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# Navigating the COVID-19 Landscape as a Family Business

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April 9, 2020

Welcome and thank you for joining us for today's presentation. Our topic is **“Navigating the COVID-19 Landscape as a Family Business”**

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# Topics for Discussion

- Furloughs, Layoffs and Other Restructurings
- The CARES Act Paycheck Protection Program
- Other Sources of Financial Assistance (State & Federal)
- Families First Coronavirus Relief Act (FFCRA)



# Downsizing / Reductions in Force

- Non-union employers in PA have many options.
  - Furloughs (temporary layoff / forced unpaid leave of absence)
    - Can be “partial” or complete, i.e., reduction in hours or outright removal from schedule for a period of time, which may be definite or indefinite
  - “Layoffs” (permanent separation)
  - Reductions in compensation
    - Under PA law, cannot reduce compensation during the current pay period
    - Beware FLSA compliance issues for salaried exempt employees



# Furlough

- Eligible for unemployment compensation
- Maintain attachment to employer
  - Easier to start up once “all clear” sounded
- Eligible for FFCRA benefits (no)
- No requirement to pay out PTO, depending on policy
- Lose eligibility for health benefits – **GENERALLY NO.**
  - Trigger COBRA (maybe, but maybe not)
- No WARN exposure if less than 6 months



# Layoffs / Terminations

- Eligible for unemployment compensation
- Not eligible for FFCRA benefits
- Requirement to pay out accrued pay if policy so provides
- Lose eligibility for health benefits
  - Trigger COBRA
- WARN Act notice may be necessary but unforeseen business circumstances may apply



# Legal Issues Around RIF's

- WARN Act
  - Applies to employers with 100+ employees in cases involving 50+ employees at a single site of employment suffering “job loss”
  - “Job loss” is a permanent separation or layoff of 6 months or more
  - WARN Act generally requires employers to provide 60 days’ notice of mass layoff or plant closing, subject to certain exceptions
  - “Unforeseen business circumstances” exception should apply to COVID-19 situation, but, formal notice still should be provided to CELOs and State Dislocated Workers’ Unit.



# The CARES Act - Overview

- Coronavirus Aid, Relief, and Economic Security Act
- \$2.2 Trillion Relief package passed in response to the novel Coronavirus, COVID-19 and signed on March 27, 2020
- Major Aspects of the Law
  - Title I – Paycheck Protection Program
  - Title II – Relief for Individuals, including Unemployment Compensation
  - Title III – Relief for the Healthcare Industry
  - Title IV – Relief for Airlines & other Distressed Sectors of the Economy



# The Paycheck Protection Program

- Found in Title I of the CARES Act
- Creates funding for “Paycheck Protection Loans” under Section 7(a) of the Small Business Act
- Main Issues
  - Who is eligible?
  - How to Apply
  - Loan Terms
  - Allowable uses of Loan Proceeds



# The Paycheck Protection Program: Who is Eligible?

- Available for small businesses, certain non-profits, veterans organizations, tribal business, sole proprietors, independent contractors, and certain self-employed individuals
- In order to qualify, your business must:
  - Have been in operation on February 15, 2020
  - Have fewer than 500 employees
  - Some exceptions
    - Hospitality Industry
    - Waiver of Affiliation Rules



# The Paycheck Protection Program: How to apply?

- SBA 7(a) Lenders are now taking applications
- Application Process
  - Need to fill out a Paycheck Protection Program Application Form
  - No collateral or personal guarantees required
- Is it necessary to have a pre-existing relationship with the bank?
- Lender must fund loan within 10 days of approval



# The Paycheck Protection Program: Application Requirements

- Information regarding monthly payroll costs and headcount
- List of all individuals/entities with > 20% ownership stake
- Certification that:
  - Current economic uncertainty makes the loan necessary to support the ongoing operations of the business
  - The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments
- Criteria for Lender Review and Underwriting



# The Paycheck Protection Program: Terms of the Loan

- Loan Amount is the lesser of
  1. Average Monthly Payroll Costs X 2.5; or
  2. \$10 Million
- Interest Rate – fixed rate of 1%
  - Payments may be deferred for at least six months
- Unforgiven portion of loan paid over two years
- Proceeds of the Loan must be used for expenses incurred between February 15 and June 30, 2020



# The Paycheck Protection Program: Allowable uses of Loan Proceeds

- Loan Proceeds may be used for:
  1. Payroll Costs
  2. Costs of Group Healthcare Benefits
  3. Mortgage Interest (but not Principal)
  4. Rent
  5. Utilities



# The Paycheck Protection Program: What are Payroll Costs?

- Salary, wages, commissions, and similar compensation, including cash tips (not exceeding \$100,000 annualized per employee)
- Vacation, parental, family, medical, and sick leave;
- Payments for dismissal or separation;
- Group healthcare benefits, including premiums;
- Retirement benefits;
- State and local tax assessed on compensation to employees; and
- Compensation of a sole proprietor or independent contractor (not exceeding \$100,000 annualized)



# The Paycheck Protection Program: What are NOT Payroll Costs?

- Compensation of a single employee in excess of an annual salary of \$100,000, prorated for the covered period
- Federal payroll taxes
- Compensation of employees whose principal residence is outside of the United States
- Any qualified sick or family leave wages for which a credit is allowed under 7001 or 7003 of FFCRA



# The Paycheck Protection Program: Loan Forgiveness

- Paycheck Protection Loans are eligible for forgiveness of up to 100%, but such forgiveness may be reduced based upon:
  1. Reduction in Number of Full Time Employees
  2. Reduction in Employee Wages
- BUT: Loan Forgiveness will not be reduced if Reduction in Employee Headcount or Wages is Remedied by June 30, 2020
- Loan Forgiveness will be handled by the Lender/Loan Servicer, not the SBA
  - Keep records necessary for this process, including tax and payroll documents, documents sufficient to prove employee headcount, and receipts/copies of checks related to rent, mortgage, and utility payments





# The Paycheck Protection Program: Calculating Loan Forgiveness

- **Reduction in Employee Salaries** – the amount of Loan Forgiveness will also be reduced by the amount of any reduction in salary which exceeds 25 percent of an employee's total salary in the most recent full quarter
  - This Reduction excludes employees who were paid over \$100,000 on an annualized basis in any pay period in 2019



# The Paycheck Protection Program: Calculating Loan Forgiveness

- **BUT:**

- any reduction in Loan Forgiveness based upon reduction in employee headcount or reduction will not apply if the employees are re-hired before June 30, 2020
- any reduction in Loan Forgiveness based upon salary reduction will not apply if employee salaries are restored to prior levels before June 30, 2020



# CARES Act - Coronavirus Economic Stabilization Act of 2020 (CESA)

- Found in Title IV of the CARES ACT and provides \$500 billion in loans and other investments for businesses that do not qualify for other assistance under the CARES Act.
- Fund Allocation
  - \$46 billion in funds are allocated to passenger air carriers, cargo air carriers and businesses critical to maintaining national security.
  - \$454 billion for businesses with between 500 and 10,000 employees that need the funds to maintain the operation of their business as a result of economic uncertainty tied to the Coronavirus
- Comes with “strings attached” (limitations on compensation, outsourcing, etc.)



# CARES Act: Tax Credits as An Alternative to PPP

- Refundable payroll tax credit for employee retention for businesses that were fully or partially closed due to an order from a government authority limiting travel, commerce, or group meetings due to COVID-19, or faced a significant decline in receipts related to COVID-19.
- Where applicable, the tax credits are equal to 50 percent of qualifying wages paid to each employee in a particular quarter, up to \$10,000 per employee.
- These tax credits are **not allowed** where the employer takes advantage of the Paycheck Protection loans.



# SBA Economic Injury Disaster Loans

- Low-interest loans (capped at 3.75%) for working capital to small businesses suffering substantial economic injury due to COVID-19
- Proceeds may be used to pay fixed debts, payroll, accounts payable, rent, utilities and other bills that cannot be paid because of the disaster's impact.
- Available from now until December 31, 2020
- Application completed through the SBA
- No loan forgiveness component



# Opportunities for State and Local Relief

- Pennsylvania COVID-19 Working Capital Access Program
- MontcoStrong Small Business Grant Program
- Philadelphia COVID-19 Small Business Relief Fund
- Chester County Economic Development Council
- Bucks County Economic Development Corporation



# Families First Coronavirus Response Act

- Enacted on March 18, 2020 (sunsets 12/31/20)
- Paid leave provisions became effective on April 1
  - Paid Sick Leave
  - Paid Family and Medical Leave
- Temporary Regulations issued April 1 (125 pages)
- Regs codify and clarify guidance issued in DOL “Q&A” document



# Employer Coverage – Who is Covered?

- Private employers with fewer than 500 employees and all governmental employers
  - NOTE: this includes employers who are otherwise exempt from the FMLA who have fewer than 50 employees
- Exception to Expanded FML only: businesses with fewer than 50 employees may deny leave to employees whose absence would jeopardize viability:
  1. Would cause the small employer's expenses and financial obligations to exceed available business revenue,
  2. Would pose a substantial risk to the financial health or operational capacity
  3. Would prevent the small employer from operating at minimum capacity



# Employee Coverage

- **Are certain employees not covered?**
  - Employees who are not working or teleworking due to furlough, layoff or business closure are not entitled to paid sick leave or paid FML.
  - Rather, the qualifying event must be the “but for” cause of the employee’s inability to work or telework.
  - Employers also may exclude employees who are health care providers and emergency responders.



# Paid Sick Leave – Qualifying Reasons

1. Unable to work or telework because the **employee** is subject to a Federal, State, or local COVID-19 quarantine/isolation order
2. Unable to work or telework because EE advised by a health care provider to self-quarantine for a reason related to COVID-19
3. Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

These absences are paid out at full pay, up to \$511 per day / \$5,100 total.



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# Paid Sick Leave – Qualifying Reasons

4. Unable to work or telework because employee needs to care for someone who falls under (1) or (2)
5. **Unable to work or telework because employee needs to care for a child where:**
  - a) **the child's school or place of care has closed; or**
  - b) **the child care provider is unavailable for COVID-19 related reasons**
6. Unable to work because they are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services
  - However, no such conditions have yet been identified.

Absences for these reasons are paid out at 2/3<sup>rd</sup> pay up to \$200/day up to \$2,000 total.



# What's Not Covered

- Anything other than the 6 events described above.
  - Generalized fears that it is not “safe” to come to work
  - Concerns that the employee and/or a family member are at greater risk for complications if they are exposed to COVID-19
- Employees refusing to work may be subject to discipline or discharge.
- CAVEAT: Be careful about group refusals to work -- PCA



# What Type of Paid Family Leave is Available?

- Up to 12 weeks, where an employee who has been employed for at least 30 calendar days is unable to work due to a bona fide need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19
  - Unpaid for first two weeks
  - Remaining 10 weeks: two-thirds the regular rate of pay up to \$200/day and \$12,000 total



# Duration of Leave

## **For how long can an employee take paid sick leave?**

- Full-time employees are entitled to 80 hours of PSL.
- Part-time employees are entitled to a pro-rated amount.

## **For how long can an employee take paid family leave?**

- 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 and 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.



# Other Employer Considerations

## Can an employee take other paid leave instead on these new types of leave?

- An employer may not require an employee to use PTO or other leave before using PSL.
- With respect to Paid FML, an employee may elect any accrued vacation leave, personal leave, or medical or sick leave, as well as sick or family leave mandated by state and local governments concurrently with FML.
- Not clear whether employers can **require** employees to use PTO concurrently with Paid FML.



# Employer Tax Credit

## Can an employer receive reimbursement for payment of FFCRA paid leaves?

- Yes, 100% is refundable as a tax credit with reimbursement as a credit against Social Security and Medicare payroll taxes.
- The IRS has issued a 66 point FAQ document with details on how to claim the credit. The IRS is allowing employers to reduce their federal payroll tax deposits if they meet certain criteria.
- <https://www.foxrothschild.com/publications/irs-issues-guidance-on-tax-credits-for-required-paid-leave-under-ffcra/>



# Required Notice of Rights

- DOL has now made available the [Notice of Employee Rights under the FFCRA](#)
- Employers must conspicuously post a notice of employee rights in a place where employees can see it
- Employers can also distribute the notice by e-mail or regular mail, or load it on a website where employees receive information



# Could All of This Change?

- Yes, even though the law was enacted on March 18, Congress already is considering changes.
- Also, US DOL continues to “refine” the statutory text through a “Q&A” document that it updates frequently.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- Employers are advised to consult this site regularly.
  - E.g., clarification around eligibility of laid off employees for benefits
  - Change in definition of “health care provider” whom employer can exclude from benefits.



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# Where Can We Get Additional Information?

- CARES Act:
  - <https://home.treasury.gov/cares>
- FFCRA
  - U.S. DOL - <https://www.dol.gov/agencies/whd/pandemic>
  - OSHA coronavirus guidance: [www.osha.gov/SLTC/covid-19/](http://www.osha.gov/SLTC/covid-19/)
  - [Notice of Employee Rights under the FFCRA](#)



# Questions / Follow-up?



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