Employment Versus Lay-Off Issues During the COVID-19 Pandemic

Many businesses are faced with difficult decisions concerning their workforce due to the economic headwinds caused by the COVID-19 pandemic. These decisions are complicated by the intersection of myriad new rules regarding leave, unemployment benefits, loans and economic incentives.

For example, benefits for impacted workers have now been addressed in both the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act. In particular, the CARES Act provides:

- “Pandemic Unemployment Insurance” which covers those individuals not otherwise covered by traditional unemployment benefits. This includes business owners, self-employed individuals, independent contractors, gig workers and those with a limited work history or history of wages earned.
- The extension of State unemployment benefits by 13 weeks, which for Michigan workers means they could receive benefits for up to 39 weeks.
- An additional $600 per week in unemployment benefits through July 31, 2020.
- Funding to states for coverage of the initial week of unemployment.
- Reimbursement of nonprofits, government agencies and Indian tribes for half the costs they incur related to unemployment.

In addition to these benefits, the CARES Act contains incentives to keep individuals employed and off of unemployment. For example, it expands the existing SBA “Economic Injury Disaster Loan” program to cover COVID-19, and creates a new Paycheck Protection Program (“PPP”) available to small employers with fewer than 500 employees. Through the PPP, a small employer can obtain federally guaranteed loans of up to 2-1/2 times their average monthly payroll over the prior 12 months. If the employer maintains their payroll, the portion of the loan proceeds used during the first eight weeks for covered payroll costs, interest on mortgage obligations, rent, and utilities are forgiven. The PPP is retroactive to February 15, 2020, to help bring workers who may have already been laid off back onto the payroll.

The CARES Act also creates a new Employee Retention Credit which is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees. This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is $5,000. Eligible Employers for the purposes of the Employee Retention Credit are those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either:

- Fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or

- Experiences a significant decline in gross receipts during the calendar quarter.

A significant decline in gross receipts begins with the first quarter in which an employer's gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer's 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019.

If employers are financially distressed but would like to continue operations by cutting back hours, they may wish to look at Michigan's Work Share program that allows an employer to reduce the number of hours an employee works during a week while unemployment compensation makes up some of the difference in income.

The overall objective of the foregoing is to keep people employed so they have money to buy things and get the economy moving again. Unfortunately, that may not always be possible. When it's not, how do employers decide what to do? Some of the foregoing issues that need to be considered are summarized in greater detail in the table that can be viewed by **clicking here**.

Please feel free to contact us if you have more questions in regard to these issues.

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