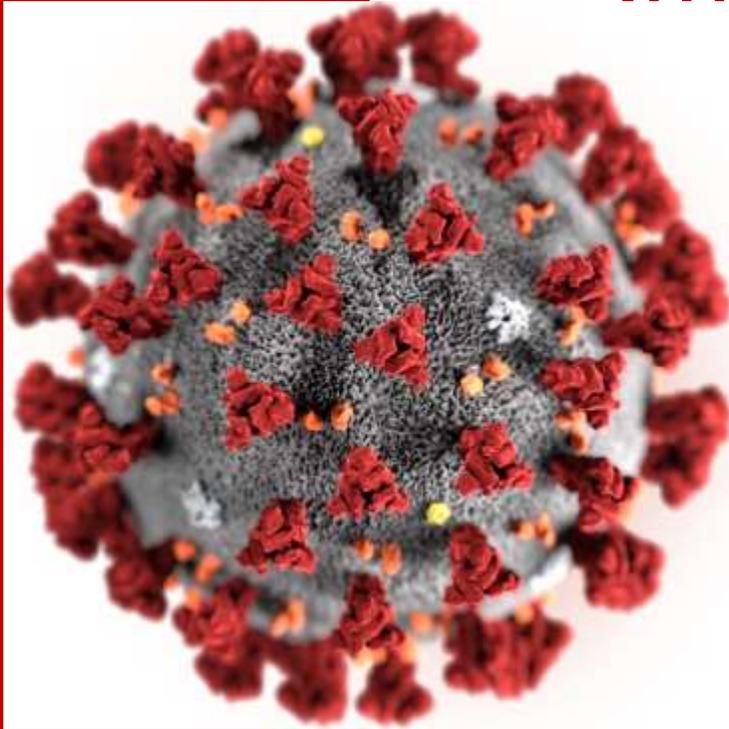


Strategies for Addressing the Impact of COVID-19 on Staffing



Prepared for

COMMUNITIES
FOUNDATION of TEXAS



Presented by

Cheryl Pinarchick
cpinarchick@fisherphillips.com

617-532-8215

www.fisherphillips.com

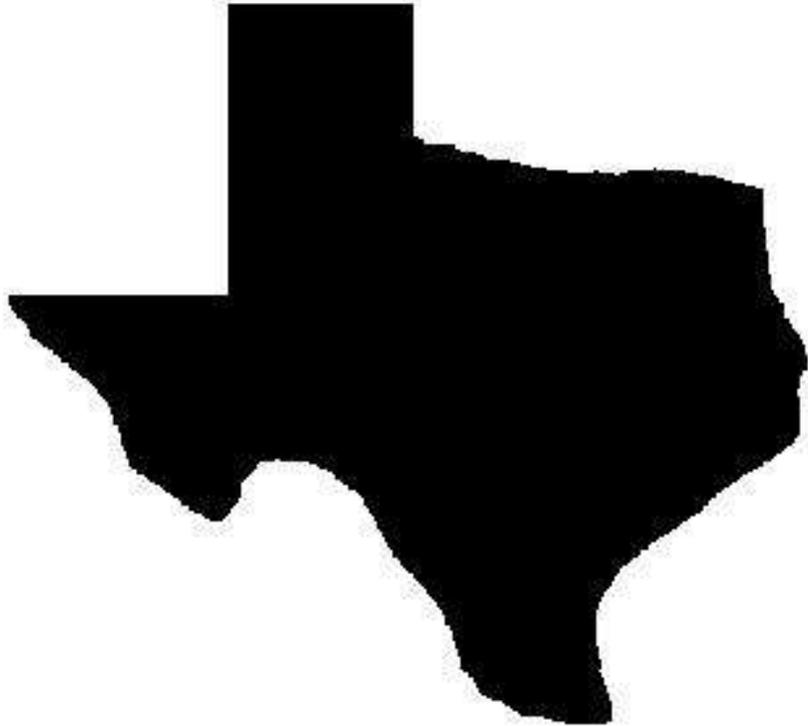
Fisher
Phillips



- Background and Current Restrictions
- Government Financial Support
- Paid Leave Obligations
- Layoffs and Furloughs
- Suspending Operations



COVID-19 BACKGROUND AND RESTRICTIONS



- 2,877 Confirmed Cases in TX (3/30)
- WHO Pandemic (3/11)
- Governor Abbott Issues Emergency Orders to Mitigate Spread of COVID-19
 - Most recently yesterday

COVID-19 BACKGROUND AND RESTRICTIONS

- Public schools closed through May 4
- No visiting nursing homes, state supported living centers, assisted living facilities or long-term care facilities unless to provide critical assistance as determined through guidance from Texas Health and Human Services Commission
- Except where necessary to **provide or obtain essential services**, every person shall minimize social gatherings and in-person contact with people who are not in the same household

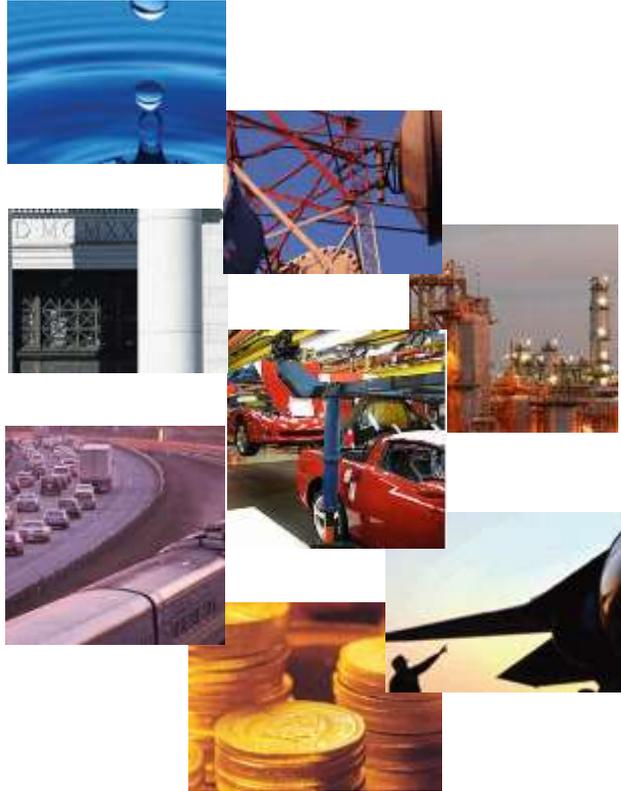
“COVID-19 ESSENTIAL SERVICES”

Services listed in Guidance on the Essential Critical Infrastructure Workforce, Version 2.0 issued by U.S. Dept. of Homeland Security

- Healthcare, public health and human services
- Law enforcement, public safety and first responders
- Food and agriculture
- Energy
- Water and wastewater
- Transportation and logistics



“COVID-19 ESSENTIAL SERVICES”



- Public works
- Communications and information technology
- Other community-based essential functions and government operations
- Critical manufacturing
- Hazardous materials
- Financial services
- Chemical
- Defense contractors

Government Financial Support

CARES Act offers financial support for nonprofits

- Charitable giving incentives
- Economic Injury Disaster Loans (EIDL) and advances or grants
- Paycheck Protection Program (PPP)
- Employee retention tax credits
- Unemployment benefits

Charitable Giving Incentives

- CARES Act lifts limitations on charitable contributions by individuals who itemize from 60% of adjusted gross income to 100%
- CARES Act lifts the limitations on charitable contributions for corporations by increasing the limitation from 10% to 25% of taxable income.

Economic Injury Disaster Loans

Economic Injury Disaster Loans (EIDLs)

- Lower interest loans of up to \$2 million, with principal and interest deferment at the SBA's discretion
- Available to pay expenses that could have been met had the disaster not occurred, including payroll and operating expenses

Emergency Economic Injury Grants

Economic Injury Disaster **Grants**

- Provide an emergency advance of up to \$10,000 to small businesses and private nonprofits harmed by COVID-19 within 3 days of applying for an EIDL
- To access the advance, first apply for a EIDL and request the advance
- Advance does not need to be repaid, even if the SBA ultimately denies the application for an EIDL
- May be used to keep employees on payroll, pay for sick leave, pay business obligations, including debts, rent and mortgage payments

Paycheck Protection Program

Designed to make funds available to qualifying businesses through approved banks, credit unions and other lenders

- Available to nonprofits with 500 or fewer employees
- Can borrow 2.5 times monthly payroll expenses, up to \$10 million
- Funds can be used to cover
 - Qualified payroll costs
 - Rent and utilities
 - Interest on mortgage and debt obligations



Paycheck Protection Program

Qualified payroll costs

- Salaries
- Vacation pay
- Severance payments
- Healthcare benefits
- Retirement benefits
- State and local employment taxes



Paycheck Protection Program

Funds cannot be used for:

- Compensation in excess of an annual salary of \$100,000 for individual employees
- Wages covered by the Families First Coronavirus Response Act

Nonprofits will need to certify that the loan is necessary due to current economic conditions and that the nonprofit is not receiving duplicate funds for the same expenses



Paycheck Protection Program

Loan Repayment

- Repayments of the loan will be eligible to be deferred for at least 6 months but not more than one year
- Interest rate is capped at 4%
- Prepayment penalties are waived



PPP Loan Forgiveness

Paycheck Protection Program

Loan Forgiveness

- Borrower is eligible for forgiveness equal to the amount spent during the 8-week period following origination of the loan on payroll costs, interest on secured debt obligations, rent, and utilities.
- Forgiveness is reduced if borrower:
 - Reduces workforce during 8-week period (following loan origination) compared to prior year, or
 - Reduces the salary or wages paid to an employee by more than 25% during the most recent full quarter the employee was employed prior to the 8-week covered period
- Reduction is avoided and full loan forgiveness if the employer hires back all employees (or increases previously reduced wages) no later than June 20, 2020

	Paycheck Protection Program (PPP)	Economic Injury Disaster Loan (EIDL)
Uses	Payroll expenses Employee salaries Mortgage Interest Rent and Utilities	Payroll Fixed debts Accounts payable Other expenses that can't be paid because of the disaster's impact
Amount	2.5x business's average monthly payroll, up to \$10 million	Up to \$2 million
Annual Interest Rate	Not to exceed 4%	2.75% for nonprofits
Forgiveness	Up to 100%	No
Repayment	No repayment for first 6-12 months 10 year term	No repayment for 12 months Up to 30 year term
Available Now	No, maybe by Friday (4/3)	Yes

Can I apply for an EIDL and a PPP loan?

- Yes.
- If you receive an EIDL and then are approved for a PPP loan, the outstanding amount of an EIDL made after January 31, 2020 and up to the date on which the PPP loans are made available may be refinanced into a PPP loan.
- Any EID grant received by a borrower who subsequently receives a PPP loan will be subtracted from the calculation of the loan forgiveness amount.



Employee Retention Tax Credit

- If you participate in the Paycheck Protection Program, you are not eligible for this assistance
- CARE Act provides for refundable payroll tax credit up to \$5,000 per employee where operations were fully or partially suspended due to a COVID-19 shutdown order or whose gross receipts declined by more than 50% when compared to the same quarter the prior year
- Must consider the organization's whole operations when determining the decline in revenue
- Credit is available for wages paid or incurred from March 13, 2020 through December 31, 2020

Unemployment Reimbursements

- 501(c)(3) organizations have the option of paying unemployment insurance tax or self-insuring
- If a nonprofit self-insures, it is required to repay its state unemployment insurance trust fund for the amount of the unemployment benefits actually claimed by the nonprofit's laid off employees
- CARES Act reimburses these nonprofits for half of their costs of unemployment benefits provided to laid-off employees through the end of 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Employer Obligations

FAMILIES FIRST CORONAVIRUS RESPONSE ACT OVERVIEW

- President Trump signed 3/18/2020.
- Dept. of Labor (DOL) has started issuing guidance, some of which clarifies gray areas and other aspects of which are very different than what was first believed.
- Leave provisions go into effect 15 days after enactment (DOL says April 1 - today)
- Leave provisions are temporary (Sunsets 12/31/2020)
- Paid and unpaid leave for Coronavirus-related reasons
 - Emergency Paid Sick Leave Act (EPSLA)
 - Emergency Family and Medical Leave Expansion Act (EFMLA)
- Reimbursement to employers as tax credits

Paid Leave Obligations

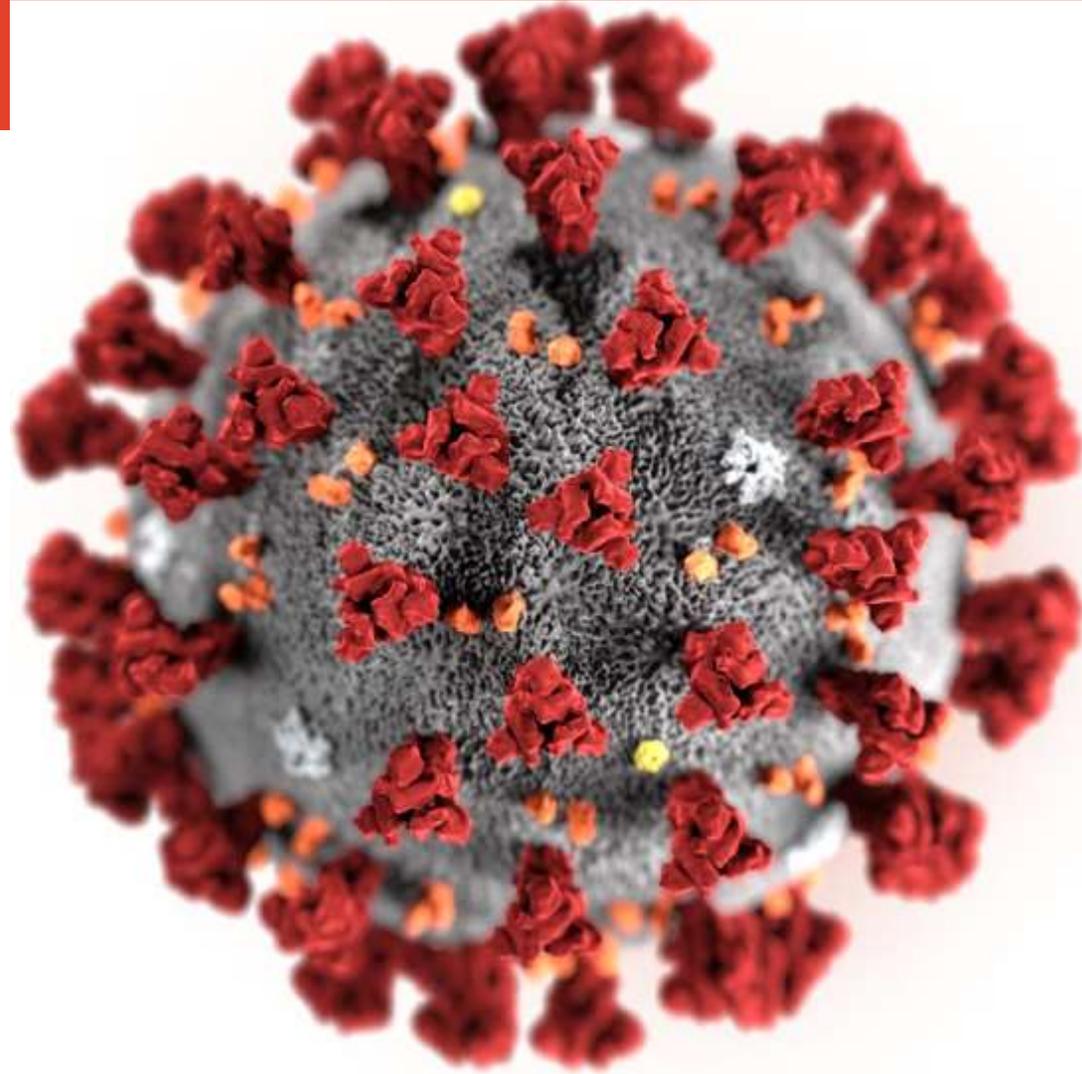
EMERGENCY PAID SICK LEAVE

Qualifying Employers/Employees

Employers with 1-499 employees,
including nonprofit organizations

Any employee who works for
employer is eligible

No minimum days/hours of
employment



EMERGENCY PAID SICK LEAVE

Qualifying Reasons

Must provide paid sick time to the extent the employee is unable to work (or telework) due to a need for leave because:

- (1) The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19 BUT recent guidance suggests this does not apply if the employer is subject to shutdown order.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order or self-quarantine as described above.
- (5) The employee is caring for a son or daughter if school or child care is closed/unavailable.
- (6) The employee is experiencing “any other substantially similar condition” specified by HHS (catch all).

EMERGENCY PAID SICK LEAVE

Employee Wages

Employee is entitled to:

- Full-time Employees – 80 hours of paid sick leave
- Part-time Employees – Pay is based on the employee's average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work.

At employee's regular rate of pay for qualifying reasons (1), (2) or (3) (i.e. own use)

At 2/3 the employee's regular rate for qualifying reasons (4), (5) or (6) (i.e. care for others)

Capped at the following levels:

- \$511 per day and \$5,110 in the aggregate per person for qualifying reasons (1), (2) and (3).
- \$200 per day and \$2,000 in the aggregate per person for qualifying reasons (4), (5) and (6).

EMERGENCY PAID SICK LEAVE CONT.

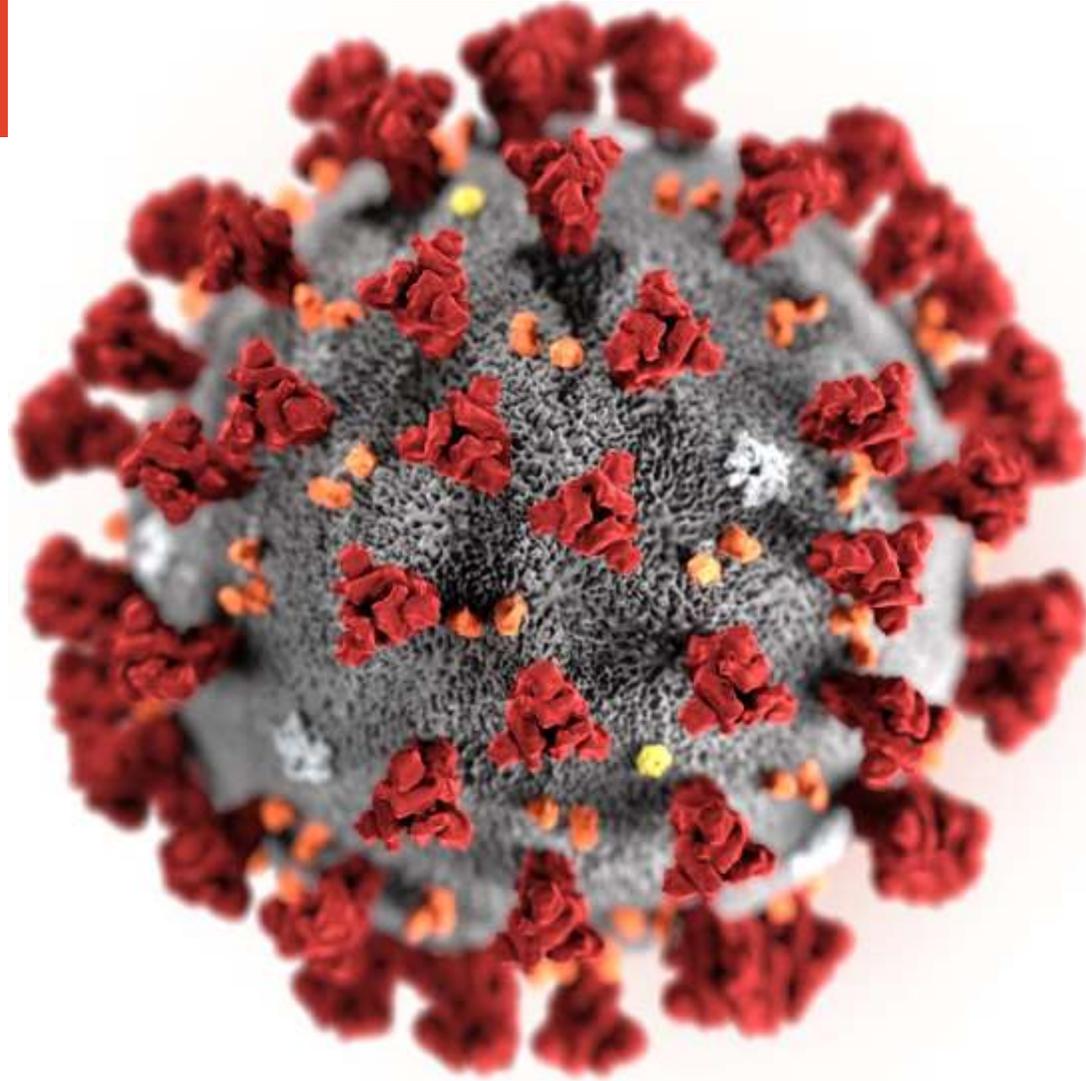
Exemptions

- **Exemption**
 - An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this section.
- **Secretary of Labor has the authority for good cause to issue regulations:**
 - To exclude certain health care providers and emergency responders from the definition of “eligible employee”
 - To exempt small businesses with fewer than 50 employees from leave to care for a son or daughter if school or child care is closed/unavailable when the imposition of such requirement would jeopardize the viability of the business as a going concern
 - “As necessary” (catch-all)

EMERGENCY PAID SICK LEAVE Additional General Rules

Sick leave does not carry over

Employer may not require employee to use other paid leave provided by the employer before using this paid sick leave



EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Qualifying Employers/Employees

- Employers with 1-499 employees, including nonprofit organizations
- Any employee who worked for employer for 30 days prior to leave and has a qualifying reason is eligible (no requirement of 12 months/1250 hours).

EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Qualifying Reasons

12 weeks of job protected leave when:

- “The employee is unable to work **(or telework)** due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”
- **“Public Health Emergency”**
- An emergency with respect to COVID-19 declared by a Federal, State or local authority

EMERGENCY FAMILY AND MEDICAL LEAVE ACT

How Does It Work

- **First 10 days of EFMLA may be unpaid**
 - An employee may elect to substitute accrued PTO, vacation, or sick leave to cover any portion of first 10 days.
 - Employer cannot require an employee to substitute such leave.
 - Eligible employees may take Emergency Paid Sick Leave (if applicable) for the first 10 days of EFMLA leave
- **After the first 10 days:**
 - Compensated at 2/3 of the regular rate.
 - Part-time employees/irregular schedule pay is calculated the same as Emergency Paid Sick Leave.
- **Pay is capped at \$200 per day and \$10,000 in aggregate per employee.**
- **EFMLA has generally the same exemptions as the Emergency Paid Sick Leave.**

EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Job Restoration/Reinstatement

- If **25 or more employees**, traditional restoration obligation – employees must be restored to the same or “equivalent” job.
- If **fewer than 25 employees**, the traditional job reinstatement provisions of the FMLA may not apply.

EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Job Restoration/Reinstatement Continued

If **fewer than 25 employees**, the traditional job reinstatement provisions of the FMLA do not apply **IF**:

- The employee takes E-FMLA
- The position does not exist due to economic conditions or other changes in operating conditions of the employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave
- The employer makes reasonable efforts to restore the employee to an equivalent position, with equivalent pay, benefits, and other terms
- If reasonable efforts to restore to an equivalent position fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the 1 year period.

Tax Credits

- Employers subject to the requirements are entitled to a tax credit equal to the amount of the paid family and medical leave requirements paid by the employer
- The tax credits for qualified wages are capped at \$200 per day and \$10,000 per calendar quarter per employee
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe

Tax Credits

- IRS has said they will be issuing guidance to address the “cash flow” challenge created by this tax credit
- Guidance will allow employers to retain an amount of payroll taxes equal to the amount of paid leave that they paid, rather than deposit them with the IRS...in anticipation of the tax credit



Furloughs/Layoffs

■ Layoff:

- *“The termination of employment at the employer's instigation, usu. through no fault of the employee; esp., the termination — either temporary or permanent — of many employees in a short time for financial reasons.”*

■ Furlough:

- *“A temporary leave from work that is not paid and is often for a set period of time.”*



WAGE & HOUR CONSIDERATIONS

- **Do employees have to be paid if a business temporarily shuts down due to COVID-19?**
 - Non-exempt (hourly) do not have to be paid when they do not work.
 - Exempt (salary) must be paid full salary in any week they work, regardless of amount of work
 - Partial Week Work – Full Salary
 - No Work – No Pay Obligation



- **Can employees use vacation/sick/PTO leave if a business temporarily shuts down due to COVID-19?**
 - No legal obligation to permit use of PTO.
 - If feasible, consider permitting employee use of PTO during furlough (may impact unemployment eligibility)





- Expanded benefits under state and federal laws
- Waiver of one-week waiting period
- Shared Work Program
 - Alternative to temporary layoff
 - Allows employers to reduce work hours of employees rather than lay them off and provides employees with partial benefits to supplement wages

HEALTH INSURANCE

- Check your health plan
- Explore plan amendments
- COBRA notices may be required if employees are furloughed and/or not working the requisite number of hours.
- Risks associated with simply continuing coverage



Suspending Operations



- Do you have **100+ employees**?
 - Multiple locations aggregated?
- **Plant closing?**
 - Includes temporary shutdown of “single site of employment” or “operating unit” resulting in “employment loss” (including >6 month layoff) of 50+ employees?
- **Mass layoff?**
 - Not plant closing, but results in “employment loss” at “single site” during any 30-day period if (1) 50+ employees, and (2) 33% of active employees?



- **60-day written notice** prior to plant closing or mass layoff, unless “unforeseen business circumstances”
 - To affected employees and state dislocated worker unit
 - Still must provide “as much notice as is practicable” and statement of basis for less notice
- **Stiff penalties for violations**
 - 60 days’ back pay and benefits and civil penalties
 - Potential for class action

Questions?



Thank You

Fisher
Phillips



Presented By:

Cheryl B. Pinarchick

cpinarchick@fisherphillips.com

(617) 532-8215