

An illustration of a diverse crowd of people, all wearing face masks. The people are rendered in various colors and styles, representing different ethnicities and ages. The background is a solid dark blue. The text is overlaid on the left side of the image.

CRISIS MANAGEMENT FOR COVID-19

Week 12: Legal & PPP Updates & Compensation Mid- and Post-COVID

*Presented by:
Hanna Resource Group and
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INTRODUCTIONS



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WHAT WE'LL COVER

1

Legal & PPP
Updates

2

Compensation
Mid- and Post-
COVID

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Questions
and Answers



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Legal & PPP Updates



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PPP Flexibility Act

On June 3, 2020, Congress passed the PPP Flexibility Act, on June 5, 2020 President Trump Signed the PPP Flexibility Act into law

- Makes PPP loans available through December 31, 2020 instead of June 30, 2020
- Extends the 8-week loan forgiveness to 24 weeks (but no later than December 31, 2020)
- Broadens safe harbors to December 31, 2020 (rehire and pay) and also provides an exception if the employer was unable to return to the same level of business operating at prior to 2/15/20 due to compliance with sanitation, social distancing, or other COVID-19 safety standards
- Changes the SBA's "75% of the **forgiven amount**" to "60% of the **total loan amount**"
- Extends the term to maturity for PPP loans to 5 years for those loans issued after June 5, 2020
- Borrower must begin making payments on PPP loan 10 months after the last day of its 24-week forgiveness period, but not earlier (changed from 6 months under SBA mandate)
- Permits PPP loan borrowers to defer payment of employer payroll taxes
- Except for extending the term of maturity, the amendments are retroactive to PPP

SBA has not yet updated its website; until it does, do not rely on the outdated information

1 FFCRA and Summertime Fun

It's been a while, so I thought I would bring back the FFCRA since "new" issues are now popping up

A little refresher: We talked in Week 2 about FFCRA.

- Up to twelve weeks of leave at 2/3 of the employee's regular rate of pay for care of a child whose school or childcare provider is closed due to COVID-19
- Shockingly, now that it's summer, surprisingly, some employees who didn't need time off in March or April, when their children were at home (and there was nowhere to go), are suddenly "needing" time off to care for their children!
- Fortunately, the DOL has issued some assistance in these areas. Somewhat...
- The following are real Frequently Asked Questions from the DOL re-written for your listening enjoyment

1 FFCRA and Summertime Fun

*FAQ courtesy of U.S. Department of Labor
(Sarcasm courtesy of JMM)*

- FAQ 91. So, I have been successfully teleworking since March, with my kids going to school. Now that it's summer, however, and everything is open, I really need FFCRA leave to cultivate my suntan – uh, I mean, take care of my kids. Can my employer serious ask me what changed and why I need leave?!
- Answer: A definite maybe. Employers must "exercise caution" in asking "lest it increase the likelihood that any decision denying leave based on that information is a prohibited act."

The "good" news from the DOL

"This does not prohibit you from disciplining an employee who unlawfully takes paid sick leave or EFMLA leave based on misrepresentations, including, ***for example, to care for the employee's children when the employee, in fact, has no children and is not taking care of a child.***"

1 FFCRA and Summertime Fun

It's been a while, so I thought I would bring back the FFCRA since "new" issues are now popping up

- FAQ 92. What can I ask from an employee who wants FFCRA leave because of COVID-19 symptoms, and seeking a medical diagnosis?
- Answer: Symptoms. Date of doctor's appointment. Nothing else!
- FAQ 93. After completing distance learning, and not taking any leave (because there was nothing to do outside of our house), my kid's school is now closed for summer vacation ... Cool places are now opening, and I really want more time off, so can I now ask for FFCRA or Sick Leave to (go somewhere cool and) take care for my kid?
- Answer: Of course no! ...

But, wait, there's more...

"However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason."

1 Potential COVID-19 Legal Issues for Employers

Benefits

- Benefit plan terms in either continuing/ending coverage due to reduction in hours or furlough, including whether plan terms match administrative practice and legal requirements

Contracts

- Breach of employee-based contracts in connection with schedule reductions, pay cuts, furloughs, etc.
- Non-compete litigation caused by employees still covered by contracts seeking new employment
- The applicability of *force majeure* clauses

COVID-19 Legislation

- Compliance with FFCRA, State and Local Leave, and related retaliation claims

Discrimination/Retaliation Claims

- National origin/race, disability and FMLA discrimination claims related to layoffs, failure to rehire, etc.

Employee Expenses

- Work from home reimbursement disputes/charges (cell phone, WiFi, internet, office supplies, etc.)

Immigration Compliance

- I-9/E-Verify; failure to pay H-1B or paying H-1B, but not US employees; DOJ audits; restarting H-1B reviews

1 Potential COVID-19 Legal Issues for Employers

NLRB

- Retaliation for refusing unsafe working conditions (potential exposure to COVID-19)

OSHA/Workplace Safety

- Safe workplace; claimed workplace infections; whistleblower/retaliation claims

Union Relations

- CBA compliance in light of COVID-19; union organization efforts in light of impact of layoffs, furloughs, terminations; impact of mid-sized companies in accepting financial support

Wage and Hour Issues

- Improper calculation for layoffs/furloughs/reduction/pay cuts
- Failure to compensate (PPE, temperature or symptom checks, donning and doffing additional PPE, etc.)

WARN Act Compliance

- Failure to comply with WARN Act in conjunction with layoffs, furloughs and office closures

Workers' Compensation

- Workers' compensation claims by infected employees; retaliation for reporting/refusals

Questions & Answers





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Compensation Mid- and Post- COVID



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Mercer COVID-19 Resources

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welcome to brighter Resource

links:
www.mercer.us/our-thinking/managing-novel-covid-19
www.hubb.com/content/mmc-web/mmc-

Today's Presenters from Mercer

- **Welcome:**
 - Doug Frederick, Leader of Mercer's Executive Benefits Group and Client Manager
 - LaCinda Glover, Rewards Consultant and Career Office Business Leader
- **Return to Work Poll + Open Forum Q&A**



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Polling Questions

Open Forum / Q&A

SHRM CODE: 20-S46DA

HRCI: 525470 (Strategic/Business)



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