

# COVID-19 Business Issues

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BY: DANIELLE M. JOHNSON, ESQ.

# High Level Overview

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1. Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)
2. Families First Coronavirus Response Act (“FFCRA”)
3. Economic Injury Disaster Loans

# CARES Act

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1. Personal Payments
2. Enhanced Unemployment Benefits
3. Paycheck Protection Program (PPP) Loan
4. Employee Retention Credit
5. Delay of Payment of Employer Payroll Taxes

# CARES Act – Personal Payments

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## 1. \$1,200 or \$2,400 for joint filers for adults

- These phase down once an individual's income reaches \$75,000 or \$150,000 for joint filer
- Reduced by \$5 for every \$100 of additional income
- Does not need to be repaid
- Delivered automatically
- \$500 for each qualifying under the age of 17
- Based off last filed tax return (if haven't filed 2019 then it will be 2018)

## 2. Social Security

- Based off SSA 1099 (social security benefits statement) or RRB 1099 (railroad retirement board)
- If didn't file taxes in 2018 or 2019 don't have to do anything

# CARES Act – Enhanced Unemployment Benefits

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- Provides for an additional \$600 on top of what you would normally get for unemployment
- This is NOT an offset
- This is only an expanded benefit based on state eligibility (no federal program)
- Benefits paid in connection with COVID-19 will not be charged to the employer accounts
- Employers may want to look at strategies to lower their unemployment insurance tax rate and realize savings and reduction in over unemployment insurance tax burden
  - Voluntary contributions to offset benefit charges in unemployment insurance rate calculations
  - Formation of a joint account that permits two or more legal entities to combine their state experience rating factors and obtain a single, favorable unemployment insurance tax rate

# CARES Act – Paycheck Protection Program

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## 1. How to apply?

- Apply through a bank that is an approved Small Business Administration (SBA) Lender (first come first served)
- Average monthly payroll costs (exclude anything over \$100,000 for a single employee) multiplied by 2.5
  - Capped at \$10 Million
  - Look at one year period and create a one-month average
- Subtract any outstanding amount of an Economic Injury Disaster Loan (EIDL) made between 1.31.20 and 4.3.20, less the amount of any “advance” under the EIDL COVID-19 loan (because it does not have to be repaid)

## 2. What can I use it for?

- Payroll
  - Salary (\$100,000 or less)
  - Commission
  - Paid leave
  - Health benefits
  - Payroll taxes
- Rent and Utilities
- Interest on certain loans (e.g.: secured by a mortgage)
- NOT for wages that you are getting a credit for under the FFCRA

# CARES Act – Paycheck Protection Program (cont'd)

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3. What if I already reduced my workforce or the wages I paid my workforce?
  - If you reduce wages or your workforce by more than 25%, then the amount forgiven is reduced
4. How long do I have to use the PPP money I receive to receive forgiveness?
  - 8 weeks for the approved expenses above
5. What if I do not use all of the money I receive through the PPP in 8 weeks?
  - It becomes a loan you must pay back (starting 6 months after disbursement – can defer up to 1 year)
  - Maturity date is 2 years (you can apply to extend the maturity date)
  - 1 % interest rate
6. Had to have been in operation (including sole proprietors, independent contractors, eligible self-employed individuals) as of February 15, 2020.
7. No collateral or personal guarantees required.

# CARES Act – Paycheck Protection Program (cont'd)

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What is the deal with the PPP and hospitality businesses, such as restaurants and hotels?

1. Hospitality businesses were not specifically excluded from the PPP, however, the requirements of the PPP make it so that many hospitality businesses will not benefit.

- Must retain or hire back their employees on par with staffing levels previous to pandemic by the end of June
  - Not a certainty for hospitality because of the nature of the business and not sure if they will be permitted to reopen in June
  - Unlikely sales will be the same
  - People might be hesitant to go out and gather or host parties/events
- PPP requires 75% of the loan to be allocated to labor costs for it to convert into a grant
  - Leaves only 25% rent (hospitality usually pays high rent and utilities)

2. Small Business Association (SBA) affiliation standards are waived for:

- hotel and food services
- Franchises in SBA Franchise Directory; and
- Businesses that receive financial assistance from companies licensed by SBA



# CARES Act – Employee Retention Credit

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1. Refundable tax credit for 50% of wages paid by employers to their employees during the pandemic
  - Maximum credit is \$5,000 per employee on wages paid from March 12, 2020 through December 31, 2020
  - This means that only the first \$10,000 of wages per employee paid by an eligible employer are eligible for the credit
  - Claimed against payroll taxes on quarterly payroll tax return (IRS Form 941)
2. To qualify, employer's operations must be fully or partially suspended due to coronavirus or the gross receipts decreased by more than 50% when compared to the same quarter the prior year.
3. Purpose: encourages employers to keep employees on payroll without causing undue hardship to employers
4. NOT eligible for this credit if you receive the PPP (Paycheck Protection Program) loan
5. BUT it is available in connection with the Delay of Payment of Employer Payroll Taxes

# Delay of Payment of Employer Payroll Taxes

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1. Payment of employer's social security payroll taxes for 2020 (which 6.2%) may be deferred
  - Interest and penalty free
2. Half of the social security taxes for the remainder of 2020 will now be due on 12/31/2021
3. The last half of the social security taxes for the remainder of 2020 will not be due on 12/31/2022
4. How does this work?
  - Fill out your quarterly payroll return (IRS Form 941)
  - Make your required payments to the IRS (Internal Revenue Service )as you normally would by the new deadline
5. NOT available if you also get the PPP (Paycheck Protection Program) Loan
6. BUT it is available in connection with the Employer Retention Credit

# Families First Coronavirus Response Act

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Does the FFCRA apply to your business?

1. Applies to private businesses with less than 500 employees at the time the employee seeks to take leave.
2. Businesses with less than 50 employees may not have to comply if complying would create an undo hardship and jeopardize the ability to exist.
  - It may be difficult to document undo hardship and the ability to exist
3. Certain public employers are also covered, regardless of size.

[https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave#\\_ftnref1](https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave#_ftnref1)

\*\*\*The FFCRA applies from April 1, 2020 through December 31, 2020

# Families First Coronavirus Response Act

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Requirements if it applies:

1. 2 weeks (80 hours) paid leave for employees if:

- Experiencing COVID-19 symptoms (or waiting diagnosis)
- Ordered home by quarantine
  - This likely does not mean all nonessential business – just means if you personally are ordered to stay home
- Pay what earning prior to leave
- Reimbursed to employer up to \$5,100

2. 12 weeks child care leave

- First 2 weeks are unpaid
- 10 weeks protected leave at least 2/3rds of pay prior to leave
- Reimbursed to employer for up to \$10,000

3. Does NOT apply if you are afraid to come into the office

- Can be fired for not coming in just because you are scared)

\*\*Leave time is very nuanced and situational – for specific questions please rely on your attorney

# Families First Coronavirus Response Act

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## Considerations for Employers:

### 1. How does this credit work?

- On your next quarterly tax return (IRS Form 941) withhold the amount you think should be credited to you
- If your credit exceeds your tax liability then the IRS (Internal Revenue Service) will cut you a check
  - The IRS expects to process these in less than 2 weeks

### 2. What if the IRS questions my Form 941?

- Keep good records to verify all leave and for what reason
- Request employees fill out formal leave request forms
  - Forms found on Department of Labor (DOL) website (WH – 381)

# Economic Injury Disaster Loan

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1. This was already in existence for the declaration of disasters, but was slightly modified by the CARES Act
2. Wisconsin declared a disaster on March 20, 2020 at 10:00pm
3. Provides for a Loan with the following terms:
  - Up to \$2 Million
  - 3.75% interest rate (2.75 for nonprofits)
  - 30 year term
  - First \$10,000 advanced on an expedited basis within 3 days
    - No obligation to repay the advancement
  - You can use it for whatever you want to cover business losses
  - NOT eligible for forgiveness
4. Application is on the Small Business Administration website (can take 3-4 weeks for approval)

# All Loans Overview

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1. CARES Act Paycheck Protection Program (PPP) Loan
  2. Economic Injury Disaster Loan (EIDL) Loan
  3. Wisconsin Economic Development Corporation (WEDC) Small Business 20/20 Program
    - Targeted at the “smallest of the small”
    - Grant of up to \$20,000 to meet payroll expenses (including sick leave) and rent
    - Must have fewer than 20 employees
    - Apply on WEDC Website
  4. Kiva Loans/Dane Buy Local
    - Zero interest small business loans
    - Up to \$10,000 (\$250,000 total available for the buy local program)
    - For Dane County Businesses as a grant (Check your county – likely similar offerings)
    - Apply on Dane Buy Local or Kiva website
- \*\*NOTE:** It is important to do an analysis of your business to decide if a loan is the best cash option

# Section 139 Payments to Employees

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1. Internal Revenue Code Section 139 allows employers to make payments to employees to reimburse or pay reasonable and necessary:
  - medical, personal, family, living, or funeral expenses incurred as a result of the disease or the quarantine
2. Deductible by employer
3. Excluded from employee's income
4. DO NOT do this without consulting your attorney as businesses can get into some trouble if the payments do not qualify



# Other Business Considerations

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## 1. Talk to your Landlord about a reduction or stay of rent payments

- Try to get this in writing (a signed Amendment to the Lease)

## 2. For individual renters, there is a moratorium for 120 days starting March 27, 2020 in which the Landlord cannot:

- Evict a tenant
- Charge late fees or other charges for non-payment of rent
- Issue a notice to vacate
- ONLY applies for non-payment of rent and NOT other causes
- nonpayment of rent during this period is NOT forgiven and these unpaid amounts will accrue during this period even if fees are not assessed

## 3. Insurance

- Business interruption insurance – likely insurance company will argue it is excluded from coverage
- Discounts from insurance companies for vehicles

# Reduction in Workforce Terms

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**Furlough:** a reduction in scheduled work and corresponding pay for some or all employees

- Employee still employed
- Usually an alternative to layoffs
- Usually employees retain benefits
- Employees may receive unemployment

**Layoff:** is a separation of the employment with some potential of return

- Employee not employed
- Employees may receive unemployment while laid-off
- Employer may (but is not required to) subsidize or maintain certain benefits (e.g. health insurance or seniority)

**Termination:** is a complete end to the employment relationship

- Employee not employed
- Employees lose all benefits (other than continuation coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA))
- Employees may receive unemployment

# Employer Workforce Considerations

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1. Workforce needs in short term (6-18 weeks)
2. Financial outlook and ability to meet payroll obligations now and for next 6-18 weeks
3. Need for retention and future ability to re-hire or “staff back up”
4. Federal and state assistance for businesses (e.g. Families First Coronavirus Response Act tax credits)
5. Federal and state assistance for employees (e.g. Unemployment Insurance benefits)
6. Changes in employee status from full time to part time
7. Eligibility for certain benefits
8. Provide COBRA notice for layoffs and terminations
9. provide unemployment information/assistance for layoffs and terminations

# OSHA and Other Safety Considerations

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1. Employers required to provide a workplace free from recognized hazards likely to cause death or serious physical harm
2. Follow the latest recommendations from the Center for Disease Control and Prevention (CDC) and local public health agencies
  - Occupational Safety and Health Administration (OSHA) has published guidelines on its website
3. Public health organizations recommend that companies bar employees or visitors from coming to the workplace for a period 14 days after a “medium” or “high-risk” exposure to the virus
  - See the CDC’s “Interim Guidance for Risk Assessment.”

# What do I do if an Employee is Sick or Symptomatic?

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1. Send employees home and instruct to stay at home if:
  - tested positive for Coronavirus
  - Exhibit symptoms consistent with Coronavirus
  - had close contact with an individual (such as a member of the same household) who has tested positive for Coronavirus
  - recently returned from an area deemed restricted by the CDC.
2. Employers should strongly consider sending employees home and/or instructing employees to stay home who:
  - had close contact (such as a member of the same household) with an individual who has exhibited symptoms consistent with Coronavirus
  - recently returned from an area of increased risk according to the CDC
  - Worked closely with an employee who meets any of the above.
3. Stay at home for the amount of time recommended by the CDC.

# What do I do if an Employee is Sick or Symptomatic? (cont'd)

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4. Notify your workforce but do NOT identify the employee.
5. Notify other employees that worked in close proximity to the infected employee in the previous 14 days.
  - Transparency with employees is recommended, including communicating that an employee is asymptomatic but you are acting out of an abundance of caution and based on recommendations of the CDC and public health officials.
6. Employers must record cases of Coronavirus under OSHA if all of the following are met:
  - the case is a confirmed case of Coronavirus,
  - the case is work-related, and
  - the case involves one or more of the general recording criteria set by OSHA (e.g. medical treatment beyond first-aid, days away from work).
7. Although not required to notify clients and customers, this is recommended.

# Can I restrict my Employees' behavior outside of work?

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1. You cannot prohibit employees from traveling (or any other behavior) on their personal time.
  - But, you can recommend employees refrain from certain activities.
2. You can ask employees to provide notice of any travel outside the county or state and can require that employees returning from high risk areas self-quarantine for amount of time recommended by the CDC and local public health officials (currently 14 days).

# Other Employer Questions

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1. Can an employee refuse to come to work due to fear of becoming infected? Can they refuse to engage in work-related travel?

- Generally, No.
- Employees are only entitled to refuse to work if they believe they are in imminent danger (cause death or serious physical harm)
- While Coronavirus is a serious pandemic, its general risk of death or serious physical harm does not appear to rise to this level either.
- If an employee feels coming to work puts them at too high of risk of exposure, they should consider utilizing vacation or other paid or unpaid time off.
- Employers may, but in most cases are not required, to allow employees to work remotely if they have such ability.

2. Are employers required to allow employees to wear a protective mask or respirator?

- Generally, No. (Within employer's discretion.)
- Unless a mask or respirator is required as part of job duties to provide for employees' safety.
- The only other exception may be if an employee has a disability under the Americans with Disabilities Act (ADA), for which wearing a mask is a reasonable accommodation. (Note: coronavirus is not a condition under the ADA unless underlying condition is exacerbated by coronavirus.)



# Other Employer Questions

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3. Can employers require employees submit to a medical exam if they exhibit possible symptoms of Coronavirus or have returned from places of higher risk?

- Generally, No.
- Employers who have objective evidence and a reasonable belief that an employee has been infected with or exposed to Coronavirus could require the employee submit to a medical examination to determine whether they are infected. (Review the latest guidance from the CDC and local public health officials prior.)

4. Can employers require employees to obtain medical certification that they are safe to return to work after a quarantine or exposure?

- Yes, but review the latest guidance from the CDC and local public health officials
- CDC recommends against requiring employees to provide a doctor's note to justify an absence for Coronavirus-related reasons so as not to inundate or medical professionals

5. Are employers required to allow employees to work remotely if requested during a pandemic?

- No.
- The Equal Employment Opportunity Commission (EEOC) has stated that employees with disabilities that put them at a higher risk of complications from Coronavirus may request to work remotely as a reasonable accommodation to reduce their chances of infection.

# Practical Considerations for Employers

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If you are forced to furlough, layoff, or terminate employees, consider the following:

1. Formal letter
2. Talk with them
3. Provide unemployment information
4. Comply with all labor laws (possible federal mass layoff notice)
5. Transparency
6. Do you plan to bring them back?
7. Section 139 payments

TAKE A DEEP BREATH, WE  
WILL GET THROUGH THIS  
**TOGETHER.**

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QUESTIONS?