

COVID-19 Considerations for Employees

Good morning everyone and thank you for inviting me to participate in today's Chamber webinar. As the Chief Financial Officer at Questco, a company whose mission is to support small businesses and the people that make them successful by providing payroll and HR support and counsel, this couldn't be a more critical time for our company.

This morning I've been asked to provide some additional insight into some of the complexities around the administration of the various actions taken by Congress to bring relief to businesses and allow our economy to survive the massive disruptions caused by the COVID-19 pandemic. The speed at which these acts have been approved is unprecedented and not surprisingly, creates some confusion and uncertainty regarding just how to implement, administer and monitor the relief provisions incorporated into these packages. It's important to recognize that what we know today may change tomorrow and I can't emphasize enough the need for all of you as business owners to continuously monitor new developments through various resources available – including the SBA and IRS websites, and the multitude of email blasts distributed by law firms, accounting firms, your local financial institutions, etc.

Now let me turn to the topics on our agenda:

First, I would like to address some options available to you as an employer with respect to managing your payroll costs in response to your decline in business operations, including furloughs or reduction in hours, temporary or permanent reductions in force, and reductions in salaries...and how these decisions impact your employees.

- ***Furlough*** is a confusing term because in some cases it's interpreted as not working in any capacity while in other cases, it is used to refer to employees working in a greatly limited capacity. Today, I would like to differentiate between employees who have continued employment with a reduced schedule and a reduction in hours. In other words, the employee remains actively employed versus employees that have been laid off (i.e., the employee is not providing any services nor receiving any wages.) Employees who have been asked to perform under a greatly reduced work schedule would be considered

employed for purposes of emergency paid sick leave and EFMLA. In other words, if they qualified under one of the 6 FFCRA criteria, they would receive pay in accordance with the specified rates under the Act. Normally in this situation, the employer expects this employee to return to full time status at some point.

Other considerations for an employee who is working under a greatly reduced schedule are medical benefits and unemployment. Generally speaking, in these unusual times, medical carriers are being far more lenient with respect to meeting the minimum hour requirement to qualify for coverage under an employer sponsored medical plan. The key here is that the premiums continued to be paid. Which means that the employer will need to continue to collect the employee's share of the premium or they can pay the full amount of the premium themselves on behalf of the employee in order to maintain coverage. Each situation is different, depending on the insurance carrier and the relationship the employer has with the carrier. I would recommend you reach out to your carrier to discuss your specific details.

As to unemployment, many states are providing for partial unemployment benefits and most likely, an employee whose hours have been significantly reduced will be entitled to some level of unemployment. It should be noted, however, that if the employee is receiving paid leave benefits under the FFCRA, they will NOT be entitled to receive unemployment for the same covered period.

- Now let's talk about layoffs. **Layoff** is a term generally used when an employer cuts ties with an employee and the employee is providing no services nor receiving any wages or other benefits from the employer while laid off. In other words, the employment relationship is over, at least for now. The employer may decide to return the laid off employee back to his or her previous status, but that outcome is to be determined. Someone in layoff status as described here generally would not be eligible for paid sick or extended family leave under the provisions of the FFCRA. They would of course be able to apply for unemployment benefits.

When an employee is laid off, it normally means that they will no longer be considered an active employee for purposes of coverage under the employer sponsored medical plan but WILL be eligible for COBRA (which means the entire portion of the premiums is

being paid by the termed employee). Again, in these unique times, many carriers are allowing for medical coverage to remain in force if the layoff is considered to be temporary (less than 2 months) and the full amount of the employee's premiums are being paid. Where this becomes a bit more challenging and continued coverage may not be an option is in the situation where the entire business has temporarily shut down and there are no paid wages for any employees. Generally, when there no longer are any covered employees, the employer sponsored group health plan will be cancelled. However, the insurance carrier providing the health coverage may voluntarily continue the coverage while the emergency is sorted out and until the employer reopens its doors. Again, I encourage you to reach out to your specific carrier to discuss options if you find yourself in this situation.

One item to note is that when the entire employer sponsored health plan is cancelled, the option for coverage under COBRA is no longer available to any termed employee.

Under any circumstances, whether one employee or an entire workforce is termed, the employees will be eligible for unemployment coverage immediately – the CARES Act removed the one week waiting period for UI benefits.

I would also like to provide some clarity around when an employee can receive paid leave benefits under FFCRA benefits and when their lost wages are covered under UI benefits.

Any employee that is laid off prior to the effective date of the FFCRA (which is today, April 1) is not eligible to receive benefits even if they qualify under one of the six covered reasons. They **will be** eligible for unemployment benefits.

And, if there are independent grounds to lay off an employee who does qualify for the leave, including economic conditions, a reduction in force, performance, etc. that is not related to anything discriminatory or attributed to the relief law in and of itself, an employee can be terminated during his/her leave.

Let's now talk about adjustments to wages or hours. You can reduce the number of hours or the salary paid to employees in order to relieve financial burden and keep your business afloat. You are only obligated to pay non-exempt employees for the actual hours they work, at minimum wage or greater, as **agreed upon with the employee**. Exempt employees have a minimum they have to make a year to keep their exemption. And if any exempt employee works **any time during a workweek**, they must be **paid for the entire workweek**. If you want to reduce an employee's salary but keep it above the exempt threshold (\$35,568) you can do that if the employee agrees to the reduced wage **in advance of implementing the change** in rate of pay. You cannot cut wages retro-actively. Employees must be paid at their regular rate for any hours already worked. And you might consider some sort of special bonus for those employees who do work reduced hours if you want to provide an incentive for staying with you.

I know a number of you are interested in understanding if an employee on paid leave and/or temporary lay-off accrues PTO during the leave period. The answer is it depends on the how your PTO policy is written. If the accrual is based on hours worked, then there would be no PTO accrued during the time off since no hours are being worked. If your accrual is based on dates of employment, then PTO would accrue during the time off, whether it is paid or unpaid leave. You can adjust your PTO accrual policy to hours worked to avoid the continued build-up of PTO, but again it would need to be prospectively. And I would consider the impact this would have on your employees' morale.

Unemployment Insurance Provisions

The CARES Act also expands unemployment assistance by creating a Pandemic Unemployment Assistance program through December 31, 2020. For weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 disruptions between January 27 and December 31, the Act provides covered individuals with unemployment benefit assistance when they are not entitled to any other unemployment compensation or waiting period credit. Furthermore, the weekly benefit amount is generally the amount determined under state law plus an additional \$600 until July 31st. Although the additional \$600 per week is only available for the next four months, the maximum entitlement was expanded to 39 weeks rather than the 26 weeks typical of most states.

Expanded Coverage And Eligibility

Covered individuals under this provision generally include those who provide self-certification the individual is otherwise able to work and available to work and is unemployed, partially unemployed, or unable to work for one of the following reasons:

- The individual is diagnosed with COVID-19 or experiencing COVID-19 symptoms and seeking medical diagnosis;
- A member of the individual's household was diagnosed with COVID-19;
- The individual is caring for a member of their family or household who was diagnosed with COVID-19;
- A child or person for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school/facility is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19 public health emergency;
- The individual is unable to reach the place of employment because a health care provider advised to self-quarantine due to COVID-19 related concerns;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual became the breadwinner or major support because the head of household died from COVID-19;
- The individual has to quit as a direct result of COVID-19;
- The individual's place of employment is closed as a direct result of COVID-19 public health emergency; or
- The individual meets additional criteria established by the Secretary of Labor.

The Act also expands unemployment to cover those who traditionally are not eligible to receive such benefits. Specifically, this new provision covers those who are self-employed (like independent contractors), who are seeking part-time employment, who do not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits if they meet a qualifying reason above. The Act excludes payments of Unemployment benefits for those who would otherwise be a covered individual if they **have the ability to telework with pay or if they receive paid sick leave or other paid leave benefits.**

Funding and Incentives to States For Unemployment Assistance

To help make this additional unemployment assistance possible, the federal government will be offering various grants and funding to states. This is important because none of us want to see a sharp increase in UI rates as a result of the economic burden of the increase in unemployment claims as a result of the COVID-19 business disruption. And as mentioned earlier, the Act also

incentivizes states to provide this unemployment compensation without any waiting period that may currently prevent unemployed individuals from getting benefits immediately after their employment is separated.

And I would be remiss if I didn't stress that any decisions made to reduce payroll costs through reductions in headcount or wages can have significant impact on the availability of relief funding introduced by the CARES act passed last Friday.

Specifically, I'll address the **Payroll Protection Program**

The Employer Must Keep Employees on the Payroll—or Rehire Quickly

- Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease by more than 25%. If a company had previously implemented reductions in employment or wages during the period beginning on February 15, 2020 and ending 30 days after the March 27th enactment date of CARES Act, this will not reduce the amount of loan forgiveness **IF** by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages.

As there are many aspects to the CARES Act which could impact the availability of other relief provisions, it is extremely critical that you evaluate the applicability of each as it relates to your specific business operations and select the approach that provides you with the most advantageous financial outcome.

Thank you again for the opportunity to share our perspective with this group. I wish you all the best and most importantly, stay safe and be healthy.