

MANAGING WORKPLACE RISK POST-COVID-19



GENOVA
BURNS



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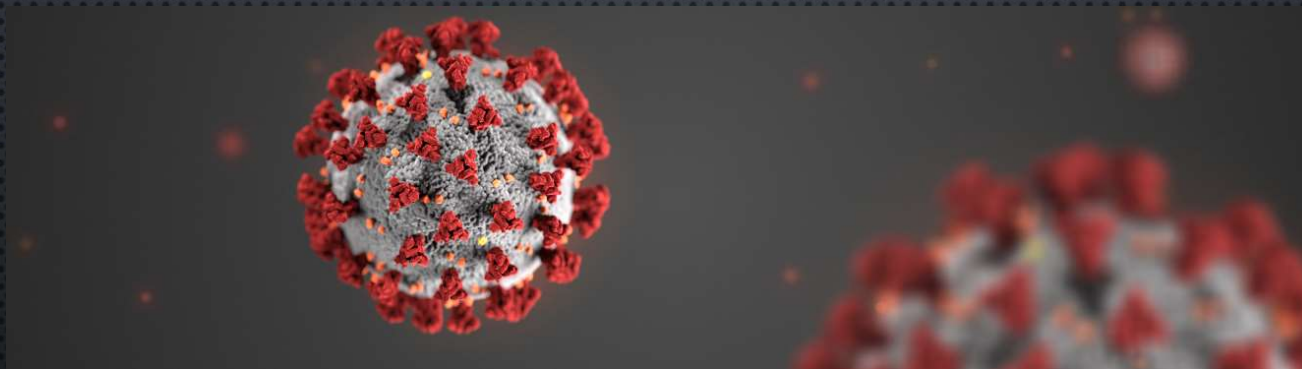
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The content in this webinar and on these slides is not legal advice, and it does not create an attorney-client relationship. It represents an interpretive and informational summary of some of today's emerging legal issues.

For those in need of additional COVID-19-related resources or assistance, please feel free to visit Genova Burns' COVID-19 Resource Center on our website at genovaburns.com or contact one of our attorneys. None of today's presentation should be a substitute for legal advice.

UPDATED OSHA & CDC GUIDANCE FOR BACK-TO-WORK



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OSHA GUIDANCE FOR WORKPLACES

- Develop an Infectious Disease Preparedness Plan:
 - Determine Sources of Exposure
 - Contingency Plan
 - Basic Infection Prevention Measures
 - Policies and Procedures for Identifying Sick Employees
 - Policies on Workplace Flexibilities
 - Implement Workplace Controls



RETURN TO WORK POLICY

- Employees with COVID-19
- Employees Caring for Family Member with COVID-19
- Employee in “Close Contact” with COVID-19 Individual



IMPLEMENTING WORKPLACE CONTROLS

1. ENGINEERING CONTROLS
2. ADMINISTRATIVE CONTROLS
3. PERSONAL PROTECTIVE EQUIPMENT
 - GUIDANCE ON FACE COVERINGS



OTHER IMPORTANT OSHA SAFETY ISSUES



- Employee Refusal to Work – fear of unsafe conditions



- OSHA Retaliation Claims



- Is Employee's COVID-19 Illness Reportable on OSHA 300 log?

PROTECTED CONCERTED ACTIVITY

- GROUP DISCUSSION AND ACTIVITY DEALING WITH SAFETY AND WELLNESS ARE PROTECTED UNDER THE NATIONAL LABOR RELATIONS ACT.
- REMEDY — BACKPAY/REINSTATEMENT
- NOTICE OF VIOLATION POSTING



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THREAT OF UNION ORGANIZING DURING THE PANDEMIC

If Employers do not take seriously Employee concerns on health and safety, a union organizer will.



ENHANCED UNEMPLOYMENT BENEFITS



- POTENTIAL “WRONGFUL RETENTION” CAUSE OF ACTION?
- EMPLOYEES WHO REFUSE TO RETURN TO WORK UPON RECALL
- OPTIONS TO BALANCE THE COMPETING PRIORITIES



WAGE-HOUR ISSUES IN THE NEW NORMAL

- **COMPENSABILITY ISSUES RAISED BY COVID-19 POLICIES**
 - **TELECOMMUTING PITFALLS**
- **TRACKING AND PAYING FOR OFF-THE-CLOCK WORK**
 - **TELECOMMUTING EXPENSES**
 - **NJ WARN AMENDMENT**

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THE AMERICANS WITH DISABILITIES ACT

UPDATED EEOC GUIDANCE



HEALTH INFORMATION, MEDICAL INQUIRIES, AND EMPLOYEE PRIVACY

EXPANDED FMLA LEAVE

- SCHOOL CLOSURE
- DAY CARE – JUNE 15
- SUMMER CAMP – JULY 7
- BEYOND – – SCHOOL FOR SEPTEMBER??

WHAT MEDICAL INFORMATION CAN I ASK OF EMPLOYEES?

- DURING A PANDEMIC EMPLOYERS CAN ASK EMPLOYEES:
 - DO YOU HAVE ANY COVID-19 SYMPTOMS
 - FEVER
 - CHILLS
 - COUGH
 - SHORTNESS OF BREATH, OR
 - SORE THROAT.

WHAT DO I DO
WITH
EMPLOYEE
MEDICAL
INFORMATION?

- **THIS INFORMATION
MUST BE KEPT AS
CONFIDENTIAL IN THE
EMPLOYEE'S MEDICAL
RECORD, SEPARATE
FROM THE PERSONNEL
FILE.**

CAN I TAKE MY
EMPLOYEE'S
TEMPERATURE?

- YES, DURING THE PANDEMIC.
- KEEP THE INFORMATION IN A CONFIDENTIAL MEDICAL FILE, NOT THE PERSONNEL FILE.

TEMPERATURE- TAKING PROCESS

- WHAT PROCESS SHOULD I FOLLOW WHEN TAKING TEMPERATURES?
 - WHO (MANAGER/SUPERVISOR)
 - BACK-UP IF THAT PERSON IS ILL
 - PERSONAL PROTECTIVE EQUIPMENT
 - OUTSIDE OF BUILDING
 - BEFORE THE START OF THE SHIFT
 - SOCIAL DISTANCE WHILE WAITING
 - LEAST INVASIVE WAY
 - LOG IT.

CAN I ADMINISTER A COVID-19 TEST TO EMPLOYEES?

- YES, DURING THE PANDEMIC.
 - “[A]N INDIVIDUAL WITH THE VIRUS WILL POSE A DIRECT THREAT TO THE HEALTH OF OTHERS. THEREFORE AN EMPLOYER MAY CHOOSE TO ADMINISTER COVID-19 TESTING TO EMPLOYEES BEFORE THEY ENTER THE WORKPLACE TO DETERMINE IF THEY HAVE THE VIRUS.”
- MUST ENSURE THE TESTS ARE ACCURATE AND RELIABLE
 - USE FDA AND CDC GUIDANCE
 - CONSIDER NUMBER OF FALSE-POSITIVES OR FALSE-NEGATIVES ASSOCIATED WITH A PARTICULAR TEST.
 - A NEGATIVE TEST DOES NOT MEAN THE EMPLOYEE WON’T GET SICK LATER.

CAN I SEND
A SICK
EMPLOYEE
HOME?

- YES. IF AN EMPLOYEE HAS SYMPTOMS OF COVID-19, SEND THE EMPLOYEE HOME.

CAN I REQUIRE A
DOCTOR'S NOTE TO
RETURN THE
EMPLOYEE TO
WORK?

- YES. THE DOCTOR'S NOTE IS PERMISSIBLE UNDER THE ADA.
- THE EEOC RECOGNIZES THAT THERE MIGHT BE A DELAY BECAUSE MEDICAL PROVIDERS ARE OVER-BURDENED RIGHT NOW.
 - "THEREFORE, NEW APPROACHES MAY BE NECESSARY, SUCH AS RELIANCE ON LOCAL CLINICS TO PROVIDE A FORM, A STAMP, OR AN E-MAIL TO CERTIFY THAT AN INDIVIDUAL DOES NOT HAVE THE PANDEMIC VIRUS."

ACCOMMODATING EMPLOYEES WITH PRE- EXISTING HEALTH CONDITIONS THAT PUT THEM AT HIGHER RISK IF EXPOSED TO COVID-19

- EMPLOYEE INFORMS YOU THAT THEY ARE HIGH-RISK DUE TO A PRE-EXISTING HEALTH CONDITION.
 - “EVEN WITH THE CONSTRAINTS IMPOSED BY A PANDEMIC, SOME ACCOMMODATIONS MAY MEET AN EMPLOYEE'S NEEDS ON A TEMPORARY BASIS WITHOUT CAUSING UNDUE HARDSHIP ON THE EMPLOYER.”
- LOW-COST SOLUTIONS:
 - REDUCED CONTACT WITH OTHERS;
 - DESIGNATING ONE-WAY AISLES;
 - USING PLEXIGLASS, TABLES, OR OTHER BARRIERS TO ENSURE SOCIAL DISTANCING;
 - TEMPORARY JOB RESTRUCTURING OF MARGINAL JOB DUTIES;
 - TEMPORARY TRANSFERS TO A DIFFERENT POSITION; AND
 - MODIFYING A WORK SCHEDULE OR SHIFT ASSIGNMENT.

EXACERBATION OF
PRE-EXISTING MENTAL
HEALTH ISSUES

- REASONABLE
ACCOMMODATION OF A
PREEXISTING MENTAL ILLNESS
EXACERBATED BY COVID-19?
(ANXIETY DISORDER, OCD,
PTSD)
- YES, UNLESS THE
ACCOMMODATION POSES AN
UNDUE HARDSHIP.

THE PROCESS

- INTERACTIVE PROCESS = STILL APPLIES = CAN ASK FOR MEDICAL DOCUMENTATION
 - IF CONDITION NOT OBVIOUS OR ALREADY KNOWN
- ACCOMMODATIONS NEEDED MAY CHANGE OVER TIME

ADA INTERACTIVE PROCESS

- CAN ASK THE EMPLOYEE
 - HOW THE DISABILITY CREATES A LIMITATION,
 - HOW THE REQUESTED ACCOMMODATION WILL EFFECTIVELY ADDRESS THE LIMITATION,
 - WHETHER ANOTHER FORM OF ACCOMMODATION COULD EFFECTIVELY ADDRESS THE ISSUE, AND
 - HOW A PROPOSED ACCOMMODATION WILL ENABLE THE EMPLOYEE TO CONTINUE PERFORMING THE "ESSENTIAL FUNCTIONS" OF THE POSITION

THE ACCOMMODATION PROCESS DURING THE PANDEMIC

- EEOC RECOGNIZES THAT GOVERNMENT RESTRICTIONS MAY CHANGE/ARE LIFTED (LIKE RESTRICTIONS ON NUMBERS OF EMPLOYEES THAT CAN CONGREGATE), ACCOMMODATIONS MAY CHANGE.
- MIGHT HAVE MORE REQUESTS FOR SHORT TERM ACCOMMODATIONS.
- EEOC SAYS THAT EMPLOYERS CAN HAVE END DATES TO ACCOMMODATIONS "TO SUIT CHANGING CIRCUMSTANCES BASED ON PUBLIC HEALTH DIRECTIVES."
- EMPLOYERS CAN PROVIDE ACCOMMODATIONS ON AN INTERIM OR TRIAL BASIS, WITH AN END DATE, WHILE AWAITING RECEIPT OF MEDICAL DOCUMENTATION.
- EMPLOYEES MAY REQUEST AN EXTENSION THAT AN EMPLOYER MUST CONSIDER, ESPECIALLY IF GOVERNMENT RESTRICTIONS ARE EXTENDED OR NEW ONES ADOPTED.

CAN EMPLOYERS
JUMP-START THE
ACCOMMODATION
PROCESS?

- IN ANTICIPATION OF RE-OPENING, EMPLOYERS CAN ASK EMPLOYEES WITH DISABILITIES TO REQUEST ACCOMMODATIONS THAT THEY WILL NEED WHEN WORK IS RE-OPENED.

DOES THE PANDEMIC
CHANGE THE UNDUE
HARDSHIP STANDARD?

- AN EMPLOYER IS EXCUSED FROM PROVIDING AN ACCOMMODATION IF IT CREATES AN UNDUE HARDSHIP.
 - HIGH BURDEN.
 - SIGNIFICANT DIFFICULTY OR EXPENSE.
- PANDEMIC CHANGES THINGS.

UNDUE BURDEN

- PANDEMIC HAS REDUCED EMPLOYER INCOME STREAM.
 - EEOC RECOGNIZES THIS IS NOW A FACTOR
- CONSIDERATIONS:
 - AVAILABLE EMPLOYER FUNDS
 - ANTICIPATED END DATE OF RESTRICTIONS ON BUSINESS OPERATIONS.
- ESSENTIAL WORKER STATUS NOT RELEVANT.

ACCOMMODATIONS AND PPE REQUIREMENTS

- REQUIREMENTS TO WEAR GLOVES AND MASKS
- ACCOMMODATION ISSUES
 - LATEX GLOVES – ALLERGY
 - MODIFIED FACE MASKS FOR INTERPRETERS
 - GOWNS TO BE USED WITH WHEELCHAIRS
 - MODIFIED EQUIPMENT DUE TO RELIGIOUS DRESS
 - BEARDS AND MASKS

HIGH-RISK EMPLOYEES
THAT DO NOT
REQUEST AN
ACCOMMODATION
(PREGNANT
EMPLOYEES)

- NO ACTION REQUIRED IF THE EMPLOYEE DOES NOT REQUEST A REASONABLE ACCOMMODATION.
- EMPLOYER CANNOT EXCLUDE AN EMPLOYEE FROM WORK/TAKE AN ADVERSE ACTION SIMPLY BECAUSE OF A DISABILITY.
- EMPLOYER CAN ACT IF THE EMPLOYEE IS A DIRECT THREAT TO HEALTH AND SAFETY AND THE THREAT CANNOT BE REDUCED BY AN ACCOMMODATION.
- DIRECT THREAT ANALYSIS MUST BE BASED ON MEDICAL JUDGMENT ABOUT THIS EMPLOYEE'S DISABILITY, NOT THE DISABILITY IN GENERAL.

HIGH-RISK
EMPLOYEES THAT
DO NOT REQUEST
AN
ACCOMMODATION
(PREGNANT
EMPLOYEES)

- CONSIDER:
 - DURATION OF RISK
 - NATURE AND SEVERITY OF POTENTIAL HARM
 - LIKELIHOOD THAT HARM WILL OCCUR
 - IMMINENCE OF HARM
 - SEVERITY OF THE PANDEMIC IN THE SPECIFIC GEOGRAPHIC LOCATION
 - EMPLOYEE'S HEALTH (IS EMPLOYEE'S CONDITION UNDER CONTROL)
 - JOB DUTIES
 - LIKELIHOOD OF EXPOSURE TO EMPLOYEE
 - EMPLOYER SAFETY PRECAUTIONS (SOCIAL DISTANCING)

ACCOMMODATION PROCESS

- IF AN EMPLOYER FINDS A DIRECT THREAT, EMPLOYER MUST STILL SEE IF THERE IS A WAY TO PROVIDE AN ACCOMMODATION TO ELIMINATE OR REDUCE THE RISK.
- IF THERE IS STILL RISK, THEN THE EMPLOYER MUST CONSIDER:
 - TELEWORK,
 - LEAVE, OR
 - REASSIGNMENT (DIFFERENT JOB/DIFFERENT LOCATION/JOB THAT ALLOWS FOR TELEWORK).
- EXCLUDE THE EMPLOYEE FROM WORK IF, DESPITE THE ANALYSIS, THE RISK OF SUBSTANTIAL HARM CANNOT BE REDUCED BY A REASONABLE ACCOMMODATION.

CAN AN EMPLOYER ACCOMMODATE PREGNANT EMPLOYEES?

- ACCOMMODATE PREGNANCY-RELATED MEDICAL CONDITIONS
- PREGNANCY DISCRIMINATION ACT REQUIRES EMPLOYERS TO TREAT PREGNANT EMPLOYEES THE SAME AS OTHERS WHO ARE SIMILAR IN THEIR ABILITY OR INABILITY TO WORK. PREGNANT EMPLOYEES MAY BE ENTITLED TO JOB MODIFICATIONS, INCLUDING TELEWORK, CHANGES TO WORK SCHEDULES OR ASSIGNMENTS, AND LEAVE TO THE EXTENT PROVIDED FOR OTHER EMPLOYEES WHO ARE SIMILAR IN THEIR ABILITY OR INABILITY TO WORK.

EMPLOYEES AGE 65 OR OLDER

- CDC WARNS THIS GROUP IS HIGH RISK OF SEVERE ILLNESS FROM COVID.
- CANNOT INVOLUNTARILY EXCLUDE FROM WORKPLACE BASED ON AGE, EVEN IF THE EMPLOYER IS TRYING TO PROTECT THE EMPLOYEE.
- NO RIGHT TO ACCOMMODATION DUE TO AGE.
“HOWEVER, EMPLOYERS ARE FREE TO PROVIDE FLEXIBILITY TO WORKERS AGE 65 AND OLDER; THE ADEA DOES NOT PROHIBIT THIS, EVEN IF IT RESULTS IN YOUNGER WORKERS AGES 40-64 BEING TREATED LESS FAVORABLY BASED ON AGE IN COMPARISON.”
- WORKERS AGE 65 + MAY REQUEST ACCOMMODATIONS OF OTHER HEALTH CONDITIONS, AS OPPOSED TO AGE.

WHAT HAPPENS WHEN
THE EMPLOYEE SAYS
THAT THEY DO NOT
WANT TO EXPOSE
HIGH RISK FAMILY
MEMBERS?

- “THE ADA DOES NOT REQUIRE THAT AN EMPLOYER ACCOMMODATE AN EMPLOYEE WITHOUT A DISABILITY BASED ON THE DISABILITY-RELATED NEEDS OF A FAMILY MEMBER OR OTHER PERSON WITH WHOM SHE IS ASSOCIATED.”
- OPTIONAL FOR AN EMPLOYEE TO PROVIDE AN ACCOMMODATION IN THIS INSTANCE.
- OTHER CONSIDERATIONS
 - DISPARATE TREATMENT CLAIMS
 - FMLA

BEING PROACTIVE - NOTIFICATIONS TO EMPLOYEES PRIOR TO RETURNING TO THE FACILITY

- EMPLOYERS CAN PROVIDE ALL EMPLOYEES WITH CONTACT INFORMATION FOR DISABILITY ACCOMMODATION REQUESTS IN CONNECTION WITH RECALL TO THE FACILITY.
- EMPLOYERS MAY RE-STATE THE CDC-LISTED MEDICAL CONDITIONS THAT MAY PLACE PEOPLE AT HIGHER RISK OF SERIOUS ILLNESS IF THEY CONTRACT COVID-19, AND INFORM EMPLOYEES THAT REQUESTS RELATED TO THESE CONDITIONS, AND ANY OTHER CONDITIONS, WILL BE CONSIDERED ON A CASE-BY-CASE BASIS
- EMPLOYERS ALSO MAY SEND A GENERAL NOTICE TO ALL EMPLOYEES DESIGNATED FOR RECALL ADVISING THEM THAT DISABILITY ACCOMMODATION REQUESTS WILL BE CONSIDERED ON AN INDIVIDUAL BASIS.

WHAT IF AN
EMPLOYEE REQUESTS
AN ALTERNATIVE
SCREENING METHOD
DUE TO
DISABILITY/RELIGION?

- ENGAGE IN THE INTERACTIVE
PROCESS.

POTENTIAL PERSONNEL POLICIES TO CONSIDER ADDING/REVISING

- CORONAVIRUS LEAVE POLICY
- TELEWORKING POLICY
- RETURN TO WORK POLICY
- “STOP THE SPREAD” POLICY
- SAFETY SCREENING POLICY (E.G., TEMPERATURE CHECKS)
- ACCOMMODATIONS POLICY



ANTICIPATED LITIGATION TRENDS

- **VIOLATIONS OF THE FAMILY FIRST CORONAVIRUS RESPONSE ACT (FFCRA)**
 - *JONES V. EASTERN AIRLINES* (E.D. PA.) APRIL 16, 2020
 - FORMER EMPLOYEE CLAIMED FFCRA INTERFERENCE AND RETALIATION AFTER BEING TERMINATED FOR REQUESTING EPSLA/ EFMLA TO CARE FOR HER MINOR CHILD WHOSE SCHOOL HAD BEEN CLOSED DUE TO COVID-19.
- **UNSAFE WORKING CONDITIONS**
 - **OCCUPATIONAL** SAFE AND HEALTH ADMINISTRATION (OSHA) STANDARDS OBLIGATE EMPLOYERS TO PROTECT EMPLOYEES' SAFETY. OSHA HAS GENERAL DUTY CLAUSE APPLICABLE TO EMPLOYERS, A STANDARD ON PERSONAL PROTECTIVE EQUIPMENT (PPE), AND HAS PROVIDED COVID-19 GUIDELINES. EMPLOYERS IN VIOLATION OF OSHA REGULATIONS ARE SUBJECT TO AN UNANNOUNCED OSHA INSPECTION, WHICH MAY RESULT IN THE IMPOSITION OF FINES.
- **DISCRIMINATION CLAIMS (DISPARATE IMPACT)**
 - **SCRUTINY** OF LAY-OFF/ FURLOUGH/ TERMINATION DECISIONS. EMPLOYEES MAY CHALLENGE THE DECISION TO SEPARATE CERTAIN GROUPS OF EMPLOYEES FROM EMPLOYMENT AS DISCRIMINATORY.
- **WORKERS ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT CLAIMS**
 - FEDERAL WARN ACT REQUIRES CERTAIN EMPLOYERS TO PROVIDE 60-DAY'S NOTICE TO EMPLOYEES PRIOR TO CLOSURES OR MASS LAY-OFFS, EXCEPT IN THE EVENT OF NATURAL DISASTERS AND UNFORESEEN BUSINESS CIRCUMSTANCES. THESE WILL LIKELY BE AN EMPLOYER'S BEST DEFENSE. NOTE: SOME STATES, INCLUDING NY AND NJ HAVE THEIR OWN WARN ACT.

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ANTICIPATED LITIGATION TRENDS (CONT'D.)

- **DISABILITY DISCRIMINATION**
 - CLAIMS FOR FAILURE TO PROVIDE ACCOMMODATIONS TO AN EMPLOYEE WITH A QUALIFYING DISABILITY WHO IS WORKING REMOTELY.
- **EMPLOYEE MEDICAL PRIVACY CLAIMS**
 - CLAIMS ABOUT THE MANNER IN WHICH EMPLOYERS HANDLE SENSITIVE INFORMATION CONCERNING EMPLOYEES' MEDICAL DIAGNOSES (E.G. COVID STATUS).
- **ERISA CLAIMS**
 - **ANY** DOWN MARKET PROMPTS GREATER SCRUTINY OF PAST FIDUCIARY DECISIONS. EMPLOYEES MAY SEEK RECOVERY OF INVESTMENT LOSSES THROUGH FIDUCIARY-BREACH CLAIMS BASED ON UNDERPERFORMANCE OF INVESTMENT OPTIONS IN RETIREMENT PLANS.
- **WAGE AND HOUR ISSUES**
 - CLAIMS CHALLENGING ACCOUNTING OF EMPLOYEE TIME WHEN WORKING REMOTELY (E.G. UNPAID OVERTIME AND MEAL BREAKS).
- **DONNING AND DOFFING**
 - ARE EMPLOYEES PAID FOR TIME SPENT PUTTING ON AND REMOVING PPE? TEMPERATURE CHECKS? EMPLOYEE HEALTH QUESTIONNAIRES?
- **HUGE EXPLOSION IN CLASS ACTIONS RELATED TO WORKPLACE SAFETY, LAY-OFFS/TERMINATIONS, AND WAGE AND HOUR CLAIMS.**



PPP FLEXIBILITY ACT OF 2020

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WHAT CHANGES WERE MADE?

❖ Maturity:

- Loans made after June 5, 2020 – Loan Term of 5 Years
- Loans made before June 5, 2020 – May amend with Lender

❖ Loan Forgiveness Covered Period:

- 24 weeks (not later than December 31, 2020)
- Existing borrowers (loans before June 5, 2020) may elect to keep 8-week covered period

❖ Payroll Costs Requirement:

- At least 60% of the PPP Loan

❖ Forgiveness Amount Adjustments - Exemption Based on Employee Availability:

- Document inability to rehire individuals who were employees on February 15, 2020; and
- Document inability to hire similarly qualified employees for unfulfilled positions on or before December 31, 2020
- Document inability to return to same level of business activity as before February 15, 2020 due to compliance with sanitation, social distancing, or other worker/customer safety requirements of HHS, CDC, OSHA from March 1, 2020 – December 31, 2020

❖ Extension of Deferral Period: 10 months

One Hundred Sixteenth Congress
of the
United States of America

APPLYING FOR PPP LOAN FORGIVENESS

- Loan Forgiveness Application
- Loan Forgiveness “Covered Period”
- Count Your Employees
- Review Salary/Wage Reductions
- Document!



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PAYROLL AND NONPAYROLL ELIGIBLE COSTS

Payroll Costs -

- Covered Period vs. Alternative Payroll Covered Period
 - Covered Period: Starts from Date of Disbursement
 - Alternative: Starts from first day of the first pay period after date of disbursement of PPP loan funds
 - Only available for employers with biweekly or more frequent payroll schedules
- Payroll Costs Incurred vs. Paid
 - Incurred: When employee's pay is earned
 - Paid: When paychecks are distributed / when ACH is initiated.

Nonpayroll Costs –

- Interest on covered mortgage obligations
- Covered rent obligations (business rent/lease)
- Covered utility payments [Service before Feb. 15]
 - Electricity
 - Gas
 - Water
 - Transportation
 - Telephone
 - Internet Access
- Must be paid during Covered Period or incurred during Covered Period and paid on or before the next regular billing date (even if billing date is after the Covered Period)

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REDUCTIONS TO LOAN FORGIVENESS

Completing the Loan Forgiveness Application

- **Workforce Reductions**

- Was there a reduction in FTE employees between January 1, 2020 and the end of the loan forgiveness 'covered period'?
- Was there a reduction in FTE employees during the covered period?
 - From February 15, 2020?
 - As compared to either --
 - February 15, 2019 – June 30, 2019
 - January 1, 2020 – February 29, 2020?
- Was the reduction during the reduction safe harbor period – between February 15, 2020 – April 26, 2020?
 - Was the reduction (will the reduction be) eliminated by Dec. 31?
- Do any of the safe harbor exemptions apply?

- **Salary / Wage Reductions**

- Was there a reduction in salary/wages by more than 25% for any one or more employee?
 - Compare against January 1, 2020 and March 31, 2020*.
 - *Most recent full quarter during which employee was employed before loan forgiveness 'covered period'.
- Was the reduction during the reduction safe harbor period – between February 15, 2020 – April 26, 2020?
 - Was the reduction (will the reduction be) eliminated by Dec. 31?

- **Average FTE*:**
 - **Based on a 40-hour workweek**
 - **May Use Simplified Method:**
 - **Employee who works 40+ hours/week = 1.0 FTE**
 - **Employee who works fewer hours = 0.5 FTE**
- **Calculation of Average # of Employees**
 - **CARES Act: Calculate average number of FTE employees for each pay period falling within a month.**
 - **Forgiveness Application: See PPP Schedule A Worksheet➡**

EXEMPTIONS FROM LOAN FORGIVENESS REDUCTION

- Employee declines offer of re-employment / restoration of hours at same salary/wages
 - Employer must have made good faith written offer to rehire/restore reduced hours during the covered period/alternative payroll covered period;
 - Offer was for the same salary or wages and same number of hours as earned by employee in the last pay period prior to separation/reduction in hours;
 - Offer was rejected by affected employee;
 - Borrower has maintained records documenting the offer and rejection; and
 - Borrower informed the applicable state unemployment insurance office of employee's rejected offer **within 30 days** of employee's rejection of offer.
- Inability to hire similarly qualified employees for unfulfilled positions by December 31, 2020
- Inability to return to same level of business activity as at before February 15, 2020 due to compliance with HHS, CDC, OSHA requirements for sanitation, social distancing, and safety related to COVID-19 between March 1, 2020 through December 31, 2020.

[illegible]

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NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (NJEDA)

- Small Business Emergency Assistance Grant Program
 - \$1,000 per Full-Time Employee (based on WR-30 Filing), Maximum Grant = \$10,000
 - Eligibility:
 - 25 or fewer full-time employees; physical commercial location in New Jersey
 - Must have been in operation on February 15, 2020; Must make best effort not to furlough or lay off employees through 6 months after the end of declared state of emergency; Must have been negatively impacted by COVID-19; and Have material financial need for grant funds.
- Small Business Emergency Assistance Guarantee Program
 - Guarantee of up to 50%, not to exceed total NJEDA exposure of \$100,000 to 'premier lenders' who issue working capital loans or lines of credit to support business continuity for COVID-19 related impacts.
 - Eligibility:
 - Physical commercial location in New Jersey (home-based businesses are not eligible)
 - Must have been in existence for at least 1 full year
 - Have \$5 million or less in annual revenue
- Micro Business Loan Program (Loans up to \$50,000) for NJ Businesses with fewer than 10 employees, no more than \$1.5 million in revenues
- Small Business Fund (Loans up to \$500,000) for NJ Businesses with up to \$3 million in revenue (at least 1 full year of operations)
- Direct Loans (Loans up to \$750,000 for working capital), must be committed to job creation/retention.

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FEDERAL RESERVE – MAIN STREET LENDING

- Main Street New Loan Facility*
 - Minimum Loan Size = \$250,000
 - Maximum Loan Size = Lesser of \$35MM and total Borrower's debt < 4 times Borrower's 2019 EBITDA
 - 5-year maturity: 15% principal amortization at end of each of third and fourth years; balloon payment of 70% at maturity.
 - Principal Payments deferred for 2 years; Interest payments deferred for 1 year (unpaid interest to be capitalized)
 - Interest Rate = adjustable rate of LIBOR (1 or 3 month) + 300 basis points
 - No subordination to other loans/debt instruments
 - Must make commercially reasonable efforts to maintain payroll and retain employees while Loan is outstanding
 - Must have 15,000 or fewer employees, or \$5 billion or less in 2019 annual revenues.

*Additional eligibility/ineligibility rules apply; Fees apply.

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FEDERAL RESERVE – MAIN STREET LENDING

- Main Street Priority Loan Facility*
 - Minimum Loan Size = \$250,000
 - Maximum Loan Size = Lesser of \$50MM and total Borrower's debt < 6 times Borrower's 2019 EBITDA
 - 5-year maturity: 15% principal amortization at end of each of third and fourth years; balloon payment of 70% at maturity.
 - Principal Payments deferred for 2 years; Interest payments deferred for 1 year (unpaid interest to be capitalized)
 - Interest Rate = adjustable rate of LIBOR (1 or 3 month) + 300 basis points
 - No subordination to other loans/debt instruments; may be pari passu with other loans or debt instruments, other than mortgage debt
 - Must make commercially reasonable efforts to maintain payroll and retain employees while Loan is outstanding
 - Must have 15,000 or fewer employees, or \$5 billion or less in 2019 annual revenues.

*Additional eligibility/ineligibility rules apply; Fees apply.

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FEDERAL RESERVE – MAIN STREET LENDING

- Main Street Expanded Loan Facility (for loans originated on or before April 24, 2020 with a remaining maturity of at least 18 months)* - may increase (upsized) existing term loan or revolving credit facility
 - Minimum Loan Size = \$10 million
 - Maximum Loan Size = Lesser of \$300MM and total Borrower's debt < 6 times Borrower's 2019 EBITDA
 - 5-year maturity: 15% principal amortization at end of each of third and fourth years; balloon payment of 70% at maturity.
 - Principal Payments deferred for 2 years; Interest payments deferred for 1 year (unpaid interest to be capitalized)
 - Interest Rate = adjustable rate of LIBOR (1 or 3 month) + 300 basis points
 - No subordination to other loans/debt instruments; may be pari passu with other loans or debt instruments, other than mortgage debt
 - Must make commercially reasonable efforts to maintain payroll and retain employees while Loan is outstanding
 - Must have 15,000 or fewer employees, or \$5 billion or less in 2019 annual revenues.

*Additional eligibility/ineligibility rules apply; Fees apply.

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HOW TO CONTACT US



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