



MAKING SENSE OF CHAOS

Season 1, Episode 1:

Employment Law Issues and Small Business Support

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The materials provided herein are a summary of the resources available as of the date of the webinar. They do not constitute legal advice. To best serve you, please call or email so we can understand your specific circumstances and provide the guidance you need to navigate these challenging times.

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AGENDA:

- Impact of “Emergency Declarations”
- Pandemic Issues in the Workplace
- Small Business support:
 - State Emergency Small Business Loan Program
 - SBA Economic Disaster Loan
- Congressional update
- Your Questions

EMERGENCY DECLARATIONS:

- WHO declared global pandemic on March 11
- US President declared national emergency on March 13, 2020
 - National Emergencies Act and the US Constitution
- State Executives declared various Emergencies under state Constitutions and state law.
 - MN Gov. Walz declared Peacetime Emergency in Exec. Order 20-01

EMERGENCY DECLARATIONS:

- Emergency Authority must be taken carefully and directly connected with the scope and type of the Emergency.
- Only Congress / Legislatures typically have power to tax, spend, declare war, etc...
- Congress and State Legislatures have delegated emergency power to executives
- Presidents, Governors, local executives must act carefully within the power designated by lawmakers
- Courts can invalidate emergency actions

EMERGENCY DECLARATIONS:

- Key questions:
 - What is an “essential service”
 - What if I don’t comply?
 - How quick do actions become effective?
 - What if I disagree with an interpretation or an Executive Order is clear?
 - Is a tweet or public oral statement enough to make an emergency order?

PANDEMIC ISSUES IN THE WORKPLACE

- Overview
- Federal Response
 - Emergency Paid Sick Leave
 - Emergency Family Medical Leave Amendments
 - OSHA Guidance
 - EEOC Guidance
- State Response
 - Executive Order 20-05
 - Executive Order 20-20
 - Mn DEED's Response
- Practical Suggestions

PANDEMIC ISSUES IN THE WORKPLACE

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Effective Date – **presume April 1**, not April 2
 - Not retroactive
 - No credit (currently) for COVID-19 related paid leave prior to Effective Date

PANDEMIC ISSUES IN THE WORKPLACE

EMERGENCY PAID SICK LEAVE

- Employers must provide up to 80 hours (for full-time employees) of paid sick leave for certain COVID-19 related absences
- Emergency Paid Sick Leave is mandatory for all employers and is in addition to current sick leave and PTO
- EPSL covers all employers (<500 employees) unless an exception for certain small businesses or health care providers applies (addressed below).
- All employees regardless of length of service with the employer are eligible.

PANDEMIC ISSUES IN THE WORKPLACE

EPSL Covered Employees

1. Employee subject to government quarantine/isolation order (Includes Minnesotans Stay Home Order)
2. Employees advised by a health care provider to self-quarantine
3. Employees with symptoms of COVID-19 & seeking a diagnosis
4. Employees caring for person subject to (1) or (2)
5. Employees caring for own child if their elementary or secondary school or childcare provider is unavailable.
6. Employees experiencing any other substantially similar condition specified by the Secretary of HHS

PANDEMIC ISSUES IN THE WORKPLACE

EPSL Caps

- Payments capped at \$511 a day and \$5110 in the aggregate for employees in categories 1, 2, 3 and 6 (sick employee/relative).
- Payments capped at \$200 per day and \$2000 in the aggregate for employees in categories 4 and 5 (child care).
- Part-time employees will receive prorated leave
 - Average hours worked in an average two-week period
 - Measured over the six-months prior to the date leave is requested

PANDEMIC ISSUES IN THE WORKPLACE

EPSL Other:

- EPSL does not apply to employees who otherwise have the ability to telecommute
- Employers may not force employees to use regular sick leave, vacation or PTO in lieu of or before using EPSL
- Employer's obligation to provide EPSL ends when the 80-hour cap is reached or when a covered employee returns to work

PANDEMIC ISSUES IN THE WORKPLACE

EFMLA: Leave Required

- Covered employers will be required to provide up to 12 weeks of Emergency FMLA leave to employees with a “qualifying need” related to the COVID-19 public health emergency.
 - “Qualifying need” means employee is unable to work (or telework) due to a need to care for son or daughter under 18 years of age
 - 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.
 - “Child care provider” means a provider who receives compensation for providing child care services on a regular basis

PANDEMIC ISSUES IN THE WORKPLACE

EFMLA: Paid Leave

- The first ten days of Emergency FMLA may be covered by Emergency Paid Sick Leave or other employer-provided sick leave or paid time off if the employee so chooses
- After 10 days, employer will pay up to 2/3 of the employee's usual rate of pay, capped at \$200 per day with an aggregate cap of \$10,000
- Employer required to restore the employee to the same or equivalent position at end of leave or need for leave
- Prohibits retaliation against employees requesting FMLA leave

PANDEMIC ISSUES IN THE WORKPLACE

FFCRA Exemptions:

- Certain Health Care Providers
- Certain Small Businesses
 - Secretary of Labor has authority to exempt small businesses with fewer than 50 employees
 - Requires proof that leave would “jeopardize the viability of the business.”
- Only exception approved to date are those relating to school closings or childcare unavailability

PANDEMIC ISSUES IN THE WORKPLACE

FFCRA Exemptions:

- 30-Day Non-Enforcement Period.
 - DOL will not bring an enforcement action against any employer for violations of the act so long as the employer has acted reasonably and in good faith to comply

SMALL BUSINESS SUPPORT

SBA Economic Disaster Loan:

- Low-interest loans for working capital
- For small businesses suffering economic injury due to COVID-19
- Existing program of the U.S. SBA
- Administered by local offices
 - MN and WI already eligible; check your own state for eligibility and action

SMALL BUSINESS SUPPORT

SBA Economic Disaster Loan:

- Up to \$2,000,000 loan
 - Max. unsecured loan is \$25,000.
 - Collateral required over \$25k.
- Eligible:
 - Small business (typically fewer than 500 employees)
 - Small Ag Cooperatives
 - Most private nonprofit orgs
 - Generally have IRS status under 501c, 501d or 501e

SMALL BUSINESS SUPPORT

SBA Economic Disaster Loan:

- Up to \$2,000,000 loan
- As long as 30 year term
- Interest rates:
 - 3.75% for small biz
 - 2.75% for nonprofit orgs
- No prepayment penalty
- 12 month payment deferrals (interest accrues)

SMALL BUSINESS SUPPORT

SBA Economic Disaster Loan:

- USES:
 - Rents, Mortgage etc...
 - Other fixed debts
 - Payroll
 - Accounts Payable

SMALL BUSINESS SUPPORT

SBA Economic Disaster Loan:

- Apply:
 - online using the Electronic Loan Application (ELA) via SBA's secure website at <https://disasterloan.sba.gov/ela>.
- Paper loan applications can be downloaded from the link above. Complete and mail to:
U.S. Small Business Administration Processing and Disbursement Center
14925 Kingsport Road, Fort Worth, TX 76155

SMALL BUSINESS SUPPORT

State Emergency Loan Program(s)

- Ex. Minnesota:
- Authorized under Exec Order 20-15
 - \$2,500 to \$35,000 loans, 5-year term
 - 0% interest; 6 month payment deferral
 - 50% forgivable
 - Easy application
 - Strict conditions apply
 - <https://mn.gov/deed/business/financing-business/deed-programs/peacetime/>

CONGRESSIONAL UPDATE

US CONGRESS:

- Already covered Phase One and Phase Two legislation from Congress
- CARES Act has passed the Senate
 - Awaiting action in the US House as of 2pm CT Thursday Mar 26
- What else will Congress do?

CONGRESSIONAL UPDATE

STATE LEGISLATURES:

- Minnesota has enacted a \$200 Million intervention bill
- MN House just passed a \$280-\$356 Million bill that will become law ASAP
 - Includes Child Care support, Small Biz Loan Guarantee expansion and more

Q & A

Your Questions

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