

A stylized illustration of a diverse crowd of people, all wearing face masks. The figures are rendered in various colors (blue, orange, green, purple) and are shown from the chest up, looking in different directions. The background is a solid dark blue.

HR CRISIS MANAGEMENT: COVID-19 UPDATES, PART 3

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INTRODUCTIONS



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Hood, MD



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Risky Business -- Loans under the FFCRA and CARES Act

The Good, the Bad, and the UGLY

- The FFCRA and CARES Act were designed to assist businesses through the COVID-19 Crisis
- Some of these plans provide extremely helpful short-term and potentially long-term benefits
- However, some of these plans contain hidden provisions
- Buyer BEWARE!

CARES Act Paycheck Protection Program (PPP)

What is the Paycheck Protection Program, and how does it affect my business?

- The CARES Act created a Paycheck Protection Program (PPP) within the Small Business Administration (SBA), calculated as a maximum of 2.5 months of salary, up to \$10M, available from 2/15/20-6/1/20
- The SBA will guarantee 100 percent of the amounts loaned with no personal guarantees, and deferred payments from up to 6 months to 1 year
- The PPP is limited to only \$349 billion – ***first come, first served***
- Covered loans can be used for:
 - (1) payroll support, including paid sick, medical or family leave, and costs related to the continuation of group health care benefits during those periods of leave;
 - (2) employee salaries, commissions or similar compensations;
 - (3) payments of interest on any mortgage obligation (not principal), lease and utility payments;
 - (4) any other debt obligations incurred prior to February 15, 2020

PPP Details and Benefits

What is "forgiven" under the PPP loan?

- The PPP forgives the first eight weeks of payments for payroll-related expenses, interest on mortgages on real or personal property incurred prior to 2/15/2020, rent payments incurred before 2/15/2020, and payments for electricity, gas, water, transportation, phone or internet which began prior to 2/15/2020
- Loan forgiveness is reduced, but not increased, by a calculation based upon: Either the average number of full-time employees per month during the 2/15/19-6/30/19, or 1/1/20-2/29/20 (seasonal employers must use the 2/15/19-6/30/19 time period).
- Loan forgiveness is also reduced by the reduction in total salary or wages by more than 25% during the eight-week period (other than above \$100,000)
- ***However, reductions that occurred subsequent to 2/15/20, but are "corrected/replaced" prior to 6/30/2020, will not be discounted from the loan forgiveness (rewarding the rehiring of employees).***
- Unintended consequences allows for the laying off of employees now, so long as they are hired back before 6/1/20. Congress is discussing potential "remedy" to this glitch in the deadlines

Emergency Disaster Injury Loan

- Federal Government has established “disaster” loans in addition to the small business interruption loans.
- The SBA also provides smaller “Economic Injury Disaster Loans” (EIDLs) in an amount up to \$2 million to businesses with not more than 500 employees that have suffered substantial economic damage as a result of COVID-19 for the period of 1/31/20-12/31/20.
- CARES Act also: (1) waives any requirement for a personal guarantee for loans less than \$200,000; (2) only requires that businesses have been in operation on 1/31/20; and; (3) waives requirement that applicants are unable to obtain credit elsewhere.
- Allows businesses that self-certify as eligible, to apply for an EIDL advance/ grant, in an amount up to \$10,000, to be provided within 3 days after receipt of the application.

So, what is the catch in accepting these government loans?


Good question. The CARES Act contains a few concerns, including “good faith certifications” for mid-sized businesses that cause concern for contemplation of any government loans.

- Mid-Sized businesses (501-10,000 employees) must “certify,” among other assurances:
 - a) The uncertainty of economic conditions makes the loan necessary to support ongoing operations
 - b) The funds will be used to retain 90% of the workforce at full pay until 9/30/20, and restore all compensation that existed as of 2/1/20, no less than 4 months after termination of the public emergency
 - c) The entity is domiciled, organized, and significant assets/employees in the USA, and is not in bankruptcy
 - d) The entity will not pay dividends or re-purchase its securities, as of the date of the CARES Act.
 - e) The recipient will not **outsource or offshore jobs** for the term of the loan + 2 years
 - f) The recipient will not **abrogate any existing collective bargaining agreement** for the term + 2 years
 - g) The **“recipient will remain neutral in any union organizing effort for the term of the loan”**

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Business Loans under the FFCRA and CARES Act Questions





For the past three weeks, DOL and other agencies have been providing regulatory guidance for FFCRA and CARES –
Employers finally are getting relief

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Department of Labor and other Key Agency Guidance

- Tax credits are available to small businesses (fewer than 500 employees) dollar for dollar for EPSLA and EFMLEA, including health insurance coverage
 - IRS is providing immediate dollar for dollar tax offset against payroll taxes
 - To the extent that payments exceed payroll taxes, IRS will issue prompt refunds to businesses
 - Businesses can request an accelerated IRS refund payment
 - **All employers will not have any payroll tax liability for payments made pursuant to the FFCRA**

DOL and other agencies are, by regulation, addressing the “unintended consequences” of the FFCRA and CARES Acts

- If you closed your business, or worksite, before 4/1/2020, ***after*** 4/1/2020, or even while someone is on leave, there is no sick leave or expanded FMLA leave for terminating or furloughing an employee – a huge change!
- Employees ***can*** take expanded family and medical leave intermittently while a child’s school or place of care is closed, or child care provider is unavailable, if not teleworking, but only with the employer’s permission. Typically, employees may ***not*** typically take paid sick leave intermittently.
- Employees may not use EFMLA or Sick Leave to supplement reduced hours
- A quarantine or isolation order, as well as shelter-in-place orders, that causes the inability to work qualifies for FFCRA. However, if the employer had no work as a result of shelter-in-place, employees do not qualify.
- Health Care Provider Employees exempted from Paid Sick Leave or Expanded Family and Medical Leave is anyone employed at a medical facility, of any type.
- If a school has moved to online instruction or to another model in which children are expected or required to complete assignments at home, it is still closed.

What Unemployment Benefits are actually included for my employees?

The CARES Act includes the Pandemic Unemployment Compensation Program:

- Allows eligible individuals awarded benefits by their state to receive an additional \$600 per week (funded by the federal government) for the next four months (through 7/31/20), for full or partial unemployment (§2104)
- Also provides for an additional 13 weeks of benefits after all regular UI benefits are exhausted (§2107)
- Federal unemployment will be provided to workers who are otherwise ineligible for state unemployment benefits, including independent contractors, self-employed, and limited work histories (§2101)
- The federal government also will temporarily provide full funding for states with workshare programs, providing benefits to employees whose hours and pay have been reduced

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CARES Act Questions & Answers





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Important questions answered by Dr. Greg Hood

Should I be wearing face masks, or require employees to wear facial coverings?

- Public pressure, and CDC guidance, has led to the concession that citizens may wear a covering in public if they so choose.
- General covers may not do much more than nothing, but can't hurt - as long as social distancing, handwashing and other recommended measures are observed.



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Important questions answered by Dr. Greg Hood

Can you provide information about testing available for COVID-19?

- COVID-19 viral testing has been very difficult but is expanding substantially. The accuracy of testing depends greatly on the technique of how the swab is performed and also timing relative to onset of symptoms.
- Antibody testing has been developed, but protocols for all available tests haven't been put in place to establish a Return to Work criteria.
- A number of logistical, governmental and civil liberty issues remain unresolved



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Important questions answered by Dr. Greg Hood

What issues can we expect if we experience a COVID-19 outbreak at work?

- This is a "when" not "if" scenario and will likely play out many times over throughout this epidemic.
- Generally, from exposure people are at risk for exhibiting symptoms within the next 2 weeks
- It is important as an employer to not "play doctor" and encourage employees to contact their physician.
- It is critical to maintain privacy to not violate the ADA or health privacy standards and incur additional liability. Any potentially exposed employees should self-quarantine for 14 days from last probable contact
- Work areas where possible exposure took place need to be sanitized in accordance with CDC's published guidelines.



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Important questions answered by Dr. Greg Hood

What is the best method to get treatment if someone may have COVID-19?

- Most patients can manage at home with conservative measures and over the counter options.
- Direct phone or video consultation with a physician can make best recommended approach to additional testing and/or higher levels of care.
- Patients should not, at this time, expose themselves to additional risks by going on their own to medical offices, urgent cares or the hospital because they are worried or have mild symptoms.



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Important Questions Answered by Dr. Greg Hood

What is the best treatment if someone may have COVID-19?

- Conservative measures, such as rest and symptom based over-the-counter treatments are the mainstays of treatment.
- There are a plethora of other treatments being looked at, from antibiotics, to antivirals to antiparasitics.
- There are over 15 separate efforts for a successful vaccine. They are employing a number of different strategies, and different timelines.

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Questions for Dr. Greg Hood





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