

COVID-19 Update

Presented by
The Franklin Partnership, LLC
Policy Resolution Group at Bracewell
September 11, 2020



Your Team in Washington, D.C.



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Nothing contained in here shall be deemed legal advice.

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Agenda

- OSHA Guidance: Masks in a Hot Indoor Environment
- EEOC and CDC Guidance FAQ Reconciliation
- OSHA Outreach and Enforcement Statistics
- Sample of States Participating in \$400 Unemployment Insurance Supplement
- Government Shutdown and Next COVID Legislation
- Senate GOP COVID “Skinny Bill”
- COVID-19 Legislation Status
- When to Submit Forgiveness Applications
- Questions

All information presented as of September 10, 2020

OSHA Guidance: Masks in a Hot Indoor Environment



COVID-19 Guidance on the Use of Cloth Face Coverings while Working Indoors in Hot and Humid Conditions

During the COVID-19 pandemic, OSHA generally recommends that employers encourage workers to wear cloth face coverings at work to help reduce the spread of COVID-19. However, workers who wear cloth face coverings in hot and humid environments or while performing strenuous activities indoors, such as those in bakeries, kitchens, laundries, electric utilities, fire services, mills, foundries, manufacturing, and warehousing, can find cloth face coverings to be uncomfortable.

Employers should follow the below practices to protect against the spread of COVID-19 and the risk of heat-related illness:

- Acclimatize new and returning workers to environmental and work conditions while wearing cloth face coverings.
- Prioritize the use of cloth face coverings when workers are in close contact with others (less than 6 feet), such as during group travel or shift meetings.
- Allow workers to remove cloth face coverings when they can safely maintain at least 6 feet of physical distance from others.
- Evaluate the feasibility of wearing cloth face coverings for each worker and consider alternatives (e.g., face shields) when appropriate.
- Increase the frequency of hydration and rest breaks in cooled environments.
- Incorporate at least 6 feet of physical distancing into break areas by staggering breaks, spacing workers, or limiting the number of workers on break at a time, where feasible.



Photo: OSHA

- Enhance ventilation throughout the worksite, including in break areas, where feasible.
- Allow workers to return to personal vehicles during breaks to use air conditioning, when possible. Multiple workers should generally not return to the same car.
- If fans are used, avoid directing the fan so it pushes air over multiple people at the same time, since fans may increase the distance respiratory droplets can travel.
- Encourage workers to use cloth face coverings that optimize fit and comfort and are made out of breathable, moisture-wicking materials.
- Encourage workers to change cloth face coverings when wet, as wet face coverings make it more difficult to breathe and are not as effective. Provide clean replacement cloth face coverings or disposable face masks, as needed, for workers to change into throughout the work shift.
- Ensure workers use handwashing facilities or hand sanitizers with at least 60% alcohol often, as heat or moisture build-up may cause workers to put on and take off cloth face coverings frequently.
- Allow workers to wear personal passive cooling items (e.g., icepack vests, cooling bandanas) and loose-fitting and breathable clothes, as long as these items do not present a safety hazard.
- Plan for heat emergencies and train workers on heat stress prevention and treatment.
- Increase the frequency of communication to workers and encourage workers to monitor themselves and others for signs of heat illness.

Note: Cloth face coverings should not be considered a substitute for engineering and administrative controls, safe work practices, or necessary personal protective equipment (PPE).

For interim guidance and other resources on protecting workers from COVID-19, visit [OSHA's COVID-19 webpage](#).

For guidance and other resources on protecting workers from heat stress, visit [OSHA's occupational heat exposure webpage](#).

For guidance on heat illness prevention during the COVID-19 pandemic, visit the Centers for Disease Control and Prevention's webpages for [workers](#) and [employers](#).

For the latest information on the symptoms, prevention, and treatment of COVID-19, visit the [Centers for Disease Control and Prevention's COVID-19 webpage](#).

For the latest information on masks, visit the [Centers for Disease Control and Prevention's COVID-19 and masks webpage](#).

For the latest information on COVID-19 in the workplace, visit the [National Institute for Occupational Safety and Health's COVID-19 webpage](#). ■

EEOC/ADA vs CDC Guidance

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) when evaluating an employee's initial or continued presence in the workplace? *(4/23/20; updated 9/8/20 to address stakeholder questions about updates to CDC guidance)*

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take screening steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before initially permitting them to enter the workplace and/or periodically to determine if their presence in the workplace poses a direct threat to others. The ADA does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate. Testing administered by employers consistent with current CDC guidance will meet the ADA's “business necessity” standard.

EEOC/ADA vs CDC Guidance

A.9. May a manager ask only one employee—as opposed to asking all employees—questions designed to determine if she has COVID-19, or require that this employee alone have her temperature taken or undergo other screening or testing? (9/8/20; adapted from 3/27/20 Webinar Question 3)

If an employer wishes to ask only a particular employee to answer such questions, or to have her temperature taken or undergo other screening or testing, the ADA requires the employer to have a reasonable belief based on objective evidence that this person might have the disease. So, it is important for the employer to consider why it wishes to take these actions regarding this particular employee, such as a display of COVID-19 symptoms. In addition, the ADA does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate.

A.10. May an employer ask an employee who is physically coming into the workplace whether they have family members who have COVID-19 or symptoms associated with COVID-19? (9/8/20; adapted from 3/27/20 Webinar Question 4)

No. The Genetic Information Nondiscrimination Act (GINA) prohibits employers from asking employees medical questions about family members. GINA, however, does not prohibit an employer from asking employees whether they have had contact with anyone diagnosed with COVID-19 or who may have symptoms associated with the disease. Moreover, from a public health perspective, only asking an employee about his contact with family members would unnecessarily limit the information obtained about an employee's potential exposure to COVID-19.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

September 8, 2020

EEOC/ADA vs CDC Guidance

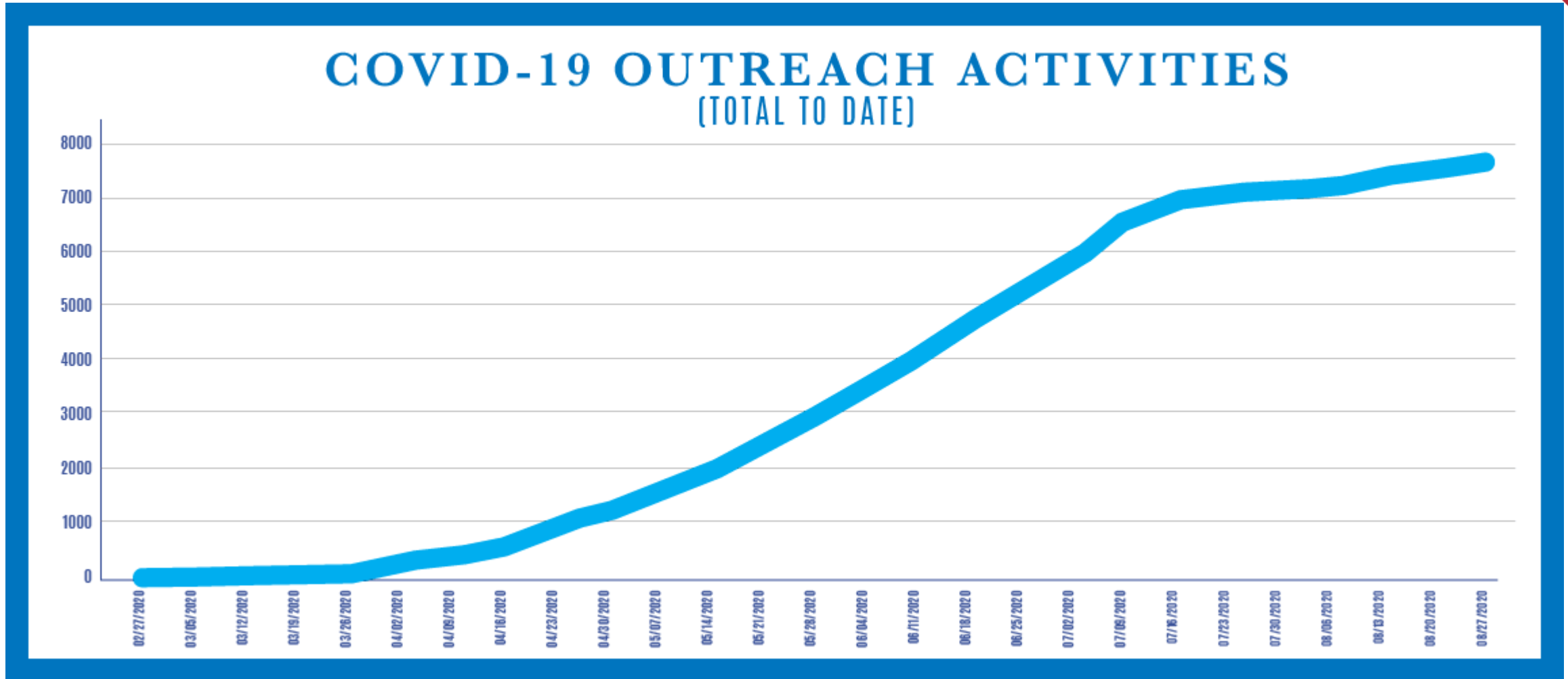
B.5. Suppose a manager learns that an employee has COVID-19, or has symptoms associated with the disease. The manager knows she must report it but is worried about violating ADA confidentiality. What should she do? *(9/8/20; adapted from 3/27/20 Webinar Question 5)*

The question is really what information to report: is it the fact that an employee—unnamed—has symptoms of COVID-19 or a diagnosis, or is it the identity of that employee? Who in the organization needs to know the identity of the employee will depend on each workplace and why a specific official needs this information. Employers should make every effort to limit the number of people who get to know the name of the employee.

B.7. An employer knows that an employee is teleworking because the person has COVID-19 or symptoms associated with the disease, and that he is in self-quarantine. May the employer tell staff that this particular employee is teleworking without saying why? *(9/8/20; adapted from 3/27/20 Webinar Question 7)*

Yes. If staff need to know how to contact the employee, and that the employee is working even if not present in the workplace, then disclosure that the employee is teleworking without saying why is permissible. Also, if the employee was on leave rather than teleworking because he has COVID-19 or symptoms associated with the disease, or any other medical condition, then an employer cannot disclose the reason for the leave, just the fact that the individual is on leave.

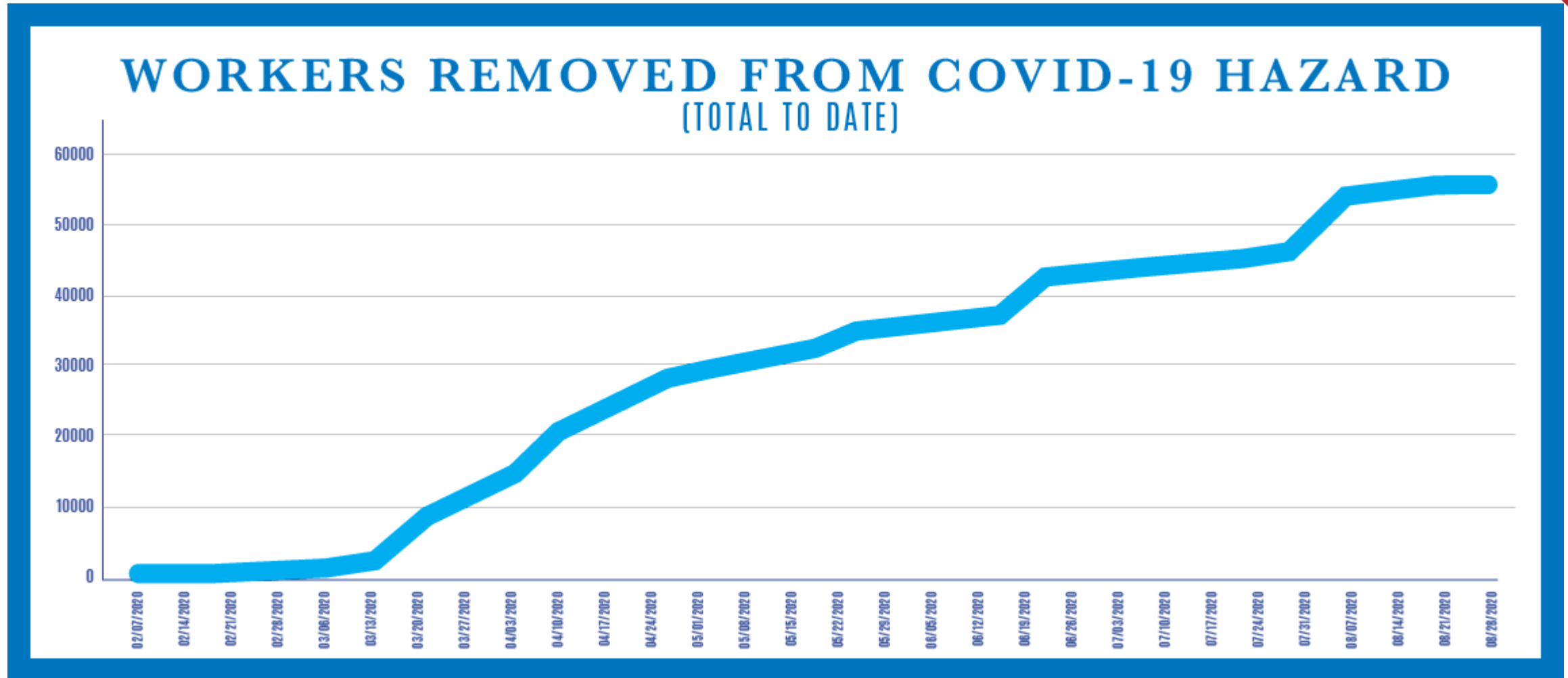
OSHA Outreach Activities



September 7, 2020

https://www.osha.gov/enforcement/covid-19-data#complaints_referrals

OSHA Enforcement Statistics



September 7, 2020

https://www.osha.gov/enforcement/covid-19-data#complaints_referrals

\$400 Unemployment Supplement Agreements

Connecticut

FEMA Status: Approved 8/24/2020

Amount: \$300

Payments Begin: mid-September
Connecticut has [announced](#) that it expects LWS payments to go out beginning in mid-September.

Indiana

FEMA Status: Approved 8/21/2020

Amount: \$300

Payments Begin: mid to late September
According to [one news report](#), LWA payments will go out in the next two to three weeks. An [FAQ page](#) provides more details.

Ohio

FEMA Status: Approved 8/26/2020

Amount: \$300

Payments Begin: [mid to late September](#)

Illinois

FEMA Status: Approved 9/1/2020

Amount: \$300

Payments Begin: TBD

In an [FAQ page](#), the Illinois Department of Employment Security said, “IDES will work as hard and quickly as possible to distribute LWA as soon as grants funds are received.”

Michigan

FEMA Status: Approved 8/21/2020

Amount: \$300

Payments Begin: week of 9/7/2020

News outlets [report](#) that Michigan will begin sending out \$300 payments the week of September 7th. Updates on Michigan’s labor department website can be found [here](#).

Pennsylvania

FEMA Status: Approved 8/24/2020

Amount: \$300

Payments Begin: by 9/12/2020

According to one [news report](#), Pennsylvania will start issuing payments by September 14th. Unlike most other states, claimants must complete a [Lost Wages Assistance certification](#). A [report](#) out September 7th says payments will go out by September 12th.

Source: <https://www.forbes.com/sites/robertberger/2020/09/06/when-300-unemployment-payments-begin-in-each-state/#691b2fd423a3>

States had to apply by Sept. 10 to participate and agree to contribute at least \$100 towards \$400 to trigger federal program

<https://www.fema.gov/fact-sheet/lost-wages-assistance-approved-states>

Sept. 6, 2020

However...FEMA Unemployment Money Running Out

- FEMA notified Texas and Tennessee this week they will no longer receive funding to provide the \$300 under President Trump's Lost Wages Assistance Program
- Montana told funding will be cut off by September 11
- Iowa started payments September 4, notified funding dried up
- Arizona payments possibly ending this week
- President redirected \$44 billion of hurricane disaster money
- Congress would have to authorize new money or President reprograms existing funds
- 30 million Americans currently receiving some form of jobless benefits

Decoupling Government Shutdown from COVID

- Pelosi and Mnuchin have an agreement to prevent a government shutdown
- Will pass a temporary spending bill
- Few benefit from a government running out of money Oct 1 at 12:01 AM Eastern
 - Pelosi wanted to decouple COVID from shutdown to limit leverage over House Dems
 - White House and McConnell believe shutdown hurts them politically
 - Only House GOP and challengers running against House, Senate incumbents benefit as shows broken Washington
- Question remains over length of temporary funding
 - Democrats want extension to March 2021, concerned if Trump loses, he will let government shutdown
 - Senate GOP wants extension to 2nd week in December, don't want to give away leverage if they lose Senate control
 - Prediction: Trump signs Continuing Resolution funding government through December 11, 2020
- Will likely also temporarily extend highway authorization bill, others

Still a chance an overwhelmingly bipartisan COVID bill is attached to spending bill

Senate Fell 8 Votes Short on GOP “Skinny” COVID Bill

- McConnell said at least 20 GOP Senators opposed his original \$1 trillion proposal
 - Sens. Paul (Kentucky), Lee (Utah), Cruz (Texas), Hawley (Missouri) want smaller bill
 - COVID bill has 2024 White House GOP Primary implications
- Rescinded and reprogrammed \$350 billion, added \$300b in new money = \$650b total
- \$105 billion for schools; \$31b for vaccine; \$20b farmers; \$16b testing; \$15b daycare
- No additional funding for states, local governments (Democrats want \$1 trillion)
- Includes \$300 federal unemployment supplement; does not include \$1,200 stimulus check
- Charitable donations expanded to \$600; ability to use credits, 529 for homeschool, private
- PPP: Rescinds \$146b remaining then adds more back in for new total of \$258 billion
 - Expands PPP1 to allow for supplier costs
 - PPP forgiveness period anytime between 8 weeks after loan origination and December 31, 2020
 - PPP Second Draw includes a 1Q/2Q 2019 vs. 2020 revenue loss test of 35%

Where COVID Negotiations Stand

Senate GOP “Skinny Bill”

- 2020 vulnerable GOP Senators needed a bill to show voters they were for something
- McConnell secured 52 GOP votes, needed 60 bipartisan Senators to pass
- Senate GOP “skinny bill” will not receive a vote in House or become law
- Republicans needed to put Democrats on defense and respond to their May proposal
- Either helpful to jumpstart talks or unhelpful since less than half White House proposal

Negotiations with White House

- Still no substantive high-level negotiations ongoing – spending levels largest obstacle
- Democrats have come down from \$3.4 trillion package to \$2.2 trillion
- White House reportedly now up to \$1.5 trillion from \$1.2t (GOP skinny bill ~\$500b)
- Mnuchin believes there is a deal to be made on COVID-19
- Pelosi says she will not negotiate with White house Chief of Staff Mark Meadows

Politics of COVID-19 Legislation

Political Obstacles to a Bill Moving

- McConnell would need Senate Democrats to secure 60 votes to pass
- Republicans believe top line job numbers show economy is improving
- Election only 53 days away – should wait for a lame duck session
- Both sides see political benefit if no bill
 - White House thinks Pelosi takes blame for no COVID bill
 - Democrats believe voters will blame Trump, Washington in general for no further relief

Political Reasons to Move a Bill

- It's the right thing to do: People, businesses still need help
- Trump wants another \$1,200 check to voters with his name on it
- Moderate House Democrats in competitive suburban seats want a bill
- McConnell wants to keep the Senate, a bill may help 4-5 vulnerable GOP Senators

PPP Forgiveness Guidance – Should you Wait?

“As long as a borrower submits its loan forgiveness application within ten months of the completion of the Covered Period, the borrower is not required to make any payments until the forgiveness amount is remitted to the lender by SBA.”

- 10 months from first loans is February 2021
- Many companies are anxious to get loan off the books
- However, lenders are hesitant to accept loans knowing rules may change
- If you do not “have” to submit your loan forgiveness now, can you wait?
- Are there covenants in other loans, contracts that prohibit PPP outstanding loan?
- Still no solution on deduction of expenses if loan forgiven ahead of Sept 15
- CPAs advising to withhold deduction of expenses to see if Congress later change rule
- Should ask yourself whether you can wait on Congress to see if they make changes?
- If you submit now, how easily will it be to amend your filed forgiveness application?

MEDIA



When Clips & Clamps, a metal forming company in Plymouth, Mich., advertised for a die setter and operator last year, more than a hundred applications came sailing in.

This summer, the company sought to hire another operator, offering \$17 to \$22 an hour and benefits. After three months, not a single person had responded.

“I received zero applicants,” said Jeff Aznavorian, the company’s president. “I’ve been dumbfounded.”

Mr. Aznavorian, whose grandmother founded the company 66 years ago, has no clear explanation for his hiring troubles. In the Detroit area, there should be plenty of qualified candidates, he said. And Michigan’s [unemployment rate](#) was 8.7 percent in July, more than double what it was last summer.

“I’m guessing it has something to do with the extra benefits associated with unemployment,” he said.

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Questions?

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