

EMPLOYMENT ISSUES & STRATEGIES IN RESPONSE TO CORONAVIRUS

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KEY CONSIDERATIONS REGARDING FURLOUGHS, LAYOFFS & SALARY REDUCTIONS

- What is a Furlough?
 - Generally refers to a mandatory period of time off work without pay
 - Intended to be for a temporary or limited duration. Sometimes the term “temporary layoff” is used
 - Generally, the employee remains on payroll and may remain eligible for benefits, including health insurance coverage, while on furlough, with a mutual expectation of reinstatement

KEY CONSIDERATIONS REGARDING FURLOUGHS, LAYOFFS & SALARY REDUCTIONS

- Benefits of a Furlough
 - Reduces compensation costs for the employer
 - Reduces hiring costs when economic downturn ends
 - Allows employees (in most cases) to obtain unemployment while maintaining benefits

KEY CONSIDERATIONS REGARDING FURLOUGHS, LAYOFFS & SALARY REDUCTIONS

- What is a Mass Layoff?
 - Employer terminates an employee's employment without any right to be recalled and reinstated if business conditions improve
 - Benefits typically are terminated when an employee is laid off, including health benefits (subject to the employee's right to continue that coverage pursuant to COBRA)

KEY CONSIDERATIONS REGARDING FURLOUGHS, LAYOFFS & SALARY REDUCTIONS

- Benefits of a Mass Layoff
 - Accounts for the uncertainty of economic conditions
 - Save costs on benefits
- Must consider whether the Mass Layoff triggers WARN

KEY CONSIDERATIONS REGARDING FURLOUGHS, LAYOFFS & SALARY REDUCTIONS

- Another options is to reduce an employee's salary/compensation
 - Allows a reduction in costs while allowing employees to remain employed
 - May impact morale and remove employee's ability to qualify for unemployment
 - Must ensure compliance with any state-specific notice obligations
 - Must ensure for exempt employees that the reduction does not violate the salary basis test (\$35,568 per year in Illinois)

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Emergency Paid Leave Benefits
 - Applies to **for-profit and not-for-profit** employers with fewer than 500 employees and all government employers
 - Provides for 10 days of paid sick leave if unable to work (or telework) because of six specified reasons, which include being subject to a quarantine or isolation order
 - Caps on monetary amount employees receive (\$200 per day/\$2,000 total)
 - Employers eligible for tax credits
 - Employers cannot require employees to first take other paid leave

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

■ Enhanced FMLA

- Applies to for-profit and not-for-profit employers with fewer than 500 employees and all government employers
 - Exceptions for businesses with fewer than 50 employees if requirements jeopardize the viability of the business
- Unpaid leave for the first 10 days then up to 10 weeks of paid FMLA if an employee is unable to work (or telework) because a child's school or place of care is closed or a child care provider is unavailable
- Caps on amount payable to employees (\$200 per day/\$10,000 total)
- Employers eligible for tax credits

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Practical Considerations Regarding Leave
 - Employees are not eligible for this leave if their employer is already shut down due to Coronavirus
 - Leave eligibility begins not later than 15 days from enactment of law
 - Provide employees notice of leave availability
 - Determine process for employees to request leave
 - Assess interaction with other leave policies

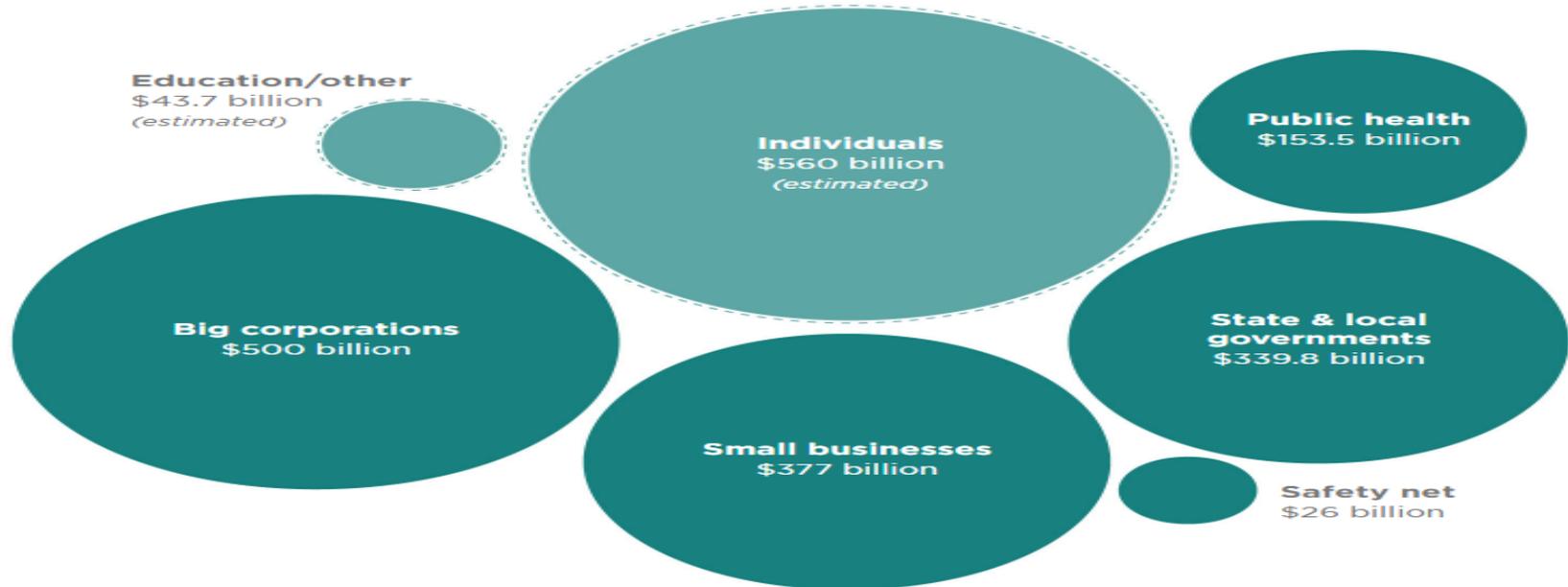
THE CARES ACT

- The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”)
 - Enacted March 27, 2020
 - Roughly \$2 trillion of relief
 - Appropriates approximately \$877 billion to lending programs for small, mid-sized and large business entities
 - Still being rolled-out

THE CARES ACT

How The \$2 Trillion Breaks Down

The CARES Act provides relief to several groups impacted by the coronavirus pandemic.



Source: Estimates for third relief bill based on bill text, committee and administration numbers.

Credit: Audrey Carlsen/NPR

THE CARES ACT - LENDING PROGRAMS

Distressed Industries	Federal Reserve Lending Programs (e.g., midsize businesses)	Small Businesses - Paycheck Protection Program (PPP)	Small Businesses – Economic Injury Disaster Loan (EIDL) Program
<p>U.S.-based distressed industries:</p> <ul style="list-style-type: none"> • Passenger air carriers; eligible businesses approved to perform aircraft inspections and maintenance; and air ticket agents (\$25 billion) • Cargo air carriers (\$4 billion) • Businesses critical to maintaining national security (\$17 billion) 	<p>Yet-to-be determined lending programs:</p> <ul style="list-style-type: none"> • <u>Midsize Business Lending Program</u> – U.S.-based businesses with 500 to 10,000 employees • <u>Mainstreet Lending Program</u> – Small and midsize Businesses • <u>Government Lending Program</u> – State and local municipalities <p><u>Note:</u> Significant restrictions apply to these loans.</p>	<p>Eligible entities are those with fewer than 500 employees, but subject to exceptions (with affiliate counting, but subject to exceptions)</p>	<p>Eligible entities are those with fewer than 500 employees, but subject to exceptions (with affiliate counting, but no exceptions)</p>

NONPROFIT ELIGIBILITY – PPP LOANS V. EIDLs

PPP (<u>Not Eligible for 501(c)(7)s</u>)	EIDL (<u>Eligible for 501(c)(7)s</u>)
<p>A “non-profit organization” is eligible for PPP loans if it:</p> <ul style="list-style-type: none">• is <u>either</u> tax-exempt under Section 501(c)(3) or a tax-exempt veterans organization under Section 501(c)(19) of the Internal Revenue Code;• was in operation on February 15, 2020;• has employees for whom it paid salaries and payroll taxes; and• employs fewer than 500 employees. <p>A non-profit organization that receives a PPP loan, however, is ineligible for the payroll tax credits</p>	<p>A “non-profit organization” is eligible for an EIDL if it:</p> <ul style="list-style-type: none">• is a “private non-profit organization”, defined as including any entity exempt under Section 501(c), trade associations, advocacy organizations, unions, and social clubs otherwise excluded under the PPP, in addition to certain organizations tax-exempt under 501(d) (apostolic organizations) or 501(e) (cooperative hospital service organizations);• was in operation before January 31, 2020; and• employs fewer than 500 employees.
<p>No underwriting requirements are required.</p>	<p>EIDLs may be approved: (i) solely on credit score and will not require a tax return; and (ii) using alternative methods to determine ability to repay.</p>
<p>The SBA's standard requirement that an applicant is "unable to obtain credit elsewhere" is waived.</p>	

TERMS – PPP LOANS V. EIDLs

	<u>PPP</u>	<u>EIDL</u>
Maximum Amount	<p>The <u>lesser</u> of:</p> <ul style="list-style-type: none"> • \$10 million; or • 2.5 <i>times</i> your average total monthly payroll costs incurred during the year prior to the loan date, or at your election, during the period from March 1, 2019 – June 30, 2019, <i>plus</i> the amount of any refinancing of an EIDL obtained after January 31, 2020 	Up to \$2 million (an amount equal to the economic injury suffered)
Permissible Use of Funds	<p>Loan proceeds must be used as follows:</p> <ul style="list-style-type: none"> • At least 75% on “payroll costs” (excluding compensation of any employees in excess of \$100,000 annualized); • No more than 25% on “non-payroll costs”: (i) mortgage interest payments; (ii) rent; (iii) utilities; and (iv) debt interest payments, if obligations were incurred prior to February 15, 2020. 	Working capital, to support operations and for expenditures necessary to alleviate the specific economic injury

TERMS – PPP LOANS V. EIDLs

	<u>PPP</u>	<u>EIDL</u>
Advance Availability	No	Yes, up to \$10,000 during the processing of your loan application (if your application is denied you will not have to repay the advance)
Maturity	2 years	Determined on a case-by-case basis, not to exceed 30 years
Deferral	6 months (principal and interest, interest continues to accrue)	None
Interest Rate	1%	Maximum of 2.75% annually for non-profits
Collateral Requirements	None	Yes, to the extent available and for all loans over \$25,000
Personal Guarantee Requirement	None	Yes; however, all personal guarantee requirements waived on loans under \$200,000
Fees	None	None
Eligible for Loan Forgiveness	Yes, to the extent proceeds are used to cover the first 8 weeks of payroll and eligible expenses following origination	No, but the EIDL may be refinanced by a PPP loan

LOAN FORGIVENESS – PPP LOANS

	<u>PPP</u>
Permissible Use Limitation	<p>To be eligible for forgiveness, loan proceeds must have been used as follows:</p> <ul style="list-style-type: none">• At least 75% on “payroll costs” (excluding compensation of any employees in excess of \$100,000 annualized); and• No more than 25% on “non-payroll costs”: (i) mortgage interest payments; (ii) rent; and (iii) utilities.
Employee Headcount Reduction	<p>The amount of eligible loan forgiveness will be reduced if:</p> <p>The average number of full-time equivalent employees (“FTEs”) of the borrower during (A) the 8-week period following receipt of the loan is <i>less than</i> (B) the average number of FTEs of the borrower, at the borrower’s option, during the period from (i) February 15, 2019 to June 30, 2019, or (ii) January 1, 2020 to February 29, 2020</p>
Salary/Wage Reduction	<p>The amount of eligible loan forgiveness will also be reduced by the amount of any reduction in total salary or wages of any employee that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before February 15, 2020.</p>
Savings Clause	<p>If a reduction in headcount or salary/wages occurs between February 15, 2020 and April 26, 2020 <u>and</u> the reduction is eliminated by June 30, 2020, there will be no impact on loan forgiveness.</p>

THOUGHTS ON THE CARES ACT

- The CARES Act was rushed through
 - Created more questions than answers
- Many entity types were sidelined
- The PPP is likely to be oversubscribed and there may be a second round
 - Count on the lobby

ENHANCED UNEMPLOYMENT BENEFITS UNDER CARES ACT (Eligible for 501(c)(7)s)

- Provides \$250 billion to expand unemployment benefits
- Raises the maximum unemployment insurance benefit amount by \$600 per week through July 31, 2020. This is in addition to what the individual is eligible to receive under state law
- Provides additional 13 weeks of benefits beyond what states typically provide for those who have exhausted their right to benefits
- Increased benefit in Illinois results in many employees making more on unemployment than in current role

OSHA COMPLIANCE DURING CORONAVIRUS

- OSHA issued employer guidance on dealing with Coronavirus
 - OSHA recommends that employers develop an infectious disease preparedness and response plan
 - Lower risk employers monitor public health communications about COVID-19 and ensure that employees have access to that information

IMMIGRATION CONCERNS

- Changes in the workplace may impact employees working under work visas
- H1-B visas place limits on the location an employee can work (which may require action in a work-from-home scenario)
- Layoffs (even temporary) may impact visa status

KEY TAKEAWAYS

- Engage competent counsel
 - Diversity of skills
 - Practical advice
- Determine your financial strategy
 - Are any or all SBA loan programs available to you?
 - Weigh the benefits for your organization
 - If not, there will be additional lending programs created under the CARES Act – stay tuned

QUESTIONS?



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