

# COVID-19: Employer Plans and Responses to the Known and Unknown

**Maddin Hauser Employment, Corporate,  
Tax, Benefits, and Insolvency Groups**

# Maddin Hauser *Presentation* | COVID-19 – Legal Updates



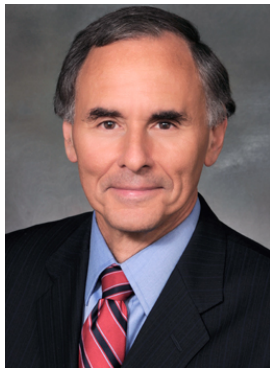
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## Learning Objectives

- Review recommendations for responding to the impact of COVID-19 in the workplace:
  - Communicate Your Plan
  - Remote Work Opportunities
  - Mandated and Permissive Changes to Paid Time Off/Leave Policies
  - Benefits Available to Support Employees and Employers
  - Options for Responding to Reduction in Business Demands

## Communicate Your Plan

- Michigan Stay Home
  - Executive Order 2020-21
- Oakland County Health Order
- CDC Guidelines
  - Personal hygiene/company cleanliness
  - Encourage reduction of contact points
  - Address travel restrictions and consequences



## Communicate Your Plan

- Explain expectations of sick employees
  - Sick employees should stay home
  - Separate employees who show up to work with respiratory symptoms or develop them during the day
  - Comply with leave policies





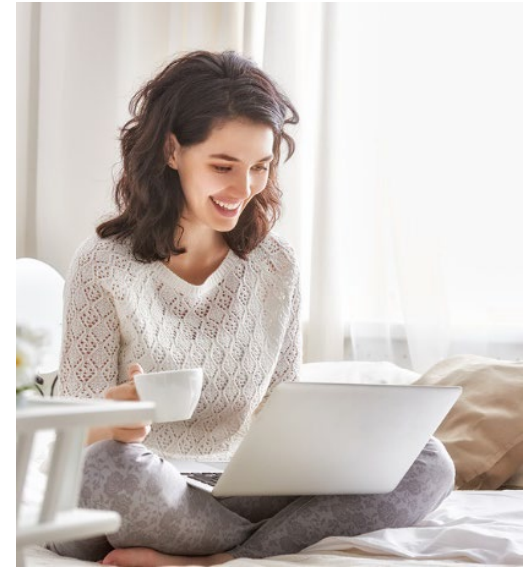
## Communicate Your Plan

- Expectations of Managers
  - Confidentiality
  - If employee tests positive, establish path of potential contact
- Alternatives to large gatherings and in-person meetings alternatives



## Remote Work Opportunities

- Document expectations
- Identify temporary duration
- Acknowledge that employee may not be able to perform all essential functions remotely



## Remote Work Opportunities

- Evaluate needs to work remotely
- Payroll
  - Exempt v. non-exempt
- Confidentiality and privacy
- Policy and Agreement





## Mandatory Changes to PTO/Leave Policies

- Families First Coronavirus Response Act (FFCRA)
  - Emergency Family and Medical Leave Expansion Act (EFMLEA)
  - Emergency Paid Sick Leave Act (EPSLA)
- Michigan Paid Medical Leave Act
- Other state paid/family leave laws

## Emergency Family and Medical Leave Expansion Act

- Applies to employers with fewer than 500 employees (except if fewer than 50 employees and viability of business jeopardized)
- Employees must be employed for at least 30 days to use FMLA based on inability to work (or telework) due to:
  - **Need to care of son or daughter under 18 years of age if school or place of care has been closed or child care is unavailable due to public health emergency related to COVID-19.**

# Emergency Family and Medical Leave Expansion Act

- 12 weeks of protected FMLA leave:
  - First 10 days are unpaid (employee may use any other accrued vacation, personal, medical, or sick leave concurrently)
  - Next 10 weeks are paid at two-thirds the employee's regular rate of pay, based on number of hours regularly scheduled to work
    - Up to \$200 per day and \$10,000 in the aggregate.
- FMLA requirements apply
  - Notices, no retaliation, and restoration of position with exceptions

## Emergency Paid Sick Leave Act

- Applies to employers with fewer than 500 employees (except if fewer than 50 employees and viability of business jeopardized)
- All employees, regardless of how long they have worked for employer.
  - Full-time: 80 hours
  - Part-time: the average number of hours that the employee works over a two-week period



## Emergency Paid Sick Leave Act

- Employees may use paid sick leave for the following 6 reasons:
  - Employee is subject to a Federal, State, or local quarantine or isolation order related to coronavirus
  - Employee has been advised by a health care provider (as defined by the FMLA) to self-quarantine due to concerns related to coronavirus
  - Employee is experiencing symptoms of coronavirus and seeking a medical diagnosis
- Employees using leave for the above reasons will be paid at their regular rate of pay or minimum wage (whichever is higher), up to \$511 per day and \$5,110 in the aggregate.



## Emergency Paid Sick Leave Act

- Employee is caring for an individual who is subject to an order of quarantine as described in the first and second reasons above
- Employee is caring for employee's son or daughter (as defined by FMLA), whose school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus precautions
- Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and Secretary of Labor)
- Employees using leave for the above reasons will be paid at two-thirds their regular rate of pay or minimum wage (whichever is higher), up to \$200 per day and \$2,000 in the aggregate.

## Emergency Paid Sick Leave Act

- After the first day, employers may require reasonable notice procedures to continue receiving paid sick leave.
- Employees must not be required to find a replacement for shift.
- Employers may not require employees to use other paid leave before using paid sick leave.
- May not discriminate or retaliate against employees using leave under this law.
- This leave does not diminish benefits under other laws, CBAs, or existing employer policies.

## Michigan Paid Medical Leave Act

- Applies to employers with 50 or more employees
- 40 hours of paid leave to eligible employees
  - Non-exempt who worked an average of 25 hours per week in prior calendar year, subject to other exceptions
- Accrual or frontloading
- Presumption of compliance



## Changes to PTO/Leave Policies

Employee Circumstance	Come to work?	Emergency Paid Sick?	Emergency FMLEA?	PMLA
Positive COVID-19	No	Yes, up to \$511	No	Yes
Symptoms of COVID-19	No	Yes, up to \$511	No	Yes
Symptoms similar to COVID-19	Physician*	Yes, up to \$200	No	Yes
Caring for COVID-19	Physician*	Yes, up to \$200	No	Yes, if family
Caring for child whose school is closed by gov't order/childcare unavailable due to COVID-19		Yes, up to \$200	<b>Yes</b>	Yes
At risk of severe illness based on underlying medical condition	Physician recommend*	Possibly, if quarantined, up to \$511	No	Possibly

## Benefits Available to Support Employees and Employers

- Unemployment Benefits/Shared Work
- Supplemental Unemployment Benefit Plan (SUB)
- Health Insurance
- COBRA
- 401(k) Accounts
- Loans





## Benefits Available to Support Employees and Employers

- **Unemployment Benefits:** Expanded eligibility for 26 weeks and criteria if employee leaves work because of:
  - Self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised;
  - Displaying the symptoms of COVID-19;
  - Having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19;
  - The need to care for someone with a confirmed diagnosis of COVID-19; or
  - A family care responsibility as a result of a government directive.
- Provide employee with Unemployment Compensation Notice

## Benefits Available to Support Employees and Employers

- **Shared Work (through UIA):** The UIA may approve a shared-work plan.
  - Provides employees with partial unemployment benefits upon reduction in hours between 15-45% and provided other criteria are met

## Benefits Available to Support Employees and Employers

- Supplemental Unemployment Benefit Plan
  - What is it?
  - Impact on unemployment benefits
  - Tax advantages
  - Any pre-funding required?

## Benefits Available to Support Employees and Employers

- **Supplemental Unemployment Benefit Plan (IRS Publication 15-A)**
- To be excluded from wages for purposes of Social Security, Medicare, and FUTA tax purposes, the benefits must meet the following requirements.
  - Benefits are paid only to unemployed former employees who are laid off by the employer.
  - Eligibility for benefits depends on meeting prescribed conditions after termination.
  - The amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state law, and the amount of regular weekly pay.
  - The right to benefits doesn't accrue until a prescribed period after termination.
  - Benefits are not attributable to the performance of particular services.
  - No employee has any right to the benefits until qualified and eligible to receive benefits.
  - Benefits may not be paid in a lump sum.

## Benefits Available to Support Employees and Employers

- **Supplemental Unemployment Benefits (cont'd)**
  - MCL 421.44 provides that “Remuneration” does not include either of the following
    - (b) Money paid by an employer to a worker under a supplemental unemployment benefit plan consistent with the criteria for a supplemental unemployment benefit plan as described in Internal Revenue Service publication 15-A, employer's supplemental tax guide, regardless of whether the benefits are paid from a trust or by the employer.



## Benefits Available to Support Employees and Employers

- **Supplemental Unemployment Benefits (cont'd)**
  - Provide benefits upon layoff/termination to some or all employees
  - Can have different benefit levels to different groups
  - No IRS discrimination testing – No trust
  - ERISA Plan document and SPD needed.
  - Form 5500 needed if plan covers 100 or more

## Benefits Available to Support Employees and Employers

- **Health Insurance:**
  - Most health insurance policies require active employment/30 hours
  - Underwriting exceptions
  - Employee share of premium payments
  - Non-COBRA continuation/COBRA continuation
- **COBRA:**
  - 20 or more employees – consider controlled group

## Benefits Available to Support Employees and Employers

- Cafeteria Plan Issues
  - Reduction in hours – 30 hours to under 30 hours – Medical Only
  - Reduction in Pay – No Change

## Benefits Available to Support Employees and Employers

- **401k Accounts:** How can our employees gain access to their 401k accounts? Options:
  - In-service distributions
  - Hardship distributions
  - Plan loans

## How can our employees gain access to their 401k accounts?

- **Hardship Distributions:**
  - When are they available?
  - What type of plans may make them available?
  - What are tax consequences to participate?
  - How much is available to the participant?



## How can our employees gain access to their 401k accounts?

- **In-Service Distributions:**
  - When are they available?
  - What type of plans may make them available?
  - What are tax consequences to participate?
  - How much is available to the participant?

## How can our employees gain access to their 401k accounts?

- **Plan Loans:**
  - When are they available?
  - What type of plans may make them available?
  - What are tax consequences to participate?
  - How much is available to the participant?
- What is Congress considering?
  - Hardship distributions
  - Plan loans

## Response to Reduction in Business Demands

- Terminations with or without pay
- Temporary layoff
- Unpaid leave
- Hour and salary reduction
- Reduce or cease reimbursements and matching contributions
- Continue regular pay for finite period
- Bankruptcy and Restructuring



## Response to Reduction in Business Demands

- **Terminations with or without pay**
    - Eligible for unemployment benefits (and SUB-Pay)
    - Health insurance ends according to plan/BCBS; COBRA
    - Consider Warn Act (applies if employment loss greater than 6 months)
  - **Temporary layoff**
    - Eligible for unemployment benefits (and SUB-Pay)
    - Health insurance ends according to plan/BCBS; COBRA?
- \*Conduct exit interviews/checklists; Maintain morale for remaining employees

## Response to Reduction in Business Demands

- **Unpaid leave**
  - Potentially eligible for unemployment if less than 120 days
  - Effective April 2, 2020 paid sick/FMLA leave reimbursed by government
  - Health insurance ends according to plan/BCBS; COBRA
- **Hour and salary reduction**
  - Full-time employees may qualify for partial unemployment benefits through Work Share, if reduction of 15-45%, other criteria met, and plan approved by UIA
  - Non-exempt: pay for hours worked
  - Exempt: pay salary of no less than \$684 per week (\$35,568 per year)
  - Health insurance may be continued, provided eligibility criteria met

## Response to Reduction in Business Demands

- **Reduce or cease reimbursements and matching contributions**
  - Make sure this doesn't cause non-exempt employees' hourly rate to go below minimum wage
- **Loans**
  - If not repaid and waived, will be considered taxable income to employee
- **Continue regular pay for finite period**
  - Health insurance continues according to plan/BCBS; COBRA?



# Response to Reduction in Business Demands

- **Bankruptcy & Restructuring**
  - The Bankruptcy, Restructuring and Debtor-Creditor Rights Group is working diligently to remain prepared to address the unprecedented financial consequences of the COVID-19 pandemic. Our qualified Insolvency Team is actively monitoring events as they unfold and remains ready to promptly respond to your financial concerns. Using various technologies, our entire Team is working remotely to address your concerns, while still maintaining the health and safety of our Maddin Hauser families, which is a matter of top priority. We stand ready to assist you with your urgent financial matters.

# Response to Reduction in Business Demands

- In unprecedented times such as these, our highly qualified Team is prepared to immediately respond to financial challenges you may encounter. Our vast experience qualifies us to, among other things:
  - Work with owners, officers, directors and managers to prioritize their financial concerns
  - Communicate with lenders, landlords, vendors, customers and employees
  - Address monetary/non-monetary defaults (such as financial covenants, cross defaults, material adverse events)
  - Evaluate forbearance, workouts, restructuring, insolvency options
  - Evaluate viability of bankruptcy and non-bankruptcy alternatives

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- Review supply chain issues
- Assess available creditor and debtor rights and remedies
- Review credit/liquidity concerns
- Evaluate preference concerns
- Negotiate personal guaranties
- Prepare liquidation analyses
- Conduct insurance analyses (business interruption)
- Conduct contract analyses (force majeure)

## Thank you!

- The recommendations in this presentation are just a guideline. You may have other corporate, financial, and employment concerns that we are happy to discuss with you.
- Our many years of experience in navigating our clients through their business challenges has enabled us to deliver prompt and efficient solutions. Our commitment to this mission will not change, even during these compelling and rapidly changing times.

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