

Labor and Employment Alert: PPP Forgiveness Preparation and Workforce Return Plan

April 27, 2020 – We are approaching 40 days since the New Jersey Governor issued [Executive Order 107](#) on March 21, 2020 regarding when and how employers can operate during the coronavirus/COVID-19 pandemic. It seems like we are all stuck in the sequel of the Bill Murray classic Groundhog Day, with gloves and masks added this time around. But the fact is that employers are now starting to receive their Paycheck Protection Program (PPP) loan proceeds and have a limited time period to spend those monies, primarily on payroll costs. In addition, employers have to ensure they take reasonable steps, consistent with current Federal Occupational Health and Safety Administration (OSHA) guidance.

We are still awaiting the SBA regulation on forgiveness that will expand upon the statutory forgiveness provisions. Until then, however, we do have the statute to go by. We also have OSHA's guidance on what the workplace should look like, depending on where the employer falls in one of four categories of risk identified by OSHA. And let's not forget the myriad of leave requests that employers will be bombarded with that have to be handled on an individual basis.

Employers have no choice but to master the PPP forgiveness process, OSHA workplace guidance, and employee leave rights under Federal and State law. To do so, we have provided below the must-do tasks for employers to conquer during the next few months to alleviate what is likely a mass of overwhelmed employers who do not know where to start and what to do. **We are here to help so do not hesitate to send us an email for assistance.**

Without further ado:

PPP Forgiveness Preparation Checklist

- Flag, circle in red, highlight in yellow, and do anything else to mark the eight-week anniversary from receipt of the PPP loan proceeds, known as the "covered period" in the PPP statute for spending the loan proceeds.
- Designate the responsible team members at your company who will review, approve, and keep track of each and every item the PPP monies are spent on (payroll costs, covered rent obligations, covered mortgage obligations, and covered utility payments). This team should include the person(s) who will be responsible for preparation of the forgiveness application once your lender provides you with the form.
- Since the SBA recently threw out the "F" word (fraud, not the other "F" word, silly!) with regard to spending the PPP loan proceeds, provide legal counsel to the responsible team members to guide them through the PPP spending process and ensure the monies are spent properly.

OSHA Workplace Preparation Checklist

- Designate the responsible team members at your company who will review and develop an infectious disease preparedness and response plan consistent with current OSHA Guidance for [Preparing the Workplace for COVID-19](#) as well as staying current on developing OSHA guidance. This plan, at a minimum, should involve:
 - Preparation of basic infection prevention measures based upon the uniqueness of your workplace.
 - Preparation of policies and procedures to identify and handle sick employees and clients.
 - Communication plan with employees as well as protections available to them.
 - Implementation of appropriate workplace controls (engineering and administrative controls, safe work practices, and personal protective equipment (PPE)).

- Designate your workplace as lower risk, medium, high, or very high according to the OSHA pyramid.
- Provide your designated team with legal counsel to assist in review, implementation.

Workforce Leave Requests

- Designate the responsible team members who will receive and handle all employee leave requests. These persons should be required to remain current on all Federal and State employee leave laws.
- Create a central repository for employee submission of leave requests.
- Create a policy that requires all managers to report to the responsible team members all employee absences or attendance issues (whether they request leave or otherwise) in order to ensure that all available leave is given to avoid any lawsuits or regulatory actions.
- Create a form to document the handling of all leave requests under the Federal Emergency Sick Leave Act or the Federal Family and Medical Leave Act Expansion (whether granted or denied and whether your company is claiming an exemption or not to those laws).

As always, we are here for you. For more information about this Alert or any other Labor and Employment issue, please contact:

Anthony M. Rainone, Member, [Labor and Employment Practice](#), at arainone@bracheichler.com or 973-364-8372

Matthew M. Collins, Member and Chair, [Labor and Employment Practice](#), at mcollins@bracheichler.com or 973-403-3151