



Rhode Island Bar Journal

Rhode Island Bar Association May 2020

Special COVID-19 Issue

Articles

3 An Introduction to the Business Calendar, the Business Recovery Program, and Virtual Hearings

Hon. Brian P. Stern and Christopher J. Fragomeni, Esq.

8 The Government CARES for You

Marc J. Soss, Esq.

11 The Constitution and Federalism in the Age of Pandemic

Diane Messere Magee, Esq.

15 Conducting Arbitrations and Mediations Remotely During the COVID-19 Crisis and Beyond

Melody Alger, Esq.

18 Model Standstill Agreement for Business in Response to COVID-19 Crisis

Patrick A. Guida, Esq.

20 COVID-19 and the Clean Water Act: A Look at the Liability and Damages of “Flushable” Wipes

Nicole Andrescavage, Esq. and Kallie Longval, Esq.

23 I Survived the Coronavirus

Amy Rice, Esq.

FEATURES

- 17 Ada Sawyer Centennial Celebration
- 19 Follow Us on Social Media
- 25 Municipal and Probate Court Operations during COVID-19

Front Cover Photograph by Brian McDonald

Lippitt House Museum, Providence, RI Rhode Island's 1865 Lippitt House Museum offers guided tours, special exhibitions, lectures, art installations, concerts, and family programs. A National Historic Landmark, Lippitt House has one of the best-preserved Victorian interiors in America, allowing visitors to step into Providence's Golden Age. Following the Lippitt family's example of public service, the museum's cultural programming promotes civic engagement, the arts, and history of Providence.

Advertiser Index

Arbitrator – Nicholas Trott Long	21	Coia & Lepore, Ltd. – Mediation	10
Balsafiore & Company, Ltd. – Forensic Accounting, Litigation Support	22	LawPay	Back Cover
Barrett Valuation Services, Inc.	7	Leone Law, LLC – Anthony R. Leone II.	9
Coia & Lepore, Ltd. – John Cascione.	5	Mignanelli & Associates, LTD. – Estate Litigation	17
		Ocean Roads Realty – Real Estate Sales	17



Editor In Chief, Nicole J. Benjamin, Esq.

Editor, Kathleen M. Bridge

Editorial Board

- Victoria M. Almeida, Esq.
- David N. Bazar, Esq.
- Thomas R. Bender, Esq.
- Sean Clough, Esq.
- Jerry Cohen, Esq.
- Eric D. Correia, Esq., LLM
- William J. Delaney, Esq.
- Nicole P. Dyszlewski, Esq.
- Timothy A. Gagnon, Esq.
- Jenna Giguere, Esq.
- Clovis C. Gregor, Esq.
- Matthew J. Landry, Esq.
- Lenore Marie Montanaro, Esq.
- Daniel J. Procaccini, Esq.
- Miriam A. Ross, Esq.
- Angelo R. Simone, Esq.
- Suzannah Skolnik, Esq.
- Hon. Brian P. Stern
- Elizabeth Stone, Esq.
- Dana N. Weiner, Esq.
- Samuel D. Zurier, Esq.

RHODE ISLAND BAR ASSOCIATION

LAWYER'S PLEDGE

As a member of the Rhode Island Bar Association, I pledge to conduct myself in a manner that will reflect honor upon the legal profession. I will treat all participants in the legal process with civility. In every aspect of my practice, I will be honest, courteous and fair.

Association Officers

- David N. Bazar, *President*
- Richard P. D'Addario, *President-Elect*
- Lynda L. Laing, *Treasurer*
- Mark B. Morse, *Secretary*

Executive Director

Helen Desmond McDonald

Direct advertising inquiries to the Editor, Kathleen M. Bridge, Rhode Island Bar Journal, 41 Sharpe Drive, Cranston, RI 02920, (401) 421-5740.

USPS (464-680)ISSN 1079-9230

Rhode Island Bar Journal is published bimonthly by the Rhode Island Bar Association, 41 Sharpe Drive, Cranston, RI 02920.

PERIODICALS POSTAGE PAID AT PROVIDENCE, RI

Subscription: \$30 per year

Postmaster

Send Address Correction to:
Rhode Island Bar Journal
41 Sharpe Drive
Cranston, RI 02920

ribar.com

The Government CARES for You



Marc J. Soss, Esq.
Licensed in FL, RI and CT

The Act allows defined benefit plan sponsors to delay making minimum required contributions to meet funding standards for the 2020 calendar year until January 1, 2021.

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “Act”). The Act addresses the coronavirus pandemic by directing funds to address the strains on the health care system as well as alleviate the economic pressures facing the country’s employers and workers through expanded unemployment benefits and individual and business tax changes. A brief look at them follows.

BUSINESS RELATED RELIEF

Employee Retention Tax Credit

The Act provides tax credits equal to fifty percent of employment taxes for qualified wages (up to \$10,000), including health benefits, paid to each employee. The tax credit is effective for wages paid between March 13, 2020 to December 31, 2020. Eligibility for the credit is predicated on (i) the employer carrying on a trade or business in 2020 and the operation of that business is fully or partially suspended (for specified reasons) by the government (federal, state or local) due to COVID-19, or (ii) the business has seen a significant decline in gross revenue (50% less than in the calendar quarter of the prior year) and for so long until the business recovers to eighty percent of prior year’s revenue. A business may not make this election if the business elects to receive a loan under the Paycheck Protection Program.

For businesses with one hundred (100) or fewer employees, all employee wages qualify for the credit, regardless of whether the employer is open for business or subject to a shut-down order. For businesses with more than one hundred (100) full-time employees, qualified wages are wages paid to employees when they are not working due to the COVID-19-related circumstances.

The Act postpones payment of employer and self-employed individual’s payroll taxes (6.2 percent portion of Social Security taxes) until December 31, 2021 for half (1/2) of the amount due, with the other half due on December 31, 2022.

Small Business Support

The Paycheck Protection Program provides relief to small businesses (less than 500 employees), sole proprietorships, independent contractors and the self-employed, as well as non-profit organizations, tribal businesses and veteran organizations through loans to pay salaries, benefits, payroll costs, mortgage interest, utilities, and interest on certain debt obligations. Every applicant is required to certify that the funds “will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.” For eligibility purposes, every business should count all employees, including full-time, part-time and temp workers as well as independent contractors. Businesses and owners currently in bankruptcy, delinquent on a federal loan or who have defaulted on a federal loan in the past seven years are not eligible for the loans. The program runs retroactively from February 15, 2020 to June 30, 2020.

The program provides for forgiveness of the loan in an amount equal to the sum of the following costs incurred (payroll costs, mortgage interest, rent obligations, or any covered utility payment) over an eight (8) week period after the loan is funded. Employees who make more than \$100,000 a year are excluded. Any loan amount forgiven will not be considered taxable income to the business.

Loan Guarantee Program

The Act provides loans and guarantees for eligible businesses, states, and municipalities. The Act prohibits, as a condition of receiving the funds, stock buybacks or payments of dividends until twelve (12) months after the loan is no longer outstanding. It also limits compensation and severance payments for highly compensated employees. Even businesses that have laid off employees are eligible for funds if they intend to restore at least ninety percent of their workforce as of February 1, 2020, and to restore all compensation and benefits to workers no later than four (4) months

after the termination date of the public health emergency.

Paid Leave Provisions

Under the Act an employer can pay more than the \$511 per day and \$5,110 in the aggregate to employees either advised to self-quarantine or experiencing COVID-19 symptoms. Employees using leave to care for a family member, provide child care, or experiencing any other substantially similar condition to coronavirus can receive \$200 per day and \$2,000 in aggregate.

TAXPAYER RELIEF

Income Tax Credit

Qualifying individuals (those with a social security number and do not qualify as the dependent of another) will receive a refundable income tax credit in 2020. The credit amount will be calculated based on 2019 tax returns that have been filed (2018 returns in cases where a 2019 return hasn't been filed) and sent automatically via check or direct deposit to qualifying individuals.

The credit amount is \$1,200 per individual (\$2,400 if married filing a joint return) plus \$500 for each qualifying child under age 17. The credit is phased out for those with adjusted gross income (AGI) exceeding \$75,000 (\$150,000 if married filing a joint return, \$112,500 for those filing as head of household). For those with AGI exceeding the threshold amount, the allowable rebate is reduced by \$5 for every \$100 in income over the thresh-

old and is fully phased out when AGI reaches \$99,000 (\$198,000 for married filing jointly).

Unemployment Provisions

The Act will provide individuals eligible for unemployment insurance benefits through their existing state programs, with an additional \$600 per week of "Federal Pandemic Unemployment Compensation" to be paid through July 31, 2020. A state may also agree to waive its "waiting week" and pay unemployment benefits to eligible individuals on the first week of unemployment, with states receiving full reimbursement of those monies from the federal government.

Recipients may also receive "Pandemic Emergency Unemployment Compensation" in the form of an additional thirteen (13) weeks of unemployment benefits. These benefits will be paid through the states to individuals who have exhausted all other unemployment benefits and are able to work, available to work, are actively seeking work but unemployed, or unable to work because the individual: (i) has COVID-19; (ii) has a household member who has COVID-19; (iii) is providing care to a family member who has COVID-19; (iv) has a child who is out of school due to a COVID-19 related closure; (v) cannot get to work due to quarantine; (vi) cannot go to work because the place of employment is closed due to COVID-19; or (vii) has been advised by a health care provider to self-quarantine.

Eligible individuals also include those that are self-employed, an independent contractor or consultant, seeking part-time employment, or otherwise would not qualify for regular unemployment. Pandemic unemployment assistance is available not only if such individuals are "unemployed" but also if "partially unemployed." This benefit is not available, though, if and when such individuals are receiving paid sick leave or other paid leave benefits, including such benefits available to independent contractors under the federal Families First Coronavirus Response Act or a state law providing such paid benefits to self-employed workers.

RETIREMENT PLANS

Required Minimum Distributions

The Act removes the requirement for individuals to take a required minimum distributions (RMDs) from an employer-sponsored retirement plan (defined contribution plan or deferred compensation plan) or IRA in 2020. This includes any 2019 RMDs that would otherwise have to be taken in 2020. This applies to: (i) individuals that have been taking annual RMDs; and (ii) those who turned 70½ in 2019. Individuals that have already taken an RMD in 2020 have sixty (60) days to roll it back into the plan or IRA. In addition, if a retirement plan owner dies during this time period, the beneficiaries who inherit the plan can ignore 2020 when satisfying the five (5) year rule for distributions (effectively making it a six (6) year rule).

The ten percent early-distribution penalty tax that applies to distributions made prior to age 59½ (unless an exception applies) is waived for retirement plan distributions of up to

Representing Residents Injured in Nursing Homes



Anthony Leone

Past President of the Rhode Island Association for Justice

- Abuse and neglect
- Pressure and bed sores
- Resident falls
- Bed rail strangulation
- Dehydration and malnutrition related injuries
- Medication errors

LEONE LAW, LLC

1345 Jefferson Boulevard, Warwick, Rhode Island 02886
Tel (401) 921-6684 info@leonelawllc.com

\$100,000 relating to the coronavirus. When an employee makes a withdrawal from a company-sponsored retirement plan under this provision, the plan administrator may rely on the employee's certification that a withdrawal is coronavirus-related.

Loan Limits

Loan limits from employer-sponsored retirement plans are expanded from \$50,000 to \$100,000 (but not more than the plan balance), with repayment delays up to a year provided.

Required Employer Contributions

The Act allows defined benefit plan sponsors to delay making minimum required contributions to meet funding standards for the 2020 calendar year until January 1, 2021. Employers that take advantage of this relief must pay interest on the delayed contributions for the period from when the contributions were originally due to when the contributions are paid. The interest owed is calculated at the plan's effective interest rate for the plan year which includes the payment date.

Hardship Withdrawals and Distributions

Employers may adopt the Act's provisions for coronavirus-related distributions from 401(k), 403(b) and governmental 457(b) plans. Eligibility for a hardship withdrawal applies if (i) the participant or the participant's spouse or dependent is diagnosed with SARS-CoV-2 or COVID-19 by a CDC-approved test or (ii) the participant experiences adverse financial conse-

quences due to a coronavirus-related impact on employment.

Coronavirus-related hardship distributions (i) must be made between January 1, 2020 and December 31, 2020; (ii) cannot exceed \$100,000; and (iii) will not be subject to the ten percent tax. Participants can elect to recognize income on the distributions over a three (3) year period or contribute the amount to an eligible plan or IRA within three (3) years of the distribution.

CHARITABLE CONTRIBUTIONS

Individuals who do not itemize their tax deductions may deduct up to \$300 for contributions made to charity in 2020. Individuals who itemize deductions may deduct one hundred percent of their contributions against their 2020 adjusted gross income. Corporations that make a contribution to charity may deduct up to twenty-five percent of their taxable income (increased from ten percent). The deduction is limited to gifts of cash to public charities and not to a private foundation, donor-advised fund, or supporting organization.

STUDENT LOANS

The Act provides a six (6) month automatic payment suspension for any student loan held by the federal government through September 30, 2020. The suspension applies to both principal and interest payments. Employer's may continue to pay up to \$5,250 of an employee's student loan payments, under an education assistance program, and have it excluded from the employee's taxable income.

BANKRUPTCY RELIEF

The Act increases (from \$2,725,625 to \$7.5 million) the amount of debt a small business may have while reorganizing as part of a bankruptcy. The increased debt amount only applies to cases filed after the Act became effective and is applicable for one (1) year, absent an extension.

PRIOR LEGISLATIVE RELIEF

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) was signed into law. The FFCRA included relief provisions (i) requiring health plans to cover COVID-19 testing at no cost to the patient; (ii) requiring employers with fewer than five hundred (500) employees to provide paid sick leave to employees affected by COVID-19 who meet certain criteria; (iii) paid emergency family and medical leave in other circumstances; and (iv) payroll tax credits for required sick, family and medical leave paid.

Eligible employers may receive two (2) types of refundable sick leave credits, as well as a child care leave credit. The credits vary depending upon whether the employee (i) is unable to work because of COVID-19 quarantine or self-quarantine, or who is suffering from COVID-19 related symptoms and is seeking a medical diagnosis; and (ii) is caring for someone with COVID-19 or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to COVID-19. ◇



COIA & LEPORE, LTD.
226 South Main Street
Providence, RI 02903
(401) 751-5522

Mediation



**FAMILY DISPUTES
DIVORCE AND SEPARATION
DOMESTIC MATTERS**

Gain a new perspective on divorce and family disputes. Mediation is a cost and time efficient way to resolve domestic relations matters. A fulfilling advantage to the personal resolution of your dispute.

Dadriana A. Lepore, Esq.
LL.M., Alternative Dispute Resolution
Benjamin Cardozo School of Law
DLEPORE@COIALEPORE.COM