

## COVID-19 Update

March 27, 2020

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Good evening,

This week has been unprecedented, and we go out with a bang. We write today to report on two major events: the Coronavirus Aid, Relief, and Economic Security Act (or the "CARES Act"), which the President signed into law this afternoon, and the Department of Labor guidance, which it issued last night to clarify portions of the Families First Coronavirus Relief Act. The below is informational only, with links to further resources.

### **Coronavirus Relief Bill Passes Congress**

A Coronavirus relief bill, passed by the U.S. Senate on Wednesday, was passed by the House and signed by the President on Friday. The bill contains a \$2 trillion economic rescue plan that will include loans to small businesses, expanded unemployment coverage, stimulus payments to individuals, emergency loans to distressed businesses, student loan relief, changes to retirement account rules and more.

#### **1. Small Business Loans**

The bill provides for bridge loans to small businesses which are partially or completely forgivable.

- SBA loans available up to 2.5x average monthly payroll, excluding individual compensation in excess of \$8,333 per month, up to a maximum of \$10 million.
- Expands eligibility to most companies with up to 500 employees.
- Eligibility for payment deferment of six months to one year.
- Expedited processing of loans up to \$1 million.
- Loan forgiveness to the extent of expenditures for certain payroll, rent, utilities and mortgage interest during the eight weeks following the date of the loan. Payroll forgiveness excludes compensation to an individual in excess of \$8,333 per month.
- Reduction in forgiveness due to any decrease in the average number of employees or for certain reductions in the compensation of individual employees.
- Forgiven debt is not taxable as cancellation of debt income.

#### **2. Individual Stimulus Payments**

- Direct payments to individuals of up to \$1,200 per person, \$2,400 for a married couple, and \$500 per child under age 16, with phase-out for incomes in excess of \$75,000 for an individual or \$150,000 for a married couple.
- Based on 2019 adjusted gross income, or 2018 if 2019 not filed yet.

- No application necessary. Payments will be made automatically by the Treasury Department within a few weeks by electronic transfer if the IRS has such information on file.

### **3. Expanded Unemployment Benefits**

- The bill expands eligibility for unemployment insurance benefits and provides individuals with an additional \$600 per week for an average of four months, in addition to the unemployment amount determined by each state. Certain self-employed individuals may now qualify for this benefit.

### **4. Temporary Changes to Retirement Account Rules**

- A retirement plan may permit corona-virus related distributions to participants of up to \$100,000.
- 10% early-withdrawal penalty does not apply.
- Recipient has three years to repay the distribution.
- If not repaid, taxpayer may elect to spread recognition for income tax purposes over three years.
- Limit on plan loans doubled for 180 days after enactment if due to coronavirus.
- Required minimum distribution rules waived for 2020. Avoids having to take a distribution when an investment account has severely dropped in value.

### **5. Health Care**

- Substantial funding for hospitals and veterans' health care, as well as for personal protective equipment, ventilators and other medical supplies for federal and state response efforts, as well as for vaccines, therapeutics, diagnostics and other medical needs.
- Requirement for insurers to cover tests for Covid-19.
- Increase in Medicare payments to hospitals for treating Covid-19 patients.
- Policy changes regarding the provision of telehealth services, which may increase access during the emergency period.

### **6. Student Loan Relief**

- Automatic suspension of payments for any student loan held by the federal government until September 30.
- Interest will not accrue during the suspension.

### **7. Miscellaneous Provisions**

- Forbearance on mortgage payments for 180 to 360 days on mortgages backed or owned by Fannie Mae, Freddie Mac and other federal entities. No fees, penalties or higher-than-normal interest during forbearance.
- 120 day nationwide eviction moratorium for residential tenants whose landlords have mortgages backed or owned by Fannie Mae, Freddie Mac and other federal entities.
- \$208 billion authorized for loans and loan guarantees to specific distressed industries, including passenger and cargo airlines.

The bill passed by Congress is massive and this is only a summary of select provisions.

## U.S. Department of Labor Issues Further Guidance on the Families First Coronavirus Response Act

The guidance is extensive, but clarifies two key issues our clients have asked us about this week:

### **1. What it Means to be “Unable to Work”**

According to the guidance, when the law allows an employee to take leave because he or she is “unable to work,” it means precisely what it says. If an employer has work, and the employee can do it some way, somehow, the employee is not “unable to work” and, according to the guidance, “leave is not necessary.”

For example, if an employee can work a normal number of hours, but those hours must be worked outside ordinary business hours, the employee is not “unable to work.” If an employee can work while at the same time caring for older, more independent children, the employee is probably not “unable to work.” But if an employee has younger children at home, requiring extensive attention that takes away from work, the employee is “unable to work.” According to the guidance, “to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.”

However, employees may take intermittent leave through mutual agreement with their employers. The example given by the guidance is an agreement on a 90-minute increment: the employee works remotely from 1:00 p.m. to 2:30 p.m., takes leave from 2:30 p.m. to 4:00 p.m., then returns to work from 4:00 p.m. to 5:30 p.m.

The guidance also clarified that leave is only available for employees who are working for an operating business and have work to do. A reduced work schedule, complete shutdown, or furlough situation either due to a lack of work or stay at home order is not a situation where leave is available.

### **2. Required Employer Recordkeeping**

The Department of Labor’s (“DOL”) guidance clarifies the information employers must request from employees seeking leave under the Emergency FMLA or Paid Sick Leave laws to support the basis for the leave. The following information will be required when the employer applies for the tax credit or reimbursement promised under the law:

- Employee name.
- Qualifying reason for requesting leave.
- Statement that the employee is unable to work, including remote work. If the basis is a quarantine or isolation order, the source of that order must be provided. If the basis is a school closure, a notice posted on a government, school, or daycare website or publication or an email from a school official announcing the closure satisfies this requirement.
- The dates for which leave is requested.

The guidance recommends consulting IRS forms and instructions for procedures for claiming the tax credit, and we understand that further IRS guidance regarding the tax credit will be issued soon. We

recommend the employers contact one of the lawyers listed below for assistance in assembling and maintaining the required documentation.

The DOL guidance is comprehensive, with a total of 37 FAQs and answers. A link to the guidance is here: <http://marker.to/Rtic6m>.

GMH's Coronavirus Task Force is here to answer your questions. While GMH is complying with Governor Whitmer's Order, we are working remotely and available to assist you. Please contact any of the below lawyers for more Coronavirus support.

*THE LOCAL, STATE AND FEDERAL GOVERNMENT REQUIREMENTS RELATED TO COVID-19 MAY CHANGE, AND ADDITIONAL GUIDANCE, RULES, LAWS AND REGULATIONS MAY BE ISSUED OR AMENDED, AT ANY TIME. ACCORDINGLY, OUR GUIDANCE OR POSITION ON THESE TOPICS MAY ALSO CHANGE, WITH OR WITHOUT NOTICE, AND THE ABOVE INFORMATION IS FOR EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE INTERPRETED OR RELIED UPON AS LEGAL ADVICE. EACH SITUATION IS UNIQUE AND SHOULD BE REVIEWED WITH THE ASSISTANCE OF COMPETENT PROFESSIONALS.*



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