

COVID-19: Update

April 6, 2020

1. Federal Loans for Midsized Businesses under the CARES Act:

Midsized Businesses – businesses with 500-10,000 employees – can apply for direct loans under the CARES Act. However, unlike the Paycheck Protection Program for small businesses, these loans do not provide for any forgiveness. The loans do allow for deferment of principal and interest payments for at least the first six months, can have up to a five-year term, and have a 2% interest rate. Significantly though, in receiving such loans, companies are required to certify and abide by the following restrictions:

- The funds the employer receives will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits until September 30, 2020.
- If the employer has already laid off employees, it will restore not less than 90% of its workforce that existed as of February 1, 2020 with full compensation and benefits no later than four months after the termination of the public health emergency.
- The employer is domiciled in the United States with significant operations and employees located in the United States.
- The employer will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan.
- The employer will remain neutral in any union organizing effort for the term of the loan.
- The employer will not "abrogate" existing collective bargaining agreements for the term of the loan and for the two years after completing repayment.

Further, in entering into such loan agreements, medium-sized employers must agree to certain limitations for highly-compensated employees and officers:

- During the term of the loan and for one year thereafter, no officer or employee of a recipient business whose total compensation exceeded \$425,000 in 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020) will receive total compensation greater than what the employee received in 2019.
- Further, the same officer or employee cannot receive severance pay or other benefits upon termination exceeding twice the maximum total compensation received from the employee from the business in 2019.

- Any officer or employee whose total compensation exceeded \$3 million in 2019 may not receive in excess of \$3 million, plus 50% of the excess over \$3 million received by the officer or employee in 2019.

2. Employee Retention Credit:

The CARES Act creates a tax credit for employers in the amount equal to 50% of qualified wages paid to employees during the COVID-19 pandemic. The credit applies to qualified wages paid after March 12, 2020 and before January 1, 2021. The tax credit is capped at \$10,000 per employee and is only available to employers whose operations were fully or partially suspended due to a government shut-down order or the employer's gross receipts declined by more than 50% compared to the same quarter in the prior year. Keep in mind that the amount of the credit is reduced by any credits provided to the employee under the Families First Coronavirus Relief Act. For more information, the IRS issued helpful [FAQs](#).

3. What's Next?

The COVID-10 pandemic has raised all sorts of workplace issues. But while employers continue to navigate each legislative development, they should also be thinking about what's next – what happens when the "Stay Home, Stay Safe" Executive Order is lifted, and individuals return to work?

Revisit Company Policies and Employee Handbooks:

- Employers should make sure their policies and employee handbooks are up to date, to include among other things, the Emergency Paid Sick Leave Act and Emergency Family Medical Leave Act under the Families First Coronavirus Response Act ("FFCRA"). This also includes:
 - Posting the required [notice](#) in a conspicuous place on its premises; and
 - Providing employees with a leave request form for such requests.
- Employers should update policies as necessary. This may include more robust:
 - Teleworking policies;
 - Training for managers and supervisors to manage teleworking employees; and
 - Policies to document hours worked, especially for non-exempt employees, including overtime and paid sick leave.

Accommodations When Employees Return to Work:

- Federal laws under the Americans with Disabilities Act (“ADA”) and Equal Employment Opportunity Commission (“EEOC”) still apply. That means:
 - An employee that contracts COVID-19 may be entitled to reasonable accommodations and protections under the ADA if the employee’s reaction to COVID-19 is severe or if it complicates or exacerbates one or more of an employee’s other health condition(s)/disabilities.
 - If an employee is confirmed to have COVID-19, employers should inform their employees of their possible exposure to the virus but should not disclose the identity of the quarantined employee due to confidentiality requirements under the ADA.
 - An employer should not tell employees of a protected class (i.e. employees over 40 years old, pregnant woman, race, and genetic information) to not return to work.

Employer “No Retaliation” Executive Order:

- As you may know, Governor Whitmer signed [Executive Order 2020-36](#). This Order provides for stay at home for employees who test positive for COVID-19 or who display one or more of the principal symptoms (specifically listed as fever, atypical cough or atypical shortness of breath), as well as for employees who had “close contact” with someone who tests positive or with someone who displays any principal symptoms. Close contact is defined as being within approximately six feet of an individual for a prolonged period of time, and can occur, for example, while caring for, living with, visiting, or sharing a health care waiting room with an individual. Finally, the Order prohibits employers from discharging, disciplining, or otherwise retaliating against an employee for staying home from work if they stay at home as required by this Order.
- Notably, a number of local municipalities (including Oakland County and Wayne County) issued orders that require employee screening and exclusion from the worksites if the employees exhibit certain COVID-19 symptoms which, for the above municipalities, also include sore throat and diarrhea in addition to the principal symptoms identified in the above Executive Order, or have certain travel history. The employers should ensure compliance with both the applicable municipal orders and the Executive Orders.
- Keep in mind that employers may also be subject to lawsuits including:
 - Violations under the Fair Labor Standards Act;

- Violations of the ADA;
- Violations of the EEOC;
- Violations of FMLA and FFCRA claims; and
- Whistleblower claims.

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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