- Eligible borrowers are any businesses affected by or located in an area affected by a disaster to whom credit is not reasonably available and for whom the obligation is prudently incurred.
- The business must have incurred or expect to incur losses such that continued operation is jeopardized.

# COVID-19 Resource Center

## McAfee & Taft COVID-19 Resource Center

**We're in this together.** Together, we're here to help our clients navigate the uncharted waters created by the COVID-19 pandemic. This dedicated COVID-19 Resource Center will be regularly updated with information, insights and complimentary resources to help guide you through these uncertain and turbulent times.

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# Questions?

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