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**B R O W N**

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L A W F I R M

# Business During a Pandemic

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# Business Incentives Under CARES Act

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# Disclaimer

Due to limitations and the nature of this program please understand that printed material and oral presentations or other data presented are not intended to be a definitive analysis of the subjects discussed. Users are cautioned that situations involving healthcare and employment law questions are unique to each individual circumstance, and the facts of each situation will dictate a different set of considerations and varying results. Material contained in this presentation or listed as a reference is a general review of the issues, and must not be considered as a substitute for advice from your attorney on your own independent situations.

# What the Disclaimer Really Means

- I am not talking about you
- The facts change the answer
- There isn't always one right answer

# Paycheck Protection Program

- Who is eligible?
  - Small Business Concerns – meet SBA employee-based or revenue-based standard; or meets March 27 criteria
    - Maximum tangible net worth of business no more than \$15 million; and
    - Average net income (after federal taxes) for two full years is not more than \$5 million
  - Any other business concern, non-profit, veterans' organization, or tribal business concern employing 500 or fewer people

# PPP Eligibility

- Who is not eligible?
  - Person engaged in activity that is illegal
  - Household employers (nannies/housekeepers)
  - Owner of 20% or more of applicant is incarcerated, on probation, on parole or subject to indictment, criminal investigation, arraignment or convicted of felony with last 5 years

# Loan Terms Under PPP

- Portion of loan is forgivable if used for payroll costs, rent, utility payments for payments made within 8 weeks following application.
- Unforgiven portion interest rate is 1% and maturity date no longer than 2 years
- Payments of P&I deferred for at least six months
- Borrower certifications required

# PPP Maximum Loan Eligibility

- Maximum loan amount is lesser of \$10 million or:
  - Sum of Average Monthly Payroll Costs (salaries, wages not exceeding \$100,000 per employee plus qualified sick and family leave), group health insurance, retirement benefit costs, State/local Taxes on Employee Compensation
  - Multiply that number by 2.5

# Allowable Use of Funds

- Payroll costs
- Health care benefits
- Interest on mortgage (not principal)
- Rent
- Utilities
- Interest on any other debt obligation incurred before Feb. 15, 2020

# Forgivable Portion

- Add together payroll costs, rent, utilities and interest on covered mortgages over covered period
- Reduce that amount by percentage of employees reduced during that period
- Reduce that amount by reductions in salary made in excess of 25% of total wages in most recent full quarter

# Emergency Economic Program

Eligible: Small businesses with 500 or fewer workers that have sustained economic injury

Grants capped at \$10,000

Loans also available:

Small Business: \$2 million with interest rate of 3.75%

Non-profits: 2.75% for with maturity date of 30 years

# Emergency Economic Program

- Funds may be used for providing paid sick leave for employees unable to work due to the direct affect of COVID-19, maintaining payroll, meeting increased costs to obtain materials, making rent payments and other obligations.
- Filing open at <https://disasterloan.sba.gov/ela/>
- Businesses that apply for this loan may later transfer into a Paycheck Protection Loan and amounts advanced are subject to being forgiven.

# Employer Retention Credit

- Cannot be used with loan programs. Eligible only if meet certain criteria.
- Credit is a fully refundable tax credit for employers equal to 50% of “qualified wages” that employers pay their employees.
- Applies to wages paid after March 12, 2020 and before January 1, 2021.
- Maximum amount of wages for each employee limited to \$10,000 (so maximum credit for any employer per employee is \$5,000)

# Delay of Payroll Taxes

- Cannot be used with loan programs
- Can delay payment of employer portion of social security taxes for wages paid between March 27, 2020 and December 31, 2020.
  - 50% are due by 12/31/21 and the remainder due by 12/31/22.

# Diagnosis, Prognosis, and Recovery- Business during a pandemic

Jo Ellen Whitney

# Stay Safe

- OSHA's obligation to address safety issues
- PPE
- Temping EEs, visitors, contractors, etc.
- Social Distancing; Spatial Limits
- Cleaning & Infection Control
- Quarantine Policy

# Listen to the CDC

- <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>

# RTW Certification

## Employee Certification Form to Return to Work

I, \_\_\_\_\_, hereby certify that I am free from any symptoms related to influenza, COVID-19/Coronavirus and that I have had no symptoms (fever greater than 100.4; cough; shortness of breath/difficulty breathing; direct exposure to confirmed or suspected COVID19) within the last 72 hours. I am not required to obtain a doctor's certification to avoid overburdening the medical care professionals. I understand that my employer is relying on this statement to be truthful and accurate and that making any false or misleading statement is considered to be gross misconduct and will result in disciplinary action up to and including termination of my employment.

Do Not Require Medical Release \*\* Do Not Overburden other Treeters

# Notification Template

Dear Employees,

As you know, the novel coronavirus (COVID-19) is spreading throughout the United States, including Iowa. We were recently notified that \_\_\_\_\_ of our employees tested positive for COVID-19. The employee was last on-site on or about \_\_\_\_\_ (date) and **was or was not** symptomatic while on at work. If we believe you had close contact with this person, you will be separately notified.

We want to assure you we are implementing the recommended precautions and guidance from public health officials to protect our employees, patients, staff and visitors. To protect our employees' privacy, we will not be providing any further details regarding the staff persons involved. Given community spread of COVID-19 is occurring within Central Iowa, we ask that each of you be mindful of your health. Any employee or staff member who is experiencing respiratory symptoms or has a fever of 100.4 or higher should contact \_\_\_\_\_ at \_\_\_\_\_ to determine whether he/she should be tested. **[For HCP] Please do not reach out independently to our physicians or show up on site without contacting \_\_\_\_\_ to make arrangements.**

We ask that you also remember our social medial policy and respect our employees' privacy during this time. If you receive any media or other inquiries regarding this incident, please direct them to \_\_\_\_\_.

We understand this is a stressful and uncertain time. We will continue to update you as this situation evolves. In the meantime, please forward any questions to \_\_\_\_\_.

Thank you for your continuing efforts to support the health and wellbeing of our community.

# Communication

- What if an employee doesn't want to work?
- What if a spouse calls?
- What if a customer has concerns?

# Someone Tested Positive. Now What?

- Transparency
- Consent/Knowledge
- Interactive Discussion
- Closure/Quarantine

# What about OSHA?

- Recordable event
- Is it really work related?

# What Documents?

- Government Orders
- Quarantine-Public/Personal
- Payroll Records
- Interest and Debt
- Business Comparative (then and now)
- Contracts
- Benefit Records
- IWD Notices, Individual Claims
- Individual Employee Records
- Doctors Notes
- School Closures

# Paycheck Protection Act

- Apply at any approved lending institution
- Through the SBA

# Who is Eligible?

- 500 or fewer employees
- Some special rules for franchises, etc.
- Sole proprietors, gig workers, and those who are self employed are eligible

# How Much Can I Borrow?

- 250% of average monthly payroll expenses up to 10 million dollars
- Intended to cover up to 8 weeks of payroll and payments towards debt obligations

# What Time Period Does This Cover?

February 15, 2020 to June 30, 2020

# What is Forgiven?

- Payroll, interest payments or mortgages, rent payments, leases and utility service payments
- Portions used for other expenses like inventory will not be forgiven

# What Decreases the Amount Forgiven?

- Use of funds for things like inventory
- If you reduce payroll by more than 25% forgiveness will be commensurately reduced
- You can get full forgiveness if you rehire prior to June 30, 2020

# 401K Issues / IRA Distributions

- CARES Act allows new hardship withdrawal
- Not subject to 10% penalty
- May be repaid over 3 years
- May not exceed \$100,000 per eligible participant
- Income tax may be paid over 3 years
- Retroactive to January 1, 2020 if COVID circumstances cause the need

# 401K Loans

- Through December 31, 2020 loan limits doubled to \$100,000 or total vested amount – whichever is lesser
- Allows delay of loan repayments up to 1 year

# Student Loan Assistance

- Employers can reimburse employees for up to \$5,250 tax free

# Pandemic Unemployment Assistance Program

- Through December 31, 2020
- Used to assist gig workers, etc.

# Who is an Essential Employee?

- “Other community or government based operations.....”
- Workers to ensure continuity of building functions.  
Includes HVAC

# Pay Attention To The Side Hustle

- Does your side gig effect safety?

# Families First Coronavirus Response Act

- April 1 through December 31, 2020
- Healthcare employee exemptions from the law

# Emergency FMLA Expansion

- Employees who have been employed for a minimum of 30-calendar days with the employer
- Applies to employers with fewer than 500 employees
- Applies to school or childcare closures when an employee is unable to work or telework due to such events

# Emergency FMLA Expansion

Businesses with fewer than 50 employees are exempt if they can show business necessity and economic hardship which would jeopardize the business “as an ongoing concern.”

# Emergency FMLA Expansion

The first 10-day period is unpaid, but the employee can choose to substitute accrued PTO.

# Emergency FMLA Expansion

- After the 10-day period, employees meeting the conditions of the FMLA expansion will receive paid leave for the remainder of the covered time at a rate of 2/3 of their standard pay.
- Limits on the amount that will be required to be paid:
  - Total amount of leave paid pursuant to the statute “Shall not exceed \$200 per day or \$10,000 in the aggregate.”

# EFMLA Job Return

- Same as normal under the FMLA unless you have fewer than 25 employees and then you have extra hoops to jump through

# Emergency Paid Sick Leave

This applies to all employees who are unable to work or telework.

# Emergency Paid Sick Leave

- Subject to a governmental quarantine
- Has been advised by a health care provider to self-quarantine
- Experiencing COVID-19 symptoms and is seeking medical diagnosis
- Caring for an individual who is subject to quarantine either due to governmental or medical order
- Caring for a son or daughter if there is a COVID-19 based school or childcare closure
- Any other “substantially similar condition”

# Eligible Employees Have Right to:

- 80 hours of paid sick leave for full-time employees and a prorated amount based on average hours worked for part time employees over a two-week period
- Immediately available and is not based on length of service
- Leave does not carry over from year to year and is not used for other purposes other than to those cited above and related to the current pandemic
- Employers may not require that employees “find their own replacement” in order to qualify for this leave

# Eligible Employees Have Right to:

- Employers may not require that employees first exhaust other paid sick time prior to using this mandated sick leave.
- Violations of this statute are wage hour violations

	Due to quarantine or personal illness	Due to care of another person or school/daycare closure
Max per day	\$511	\$200
Total aggregate amount	\$5,110	\$2,000

All employers are required to post on their premises a DOL notice about this leave.  
The notice is available at [dol.gov](http://dol.gov)

# Iowa Workforce Development / Job Service

## Amounts

- Weekly benefits \$87-\$591 based on previously paid employee wages and number of dependents

## Timing

- Benefits available for a maximum of 26 weeks unless there are further changes to the law

# Iowa Workforce Development / Job Service

Claimants that file will be eligible if they are out of work due to:

- Caring for a family member with COVID exposure/illness
- Loss of childcare or school closures
- Employer shut down (temporary layoffs have always qualified)
- Self-quarantine need
- Ill with COVID-19 and unable to work due to sickness or quarantine

# Iowa Workforce Development / Job Service

- Work Search requirement is waived for these circumstances
- Employees will check COVID-19 on the benefit application form which will trigger this coverage
- New employees who would not otherwise qualify for job service due to lack of time worked will remain eligible for payment under the COVID-19 plan. IWD will look at the prior employer to determine payment rate. It appears that if an employee has worked for the minimum in qualifying wages in the last 18 months some benefits will be available.
- Employee eligibility is broad, but you do have to have been employed and earned wages in the last 18 months

# IWD – Voluntary Shared Work Program

- An affected employee's hours are reduced between 20-50% (the minimum reduction is 20% and the maximum is 50%)
- Affected employees are paid a percentage of their weekly unemployment insurance (UI) amount, based on the percentage their hours are reduced. For example, if the hours of employees in the affected work unit are reduced from 40 to 32, that is a 20% reduction, and the UI claim would pay them 20% of their weekly UI amount.

# IWD – Voluntary Shared Work Program

## Cost to Employer

Employer accounts will not be charged for benefits paid under the VSW Program directly or indirectly related to COVID-19

# CARES Act / Workers Affected by Coronavirus Act

- Adds up to \$600 weekly for job service for up to 13 weeks
- Ends July 31, 2020
- Provides for a maximum of 39 weeks of benefits (expires December 31, 2020)
- Is retroactive to January 27, 2020
- Includes gig workers and others

# Other IWD Changes

No longer have to exhaust PTO to qualify

# Important Resources

- Remember: the situation is changing rapidly; monitor these frequently:
  - CDC Website: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
  - IDPH: <https://idph.iowa.gov/Emerging-Health-Issues/Novel-Coronavirus>
- Do you have a legal question relating to the coronavirus?
  - Email us your question: [info@davisbrownlaw.com](mailto:info@davisbrownlaw.com), subject line: Coronavirus
  - We'll publish updated blog posts and try to answer as many as we can

# QUESTIONS?

Thank you,

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*"Beyond the Product"*

**Have additional questions?**

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