



ALERTS

COVID-19: Navigating Downsizings, Furloughs And Layoffs Under New Federal Laws

March 30, 2020

Loan forgiveness for certain small employers under new federal laws aimed at helping businesses with payroll and other operating expenses in the wake of COVID-19 is, of course, only a small portion of what the extensive new legislation covers. In addition, the legislation provides expanded paid leave benefits to employees impacted by the COVID-19 epidemic.

Family First Coronavirus Response Act

The Family and Medical Leave Act (FMLA) was expanded after this Act was signed into law in mid-March, guaranteeing paid sick leave for certain U.S. employees. Under the legislation, employers with fewer than 500 employees are required to provide up to two weeks of paid leave and 10 weeks at two-thirds pay for their employees, until the end of the year.

Employees subject to local quarantine or an isolation order related to COVID-19, caring for a stricken family member, or with children whose schools or daycare programs have closed are eligible for the initial two weeks of paid leave.

Paid leave is capped at \$511 daily and up to \$5,110 for leave related to the employee being in quarantine or isolation, respectively, in connection to COVID-19 healthcare symptoms or concerns, as confirmed by a healthcare provider. Paid leave is capped at \$200 daily and \$2,000 total for individuals caring for an individual subject to a self-quarantine or -isolation order.

Businesses that fall under the mandate would also have to provide an

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additional 10 weeks off at partial pay for employees who have lost their child care because of school and daycare closures. Paid leave due to child care-related COVID-19 school closures is capped at two-thirds of the employee's base salary up to \$200 daily and \$12,000 total.

[Employers must provide notice](#) of the "employee rights" in a conspicuous place in the business or provide each an employee a copy electronically, as stated in Department of Labor guidance.

To compensate employers for paid leave, the law provides a credit against the employer's portion of the social security tax component of its payroll taxes.

CARES Act: Small Business Loan Forgiveness to Cover Short-Term Payroll

The CARES Act provides loan and loan forgiveness programs for eligible small businesses, sole proprietors, independent contractors, and self-employed persons for payroll and other operating expenses. An employer considering short-term employee layoffs or furloughs may want to consider how such decisions could impact their borrowing ability under the Act; if their business is eligible; and the extent to which the government may underwrite certain payroll and operating expenses for a period of short duration under the loan forgiveness program.

The loan forgiveness amount is equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payments on any mortgage incurred prior to Feb. 15, 2020, payments of rent on any lease in force prior to Feb. 15, and payment on any utility for which service began before Feb. 15. Eligible payroll costs do not include compensation above \$100,000 in wages.

The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation.

Borrowers that rehire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

The loan is capped at \$10 million through Dec. 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business (generally, the sum of the average monthly payroll costs multiplied by 2.5)

Work Share Programs

Under the CARES Act, in states that have or will adopt a "shared work" compensation program, such programs will allow an employer to reduce hours for its workforce and state unemployment compensation programs will cover a portion of the reduced hours. For example, an employee's hours reduced by 25 percent will entitle the employee to an unemployment compensation claim equal to 25 percent of the employee's weekly unemployment benefit. Texas has had such a program in place since 1985.

Additionally, the COVID-19 employment-related laws may intersect with

an employer's obligations under the FMLA and the Americans with Disabilities Act (ADA), especially in the areas of employee requests for extended unpaid leave accommodations or an employer's inquiry about an employee's medical condition or request for medical examination or testing. Large-scale layoffs or downsizings could trigger WARN Act obligations for covered employers.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Doug Haloftis at 214-258-4137 or doug.haloftis@btlaw.com.

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