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## **COVID-19 Additional Information to Protect your Business**

Disclaimer: This content is a combination of multiple information Venturezen gathered through various webinar, and other public sources. We are not by any mean providing guidance or advice for any of the programs or other relief information. Our goal our clients and prospect to better navigate through this process. Please seek out your trusted advisor (who better understand your current situation), legal or CPA for additional needs.

### Income Tax Filing & Payment:

- The federal tax return filing and payment deadlines are now July 15, 2020
- Check your state and local tax agencies as well as several states have aligned their deadlines.

### State and Local Relief Programs:

- Several local jurisdictions are supporting small businesses with loans, grants, or deferment of collection of taxes and fees. [Forbes](#) and [Inc](#) have evolving listings of local programs\*\*

### B2B Transactions:

- Check with your providers, as many B2B providers (companies, utilities, etc.) are providing discounts, deferral of payments and/or grants to small businesses

### "Phase II" Coronavirus Stimulus: Families First Coronavirus Response Act:

- Tax credits for businesses with fewer than 500 employees to cover:
  - Two weeks of paid sick leave for employees who have been quarantined, have a sick family member, or have been affected by school closings
  - Up to three months of paid family and medical leave amounting to no less than two-thirds of regular pay for those employees listed above
- The option for the Labor Department to exempt businesses with fewer than 50 employees from abiding by the paid leave mandate, if the Labor Department decides the new law could pose an existential threat to the company.

### "Phase III" Coronavirus Stimulus

- More than \$1 Trillion in spending, tax benefits, loans, and other aid to businesses; \$2 Trillion in overall relief
- Delays of payment of Employer Payroll Taxes:
  - Payroll taxes due to the IRS through the end of 2020 can be deferred with 50% of those deferred payments due by December 31, 2021 and the remaining 50% due by December 31, 2022
  - Taxpayers that had indebtedness forgiven under the CARES Act are excluded from this benefit

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- Changes to Net Operating Loss Rules to use losses today against past profits to claim refunds:
  - The Act temporarily reverses changes to how net operating losses can be carried back.
  - Losses from 2018, 2019 and 2020 will be permitted to be carried back for up to five years (or forego the carryback and instead carry the loss forward) for 2019 and 2020 income
  - Increases to the amount of interest expense businesses may deduct from 30% to 50% for 2019 and 2020
  
- Emergency Paid Sick Leave Act:
  - Emergency Paid Sick Leave Act (EPSLA)
  - Covered Employees: All employees.
  - Covered Employers: Employers with fewer than 500 employees.
  - Amount of Leave:
    - Full time employees: 80 hours of paid leave
    - Calculated at their regular rate of pay (as calculated by the FLSA) or the minimum wage, whichever is greater.
    - Part-time employees: Average number of hours worked over a two-week period.
  - If employee works a variable schedule, it is the average number of hours they worked per day over the previous six months. If the employee has not worked this long, it is the reasonable expectation of the employee at the time of hire of the average number of hours per day the employee would normally be scheduled.
  - Employers cannot require employees to use any other leave prior to using the Emergency Paid Sick Leave.
  - Notice requirements: Employers must post a notice in conspicuous places on the premises of a notice to be prepared by the Secretary of Labor. The Secretary of Labor has 7 days after the enactment of the Act to make the notice publicly available.
  - The Act cannot not diminish the rights or benefits of employees provided under any other Federal, State, or local law, collective bargaining agreement, or existing employer policy.
  - Employers are not required to pay out any unused Emergency Paid Sick Leave at the end of employment.
  
- Emergency Family and Medical Leave Expansion Act
  - Eligible employees: An employee who has been employed for at least 30 calendar days.
  - Covered employers: An employer with fewer than 500 employees.
  - Qualified reasons for paid FMLA leave: When the employee is unable to work (or telework) due to a 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

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provider of such son or daughter is unavailable, due to a public health emergency (with respect to a COVID-19 declared by a Federal, State, or local authority), the employee may take up to 12 weeks of leave.

- Amount of paid leave:
  - First 10 days may be unpaid (but employee may use other paid leaves during this time)
  - Paid at no less than two-thirds of the employee's regular rate of pay (as determined by the FLSA) and the number of hours the employee would normally be scheduled to work for up to 12 weeks.
  - Paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.
- Reinstatement rights: Employees are entitled to reinstatement to the same position or an equivalent position, unless the employer employs fewer than 25 employees. In that case, the employer must make reasonable efforts to provide the employee with a position or an equivalent position for 1 year after the "public health emergency concludes" or 12 weeks after commencement of the leave, whichever is earlier.
- Exclusions: The Secretary of Labor has authority to issue regulations for good cause to exclude certain health care providers and emergency responders, and to exempt small businesses with few than 50 employees if requirements would "jeopardize the viability of the business as a going concern."
- Families First Coronavirus Response Act
  - **Who will pay for this?**
  - The Act provides payroll tax credits granted to employers to offset the costs associated with these employers provided mandates. This is a concern for many business owners, especially restaurant owners, who have been forced to close or substantially reduce their operations to take-out only, and now must find extra money for these payments and wait for a tax credit.
- Employers Must Inform Employees of Their Right to Take Paid Sick Leave Under the EPSLA
  - Employers shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements of the Act.
  - The Secretary of Labor has been asked to make this notice publicly available by March 25, 2020.
- How Does the EPSLA Impact State and Local Mandatory Sick Leave?
  - The Act does not diminish and, therefore, grants rights and benefits in addition to the rights or benefits that employees are entitled to under California's state and local law, collective bargaining agreements or existing employer policy.
  - Paid sick time under this Act does not carry over if not used in 2020.



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- Is COVID-19 FMLA Leave Job Protected?
  - Yes. However, employers with less than 25 employees may be exempted from protecting the job if the position held by the employee when the leave commenced does not exist anymore due to the economic conditions or other changes in operating conditions of the employer.
  - The employer must engage in reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.
  - If the employer's reasonable efforts fail, the employer must contact the employee if an equivalent position becomes available in the one-year period following the date of the public health emergency's conclusion or 12 weeks after the date when the employee's COVID-19 FMLA leave commences, whichever is earlier.
  
- General Overview of Employer Obligations Under California Law
  - Employer obligations created by school closures
  - Employer obligations if employees are fearful to come to work
  - Paid sick leave time
  - Federal: Families First Coronavirus Response Act
  - California State Law
  - Local Ordinances – Example: San Diego
  
- Federal and Cal-WARN Issues
  - Fed-WARN and Cal-WARN both require employers to give employees and state/local government 60 days' notice before certain business closures or mass layoffs
  - Civil penalties and pay-in-lieu for violations
  - Critical to analyze potential coverage and seek counsel if in doubt
  - Governor Newsom Executive Order modified Cal-WARN in light of COVID-19 – *not a total suspension!*
  
- Fed-WARN – When does it apply?
  - *Step 1: Are you a qualifying employer?*
  - 100 or more full-time employees; or
  - 100 or more employees and aggregate 4,000 non-overtime hours per week
  - *Step 2: Did you order a plant closing or mass layoff?*
  - *Step 3: Do any exceptions apply?*
  
- Fed-WARN – Plant Closing
  - Plant Closing
  - Permanent or temporary shutdown of single site of employment (or one or more operating units thereof)
  - Results in “employment loss” for 50 full-time employees during any 30-day period

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- What is employment loss?
  - Termination (except for cause, voluntary, or retirement)
  - Layoff exceeding 6 months
  - 50%+ reduction in hours each month for 6 months
  - *But not*: Sale of all or part of business
- Fed-WARN – Mass Layoff
  - Not a plant closing
  - Employment loss at a single site of employment during 30-day period of either:
    - 500 full-time employees; or
    - 50 full-time employees constituting 1/3 of workforce at the site
- Fed-WARN – Exceptions to 60-day Notice
  - Actively seeking capital or business to avoid/postpone shutdown and giving notice would preclude transaction
  - Business circumstances that were not reasonably foreseeable
  - Natural disaster (such as flood, earthquake, or drought)
- Cal-WARN – When does it apply?
  - Step 1: Is your facility a covered establishment?
    - Employed 75 or more persons over past 12 months
    - Includes full-time and part-time employees
    - Includes current and former employees
  - Step 2: Did you order a mass layoff, termination, or relocation?
  - Step 3: Do any exceptions apply?
- Cal-WARN – Termination/Relocation/Layoff
  - Termination: Cessation or substantial cessation of industrial or commercial operations in a covered establishment
  - Relocation: Removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away.
  - Mass Layoff: Separation from a position for lack of work or funds of 50 or more employees during 30-day period at a covered establishment
  - Employee: person employed at least 6 of 12 months
  - Applies even to temporary layoffs! (International Brotherhood of Boilermakers v. NASSCO Holdings)
- Cal-WARN – Exceptions
  - “Physical Calamity”
  - Gov. Newsom Executive Order N-31-20
  - Excuses shortened notice if four conditions met:
    - Employer gives the written notices required
    - Notice given as soon as practicable and includes brief statement on basis for reduced notice

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- Caused by COVID-19 related business circumstances that were not reasonably foreseeable
- Notice includes specified statement re UI
- LWDA to provide guidance by today
- Cal-WARN Whom?
  - Affected Employees
  - Employment Development Department
  - Local Workforce Investment Board
  - Chief elected official of city and county for covered establishment

\*\*Source: Congress.gov , SBA, CDC, Zaller Law Group, Bolton & Co.

Neither Venturezen, Inc nor any of its employees provide tax or legal advice. You should consult with your personal tax or legal advisor.