EMPLOYMENT VERSUS LAY-OFF ISSUES DURING THE COVID-19 PANDEMIC

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FACTOR	EMPLOYER	EMPLOYEE
Families First Coronavirus Response Act		
Emergency Paid Sick Leave Act	80 hours (or number of hours worked over two-week period if part-time) financed through a refundable tax credit provided on a quarterly basis and allowed against the employer's Social Security and Medicare taxes, payable to employee at either (i) at 100% of pay capped at $511 per day and $5,110 in total or (ii) 2/3 regular rate of pay capped at $200 per day or $2,000 in total. Applies to employers with fewer than 500 employees, unless employer has 50 or fewer employees and such payments would jeopardize viability of business.	A layoff for lack of work does not qualify an employee for benefits under EPSLA. That's the case even if the lack of work is due to the COVID-19 pandemic. For the same reason, EPSLA does not apply where a business is closed due to a stay-at-home or shelter-in-place order. The leave provisions only apply where the employer has work available for an employee that the employee is unable to perform on site or at home for one of the qualifying reasons (i.e., medical conditions or school/day care provisions caused by the coronavirus). If an employer's business is closed under a general stay-at-home or shelter-in-place order, and there is no work available for the employee to perform, then the leave provisions do not apply.
Emergency Family Medical Leave Expansion Act	Employees must be employed with covered employer for at least 30 days to be eligible. No pay is provided for first 10 days (unless employer has a different policy or Emergency Paid Sick Leave is paid	A layoff for lack of work does not qualify an employee for benefits under EFMLEA. That's the case even if the lack of work is due to the COVID-19 pandemic. For the same reason, EFMLEA does not apply where a business is closed due to a stay-

	concurrently) and thereafter at 2/3 regular rate for next 10 weeks capped at $200 per day or $10,000 in total and financed through a refundable tax credit provided on a quarterly basis and allowed against the employer's Social Security and Medicare taxes. Applies to employers with fewer than 500 employees, unless employer has 50 or fewer employees and such payments would jeopardize viability of business.	at-home or shelter-in-place order. The leave provisions only apply where the employer has work available for an employee that the employee is unable to perform on site or at home for one of the qualifying reasons (i.e., medical conditions or school/day care provisions caused by the coronavirus). If an employer's business is closed under a general stay-at-home or shelter-in-place order, and there is no work available for the employee to perform, then the leave provisions do not apply.
IRC §45S	Provides a business tax credit for certain employer-paid family and medical leave. The minimum percentage is 12.5% of the amount of wages paid to a qualifying employee while on family and medical leave for up to 12 weeks per taxable year and is increased by 0.25% for each percentage point by which the amount paid to a qualifying employee exceeds 50% of the employee's wages, with a maximum of 25%.	Not available solely due to a quarantine. The leave would need to involve an employee or employee's spouse, child, or parent who has a serious health condition, e.g., due to COVID-19.
Coronavirus Aid, Relief, And Economic Security Act (CARES Act)		
Economic Injury Disaster Loans (EIDL)	Loan available to cover payroll costs and certain other COVID-19 related expenses payable over a period of up to 30 years at 3.74%. First payment can be deferred one year. Collateral may be required on loans over $25,000 and personal guarantees on loans over	Loan available to finance 100% of payroll and certain other COVID-19 related costs and can be applied for now.

	$200,000. Possible emergency advance of $10,000 available while application is pending that does not have to be repaid if application is denied. If the business ultimately receives a PPP loan, or refinances an EIDL into a PPP loan, then any advance amount received under the EIDL would be subtracted from the amount forgiven in the PPP. However, the business could not use its EIDL for the same purpose as its PPP loan. For example, if it used the EIDL to cover payroll for certain workers in April, it could not use PPP for payroll for those same workers in April, although it could use it for payroll in March or for different workers in April.	
Paycheck Protection Program (PPP)	Loans available generally to businesses and nonprofits with 500 or fewer employees to cover certain payroll costs and other COVID-19 related expenses, provided that at least 75% of the loan proceeds must be used for payroll costs. Amount that can be borrowed is generally 2.5x average monthly payroll from the last 12 months (the SBA application says "most applicants will use average monthly payroll for 2019"). "Payroll costs" excludes compensation over $100,000 per year for any employee. The amount spent on permissible expenses during the first 8 weeks is forgiven, subject to a reduction if the average number of full-time employees is not maintained or compensation for those making less than $100,000 is reduced by more	Laying employees off indirectly reduces the maximum amount that can be borrowed by reducing average monthly payroll. Lower payroll costs will likewise translate into a smaller loan being approved, unless there are other permissible COVID-19 expenses that can be paid from the loan proceeds. Any amount forgiven will be reduced unless the laid off employees are rehired by June 30, 2020.

	than 25% unless reversed by June 30, 2020. The loans are for two years. The first payment due on the amount not forgiven can be deferred for six months. Interest accrues on the unpaid balance at 1.0%. Loans are nonrecourse and no collateral or personal guarantees are required.	
Employer Retention Credit	Refundable credit equal to 50% of qualified wages paid to full-time employees. For each eligible employee, a maximum of $10,000 in wages can be taken into account for the retention credit (i.e., a maximum of $5,000 in retention credits per employee) for wages paid between March 12, 2020 and January 1, 2021. An employee's qualified wages includes qualified health plan expenses. The credit is available during the period: (i) beginning with the first calendar quarter after 2019 in which the employer experienced a 50% or greater reduction in gross receipts in that quarter when compared against the gross receipts of the same quarter in the prior year; and (ii) ending with the subsequent quarter (to which the credit was claimed) in which the employer had gross receipts greater than 80% of the gross receipts in the same quarter of the previous calendar year.	Helps to finance payroll; not available if employees laid off.
Delay of Payment of Employer Payroll Taxes	Employers and self-employed individuals may defer payment of the employer's share of Old-Age, Survivors, and Disability	Helps to finance payroll; not available if employees laid off.

	Insurance Tax (Social Security) under IRC Section 3111(a), which is 6.2% of wages up to the wage base ($137,700 in 2020); the portion of the employer's and employee representative's share of Tier 1 Railroad Retirement Tax Act (RRTA) tax under IRC Sections 3211(a) and 3221(a) that corresponds to the 6.2% Social Security tax rate due; and for self-employed individuals, the equivalent amount of Self-Employment Contributions Act (SECA) tax due on net earnings from self-employment under IRC Section 1401(a) (i.e., 50% of the 12.4% tax), which would similarly be exempt from estimated tax payments. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.	
Unemployment Compensation		
Michigan Unemployment Benefits	An employer will not be charged for unemployment benefits if their employees become unemployed because of an Executive Order requiring them to close or limit operations (see E.O. 2020--24). The E.O. applies to claims filed between March 16 and April 22, 2020.	There is no requirement of seeking work, as suitable work is unavailable because of COVID-19.
Pandemic Unemployment Insurance		Federal funding (available through December 31, 2020) for up to 39 weeks of unemployment (increased from 26 weeks) at the same rate

		otherwise payable ($362 maximum in Michigan), plus additional $600 through July 31, 2020.
Underinsured Benefits	In Michigan, if an individual collecting unemployment benefits earns wages that equal or exceed 1.5 the weekly benefit amount ("WBA"), which is capped at $362 per week, then unemployment benefits are reduced to zero and the employee only receives the additional wages earned. If the additional wages are less than 1.5 times the WBA but greater than the WBA, then the individual can retain the additional wages and also receive unemployment benefits in an amount equal to 1.5 times the WBA less the additional wages. If the additional wages are equal to or less than the WBA, then the individual can retain the additional wages and also receive unemployment benefits in an amount equal to the WBA less .5 times the additional wages.	Employees receiving wages while collecting unemployment may potentially receive up to $542 per week, depending on eligibility criteria and amount of additional wages.
Workshare	Michigan currently has a workshare program in effect (see UIA Fact Sheet 156, dated March 2020, and E.O. 2020-24). Plans must be approved by the UIA.	Work programs allow an individual who is employed for a portion of the week to collect unemployment benefits on top of his or her regular pay. The purpose of the plans is to encourage an employer to avoid layoffs by reducing the number of regularly scheduled hours of work for all, or a group of, individuals during disruptions to regular business activity. Whereas partial benefit formulas look at an individuals' earnings, a workshare plan looks at the hours of work and

		provides individuals a pro-rata share of weekly benefits based on the reduction in weekly hours of work.