Employee Management During COVID-19

Nicole Cook, JD, LL.M.
Environmental and Agricultural Faculty Legal Specialist

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The Agriculture Law Education Initiative (ALEI) is a collaboration of the University of Maryland Francis King Carey School of Law at the University of Maryland, Baltimore (UMB); the College of Agriculture & Natural Resources at the University of Maryland, College Park (UMCP); and the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore. ALEI is an initiative of the University of Maryland: MPowering the State.

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Disclaimer

This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority.

State laws vary and any attempt made to discuss laws of states other than Maryland is for general information to help the viewer better understand Maryland law.

For advice about how these issues might apply to your individual situation, consult an attorney.
COVID-19 LEGISLATION

- Coronavirus Preparedness and Response Supplemental Appropriations Act
- Families First Coronavirus Response Act (Families First Act)
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
- Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act)
## Paycheck Protection Program

<table>
<thead>
<tr>
<th>Statutes</th>
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<tr>
<td>Agency</td>
<td>Small Business Administration (SBA)</td>
</tr>
<tr>
<td>Website</td>
<td><a href="https://www.sba.gov">https://www.sba.gov</a></td>
</tr>
<tr>
<td>How is it helpful?</td>
<td>Loans cover 8 weeks of payroll costs and can be forgiven</td>
</tr>
</tbody>
</table>
| Eligibility       | • Farms; small businesses; nonprofits; veteran’s organizations; other self-employed individuals (generally not more than 500 employees)  
                      • In operation as of Feb. 15                                       |
| Application Deadline | June 30, 2020                                                      |
| Where to apply?   | Must apply through a lender                                       |
## COVID-19 Economic Injury Disaster Loan Program

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| **How is it helpful?** | • Loans for small businesses (generally fewer than 500 employees)  
                       • Emergency advances of up to $10,000 that don’t have to be repaid |
| **Eligibility**   | Small agricultural enterprises and businesses with fewer than 500 employees; private nonprofits; small agricultural co-ops; sole proprietorships |
| **Application Deadline** | Program available until Dec. 31, 2020 |
| **Where to apply?** | Must apply directly on SBA’s website: [https://covid19relief.sba.gov/#/](https://covid19relief.sba.gov/#/) |
# Pandemic Unemployment Assistance Program

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| How is it helpful? | • Unemployment insurance available for jobs lost due to COVID-19  
|             | • Normal payments increase by $600 per week                              
|             | • Assistance extended to 39 weeks of benefits                             |
| Eligibility | • Must be unable to work due to one of several reasons related to COVID-19 crisis  
|             | • Includes self-employed and independent contractors                     |
| *The unemployed person himself or herself applies | In Maryland, go to [https://www.dllr.state.md.us/employment/unemployment.shtml](https://www.dllr.state.md.us/employment/unemployment.shtml) |
# Emergency Paid Sick Leave

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| How is it helpful?        | • Emergency Paid Sick Leave requires private employers to provide paid sick leave for an employee who can’t work (or telework) due to COVID-19-related circumstance  
                            • Employers can claim payroll tax credits for emergency leave wages paid to employees                                                                                                               |
| Employer Eligibility      | • Employers with fewer than 500 employees  
                            • Doesn’t matter how long the employee has worked  
                            *Note the Small Business Exception for employers with less than 50 employees whose employee seeks COVID-related sick leave because their child’s school or daycare is closed | |
| How much leave?           | • Full-time employees get 2 weeks paid sick leave (up to 80 hours)  
                            • Part-time employees get paid sick leave equal to the average number of hours they typically work in a two-week period                                                                                      |
| How much pay?             | • Employees who can’t work because they’re under quarantine orders or because they are having COVID symptoms and are seeking medical diagnosis get paid sick leave at their regular rate (100%), but not more than $511 per day and $5,110 total  
                            • Employees who can’t work because they’re caring for someone else who is quarantined or because their child’s school is closed due to COVID get paid sick leave at two-thirds their regular rate, but the amount paid cannot exceed $200 per day and $2,000 total  
                            • In addition to wages at these specified amounts, employers must also continue to provide any health care benefits that the employee taking sick leave had been receiving |
MAY 4, 2020 UPDATE: SBA HAS OPENED THE EIDL APPLICATION WEB RANCHERS

This article is not a substitute for legal advice. See here for the site's reporting policy.

May 4, 2020: SBA is now accepting new Economic Injury Disaster Loan (EIDL) and EIDL Advance applications on a limited basis only to provide relief to U.S. agricultural businesses. See below for links to the application site and a useful online tutorial about the application forms. Information from the April 28th blog post about the EIDL programs is also below.

The application is available at https://www.sba.gov/page/disaster-loan-applications.

Agricultural businesses includes those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries (as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)).

At this time, only agricultural business applications will be accepted due to limitations in funding availability and the unprecedented submission of applications already received.

For agricultural businesses that submitted an EIDL application through the streamlined application portal prior to the legislative change, SBA will process these applications without the need for re-applying.

For more information, please visit https://www.sba.gov/funding-programs/disaster-assistance.

For information about filling out the application forms, see this tutorial video from the California Small Business Development Center.
Emergency Paid Sick Leave

The employee is unable to work because:

1. The employee is subject to a federal, State, or local government quarantine or isolation order related to COVID-19
   The order must make the employee “unable to work even though his or her Employer has work that the Employee could perform but for the order.” If, “as a result of the order or other circumstances” the employer does not have work for the employee due to lack of business that’s caused by a stay-at-home order, the employee may not take emergency paid sick leave.

2. The employee been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (Note: simply being afraid of getting COVID doesn’t count.)

3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis

4. The employee is caring for an individual who is quarantined due to a government order or a health care provider’s advice (“an immediate family member, roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she self-quarantined or was quarantined”)

5. The employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions (note the Small Business Exemption for employer with less than 50 employees)
Employers don’t have to provide paid sick or paid family leave if, and only if, all of the following are true:

1. You have less than 50 employees

2. Your employee is seeking paid sick leave or paid family leave to care for his or her child because the child’s school or daycare or regular provider is closed due to COVID-19

AND

3. You can show that providing leave will jeopardize the viability of your business for one of the following reasons:

   A. Providing the requested leave would result in your business’ expenses and financial obligations exceeding available business revenues and cause your business to cease operating at a minimal capacity

   B. The absence of the employee requesting leave would entail a substantial risk to the financial health or operational capabilities of your business because of their specialized skills, knowledge of the business, or responsibilities

   C. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee requesting leave, and these labor or services are needed for your business to operate at a minimal capacity
# Paid Family Medical Leave

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| How is it helpful? | • Emergency Paid Family Leave requires private employers to provide paid leave for an employee who can’t work (or telework) due to a need to care for their child if the child’s school or place of care has been closed due to COVID-19, or because the child’s care provider is unavailable for reasons related to COVID-19  
  • Employers can claim payroll tax credits for emergency leave wages paid to employees |
| Eligibility   | • Employers with fewer than 500 employees  
  • Employee has been employed for at least 30 days  
  • *Note the Small Business Exception for employers with less than 50 employees whose employee seeks COVID-related family leave |
| How much leave? | • 10 days of unpaid leave  
  • After 10 days, employer must provide “family leave wages” for up to 10 weeks |
| How much pay? | • The first ten days for which an employee takes family leave for circumstances related to COVID can be unpaid. During those 10 days, though, they may be entitled to Emergency Sick Pay, or they can use accrued sick leave, annual leave, or other paid time off under employer’s policy.  
  • “Family leave wages” is equal to two-thirds of the employee’s regular pay, up to $200 per day and $10,000 total |
How Do Employers Pay for Sick or Family Leave?

If employers have sufficient funds in their account from money withheld from employee wages for taxes, they should use these and then seek reimbursement on their federal employment tax returns using Form 941/943 (employer’s quarterly tax return).

If they do not have sufficient funds, they can seek payment from the government upfront by filing Form 7200 (advance credit).

In either case, these payments from the government will be treated as income to the employer.

Employers are entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.

Check out the following IRS web pages for more information about the tax credits and specifically how to claim the credits.
Required Documentation for COVID-Related Sick or Family Leave

Employers must keep the following records for 4yrs. (regardless of whether leave was granted) in case of IRS audit/enforcement action:

Signed statement with 1) employee’s name, 2) date(s) leave is requested, 3) reason for leave, 4) any IRS forms submitted and 4) additional documentation required for each reason:

- Government order: need name of governmental authority issuing order
- Doctor order: name of health care provider that advised quarantine
- Experiencing symptoms, seeking diagnosis: name of health care provider, information about diagnosis and date of diagnosis (other info is required under FMLA regulations, at 29 CFR 825.306)
- Caring for someone who is quarantined: their name + FMLA required info if a parent, spouse, or child
- Caring for child due to school/daycare closure: name of child, name of school, statement that employee is only suitable person available to care for child

Employer claiming the exemption must be able to show which three factors applies to them and why
RESOURCES

• ALEI: http://umaglaw.org

• Farmers’ Legal Action Group: www.flaginc.org

• Farm Commons: https://farmcommons.org/

• USDA Service Center: https://offices.sc.egov.usda.gov/locator/app

• USDA Info. Hotline: (202) 720-2791

• Find Your State Unemployment Office: https://www.dol.gov/coronavirus/unemployment-insurance#find-stateunemployment-insurance-contacts

• SBA Disaster Assistance Customer Service Center: https://disasterloan.sba.gov 1-800-659-2955 | TTY: 1-800-877-8339

• SBA Coronavirus Relief Options: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options

• SBA EIDL Application: https://covid19relief.sba.gov/#/

• Lenders for PPP: https://www.sba.gov/document/support--paycheck-protection-program-participating-lenders
TIPS

• Recordkeeping is critical!
• Contact agencies and lenders right away
• You might need a farm number
• Double check deadlines
• Some programs have appeals processes
• Be wary of loan or debt modification scams
• Be patient and care for yourself
QUESTIONS?

You have Goat to be Kidding

Image from thefunnybeaver.com
Stay safe and
Thanks for all you do!

Nicole Cook, LL.M.
410-651-6182
nlcook@umes.edu

Website: www.umaglaw.org
Twitter: @MdAgLaw
Facebook: www.facebook.com/MdAgLaw
Email: umaglaw@umd.edu