

COVID-19 E-BOOK

FOR BUSINESSES

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Introduction



Never in my career have I seen such swift changes in the law in reaction to a single event as we have seen as in response to the COVID-19 quarantine and economic shut down. Congress, Executive Branch Departments, state governments and local officials have enacted and promulgated groundbreaking regulations and benefits designed to artificially stoke the economy and provide economic life rafts for businesses and individuals as well as require action to promote public health and safety.

Companies are at ground zero of this governmental action. In just a matter of days governments closed or restricted company operations, imposed paid sick and family leave, extended unemployment benefits, and offered forgivable loans as rescue packages for small businesses. Weeks of “stay at home” orders brought economic activity to halt for all but a few “essential businesses.” All businesses

large and small face an uncertain future with new, hopefully temporary, paid leave requirements and safety and health operational requirements. Hopefully, this e-book will help companies begin to think about how to uniquely respond to these new times.

This e-book summarizes the most notable changes for businesses.

1. New paid sick and family leave benefits are a groundbreaking requirement never before seen in American business. The Family Medical Leave Act requires unpaid leave for employees with certain physical conditions, but never has the American government mandated private employers provide paid leave for workers.
2. Governments at all levels have mandated health and safety measures to slow the spread of the virus and protect the health and safety of employees and customers.
3. The Congress created a new kind of unemployment benefit for those, both employees as well as independent contractors, who lost income due to certain COVID-19 related events; and
4. The Congress created a forgivable loan program to protect the income of employees of small businesses.

This e-book is intended only as a summary and starting point. An aid to get you thinking about the considerations of compliance and survival at this time. After reading you will still have lots of questions, because each situation is different. Hopefully, you will ask more informed questions. Please continue to seek help and advice from your accountants, bankers, tax preparers, business coaches and consultants, and lawyers.

Chapter 1

Employee Leave

The Families First Coronavirus Response Act (FFCRA or Act) requires employers with less than 500 employees to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. Employers with less than 50 employees may be exempt. These provisions will apply from the effective date through December 31, 2020.

The FFCRA consists of various laws that were implemented to ensure that individuals who are affected by the Coronavirus outbreak are able to minimize the social and economic hardships that may result from the spread of the virus. Among its provisions there are two main areas that will affect employers and employees; FMLA Leave Entitlement Expansion and Emergency Paid Sick Leave.

Employer and Qualifications and Exemptions

Private employers are covered under both the FLMA Leave Entitlement Expansion and Emergency Paid Sick Leave provisions if they employ fewer than 500 employees. Under both, employers may exclude their employees from these protections if their employees are healthcare providers or emergency personnel. However, if a business has fewer than 50 employees then that business is exempt from the revisions of this Act, provided it receives an exemption from the Department of Labor.

FMLA Leave Entitlement Expansion

The Families First Coronavirus Act has expanded the FMLA to include 12 weeks of FMLA leave for use of employees who have been employed for 30 days. The first 10 days of this leave can be unpaid but employees can use other benefits to cover this time. Leave following the first 10 days must be paid to the employee by the employer. The rate must be 2/3 the employee's regular rate of pay based on normally scheduled hours. The total paid leave available to an employee is capped at \$200.00 per day and \$10,000.00 total. This leave is only available to an employee if the employee requests leave in response to on of the following Coronavirus/ COVID-19 related reasons.

FMLA Leave Entitlement Qualifications:

An individual qualifies for the revised FMLA leave entitlements if the employee is “unable to work (or telework) due to a need for leave to care for the son or daughter under the age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency”.

Emergency Paid Sick Leave

Under the Emergency Paid Sick Leave Act applies to all employees of employers with fewer than 500 employees. This Act requires employers to provide up to 80 hours of paid sick leave to full-time employees. Part-time employees are afforded their average amount of hours worked for a two-week period. If the part-time employees schedule varies then the employer must use the average amount of hours worked over six months. If the employee has not worked that long, the employer must calculate wages based on the average number of hours the employee can reasonably expect to work. In order to receive this benefit, the employee must request leave under the following circumstances.

Emergency Paid Sick Leave Qualifications

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19 (Full Pay);
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19(Full Pay);
3. The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis (Full Pay);
4. The employee is caring for an individual who is subject to a federal, state or local quarantine order, or the individual has been advised to self-quarantine due to concerns related to COVID-19 (2/3 Pay);

5. The employee is caring for the employee's son or daughter, if the child's school or child care facility has been closed or the child's care provider is unavailable due to COVID-19 precautions (2/3 Pay); or
6. The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor (2/3 Pay).

Covered circumstances 1-3 have a cap of \$511.00 per day and \$5,110.00 total. Covered circumstances 4-6 have a cap of \$200.00 per day and \$5,110.00 total. Employers cannot require the employee to use any other leave prior to using Emergency Sick Pay Leave.



Duration of Leave

For Reasons (1)-(4) and (6) Above: A full-time employee is eligible for 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) Above: A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical 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.

Chapter 2

Providing a Safe Workplace

It is very important to make obvious and conspicuous efforts to create and provide a safe and healthy working/business environment.

First, it is the law. Both Federal and State Departments of Occupational Safety and Health Administration (OSHA) have issued guidance and regulations on how to provide a healthy and safe working environment in response to the COVID-19 outbreak and subsequent recovery efforts. State Governors, State and County Health Departments, Local Governments (City and County) all have issued “return to work,” “back to business,” or “economic reopening,” decrees or orders which purport to regulate health and safety measures in workplaces, retail establishments, and other public areas. These provisions may be enforced by code enforcement, health department fines and orders, or civil lawsuits. It is important to know and observe all of these regulations.

Second, it is good business. Employees and customers will expect and demand to be safe when working and conducting business. Workers are very concerned about how to balance going back to work to make a living with exposing themselves and their families to sickness. Likewise, customers are looking for safe places to shop, eat, and conduct business. Employees and customers alike will gravitate to companies they perceive as sacrificing some profit to insure their health and safety. Such businesses will stand the best chance of weathering this storm and thriving afterwards. People will remember who was there for them in their time of need and who only cared about making a short-term buck.

Develop an Infection Disease Preparedness Plan

If a company does not have a plan-it needs one immediately. You should take into consideration local/state/federal guidelines and directives. Generally, companies should evaluate the risk their workplace poses to spread the virus from employees, customers, vendors, the general public and work to mitigate or eliminate those risks via reduced work or offer of services, social distancing techniques, and frequent disinfecting of common and public areas.

Prepare to Implement Basic Infection Prevention Measures

- ▶ Promote/require frequent hand washing for all-soap and water. It is also a good idea to have alcohol-based hand rubs containing at least 60% alcohol.
- ▶ Encourage sick workers to stay at home
- ▶ Require everyone to cover their coughs and sneezes
- ▶ Obtain touchless thermometers and take employees' and customers' temperatures prior to entry. No one with an active fever of over 100 degrees allowed.
- ▶ Screen entrants with questions such as:
 - ▶ Do you have a fever or flu like symptoms?
 - ▶ Have you been exposed to someone diagnosed with COVID-19?
 - ▶ Are you recovering from COVID-19?
- ▶ Look for opportunities to implement innovative working conditions such as remote working, flexible work hours, staggered shifts, increase in physical distance between workers. Anything to reduce the number of people in direct contact with each other.
- ▶ Eliminate face to face meetings when possible. Replace them with video or phone calls
- ▶ Discourage sharing of phones, handsets, desks, etc...
- ▶ Maintain regular housekeeping practices. Clean all common areas and work areas with disinfectant.
- ▶ Install high efficiency air filters

- ▶ Increase ventilation rates in work environment
- ▶ Install physical barriers such as clear plastic sneeze guards
- ▶ Eliminate non-essential travel
- ▶ Train workers on how to best avoid work place transmission of the virus
- ▶ Train workers on use of PPE if applicable
- ▶ Provide tissues, trash cans for tissues, hand soap, disinfectants, disposable towels for cleaning surfaces
- ▶ Install hand washing reminder signs in restrooms
- ▶ Determine if your company needs Personal Protection Equipment. Employers are obligated to provide their workers with PPE needed to keep them safe while performing their jobs. The types of PPE required during a COVID-19 outbreak will be based on the risk of being infected with SARS-CoV-2 while working and job tasks that may lead to exposure in your specific workplace.
- ▶ Follow existing OSHA standards.
- ▶ Cooperate with governmental contact tracing efforts and procedures for employees or customers who test positive for COVID-19.

Install signs and posters for your employees and also aimed at the general public. Let everyone know that your company takes safety and health seriously and will enforce regulations and guidelines. Workers and customers will both appreciate this. Don't assume they will observe your efforts; promote and highlight your efforts. You want credit for them, but repetition is the best way to ensure compliance.

Chapter 3

Unemployment Benefits

Emergency Increase in Unemployment Compensation Benefits

This portion of the CARES Act is titled the Emergency Increase in Unemployment Compensation Benefits. This law provides eligible individuals with \$600.00 per week of "Federal Pandemic Unemployment Compensation", in addition to unemployment provided by their state. This compensation has a limit of 13 weeks and will be paid through July 31, 2020. It is important to note that there is currently no limit to the amount a covered individual can receive. This creates the possibility that an individual can receive more from unemployment than their compensation from their previous employer.



Pandemic Unemployment Assistance

This new law expands an individual's eligibility for unemployment benefits. It includes individuals who are self-employed, independent contractors, part-time employment seekers, those without sufficient work history and individuals who have exhausted their unemployment benefits. Individuals who had the ability to telework or received paid leave will not be covered under this law. This law also provides individuals with up to 39 weeks of unemployment in addition to any time the individual would normally receive under State or Federal law.

Covered Individuals

The covered individuals under this section are individuals who:

- ▶ have been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis;

Example An individual who has to quit his or her job as a direct result of COVID-19 because the individual has tested positive for the coronavirus or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities, such as through telework, is not possible by virtue of such diagnosis or condition;

Example An individual who has to quit his or her job due to coming in direct contact with someone who has tested positive for the coronavirus or has been diagnosed by a medical professional as having COVID-19, and, on the advice of a qualified medical health professional is required to resign from his or her position in order to quarantine.

- ▶ a member of their household has been diagnosed with COVID-19;

Example A member of the individual's household has been diagnosed as having COVID-19 by a qualified medical professional or a member of the individual's household has tested positive for COVID-19 and the individual is unable to work as a result.

- ▶ are providing care for a family member or member of their household who has been diagnosed with COVID-19;

Example An individual is "providing care" for a family member or a member of the individual's household if the provision of care requires such ongoing and constant attention that the individual's ability to perform other work functions is severely limited. An individual who is assisting a family member who is able to adequately care for him or herself is not "providing care" under this category.

- ▶ a member of their household for which they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure they are unable to work;

Example An individual has “primary caregiving responsibility” for a child or other person in the household if he or she is required to remain at home to care for the child or other person.

Example This includes an individual whose job allows for telework, but for whom the provision of care to the child or other person with a closed school or other I-5 facility requires such ongoing and constant attention that it is not possible for the individual to perform work at home.

- ▶ are unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency;

Example An individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19.

- ▶ are unable to work because they have been advised to self-quarantine by a health care provider;

Example An individual who has been advised by a qualified medical professional that he or she may be infected with the coronavirus and that he or she therefore should self-quarantine. For example, an individual had direct contact with another person who has tested positive for the coronavirus or been diagnosed with COVID-19 by a qualified medical professional, and is advised by a health care provider to self-quarantine to prevent further possible spread of the virus. Such circumstances would render the individual unable to reach his or her place of employment.

Example An individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus.

- ▶ were scheduled to start a job but are unable to do so as a result of the COVID-19 public health emergency;

Example An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment.

Example An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

- ▶ have become a “major support for a household” because the breadwinner in the household has died as a direct result of COVID-19;

Example An individual whose head of household previously contributed the majority of financial support to the household died as a direct result of COVID-19, and the individual is now the person in the household expected to provide such financial support.

- ▶ quit their job as a direct result of COVID-19;

Example An individual was diagnosed with COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation.

- ▶ the individual’s place of employment is closed as a direct result of COVID-19 public health emergency, or;

Example If a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of individuals who worked in the business would be considered a direct result of COVID-19.

- ▶ the individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities.

Example A driver for a ridesharing service who receives an IRS Form 1099 from the ride sharing service may not be eligible for PUA benefits under the other criteria outlined above, because such an individual does not have a “place of employment,” and thus cannot claim that he or she is unable to work because his or her place of employment has closed. However, under the additional eligibility criterion established by the Secretary here, the driver may still qualify for PUA benefits if he or she has been forced to suspend operations as a direct result of the COVID19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.

It is important to remember that nothing in this law changes the traditional unemployment benefits available to workers previously. Eligibility and qualifications to relieve traditional unemployment benefits remain unchanged. Even if a company fires an employee during the pandemic, but it is performance based and unrelated to the virus or quarantine, then these extraordinary benefits do not apply.



Chapter 4

Paycheck Protection Program

The Paycheck Protection Program ("the PPP) is the part of the CARES Act recently passed and signed into law as part of the federal stimulus package. The PPP provides for forgivable loans to small businesses (companies with less than 500 employees at any given location). This program is an additional program to the SBA low interest loan program announced earlier. It is important to understand that this program is intended to protect employees' income keeping them off of the unemployment rolls, than to provide a subsidiary to business' operations and profits. The PPP contains detailed administrative parameters for implementation, oversight, administration. The provisions of most interest to business owners and individuals are:

Who is eligible to get these loans?

- ▶ Businesses, companies, 501(c)(3) nonprofits, 501(c)(19) veteran's organizations, or Tribal business concerns with less than 500 employees;
- ▶ Sole-proprietors, independent contractors, and other self-employed individuals; and,
- ▶ Larger employers (with multiple locations) with less than 500 employees per location in certain industries who fall below a certain gross receipts threshold.
- ▶ Recipients must demonstrate that they were operational on February 15, 2020 and had employees for whom it paid salaries and payroll taxes, or paid independent contractors.
- ▶ Recipients must make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; that it will use the funds to retain workers and maintain payroll, lease, and utility payments; and, are not receiving duplicative funds for the same uses from another SBA program.

Important Features

- ▶ Loans max out at \$10 million or 2.5 times the average monthly payroll based on the prior year's payroll whichever is less.
- ▶ Proceeds can be used for payroll support, such as employee salaries/wages, paid sick or medical leave, insurance premiums, and mortgage, rent and utility payments.
- ▶ Forgiveness driven by retention of employee headcount as of February 15, 2020. Forgiveness will be reduced by reduction in headcount or overall payroll during the loan period. In other words, if a company reduces its headcount or payroll then the amount of the loan eligible for forgiveness is accordingly reduced.
- ▶ To encourage companies to rehire workers, there is no penalty for recipients who add back headcount lost between February 15, 2020 and the inception of the loan.
- ▶ Loan period is February 15, 2020 through June 30, 2020.
- ▶ Loans will be available through certain approved community banks.
- ▶ Maximum interest rate of 4%
- ▶ No pre-payment fees/penalties.
- ▶ No collateral or personal guarantee is required.
- ▶ Portions of the loan not forgiven have a maturity period of not more than 10 years.
- ▶ Payments on the loan may be deferred 6 months to 1 year.

As with most things the devil is in the details. The Small Business Administration and the Treasury Department are in the process of issuing guidelines and regulations for banks and borrowers to use to calculate forgiveness amounts and uses for the money. Congress is expected to weigh in on this as well. The IRS is also expected to weigh in on the tax consequences of the use of these loan proceeds.

At this writing, all of this is up in the air. Responsible borrowers will monitor the SBA, IRS, and Department of Treasury websites for bulletins and regulations; keep in close contact with their bank for developments; and, keep in close contact with their accountants, lawyers, and tax preparers for advice and breaking news.

Prediction

Getting loan forgiveness will be harder than getting the loans in the first place.

