Government Affairs Policy Update

Ed Orlet, Sr. Vice President for Government Affairs and Strategic Projects, NAED
Ian Reynolds, General Counsel, NAED
Palmer Schoening, Chair, Family Business Coalition
Alex Ayers, Executive Director, Family Business Coalition

Reopening America
One Size Doesn’t Fit All

- Engineering controls – reduce hazards without relying on employee behavior
- Administrative controls – require action by workers to minimize hazards
- Personal Protective Equipment (PPE)
- “[I]t is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations.”
OSHA Hazard Assessment

• OSHA identifies four classes of occupational exposure to COVID-19:
  
  ![](image)

• Workers’ individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy).

Potential Legal Implications/Liability

- Employment claims including discrimination
- Worker’s compensation
- Tort liability including wrongful death
Resources
NAED Covid-19 Response https://www.naed.org/resources

OSHA
• OSHA COVID-19 Topic Website: https://www.osha.gov/SLTC/covid-19/

CDC
• CDC Community-Specific Guidance: https://www.cdc.gov/coronavirus/2019-ncov/community/index.html

Legislation dealing with COVID-19
Timeline of Phases 1-3.5

- Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020
- Families First Coronavirus Response Act
- Coronavirus Aid, Relief, and Economic Security Act
- Paycheck Protection Program and Health Care Enhancement Act
- Payroll Protection Program starts
- PPP restarts after running out on April 16
- Main Street Lending Program details released

Business stimulus fit into four categories

- Mandatory paid sick and family leave
  - Families First Coronavirus Response Act

- Retroactive tax changes to access capital
  - Net Operating Losses
  - Business Interest Deduction limit changes

- Loan Programs
  - SBA Paycheck Protection Program
  - Economic Injury Disaster Loans
  - Federal Reserve Main Street Lending Program

- Limited use tax deferrals, credits, and unemployment
  - Deferred employer payroll taxes
  - Employee retention tax credit
  - Unemployment Benefits
Phase 2: Families First Coronavirus Relief Act

- Contains two major components affecting employee leave
  - Emergency Paid Sick Leave (E-PSL)
  - Emergency Paid Family and Medical Leave (E-FMLA)
- Both provisions go into effect on April 1, 2020 through December 31, 2020 (for now)
- Affects all businesses below 500 employees
- Both sets of leave are in addition to already existing leave policies
- Employers must post signs informing employees of this requirement (posters available at: https://www.dol.gov/agencies/whd/pandemic)

Phase 3: CARES Act

- Included $2 trillion in stimulus
  - Loans from Small Business Administration
  - Federal Reserve Main Street Lending Program
  - Direct stimulus to Americans
  - Deferred payroll taxes for employers not participating in loan programs
  - Increased unemployment benefits
SBA Paycheck Protection Program

- Small Business Administration is offering forgivable loans to small employers to maintain payroll and business operations
  - 2.5 times the average of one month of payroll
  - 8 weeks of payroll
  - Additional funds for rent/mortgage interest and utility payments
- $349 billion initial funding
- $310 billion in additional funding
  - Nearly depleted
- Forgiveness for funds used on approved uses, unforgiven portion repaid in 2 years at 1% interest

Main Street Lending Program

- Designed to help small and medium sized businesses (0-15,000 employees)
- Term sheets released, but waiting on guidance from Treasury
- Loans not grants/forgiven, 4 year term, LIBOR + 300 basis points
- Three types of loans
  - Main Street New Loan Facility – from $500k to lesser of $25M or 4 X EBITDA
  - Main Street Priority Loan Facility – from $500k to lesser of $25M or 6 X EBITDA
  - Main Street Expanded Loan Facility – $10M to lesser of $200M, 35% of outstanding and undrawn available debt, or 6x 2019 adjusted EBITDA minus outstanding and undrawn available debt
Tax provisions for businesses without loan assistance

- Tax provisions are limited if using the Paycheck Protection Program or Main Street Lending Program
- Deferred employer portion of payroll taxes through Dec. 31, 2020
  - Must be paid back, half in 2021, half in 2022
  - Effectively interest free loan if you have some cashflow
- Employee retention tax credit
  - Eligible to receive 50% of wages as refundable tax credit up to $10,000 in wages per employee ($5,000 max credit per employee)
  - Must show economic harm
    1. operations were fully or partially suspended, due to a COVID-19- related shut-down order, or
    2. gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

Additional tax provisions without loan limitation

- Retroactive changes to 2018 or 2019 Net Operating Losses or excess business losses that you can carryback 5 years
  - IRS will issue refunds on previous years tax payments
  - Also available for 2020 filing next year
- Business Interest Expense Deduction
  - For businesses with limited business interest expense (averages more than $25 million in revenue over 3 years) can deduct interest up to 50% of taxable income for 2019 and 2020.
  - No guidance yet, but limitation on stimulus loans likely
How do these apply to your business?

**Businesses with >500 employees**

- Mandatory paid sick and family leave
  - Families First Coronavirus Response Act

**Accessible to all businesses**

- Retroactive tax changes to access capital
  - Net Operating Losses
  - Business Interest Deduction limit changes

**Only one or the other, not both**

- Loan Programs
  - SBA Paycheck Protection Program
  - Economic Injury Disaster Loans
  - Federal Reserve Mid-size Business Loans

- Limited use tax deferrals, credits, and unemployment
  - Deferred employer payroll taxes
  - Employee retention tax credit
  - Unemployment benefits

---

**Phase 4**

- Still being written, very political issues to resolve
- Some Senators proposed changes to PPP
- NAED priorities include
  - Protecting PPP from retroactive changes,
  - Ensuring tax deductibility of wages paid with PPP funds, and
  - Limiting impact of increased unemployment payments