



COVID-19

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**Coronavirus / COVID-19
Response Team**

MILLER 
JOHNSON
Attorneys

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MILLER 
JOHNSON
Attorneys

**Small Business Focus -
Programs to Help**

» Erik Daly
Rebecca Strauss
Tripp VanderWal

MILLER 
JOHNSON
Attorneys

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Government-Backed Small Business Disaster Relief Programs

- Federal Stimulus Legislation (CARES Act)
 - Approved by Senate; House vote expected March 26
 - “Retention Loans” / Paycheck Protection Program
 - Selected other provisions and programs
- SBA Disaster Loans
 - May be used in combination with “Retention Loans” (but only for other purposes)
- Michigan Small Business Relief Program
 - \$20 million in Michigan loans and grants
- Other State, Municipal and Private Programs

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Federal Stimulus Legislation – “Retention Loans”

- \$350 billion in small business “retention” loan guarantees (aka Paycheck Protection)
 - Support cash flow to cover payroll costs and keep up with overhead
 - Loans forgiven based on employee and wage retention through covered period
 - Available to businesses with fewer than 500 employees (may differ depending on industry)
 - Also available to self-employed/“gig economy” workers and 501(c)(3) organizations

Federal Stimulus Legislation – “Retention Loans” (cont.)

- Temporary form of SBA loan
- Size of loans to equal 250% of an employer’s average monthly payroll
 - Maximum loan size is \$10 million
- May be used to refinance recent SBA disaster relief loans
- Personal guarantees and collateral not required
- No “credit elsewhere” testing
- For any amount unrelieved: 10 year max term, 4% max int.
- Treasury aims to have website up by first week of April to accept requests and make disbursements on the same day
- No fee to apply or process; no pre-payment penalties

Federal Stimulus Legislation – Selected Additional Funding

- Additional funds for specific industries:
 - Hospitals/health care
 - National security-related
 - Passenger airlines
 - Cargo air carriers
 - Airline/aviation industry contractors
 - Airports
 - Education
 - Others
- \$454 billion more in discretionary funds, subject to Inspector General and Congressional oversight

Federal Stimulus Legislation – Selected Additional Provisions

- Existing SBA Debt Relief
 - Provides \$17 billion for the SBA to relieve six months of certain principal, interest and fees for SBA loans granted prior to the COVID-19 outbreak
 - Relief is tied to employee retention and wage stability
- SBA Emergency Grants
 - Allows businesses that apply for an SBA Economic Injury Disaster Loan (EIDL) expedited access to capital through an emergency grant that is not required to be repaid
 - Grant of \$10,000 within three days to maintain payroll, provide sick leave, service debt, increased costs, etc.
 - \$10 billion allocated to support this program

Federal Stimulus Legislation – Selected Additional Provisions (cont.)

- SBA Express Loan Limit Increased
 - Working capital line of credit increased from \$350,000 to \$1.0 million
- Deferral of employer share of payroll tax
- Retained Employee Tax Credit
- Entrepreneurial Assistance
 - \$10 million for the Minority Business Development Agency and \$265 million for grants to SBA resource partners (e.g., Small Business Development Centers and Women’s Business Centers)
 - Will offer counseling, training and general assistance (especially in relation to COVID-19)

Federal Stimulus Legislation - Impact on Employees

- \$250 billion for direct payments/deposits to individuals/families
 - \$1,200 per qualifying adult and \$500 per child
 - Means testing: Payments phase out for individuals earning between \$75,000-\$99,000 in adjusted gross income (AGI)
 - Means testing is adjusted for joint filings
 - AGI calculations based on 2018 tax returns
- Certain student loan payments and interest suspended through September 30, 2020
- Foreclosure and eviction protections

Federal Stimulus Legislation – Impact on Employees (cont.)

- Substantial expansion of unemployment benefits that would extend unemployment insurance by 13 weeks and include a four-month enhancement of benefits
 - Federal government to supplement state unemployment payments by an additional \$600 per week
 - Also applies to self-employed and “gig economy” workers
 - Retroactive to January 27, 2020 and applies through December 31, 2020
- Retirement plan flexibility (loans, withdrawals, etc.)

SBA Economic Injury Disaster Loans

- May be used in addition to “retention” loans (but only for other purposes)
- Temporary expansion of eligible borrowers
- Loans up to \$2 million
- Interest rates capped at 3.75% (2.75% for NFPs)
- Repayment term up to 30 years
- Funded directly by U.S. Treasury
- Loans to be used for working capital issues
- Loans > \$25K to be secured to the extent possible (including by real estate)

SBA Disaster Loan Application Process

- Business and Key Owner Financial Info
 - Relaxed financial information requirements during COVID-19 period
 - May rely on credit scores rather than requiring copies of all tax returns, for example
- Lending criteria
 - Credit history; repayment prospects; collateral
- No cost or fee to apply; not obligated to accept funds

Michigan Small Business Relief Program

- Up to \$20 million for small businesses impacted by COVID-19
 - Funds expected to be available April 1
- Small Business Grants (\$10MM): Fewer than 50 employees
- Small Business Loans (\$10MM): Fewer than 100 employees
- Any participating business must demonstrate income loss and impact from COVID-19 orders
- Application forms/process details not yet available

Non-Government Programs

- Many Banks Have Announced Programs for Borrowers/Customers
 - Waiving late fees
 - Delaying payments
- Miscellaneous Programs
 - Facebook offering up to 30,000 small businesses \$100 million in cash grants and advertising credits
 - James Beard Foundation Food and Beverage Industry Relief Fund to provide micro-grants to independent food and beverage small businesses

Expanded Unemployment

- State
 - 26 weeks
 - Reason include caring for children and COVID-19 related illness
 - Capped at \$362 per week
- Federal (Proposed)
 - State benefit (\$362) + \$600
 - 39 weeks (adds 13 to the state maximum)
 - Reasons
 - Diagnosed or symptomatic
 - You
 - Someone in your household
 - Providing care for someone

Expanded Unemployment

- Reasons
 - Child's school/daycare is closed and you need to stay home
 - Diagnosed or symptomatic
 - You
 - Someone in your household
 - Providing care for someone
 - Child's school/daycare is closed and you need to stay
 - Unable to reach place of employment because of COVID-19 public health emergency
 - i.e. Governor Whitmer's Executive Order 2020-21
 - Can't start a new job because of COVID-19 public health emergency

Expanded Unemployment

- Reasons
 - Head of household died from COVID-19
 - Had to quit job as a direct result of COVID-19
 - Place of employment closed as direct result of COVID-19 public health emergency

Expanded Unemployment

- Employees do NOT qualify if
 - Can telework with pay
 - Receiving sick leave or other paid benefits
 - Impact of FFCRA benefits? Impact of unemployment benefits on FFCRA?

FFCRA

- Emergency Paid Sick Leave Act
- Emergency FMLA Expansion Act
- Tax credits for both

FFCRA

- Who is Covered?
 - All employers with fewer than 500 employees and public agencies. The Department of Labor may elect to exempt employers with fewer than 50 employees if coverage would jeopardize the employer's ongoing viability.

Paid Sick Leave

- Which Employees Are Eligible for Paid Sick Leave?
 - All full-time and part-time employees, regardless of how long they have been employed.
 - If already laid off, not eligible

Paid Sick Leave

- How Much Paid Leave Can Employees Take?
 - Full-time employees can take up to 2 weeks (80 hours) of paid leave at their regular rate.
 - Part-time employees can take paid leave equal to the average number of hours that the employee works over a 2-week period.
- Employees cannot be required to use other paid time off before using Emergency Paid Sick Leave.
 - This is in addition to PTO, MPMLA

Paid Sick Leave

- When an employee:
 - is subject to a government quarantine or isolation order for COVID-19;
 - has been advised by a health care provider to self-quarantine for COVID-19;
 - is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - is caring for an individual subject to a COVID-19 quarantine or isolation order; or
 - is caring for their child because the child's school or place of care has been closed, or the child care provider for the child is unavailable, due to COVID-19 reasons.

Paid Sick Leave

- Capped at \$511 per day (\$5,110 total) if an employee is taking time off to care for themselves or \$200 per day (\$2,000 total) if the employee is caring for an individual who is quarantined or exhibiting symptoms of COVID-19 or if caring for a minor child whose school is closed.

Expanded FMLA

- **Who is Covered?** All employers with fewer than 500 employees. The DOL may offer exemptions for employers with fewer than 50 employees, healthcare providers, and first responders.
- **Which Employees Are Eligible for Emergency FMLA?** Individuals employed for at least 30 days.

Expanded FMLA

- Eligible employees can take up to 12 weeks of FMLA leave for qualifying COVID-19 reasons.
- **Qualifying Reason:**
 - The employee is unable to work (or telework) because they need to care for their minor child whose school or place of care has been closed, or whose child care provider is unavailable, due to a COVID-19 emergency declared by a Federal, State, or local authority.

Expanded FMLA

- The first 10 days can be unpaid. (But employees might be entitled to Emergency Paid Sick Leave for those days, as described above.)
- After 10 days, employees are entitled to 2/3 of their regular pay, not to exceed \$200 per day or \$10,000 total. Employees are permitted to substitute paid leave to cover unpaid time but cannot be required to do so.

Tax Credits

- Employers get a payroll tax credit
 - Paid leave: Capped at \$511 per day (\$5,110 total) if an employee is taking time off to care for themselves or \$200 per day (\$2,000 total) if the employee is caring for an individual who is quarantined or exhibiting symptoms of COVID-19 or if caring for a minor child whose school is closed.
 - Paid FMLA: capped at \$200 per day (\$10,000 total) per employee
 - The credit is refundable to the extent it exceeds the amount owed by the employer payroll tax.

How Does This All Fit Together?

- On April 3, an employee informs you he must stay home to take care of his small children.
 - He is entitled to
 - Emergency Paid Sick Leave (full pay if sick, 2/3 pay if caring for others, max \$511 day for 2 weeks)
 - Expanded FMLA (max \$200 day, 10 weeks)
 - Unemployment (max \$932 week, 39 weeks)
 - (\$23.30 per hour, based on 40 hours per week)
 - What will he choose if he earns \$15 an hour?
 - What will he choose if he earns \$100,000 per year?

Exempt Employees

- Exempt employees are paid for the full week if they work any part of the week
- But -
 - Can prospectively reduce salary
 - Can prospectively convert full-time position to part-time position
 - Consider converting exempt to non-exempt

Top Employee Benefit Questions for Small Employers

- Supplemental Unemployment Benefit (“SUB”) plans:
 - What are they?
 - Allow employers to supplement an employee’s state unemployment benefits
 - SUB plan benefits are not subject to FICA, FUTA or state unemployment taxes (in Michigan)
 - Subject to ERISA (plan document, summary plan description and, possibly, Form 5500)

Top Employee Benefit Questions for Small Employers

- Is a SUB plan right for my organization?
 - No - if you continue to pay your employees during a leave/furlough
 - Maybe - if you don't continue to pay your employees during a leave/furlough but want to help supplement their income
 - However, a SUB plan may not be necessary if state unemployment benefits are significantly expanded in the federal stimulus 3.0 package

Top Employee Benefit Questions for Small Employers

- Do we have to continue employees' health benefits during a layoff/leave/furlough?
 - Layoff (if a separation of employment) - probably not, but may trigger COBRA
 - Leave/furlough. Check your certificate of coverage
 - If the certificate provides for coverage during a leave - then probably
 - If the certificate doesn't provide coverage during a leave - then no. However many insurers are allowing employer to add a continuation of coverage during a leave in response to COVID-19

Top Employee Benefit Questions for Small Employers

- Can an employee voluntarily drop health benefits during a leave/furlough:
 - Paid leave – Maybe, if the employee’s hours are dropped below 30 and the employee represents that he or she will enroll in other minimum essential coverage as of the first day of the second month following request to drop
 - Unpaid leave – Probably
 - The employee may not be entitled to reenroll in coverage upon return

Top Employee Benefit Questions for Small Employers

- Can we reduce or suspend employer contributions to our 401(k) plan?
 - If an employer provides a matching contribution and employees are on an unpaid leave, there will be no employee pay deferrals to match
 - If the 401(k) plan is not a safe harbor plan
 - Yes, if the 401(k) plan uses discretionary formula
 - If the formula is not discretionary, then this may require a plan amendment
 - If a safe-harbor plan, it may be possible, but it is more difficult (discussed in yesterday’s webinar).

Top Employee Benefit Questions for Small Employers

- Can an employee voluntarily suspend 401(k) deferrals – Yes, but the change must follow 401(k) plan’s rules for changing these deferrals (which is usually at any time on a prospective basis)



Erik Daly

616.831.1723

dalye@millerjohnson.com



Rebecca Strauss

269.229.2986

straussr@millerjohnson.com



Tripp VanderWal

616.831.1796

vanderwalt@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW
Suite 1100
Grand Rapids, MI 49503

100 W Michigan Ave
Suite 200
Kalamazoo, MI 49007