

May 15th, 2020

There is a new bill being debated which is called the Heroes Act which was proposed by the House Democrats since they are aware that the CARES Act had some issues become apparent pretty quickly.

The one item tries to address the Paycheck Protection Program (PPP) to provide for some funds to be set aside specifically for small Community Development Financial Institutions, Minority Development Institutions, SBA microlenders and SBA Certified Development Companies. They also want to have 25% of the funds to be set aside to be used for small businesses with 10 or fewer employees so they have access to funds as well as setting an additional 25% of the funds specifically for non-profits. The other item is that funds returned due to cancellation of a covered loan would be distributed through loans to small businesses with ten or fewer employees.

The next thing, which is the one that impacts all of us is to extend the 8-week period to 24 weeks and extend the covered period from June 30 to December 31. This would solve a lot of our issues since many are not allowed to return to work other than emergency services.

Several other considerations that would impact us the most are:

- they would give 5 years to amortize loans which lowers monthly payments.
- Eliminates the 75%-25% rule on how the funds be allocated between payroll and non-payroll items.
- PPP loans cannot be calculated on a compound basis which saves you money over time.
- Mortgage interest allowed now could be expanded to include interest on other debt.

For the EIDL loans, the Heroes Act would be tasked with additional funds for more grants to be available.

There are lots more parts to the Heroes Act than mentioned above, and they are in the early stages to become part of law, so as time goes on, we will be receiving more information to send to you. This is just a window into what is going on right now.

As you are spending your PPP loan or EIDL loan proceeds, please keep meticulous records of your expenses and keep invoices and payroll summaries to back up the expenses. We are happy to help you with this. The above has not been put into law yet, so we only have the existing rules to follow, so the June 30th date is still intact. You will have to prove how you spent the funds for forgiveness and for loan purposes.

Families First Coronavirus Response Act (FFCRA)

Requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for reasons related to Co-VID 19. These apply through December 31st this year.

Two weeks or up to 80 hours of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined and or experiencing COVID-19 symptoms and seeking a medical diagnosis OR

Two weeks – up to 80 hours of paid sick leave at two thirds of the employees regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine or care for a child under 18 years old whose school or child care provider is closed due to COVID-19 or the employee is experiencing a substantially similar condition as specified by the Secretary of HHS.

The employee must have worked for at least 30 days prior.

Up to an additional 10 weeks of paid expanded family and medical leave at two thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

COVERED EMPLOYERS – The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers and private employers with fewer than 500 employees.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

There are qualifying reasons and duration of leaves requested, so if you need to review them, we can provide you with that information.

QUESTIONS ABOUT STAFFING:

Caution: These are situations that you may find yourself in and the following are just suggestions based on interpretations of the information provided by CDC, WHO, OSHA and various other sources. You should follow your own HR guidance and your own research. You should always default to finding a way to protect your staff.

My employee has told me she is scared to come back to work because of the COVID-19 crisis.

You want to talk to them to find out why and if there is anything to do to alleviate those fears in the practice. Make sure that you are already going to meet the requirements that ADA, OSHA and CDC have in place. Be careful to not discriminate amongst your employees with safety concerns. If the employee cannot be placated, then she may decide that she wants to terminate her employment with you and seek another type of work. As with anything else, you have to be extremely careful to not run afoul of any HR issues. Consult with your HR person or consider possibly working with an HR firm.

My employee doesn't want to come back to work because they are making more on unemployment than they will when they return to work.

We have heard this a lot; however, it is only temporary for them since the additional federal unemployment ends at the end of July. If you do not need to bring everyone back in all at once for full time, they may be able to still receive some of their unemployment depending on their wages with you. You could divide the available hours among the staff who can do that job so that each person gets to work and potentially still draw some unemployment, if this fits your initial practice needs. It is difficult to have them lose the additional unemployment money to return to work since money is so critical right now for everyone, but the big picture is that their job is the more important choice.

If they don't come back to work, when asked, then they have terminated their job and they can also lose the ability to file for unemployment as well. Do everything you can do to help employees in this position to help them return to work, but ultimately, it is their decision in the end of what they choose to do.

My employee showed up to work sick – what do I do?

You need to send them home immediately to protect both them and your other staff as well as patients who come to your office. Temperatures could be taken if the employee doesn't object but it isn't an indication of whether a person is infected with COVID-19 since they could be a carrier and not showing any symptoms.

The employee who was sick now wants to return to work – what do I do?

You do not need to have a doctor's note per CDC. You cannot require them to provide one unless you feel that the person poses a direct threat to others in the office. You, as the employer, bear the cost of the doctor's exam. There are some situations where you may require a doctor's note, but for most of us, it will not apply.

The employee became ill during their work day – what do I do?

You can immediately send them home. You pay them for the time they worked unless they are a salaried employee who would be paid for the entire day.

An employee has traveled and we have concerns about possible infecting others in the office – what do I do?

You are allowed to ask an employee to self-quarantine even if they do not show symptoms of COVID-19 based on the perceived risk which takes into account things such as whether they recently traveled to certain regions or countries or if they were on a plane with the 6 feet distance was not being observed or if they were in close contact with a COVID-19 positive person. These are just a few examples that may be taken into account in your decision-making process. You cannot be discriminatory in any way with any staff member not may you count this sick time against any employee.

There are rules for FMLA Leave Expansion and Emergency Paid Sick Leave Policy -COVID-19

There are rules for businesses that have different numbers of employees. The breaks are from 1 to 24, 25 to 49 to 99 and 100 to 499 and 500 and over.

Certain provisions may not apply to certain employers with fewer than 50 employees. It most likely is not worth seeking this option because it could place you at a liability risk and since these funds are fulling reimbursed to you, it seems unrealistic to seek exemptions.

Every dollar of required paid leave plus what you paid for their health insurance premiums during their leave will be 100% covered by a dollar-for-dollar refundable tax credit available to the employer.

FMLA LEAVE

For less than 25 employees:

- They have to have been employed by you for at least 30 days and you have brought them back to work.
- They are eligible to take leave if they cannot work or telework due to a need to care for their child when a school or child care has been closed or is unavailable due to a public health emergency with respect to COVID-19.
- They can have up to 12 weeks of leave to use from April 1st through the end of 2020 for this.
- They can take FMLA leave intermittently and in different increments as they need such as a certain day of the week or certain hours of the day.
- Pay will be unpaid for the first ten days of leave unless they choose to use accrued paid vacation, sick or personal leave for this timeframe OR they may choose to use the paid leave provided under the Emergency Paid Sick Leave Act. After the first ten days, leave will be paid at two-thirds of their regular rate of pay for the number of hours they would have been scheduled to work. Pay is not to exceed \$200 per day and \$10,000 in total or \$12,000 in total if using emergency paid sick leave for the first two weeks. Any unused portion of this pay will not carry over to the following year.
- They may also supplement the two-thirds pay with accrued time they have but it cannot exceed 100% of regular pay.
- If you have someone with different scheduled hours of work, you have two options.
 - If they have worked six months or more, the average ours that they had been scheduled per day or used paid leave is used as their typical hours.
 - If they worked less than six months, the expected number of hours that they were given when hired is used as their typical hours.
- Health benefits that the employee may have had will continue during their leave as they would have regularly. You must continue to deduct their portion from their paycheck. If the employee is on unpaid leave, they can request continuation of their benefits and pay their own portion of the premiums. If the employee doesn't pay their portion, you may discontinue coverage at that point. You may also elect to pay it for them.
- Procedurally, you should have the employee provide you with information as to the reason for the leave such as the name and age of the child and the school or daycare provider that is closed due to COVID-19 reasons and a statement declaring that no other suitable person is available to care for your child during that time period that they are requesting leave. If the child is over the age of 14, they should give you a statement showing what special circumstances require the employee to have to provide care during their working hours.
- When the employee comes back from leave, they are to be able to return to the same position or a similar position for the same pay and benefits they had previously. If that position no longer exists because of the economic conditions because of the COVID-19 events and there is no other position available, the employee cannot return. You then must keep this person in mind if a similar position comes up in the next year to rehire them at that point.

Emergency Paid Sick Leave For less than 25 Employees

- Eligibility for full time and part time employees who are scheduled to work but cannot work or telework due to these reasons:
 1. The employee has to be quarantined related to COVID-19
 2. The employee has been advised by a healthcare provider to self-quarantine due to COVID-19 circumstances
 3. The employee is experiencing symptoms of COVID-19 and is working on getting a diagnosis
 4. The employee is caring for a person who is subject to the above
 5. The employee is caring for their child if the school or childcare facility has been closed due to COVID-19 reasons and is suffering from the COVID-19 or be quarantined or is vulnerable to COVID-19.
 6. The employee is experiencing any other substantially similar condition specified by the secretary of HHS or Treasury or Labor secretaries.
- This does not apply to employees who are on unemployment and have not been brought back to work yet
- They are paid for sick leave up to 80 hours if they qualify as described earlier if full time and if part time, they are eligible to their average hours over a two-week timeframe. Use the rules above to calculate if they have different schedules of work.
- They may use intermittent leave for sick leave (as above) as they need to utilize to meet the demands that occur during their work day.
- For employees not teleworking and currently working in the office, they may only take intermittent leave for one of the above reasons – that of caring for their child if the school or childcare facility has been closed – because the other reasons above would place the employee at risk for COVID-19 and others at risk as well, so employees must use either the full amount of paid sick leave or use it in full-day increments until the reason for leave is satisfied so that they can return to work.
- Pay rates for emergency sick leave is to be paid at their regular pay rate or at least minimum wage using the higher of the two.
- Pay cannot exceed \$511 per day and \$5,110 in total for leave taken for reasons 1-3 above AND Pay will not exceed \$200 per day and \$2,000 in total for leave taken for reasons 4-6 above.
- The employee may use emergency paid sick leave before using any other accrued paid time off if they qualify for the above situations.
- Employees on expanded FMLA leave may use emergency paid sick leave concurrently with that leave.

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- To request this emergency Paid Sick Leave, the employee must notify their manager and give the reason for leave in writing and they must provide documentation to support it. Documentation would include a copy of the isolation order related to COVID-19 or give the name of the government body that issued the order OR written documentation by their health care provider advising them to quarantine due to COVID-19 reasons OR the name and relation of the person the employee is taking leave to care for who has been given a quarantine notice OR the name and age of the child being cared for with the name of the school or child care provider that closed or is unavailable due to COVID-19 and the reason describing the circumstances why a child over 14 requires care during their working hours.
- The employee and employer should work communicate during this period when the employee is on Sick Leave to update the employer to be able to continue receiving this paid leave.
- The timeframe for this paid leave ends December 31st 2020. It does not carry over to next year if any time is still available.
- Employees who avail themselves of this leave are not to be discriminated against or fired for work time missed.

As you can see, this is extremely detailed and just difficult to navigate. It is really encouraged that you consult an HR expert to be sure that you render this correctly to avoid later issues. It is cheaper to get help now and do it right than have issues down the road that could be more costly.