

# New Federal Laws in the Time of COVID-19

Fear and Loathing in Quarantine –  
Understanding the Latest COVID-19  
Federal Laws

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# Today's Agenda

- Key **Business** Issues
- Key **Personnel** Issues
- Key **Healthcare** Issues

# Key Business Issues

# Paycheck Protection Plan Loans

- Most talked about aspect of the CARES Act
- Expansion of existing Small Business Administration (SBA) Section 7(a) loans through June 30, 2020
  - Expect funds to be allocated prior to that
  - Allows for deferred payment (6-12 months)
  - Removes receipts test for determining whether a business is “small”
- \$349 billion allocated to fund PPP Loans

# Paycheck Protection Loans

- Who is eligible?
- “Small” Businesses (of many types)
  - For profit
  - 501(c)(3)—public charities and religious organizations
  - Certain veterans organizations (501(c)(19))
  - Certain tribal organizations
- Operating on Feb. 15, 2020
- Employee count of 500 or less
  - Counts full-time and part-time employees
- Others can qualify, too:
  - Small based on the SBA’s Table of Small Business Size Standards
  - Businesses in the food and hospitality businesses with less than 500 employees in any one location

# Paycheck Protection Loans

- How much can I borrow?
- Average monthly payroll costs X 2.5
  - Special rules apply to:
    - Businesses not in existence on Feb. 15, 2019
    - Seasonal businesses
  - What are payroll costs?
    - Salary and other wages
    - Vacation pay
    - Sick and family leave
    - Separation payments
    - Employer's share of health insurance
    - Employer's contribution to retirement plan
    - State taxes paid by employer
  - Wages paid in excess of \$100,000 are NOT included.

# Paycheck Protection Loans

- What can I use the loan proceeds for?
  - Payroll costs
    - Same costs as described in defining payroll
  - Rent
  - Mortgage interest payments
  - Utilities

# Paycheck Protection Loans

- How much will be forgiven?
  - Amount spent on:
    - Payroll costs
    - Mortgage interest
    - Rent
    - Utilities
  - Incurred after February 15, 2020
  - Paid during the eight-week period following loan origination date
  - Payroll in excess of \$100,000 per person (annualized) does not count.



# Paycheck Protection Loans

Amount forgiven is reduced by two factors:

- **Decrease in head count** – proportion of full-time equivalent employees laid off. Based on a fraction:
  - Numerator is average FTE count during the eight weeks after loan origination.
  - Denominator is either:
    - Average FTE between Feb. 15, 2019 and June 30, 2019, or
    - Average FTE from Jan. 1, 2020 thru Feb. 29, 2020.
- **Decrease in compensation** – dollar-for-dollar based on each employee making \$100,000 or less whose wages are decreased by more than 25% in the eight weeks following loan origination
  - Not an aggregate test.
  - Wages are compared to the last full quarter the person was employed before the loan origination date.

Exceptions for loan forgiveness reduction for certain rehires.  
Details are still hazy.

# Paycheck Protection Loans

- What are the loan terms?
  - Two years
  - .50% fixed rate
  - Initial payment is deferred for six months
  - No borrower fees
  - No prepayment penalties
  - No personal guaranties
  - No collateral
  - No requirement that you're unable to borrow elsewhere
- No income tax arising from any loan forgiveness

# Paycheck Protection Loans

- When can I get a loan?
  - Starting April 3, 2020, small businesses and sole proprietorships can apply through existing SBA lenders.
  - Starting April 10, 2020, independent contractors and self-employed individuals can apply through existing SBA lenders.

# Employee Retention (Payroll) Tax Credit

- Credit of up to \$5,000 per employee
  - Equal to 50% of wages paid by a “qualified employer” to its employees during COVID-19 crisis
  - To qualify, an employer must either:
    - Have operations suspended in full or part due to COVID-19 because of a “shut down” order; or
    - See gross receipts decrease by more than 50% when compared to the same quarter in 2019.
  - For employers with more than 100 employees, limited to credit against wages paid to people who aren’t working due to shut down or slow down
  - If you get a PPP Loan, you can NOT receive the Employee Retention Credit.

# Employment Tax Due Date Deferred

- May delay paying the employer's (but NOT the employee's) portion of Social Security taxes (6.2%).
- Self-employed people may delay paying one-half of the Social Security portion of their self-employment taxes.
- Taxes that may be deferred are taxes that relate to period from March 27, 2020, to January 1, 2021.
- Deferred taxes can be paid over the next two years.
  - 50% due by December 31, 2021
  - Balance due by December 31, 2022

# Key Personnel Issues

# Coronavirus, Aid, Relief, and Economic Security (CARES) Act: Expanded State Unemployment Benefits

- Individuals receiving regular state UI benefits will receive an additional \$600 per week through July 31, 2020.
  - Kansas' maximum weekly benefit amount = \$488
  - Kansas' minimum weekly benefit amount = \$122
- Expands Kansas' regular unemployment coverage from 26 weeks to 39 weeks.
- Incentivizes states to waive the one-week waiting period (which Kansas has done).

# CARES Act: Pandemic Unemployment Assistance

- New program providing unemployment for individuals not otherwise eligible for benefits (i.e., self-employed, independent contractors, gig workers).
- Must certify they are unemployed, partially unemployed, or unable to work because of certain qualifying reasons.
- Individuals who can telework or are receiving paid sick leave or other paid leave benefits are ineligible.
- Benefit amount: The amount of the UI benefit the individual would otherwise be entitled to receive under federal or state law, **plus** an additional \$600 per week.
- Benefits available for up to 39 weeks, but the \$600 per week only lasts through July 31, 2020.



# CARES Act: Shared Work Programs

- Shared Work Programs: In lieu of a temporary, total layoff, allows for a partial workweek and partial unemployment benefits.
- Kansas criteria:
  - Affected unit of two or more employees;
    - Unit broadly defined as “a specific dep’t, shift, or other unit of two or more employees that is designated by the employer to participate” in the Plan.
  - Normal weekly hours & wages of employee are reduced by 20% - 40%;
  - Plan must apply to at least 10% of employees in the affected unit;
  - Plan must describe how benefits handled; and
  - Employer certifies the Shared Work Program is in lieu of a layoff affecting at least 10% of the employees in the affected unit.

# Families First Coronavirus Response Act (FFCRA)

- Effective April 1, 2020, employers with under 500 employees must provide two new forms of emergency paid sick leave.
- Up to two weeks of paid sick leave for isolation, illness, care of others, or childcare responsibilities due to COVID-19.
- Emergency FMLA leave to care for a child who cannot go to school or daycare because of COVID-19.

# Two Weeks Emergency Paid Sick Leave if Employee Cannot Work or Telework Because:

- Employee is subject to a federal, state, or local quarantine or isolation order;
- Employee is advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
- Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- Employee is caring for an individual who is subject to a quarantine order or direction to self-quarantine;
- Employee is caring for son/daughter if the child's school or childcare provider is closed due to COVID-19; and
- Employee is experiencing any substantially similar condition specified by the Secretary of Health and Human Services.

# Emergency Family and Medical Leave

- Up to an additional 10 weeks of paid EFML (12 weeks total) if employee is unable to work due to need for leave to care for a child whose school or child care provider is closed/unavailable due to COVID-19.
- Must have been employed for at least 30 days.
- Payment:
  - 2/3 employee's regular pay for hours otherwise normally scheduled to work
  - Up to \$200/day and \$10,000 total
- Counts toward total 12 weeks of FMLA leave.

## Other FFCRA Issues

- Intermittent leave allowed in limited situations.
  - Different rules for telework vs. usual worksite.
- Covered employers eligible for dollar-for-dollar reimbursement through tax credits.
- Appropriate documentation required.

# Health Care Provider Exemption

- Health Care Provider Exemption – May be exempted from EPSL or EFML by their employer.
  - “[A]nyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any other similar institution, employer, or entity.”
  - Any individual employed by an entity that contracts with those institutions to provide services/maintain operations.

# Small Business Exemption

- Fewer than 50 employees;
- The leave is requested because a child's school or daycare is closed; and
- An authorized officer has determined that:
  - Would result in expenses exceeding revenues causing the business to cease operating at a minimal capacity;
  - The absence of the employee or employees requesting leave would entail a substantial risk to the financial health or operational capacities of the business due to the employee's specialized skill, knowledge, or responsibilities; or
  - There are not sufficient workers able, willing, and qualified to perform labor/services required to operate at a minimal capacity.

# Key Healthcare Issues



# Healthcare Overview

- Improvements to public-health infrastructure
- Coverage of COVID-19 services
- Telehealth initiatives
- Support for providers fighting the COVID-19 epidemic
- Financial assistance to broad range of providers

# Public-Health Infrastructure Improvements

- Review of medical product supply chain
  - Assessment of American dependence on drugs, devices manufactured abroad
  - Recommendations to improve supply-chain resilience
  - New reporting requirements for manufactures of critical drugs
- Mandated build-up of Strategic National Stockpile
  - Add certain PPEs
- Implemented new, more flexible rules for OTC drug approval and regulation
- Increased funding for community health centers, other public-health institutions
- \$150 billion for state and local government COVID-19 expenses

# Coverage of COVID-19 Services

- Private insurers: coverage, no cost sharing for:
  - COVID-19 testing itself
  - Services related to testing
  - Items, services to prevent or mitigate COVID-19
- Government payor cost sharing waived for COVID-19 testing and related visits.
  - Medicare/Medicare Advantage, Medicaid, CHIP, TRICARE
- No Medicare/Medicare Advantage cost sharing for COVID-19 vaccine.
- Mandated providers publicly disclose the cash price of testing.

# Telehealth Provisions – Medicare Requirements

- Significantly loosened Medicare requirements for telehealth during emergency period.
  - Originating site need not be a healthcare facility
  - Removed rural area limitation
  - No need for preexisting patient relationship
- Suspension of face-to-face visit or certification requirements.
  - No face-to-face visit necessary for home dialysis patients
  - No in-person assessment required to recertify necessity of hospice care
  - Allow non-physicians to certify more care

# Other Telehealth Provisions

- High-deductible plans may cover telehealth services without out-of-pocket payments.
- Additional grants to support telehealth initiatives
- HHS Secretary must encourage other uses of telehealth during emergency period.
- Changes not limited to COVID-19 treatments.
- Impact of changes after the emergency period ends is unclear.

# Support for COVID-19 Providers – Emergency Fund

- Approximately \$100 billion fund for hospitals and other eligible providers dealing with COVID-19
  - About \$108,000 per hospital bed in the U.S
  - Intended to facilitate quick ramp-up
  - Both non-profit and for-profit providers eligible
- Funding available for, among other things:
  - Building, construction of temporary structures
  - Leasing property
  - Medical supplies, equipment, devices
  - Workforce training
  - Retrofitting facilities

# Support for COVID-19 Providers – Emergency Fund Administration

- Applicants must provide statement of need for funds.
  - Awaiting guidance from HHS regarding grant process, more specific criteria
  - Many significant questions remain
- Wide variety of providers potentially eligible
- Only audit: three years after fund is exhausted

# Additional Support for COVID-19 Providers

- Increased Medicare payments for inpatient services to COVID-19 patients by approximately 20%.
- Limited liability for healthcare volunteers
  - Only applies to volunteers providing services related to diagnosis, prevention, and treatment of COVID-19.
  - Preempts state law.
- Softened and aligned certain patient information statutory and regulatory restrictions.



# Financial Assistance for Providers – Advance Medicare Payments

- Provides immediate cash to providers.
- Program expanded for duration of emergency period.
  - Extended to CAHs, children’s hospitals, cancer hospitals
  - Up to 100% of payments for period of up to six months
  - Increases to 125% of payments for CAHs
  - No offsets or repayment for 120 days
  - Not required to fully repay until 12 months after first payment
- Must submit a request for accelerated payments to HHS.
- Subsequently extended to all Medicare-participating providers and suppliers impacted by COVID-19 outbreak.
  - Most non-hospital providers limited to a three-month payment and 210 days to repay.

# Other Financial Assistance for Providers

- Temporary suspension of Medicare sequestration payment reductions
  - Period from May 1 to December 31, 2020
  - Would have reduced provider payments by approximately 2%
- Extended and refunded numerous existing programs
  - Several were set to expire in May
  - Includes a number of Medicaid demonstration projects
  - Delayed reductions in DSH payments

# Questions

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