

COVID-19 Legislative and Tax Relief and its Impact on Manufacturing Businesses

BY

MITCHELL E KLINGHER CPA

KLINGHER NADLER LLP

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DISCUSSION TOPICS

- FAMILIES FIRST CORONAVIRUS ACT
- CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
- REVIEW OF DISASTER RELIEF PROGRAMS FOR SMALL BUSINESS
- RECENT IRS NOTICES AND ACTIONS
- ACTION PLANNING

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- EXPANDED MEDICAL LEAVE
- EXPANDED FMLA LEAVE
- EMPLOYEE RETENTION CREDIT

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EMERGENCY FAMILY AND MEDICAL LEAVE

- PASSED MARH 18 – **EFFECTIVE DATE APRIL 1**
- **Note – as of 4/5 – The Treasury Dept. has exempted employers with less thn 50 employees**
- **FIRST EVER NATIONAL REQUIREMENT FOR EMPLOYERS TO PROVIDE PAID SICK LEAVE – 30 DAYS EMPLOYMENT TRIGGERS ELIGIBILITY**
- **FULL TIME EMPLOYEES ARE ENTITLED TO 80 HOURS AND PART TIME EMPLOYEES ARE ENTITLED TO THE AVERAGE NUMBER OF HOURS THAT THEY WORK OR ARE EXPECTED TO WORK IN A 2 WEEK PERIOD**
 - THE LANGUAGE WITH RESPECT TO PART TIME EMPLOYEES IS SOMEWHAT VAGUE AND COULD LEAD TO PROBLEMS. SINCE YOU ARE GETTING A CREDIT AGAINST PAYROLL TAXES FOR THIS YOU SHOULD PROBABLY ERR ON THE HIGH SIDE
- **EMPLOYERS CANNOT REQUIRE EMPLOYEES TO USE OTHER EMPLOYER PROVIDED LEAVE BEFORE THEY USE THIS**
- **EMPLOYER MUST GET DOCUMENTATION IN SUPPORT OF THE REASON FOR LEAVE**
 - EMPLOYEE NAME, QULIFYING REASON FOR REQUESTING LEAVE, STATEMENT THAT EMPLOYEE IS UNABLE TO WORK (OR TELEWORK), THE DATES FOR WHICH LEAVE IS REQUESTED
 - IF THE LEAVE IS THE RESULT OF MEDICAL ADVICE, THE NAME OF THE MEDICAL PROVIDER MUST BE PROVIDED
 - A STATEMENT FROM THE EMPLOYEE THAT THEY AGREE TO COOPERATE IF THE CREDIT TAKEN BY THE EMPLOYER IS AUDITED

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THE SIX SITUATIONS FOR ELIGIBILITY

- 1) a federal, state, or local quarantine or isolation order related to COVID-19 has limited the employee's ability to travel;
- 2) a health-care provider advised the employee to self-quarantine because of concerns regarding COVID-19;
- 3) the employee is experiencing symptoms associated with COVID-19 and is in the process of determining whether he or she has contracted the virus;
- 4) the employee is caring for someone who is subject to a governmental quarantine or isolation order for COVID-19 or whose health-care provider advised that person to self-quarantine because of COVID-19;
- 5) the employee needs to care for his or her child because of the closure of the child's school or child-care facility, or the unavailability of a child-care provider, because of COVID-19 considerations (although this is separate from similar leave available via an extension to the Family and Medical Leave Act, discussed later in this article); and
- 6) the employee is experiencing a situation that was specified by the Department of Health and Human Services as substantially similar to any of the five aforementioned situations.

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CALCULATING THE BENEFIT

- FOR SITUATIONS 1 – 3, THE EMPLOYEE WOULD BE ENTITLED TO BE PAID AT THE EMPLOYEE'S GREATEST REGULAR HOURLY RATE
- FOR SITUATIONS 4 – 6 THE EMPLOYEE IS ENTITLED TO 2/3 OF THAT AMOUNT
- THE TOTAL BENEFIT CANNOT EXCEED \$511 (\$5,110 IN TOTAL) FOR SITUATIONS 1 – 3
- THE TOTAL BENEFIT CANNOT EXCEED \$200 (\$2,000) IN TOTAL FOR SITUATIONS 4 – 6
- FOR PART-TIME EMPLOYEES WITH FLUCTUATING WORK WEEKS, EMPLOYERS CAN USE THE AVERAGE NUMBER OF HOURS PER DAY THAT THE EMPLOYEE WAS SCHEDULED TO WORK, INCLUDING HOURS FOR WHICH THE EMPLOYEE TOOK LEAVE OF ANY TYPE, DURING THE SIX-MONTH PERIOD ENDING ON APRIL 1.
- UNUSED HOURS CANNOT BE CARRIED OVER TO A SEUBSEQUENT YEAR

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FMLA EXPANSION

- THE ACT EXPANDS EXISTING FMLA BENEFITS TO ADD A PAID LEAVE REQUIREMENT
 - AFTER A PERIOD OF 10 DAYS UNPAID LEAVE, A PERIOD OF PAID LEAVE (UP TO WHATEVER THE EMPLOYEE HAS REMAINING OF THE 12 WEEKS OF LEAVE GENERALLY AVAILABLE UNDER FMLA)
 - THIS LEAVE IS AVAILABLE FOR EMPLOYEES WHO NEED TO TAKE CARE OF CHILDREN UNDER 18 WHILE THEIR SCHOOL OR CHILD CARE FACILITY IS CLOSED DUE TO THE CORONAVIRUS
 - THE AMOUNT OF PAY WILL BE 2/3 THE EMPLOYEE'S REGULAR RATE LIMITED TO \$200 PER DAY AND A MAXIMUM OF \$10,000
 - EMPLOYEES CAN USE ACCRUED SICK AND PERSONAL DAYS TO SUBSTITUTE FOR THE 10 DAYS OF UNPAID LEAVE

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PAYROLL TAX CREDITS – THE GOOD NEWS

- THE EMPLOYER PORTION OF SOCIAL SECURITY (NOT MEDICARE) CAN BE REDUCED BY PAYMENTS FOR EITHER PAID SICK LEAVE OF THE EXPANSION OF FMLA LEAVE
- IF THE CREDIT IS GREATER THAN THE EMPLOYER'S SOCIAL SECURITY TAX FOR THE QUARTER THE EXCESS IS REFUNDABLE
- THE AMOUNT OF THE CREDIT ALSO CAN BE INCREASED BY THE AMOUNT OF THE EMPLOYER'S QUALIFIED HEALTH PLAN EXPENSES FOR EMPLOYEES RECEIVING PAID SICK LEAVE
- IRS FORM 7200 JUST ISSUED TO ALLOW YOU TO CLAIM CRDIT QUICKLY
 - CAN BE FILED MULTIPLE TIMES EACH QUARTER TO CLAIM CREDIT, BUT DO NOT FILE FOR CREDIT IF YOU HAVE ALREADY REDUCED PAYROLL TAX DEPOSITS
 - FAX FORM TO 855-248-0552

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OTHER RULES AND REGULATIONS

- YOU MUST PROVIDE EMPLOYEES NOTICE OF THE AVAILABILITY OF THIS LEAVE
 - POSTING THIS NOTICE IN THE WORKPLACE PLUS ELECTRONIC NOTICE – IF YOUR OFFICE IS CLOSED DUE TO THIS SITUATION YOU SHOULD E-MAIL THIS NOTICE, MAIL THIS NOTICE AND PLACE IT ON AN INTERNAL OR EXTERNAL WEBSITE
- THE LABOR DEPARTMENT CAN EXEMPT EMPLOYERS OF LESS THAN 50 IF THEY CAN SHOW THAT THIS WOULD JEOPARDIZE THEIR VIABILITY AS A GOING CONCERN
- THE EMERGENCY FMLA PROVIDES FOR JOB RESTORATION UNLESS THE EMPLOYER HAS LESS THAN 25 EMPLOYEES AND MEETS CERTAIN CRITERIA
- REGULATIONS ARE EXPECTED TO BE ISSUED IN 15 DAYS – SO AROUND APRIL 4 – AND WILL HOPEFULLY CLEAR UP ANY AMBIGUITIES

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CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT

ALSO KNOWN AS THE “CARES ACT”

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“CARES” ACT OVERVIEW

- **PAYROLL PROTECTION LOANS**
 - \$349 BILLION DOLLAR SET ASIDE TO INCENTIVIZE EMPLOYERS NOT TO FIRE EMPLOYEES OR REDUCE THEIR SALARIES
- **BUSINESS TAX PROVISIONS**
 - EMPLOYEE RETENTION CREDIT
 - MEANINGFUL TAX RELIEF
 - POSTPONEMENT OF CERTAIN TAX PAYMENTS
- **INDIVIDUAL TAX PROVISIONS**
 - RELIEF CHECKS TO INDIVIDUALS
 - RETIREMENT PLAN RELIEF
 - SOME TAX RELIEF

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BUSINESS TAX PROVISIONS

- EMPLOYEE RETENTION CREDIT – 50% OF WAGES
 - ELIGIBLE EMPLOYERS ARE THOSE WHO HAVE EXPERIENCED GREATER THAN 50% REDUCTION IN QUARTERLY RECEIPTS FROM PRIOR YEAR
 - NOT AVAILABLE FOR EMPLOYERS RECEIVING SMALL BUSINESS INTERRUPTION LOANS
 - INCLUDES ALL EMPLOYEES IF LESS THAN 100 TOTAL
 - IF GREATER THAN 100 EMPLOYEES THAN INCLUDES ONLY EMPLOYEES WHO ARE FURLOUGHED OR FACE REDUCED HOURS
 - IRS CAN WAIVE 941 PENALTIES FOR EMPLOYERS WHO DO NOT MAKE DEPOSITS IN ANTICIPATION OF THIS CREDIT
 - CREDIT EQUALS 50% OF ELIGIBLE WAGES
 - WAGES LIMITED TO FIRST \$10,000 IN WAGES FOR ANY EMPLOYEE FOR ANY QUARTER

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BUSINESS TAX PROVISIONS

- DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES
 - EMPLOYER PORTION OF SOCIAL SECURITY TAXES CAN BE DELAYED UNTIL 1/1/21
- TEMPORARY REPEAL OF TAXABLE INCOME LIMITATION FOR NOL'S
- NOL CARRYBACK PERIOD CHANGED FROM ZERO TO 5 YEARS FOR ANY LOSS FOR YEARS BEGINNING AFTER 12/31/17
- EXCESS BUSINESS LOSSES ARE NOW DEDUCTIBLE IN FULL - THIS WILL IMPACT SHAREHOLDERS AND PARTNERS IN PASS THROUGH ENTITIES – LOSSES THAT WOULD HAVE BEEN SUSPENDED AND CARRIED FORWARD WILL NOW BE DEDUCTIBLE

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BUSINESS TAX PROVISIONS

- RELIEF FOR CORPORATE TAXPAYERS WHO CLAIM AMT CREDITS
- DEDUCTIBILITY OF INTEREST EXPENSE INCREASED FOR 2019 AND 2020
 - LIMITATION WAS 30% OF INCOME – INCREASED TO 50% OF INCOME
- REINSTATES THE 100% DEDUCTION FOR QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY
- CORPORATION CHARITABLE DEDUCTION LIMIT INCREASED TO 25% OF TAXABLE INCOME

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INDIVIDUAL PROVISIONS

- CASH PAYMENTS OF \$1,200 PER PERSON, \$2,400 PER MARRIED COUPLE AND \$500 FOR EACH QUALIFYING CHILD
 - PHASES OUT AT AGI OF 75K FOR INDIVIDUALS AND 150K FOR MARRIED COUPLES
- PENALTY FOR EARLY WITHDRAWAL OF RETIREMENT ACCOUNT FUNDS OF UP TO \$100,000 IS WAIVED FOR 2020 IF DISTRIBUTION CAN BE TIED TO CORONAVIRUS DISEASE AND RELATED RESTRICTIONS
 - DISTRIBUTION CAN BE REPAID WITH 3 YEARS OR PICKED UP AS INCOME OVER 3 YEARS
- INCREASED FLEXIBILITY ON LOANS FROM RETIREMENT PLANS
 - LOANS OF UP TO 100K OR 100% OF ACCRUED BENEFIT WILL NOT BE TREATED AS DISTRIBUTIONS

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INDIVIDUAL PROVISIONS

- REQUIRED MINIMUM DISTRIBUTIONS (“RMD”) FROM RETIREMENT PLANS IS WAIVED FOR 2020 IN MOST CIRCUMSTANCES
- \$300 ABOVE THE LINE CONTRIBUTION DEDUCTION FOR NON-ITEMIZERS
- DECREASED LIMITATIONS ON CERTAIN CHARITABLE GIFTS FOR CORP.’S AND INDIVIDUALS
 - NO 50% LIMITATION – DOES NOT APPLY TO PRIVATE FOUNDATIONS
- FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION
 - ADDS \$600 PANDEMIC PAYMENT AND 3 WEEKS BEYOND WHAT THE STATE PROVIDES

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REVIEW OF DISASTER RELIEF PROGRAMS FOR SMALL BUSINESS

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PAYCHECK PROTECTION PROGRAM

- PROVIDES \$349 BILLION IN FULLY GUARANTEED SBA LOANS
- EIGIBILITY REQUIRES AN EMPLOYER TO HAVE LESS THAN 500 EMPLOYEES
- ELIGIBLE RECIPIENTS COULD RECEIVE LOANS AS MUCH AS \$10 MILLION OR 250% OF MONTHLY PAYROLL COSTS – INTEREST CAPPED AT 4%
- CAN BE USED TO COVER SALARIES, COMMISSIONS, REGULAR PAID LEAVE, HEALTHCARE BENEFITS AS WELL AS MORTGAGE INTEREST, RENT AND UTILITIES (CANNOT BE USED FOR INDIVIDUAL COMPENSATION GREATER THAN 100K)
- APPLIES RETROACTIVELY TO 2/15/20
- WAIVES BOROWER AND LENDER FEES

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BUSINESS LOAN PROVISIONS

- LOANS WOULD HAVE A RISK OF 0% FOR BANKS SO THERE WOULD BE NO REQUIREMENT FOR THEM TO SET ASIDE ADDITIONAL CAPITAL
- RECIPIENTS CAN APPLY FOR LOAN FORGIVENESS
 - LOAN FORGIVENESS WOULD BE REDUCED FOR EMPLOYERS WHO FIRE EMPLOYEES OR CUT THEIR PAY
 - THIS IS BASED ON A FULL TIME EMPLOYEE EQUIVALENT (“FTE”) CALCULATION, WHICH COMPARES THE 8 WEEK PERIOD AFTER YOU RECEIVE THE LOAN TO EITHER 2/15/19 TO 6/30/19 OR 1/1/20 TO 2/29/20 (YOU GET TO PICK)
 - CANCELLED DEBT WOULD NOT BE INCOME TO THE BORROWER
 - COVERED LOANS WOULD HAVE 10 YEAR TERMS FULLY GUARANTEED BY SBA
- STREAMLINED BANKRUPTCY PROCESS INCREASED FOR DEBTORS WITH UP TO \$7.5 MILLION IN DEBT

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ECONOMIC INJURY DISASTER LOAN “EIDL”

- FOR BUSINESSES WHO SUFFERED “SUBSTANTIAL ECONOMIC INJURY”
 - BUSINESS IS UNABLE TO MEET ITS OBLIGATIONS AND PAY ORDINARY AND NECESSARY OPERATING EXPENSES
 - 1st \$10,000 of loan is forgivable
- COVERS FOR PROFIT AND NOT FOR PROFIT COMPANIES
- PROVIDES WORKING CAPITAL TO HELP SMALL BUSINESSES UNTIL NORMAL OPERATIONS RESUME
 - CANNOT BE USED FOR EXISTING DEBT REDUCTION
- BORROWING LIMIT \$2,000,000
- INTEREST RATE 3.75% FOR PROFIT AND 2.75% FOR NON-PROFIT
- CAN APPLY ONLINE – GO TO SBA.GOV AND FOLLOW THE LINK
- MUST ALSO SIGN IRS FORM 4506-T SO SBA CAN GET YOUR TAX RETURNS
- DECISION IN 2 WEEKS, DISBURSEMENT IN 5 DAYS

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IRS NOTICES

- IRS notice 2020-18
 - Federal income tax returns due 4/15/20 (individual and business) are automatically extended until 7/15/20
 - No extension needs to be filed
 - No penalties will be assessed for late payment
 - Limits in previous announcements (1 million/10 million) are withdrawn
 - Most states have formally or informally announced that they will conform – double check with your state
- IRS NOTICE 2020-20
 - GIFT TAX RETURNS AUTOMATICALLY EXTENDED TO JULY 15/20
- IRS NOTICE 2020-22
 - RELIEF FROM EMPLOYMENT TAX PENALTIES RELATING TO QUALIFIED SICK LEAVE AND FAMILY LEAVE

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IRS NOTICES

- IRS NOTICE 2020-57 – EXPLANATION OF PROCEDURES SICK AND FMLA TAX CREDITS
- IRS NOTICE 2020-59 – PEOPLE’S FIRST INITIATIVE
 - A KINDER GENTLER IRS! BROAD AUTHORITY TO ACCEPT OFFERS IN COMPROMISE, DELAYED COLLECTION ENFORCEMENT AND GREATER ABILITY TO WAIVE PENALTIES
- IRS NOTICE 2020-61 – EXPLANATION OF ECONOMIC IMPACT PAYMENTS TO INDIVIDUALS

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ACTION PLAN

- **CONSIDER A PAYCHECK PROTECTION LOAN**
 - PLAN YOUR EMPLOYEE HOURS TO MAKE SURE THAT IT WILL BE FORGIVEN
- **TALK TO YOUR LENDERS ABOUT LOAN DEFERRMENT PROGRAMS**
 - THE FED HAS INSTRUCTED ALL BANKS TO OFFER THIS
- **AGRESSIVELY TAKE EMPLOYMENT TAX CREDITS ON IRS FORM 7200**
 - PARTICULARLY IMPORTANT IF THE AMOUNTS EXCEED EMPLOYER PORTION OF FICA
- **IF YOUR REVENUES ARE DOWN SIGNIFICANTLY AND YOU MUST START LAYING OFF EMPLOYEES**
 - CONSIDER AN ECONOMIC INJURY DISASTER LOAN
 - MAKE SURE TO TAKE THE EMPLOYEE RETENTION CREDIT
- **BE EXTREMELY CAREFUL WITH EXTENDING CREDIT OR MAKING ADDITIONAL INVENTORY FOR MARGINAL CUSTOMERS**

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ACTION PLAN

- PREPARE A PRO-FORMA ON YOUR COMPANY ASSUMING A SIGNIFICANT LOSS OF BUSINESS
 - RUN IT WITH VARIOUS SCENARIOS – 10%, 20%, ETC.
 - TAKE A LOOK AT YOUR CUSTOMER BASE AND SEE WHICH ONES ARE IN ESSENTIAL INDUSTRIES
- DO NOT TAKE ANY REQUIRED MINIMUM DISTRIBUTIONS FROM RETIREMENT PLANS UNLESS YOU NEED THE MONEY TO LIVE ON
- EVEN THOUGH FILING IS POSTPONED, GET YOUR TAXES WORKED UP
 - IF YOU ARE GETTING A REFUND THEN FILE IMMEDIATELY
 - IF YOU OWE MONEY, AT LEAST YOU HAVE MORE TIME TO PLAN FOR PAYING IT
- A BUSINESS DOWNTURN IS ALWAYS A GOOD TIME TO CONSIDER FAMILY WEALTH PLANNING AND GIFTING SCENARIOS