



# COVID-19: Practical Guidance for Employers

March 27, 2020

# Speakers

**Nutter**



**Liam O'Connell**  
[loconnell@nutter.com](mailto:loconnell@nutter.com)  
617.439.2449



**David Rubin**  
[drubin@nutter.com](mailto:drubin@nutter.com)  
617.439.2848



**Melissa McMorrow**  
[mmcmorrow@nutter.com](mailto:mmcmorrow@nutter.com)  
617.439.2720



**Christopher Lindstrom**  
[clindstrom@nutter.com](mailto:clindstrom@nutter.com)  
617.439.2698



**Natalie Cappellazzo**  
[ncappellazzo@nutter.com](mailto:ncappellazzo@nutter.com)  
617.439.2390



**Laura Martin**  
[lmartin@nutter.com](mailto:lmartin@nutter.com)  
617.439.2139



**Seth Berman**  
[sberman@nutter.com](mailto:sberman@nutter.com)  
617.439.2338

Executive and Legislative Update – COVID-19 Order  
No. 13; CARES Act

Paid FMLA / Paid Sick Leave

Furloughs, Reductions in Pay or Schedules and Layoffs

Key Security and Privacy Concerns

# Governor Baker's Order

# COVID-19 Order No. 13

Nutter

- March 23rd Order – effective March 24th
- Assures operations of “Essential Services”
- Closes certain workplaces
- Prohibits gatherings of more than 10 people

# COVID-19 Order No. 13

Nutter

- “Essential Services” defined
  - Healthcare/Public Health/Human Services
  - Law Enforcement/Public Safety/First Responders
  - Food and Agriculture
  - Energy
  - Water and Wastewater
  - Transportation/Logistics
  - Communications/Information Technology
  - Critical Manufacturing
  - Hazardous Materials
  - Financial Services
  - Chemical
  - Defense Industry Base

# COVID-19 Order No. 13

Nutter

- Employer may request designation as “Essential”
- Enforcement
  - First time violators – warning
  - Second offense – civil citation and fine of up to \$300
  - Repeat/willful violations – criminal penalties; fine of up to \$500

# Coronavirus Aid, Relief, and Economic Security Act (or CARES Act)

**PART I – KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT**

# Paycheck Protection Program

Nutter

- Loans of up to \$10m offered through regular SBA Lenders
- Borrowers can be “any business concern,” nonprofit, sole proprietor, independent contractors and “eligible self-employed individuals” with no more than 500 employees
- Borrowers must certify that loan needed to support ongoing operations due to uncertain economic times AND funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments
- Funds can be used for payroll costs (not including compensation in excess of \$100k annualized to an individual employee) and other allowable uses

# Loan Forgiveness

Nutter

- Loan debt may be forgiven for amounts spent during the 8 weeks on allowable expenses
- Amount of debt forgiven reduced in proportion to the reduction in average monthly FTEs during the pandemic crisis
- Amount of debt forgiven also reduced in an amount equal to reduction exceeding 25% of wages or salary of employee making not more than \$100k
- Amount of debt forgiven will not be reduced if loss of FTEs is restored by June 30, 2020 or reduction in wages is restored by June 30, 2020

# Coronavirus Aid, Relief, and Economic Security Act (or CARES Act)

**PART II – ASSISTANCE FOR AMERICAN WORKERS FAMILIES AND BUSINESSES**

# Relief for Workers Affected by Coronavirus Act

Nutter

- Pandemic Unemployment Benefits available to individuals out of work due to nearly any reason attributable to pandemic
- Includes self-employed, seeking part-time employment, insufficient work history, or otherwise wouldn't qualify for benefits
- Regular weekly benefits for up to 39 weeks between January 27, 2020 and December 31, 2020
- Additional \$600 weekly benefit payable until July 31, 2020

# Payroll Tax Relief: Employee Retention Credit

Nutter

- Refundable payroll tax credit equal to 50% of Qualified Wages
  - Applies if:
    - A company's operations were fully or partially suspended, or
    - A company's gross receipts declined more than 50% when compared to the same quarter of 2019
  - Limited to the first \$10k of wages paid, including health benefits
- Qualified Wages =
  - If more than 100 employees: only wages paid to employees when they are not providing services for COVID-19 related purposes
  - If 100 or fewer employees: all wages (up to the \$10k limit):
- **Effective Period:** March 13, 2020 – December 31, 2020

# Payroll Tax Relief: Deferral of Payroll Taxes

Nutter

- Delay in Payment of Employer Share of Payroll and Self-Employment Taxes (6.2%) during 2020
- Amounts must be paid back:
  - 1/2 by December 31, 2021
  - 1/2 by December 31, 2022
- No limitation on income or type of employment
- **Effective for:** Payroll taxes due through calendar year 2020

# Tax Relief for Employee Benefits

Nutter

## **Payments of Student Loans by Employers (in 2020)**

- Income exclusion for employees for payment by employer
- Up to the \$5,250 employer provided educational assistance cap

## **Relaxation of Rules for Qualified Retirement Plans (in 2020)**

- Relief from required minimum distribution rules
- Relief on 10% early withdrawal penalty when withdrawn for corona-related purposes
  - Taxation on withdrawals spread out over 3 years
  - Recontributions allowed without regard to contribution limits
- Increased flexibility for loans from plans

# Paid FMLA / Paid Sick Leave

# The Families First Coronavirus Response Act

Nutter

- Paid FMLA
  - Employees of private employers with fewer than 500 employees will have the right to take up to 12 weeks of job-protected leave to care for their child when the child's school or place of care is closed for coronavirus-related reasons
    - ***The first two weeks may be unpaid***
      - Employees may use accrued paid personal, vacation, or sick time
    - ***For any leave greater than two weeks, employers must pay wages to the employee at a rate of no less than two-thirds of the employee's regular rate of pay***
      - Limited to \$200 per day and up to \$10,000 total

# The Families First Coronavirus Response Act

## • Paid Sick Leave

- Private employers with fewer than 500 employees must provide employees with two weeks of paid sick leave for certain coronavirus-related reasons, including where the employee is unable to work (**or unable to telework**) because the employee:
  1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  2. has been advised by a health care provider to self-quarantine related to COVID-19;
  3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
  5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
  6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.
- For leave reasons (1)-(3), leave is capped at \$511 per day, and \$5,110 in the aggregate (over a 2-week period).
- For leave reasons (4) or (6), leave is capped at \$200 per day, and \$2,000 in the aggregate (over a 2-week period).
- For leave reason (5), leave is capped at \$200 per day, and \$12,000 in the aggregate (over a 12-week period).

# Furloughs, Reductions in Pay or Schedules and Layoffs

# Furloughs

Nutter

- Employers reduce the days or weeks that an employee may work. Employers may use furloughs when they intend to retain workers, but need to reduce labor costs
  - Employers can reduce non-exempt employees' hours because they only need to be paid for time worked
  - If an employer furloughs an exempt employee for an entire pay period, no salary is owed
- Employers should inform furloughed employees that no work is authorized without prior written approval
- Furloughed employees may be eligible for unemployment benefits

# Reductions in Pay or Schedules

Nutter

- Employers may reduce non-exempt employees' hours and only pay the employees for the hours they worked
- Exempt employees must be paid the same minimum salary for each pay period, no matter how much work was performed
- Exempt employees pay can be reduced (must still exceed minimum for exempt status) – must be prospective and bona fide

- A temporary or permanent termination of the employment relationship
  - The employee is completely removed from payroll and can collect unemployment benefits
- WARN Act
  - Generally 60 days notice is required, but the notice requirement is waived if the layoff is caused by “sudden, dramatic, and unexpected” business circumstances that were not reasonably foreseeable
  - Under federal law, temporary layoffs of less than six months are not considered employment losses – so no notice is required

# Key Security and Privacy Concerns

# How Should Remote Networking Be Configured?

Nutter

- Employees should use their company's computer system rather than personal devices
  - Employers should ensure that work is done on a company virtual machine using a remote connection through a secure VPN
  - If employees must use their own devices, be aware that doing so increases the risk of data loss. The use of personal devices may make it extremely difficult to prevent, track, or mitigate a data breach
- Companies should ensure that multifactor authentication is rolled out throughout the network
  - Similarly, make sure that endpoint protection, logging, and monitoring are all in place

# Training on Security Issues

Nutter

- Remote employees must be reminded that security and privacy issues are still paramount concerns for the company
  - Employees must be reminded not to save sensitive or personal data on their personal devices
  - Employees must avoid using insecure wifi networks
- Employees should be on the look out for phishing attacks seeking their credentials or asking them to click on any links
  - Many are disguised as coronavirus information

# Privacy Issues

Nutter

- Coronavirus also presents a unique challenge in the need to balance the privacy of infected individuals with need to provide crucial public health information to people who may have been in contact with an infected individual.

# QUESTIONS?

