

# **Business Survival Guide in a Crisis: Coronavirus, COVID-19**

## **Solutions for Small Businesses**

*How to Pivot in the COVID-19 Pandemic* by Shannon Flumerfelt, Ph.D.

*Small Business Survival in the Virus Crisis* by Dick Ayotte, CVA

*Lessons from Y2K, 9-11 and the Great Recession* by Harry Haigley, MBA-CVA

*Practical and Legal Considerations in Crisis Employee Management* by Phyllis J. Towzey, B.C.S

*Navigating Disaster Loan Assistance* by Harry Haigley, MBA-CVA

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# CONTENTS

How to Pivot in the COVID-19 Pandemic.....	3
Small Business Survival in the Virus Crisis .....	5
Lessons from Y2K, 9-11 and the Great Recession.....	6
Practical and Legal Considerations in Crisis Employee Management .....	7
Overview.....	7
Health and Safety of Employees and Other Constituents .....	7
Legal Compliance.....	8
Understanding the Families First Coronavirus Response Act .....	8
The Emergency Paid Sick Leave Act .....	9
The Emergency Family Medical Leave Expansion .....	10
Exclusions for Health Care workers and Emergency Responders.....	11
Tax Credits for Paid Sick and Paid Family and Medical Leave.....	13
Penalties for Noncompliance .....	13
Compliance with Other Federal Discrimination Laws.....	14
Cost-Effective Management of Human Resources .....	14
Long-term Practical Considerations .....	15
Navagiting Disaster Loan Assistance.....	17
Small Business Administration .....	17

# HOW TO PIVOT IN THE COVID-19 PANDEMIC

**By Shannon Flumerfelt, Ph.D., Founder of Charactership Lean Consulting**

The current business challenges are significant due to the health, economic and financial stressors caused by the global COVID-19 pandemic. Businesses of all sizes and in all sectors are dealing with external conditions forcing responses to largely unforeseen conditions, such as temporary regulations and orders, abrupt changes in the marketplace and customer access, and the deterioration of society's mindset for the immediate future.

The need to pivot, therefore, is present and pressing on businesses. The questions for most businesses are:

- 1) Where to pivot? (Where are my customers now?),
- 2) How to survive this quarter and the next few? (Where can I gain efficiency, effectiveness and relevance?), and
- 3) How deeply to adapt my business model? (How much cost and risk should I invoke to adapt?).

All businesses, to some degree, even those who benefit from this crisis, are faced with the imminent need to respond in new and different ways to a disrupted and emerging marketplace. It is hoped that businesses will benefit from federal programs, new legislation and limited regulatory enhancements, and other factors.

However, regardless of the business, the need for crisis management is a new reality. And just beyond crisis management, the need to sustain and even accelerate the business should also be under consideration. This may seem like a difficult proposition, to move from crisis to sustainability to success, but it is possible.

First, a quick reset of paradigms and mindsets is needed, followed by enriched decision making, clearer strategies and realigned tactics. This positive journey is possible through the use of Lean, particularly when Lean is used by executives, business owners, and business leaders and managed throughout the business enterprise.

The Lean performance management system is the world-class standard for business. Lean has been around for decades and has been widely tested and enriched over time to be useful globally in all sectors and sizes of businesses.

Two guiding tenets of Lean are:

- a) *Respect for People* is an overriding, ever-present framework, and
- b) *Continuous Improvement* is an overlapping and adjoined focus.

Lean has over 50 tools that are used to drive a) Respect for People using b) Continuous Improvement. The used of Lean tools, therefore, is founded on disciplined thinking routines and habits of mind. In other words, the formula for Lean is that *thinking drives doing* at all times.

Here are some suggestions to help you better understand how to begin to use Lean. The table below lists a set of tested Lean paradigms and methods to move your business from crisis management to sustainability to success. I have used these paradigm/method combinations with past clients.

Time	Approach	Paradigms	Methods/Explanations
SHORT-TERM	<b>Crisis Management</b>	-Step into the Leadership Role	-Use Data for Decisions and Understand the Problem. <i>Do not let emotions rule; Identify barriers and remedies.</i>
		-Build Trust	-Put Safety First and Follow Compliance. <i>Respect people; Communicate commitments; Abide by rules.</i>
		-Seek Out Value	-Prioritize Customers, Goods/Services, Programs. <i>Understand how customer needs have changed and focus on value-added adaptations.</i>
		-Develop Pull	-Focus on Improvement. <i>Increase ease/efficiency to access effective/relevant offerings.</i>
MID-TERM	<b>Sustainability</b>	-Standardize Around Value	-Ensure Best Practice Work and Customer Interfaces. <i>Discover new value and align processes, procedures, policies.</i>
		-Adjust to Lessons Learned	-Show Data-Driven Agility; Justify Improvements as Solutions. <i>Use data throughout to show, test and deploy new solutions.</i>
		-Identify Assets and Rely on Your Team	-Leverage and Incentivize Social and Capital Assets. <i>Watch for, incentivize, use, reward all applied asset strengths.</i>
		-Conduct Leader Standard Work	-Test, Improve, and Ensure Adherence to New Solutions. <i>Manage solutions that work and use standardization well.</i>
LONG TERM	<b>Success</b>	-Focus on Opportunities in Mission, Vision, Goals	-Establish Strategic Planning and Management. <i>Distinguish and lead around plans for short-term improvement, disruptive innovation and deep transformation.</i>
		-Use Zero-Defect Thinking	-Test and Improve All Hypotheses for Key Performance. <i>Test for worst case/cyclical scenarios for resilience or longevity.</i>
		-Establish Tactical Clarity	-Set, Enable and Enforce SMART Goals on a Daily Basis. <i>Set resources/methods for purposeful, chunked, timed work.</i>
		-Commit to Continuous Improvement	-Set Up Feedback Loops; Improvement Structures, Methods. <i>Place resources and enablers around strategic and tactical needs; Vigilantly seek out feedback and use it to improve.</i>

It is time to pivot your business! The ideas presented above should help you to move through crisis planning to sustainability to success.

Let Charactership Lean Consulting help you to navigate to outstanding results beginning with a free, no obligation consultation.

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# SMALL BUSINESS SURVIVAL IN THE VIRUS CRISIS

**By Dick Ayotte, CVA, Business Value Center, Inc.**

While the Corona Virus promises to exact an awesome toll on humanity, most of us will survive and life will go on, if only a bit more conscious of how fragile life is and how powerless we are to control everything.

In its wake too, countless businesses will be challenged, some will be brought to their knees never to rise again, some will keep on getting by somehow, and some will find a way to thrive. Sir Winston Churchill is credited with saying “never let a good crisis go to waste.” Well, here we are. What are we going to do about it?

Churchill’s famous expression sounds like a contradiction and one has to think twice before realizing its genius. The good thing about a crisis is that it holds the key ingredient for survival: a sense of urgency. All at once, actions that were once believed to be optional or impossible are now essential if we are to keep our footing and continue to thrive.

When times are good (whatever that means), our companies provide products and services somewhat automatically. Supply lines are well established and fulfill our needs for raw materials, operational and technological systems operate as expected most of the time, and sales channels consume our goods and services with sufficient margin to pay operating costs and provide a profit that enables growth and expansion.

Then, out of the blue, a medical crisis immediately morphs into an economic crisis and within days our idyllic corporate worlds are shaken to the core. Complacency is replaced by urgency. Now, as in right now, every conceivable opportunity that might make a positive difference must be explored. Good times complacency protected you from having to do this. But now, in a state of economic crisis, there is no excuse and there is no alternative.

Nothing exposes the flaws in our companies more readily, or brutally, than an economic crisis. We could have paid consultants tens or hundreds of thousands of dollars to discover what the crisis has done for free. And for that, we should be grateful.

Except for a few outliers, the economic crisis has reduced our companies’ values and, by extension, diminished our personal wealth. That’s sad, maddening even. But look at the bright side: it has also laid bare a blueprint for gaining it all back.

Now, is the time for thinking about (and acting on) streamlining processes and testing new tools and technology. It’s time to take a critical look at the concentrations in our supply chains and customer lists and finding ways to reduce both. It is important to remember that this economic crisis is not limited to us and our existing contractors and clients. Virtually everyone outside of our immediate orbit is also affected. And because of that, finding and negotiating new deals at both ends of the chain will probably never be easier than right now.

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# LESSONS FROM Y2K, 9-11 AND THE GREAT RECESSION

**By Harry Haigley, MBA-CVA, Business Value Center, Inc.**

We are nationally certified to provide valuations of businesses, private and public. Our work is recognized by the IRS, SBA, banks and courts. I have been doing this for 20 years. This means that I held face-to-face conversations with hundreds of successful small business owners, an average of about one or two a week. Some of the conversation was personal to them. Most was about how they run their business.

Here's what I learned from them during and after Y2K, 9-11 and the Great Recession:

- Successful small business owners “see across the great divide.” They don't know when it will end but they are confident that it will end. They are planning on how to recover quicker than competitors. They are setting up growth contingencies.
- Small business owners are the only decision maker in their company. At the same time, they constantly seek the opinions of employees, vendors and trusted advisors.
- They are self-directed. They will take some advice but not much. They focus on employees and customers. Their view is “I will control what I can control. I will try to ignore what I cannot control.”
- In a crisis, they think, think and think some more.
- Trust is huge. It becomes more important in a crisis.
- They are very, very dedicated to employees. Many times, I heard a business owner say, “Everyone got paid today but me.”
- You fit their business culture, or you don't. There is no in-between. New employees are quickly “in” or “out.” This is more so in a crisis.
- The first costs to be cut are building and plant improvements or repairs, (obviously) pay raises, advertising, and discretionary recurring costs.

Small businesses are built by optimists. A crisis can't kill that.

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# PRACTICAL AND LEGAL CONSIDERATIONS IN CRISIS EMPLOYEE MANAGEMENT

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## Overview

In any crisis situation, businesses of all sizes face challenges in management of their workforce. This is particularly true where the circumstances precipitating the crises are projected to extend over an indeterminate period of time, as is the case with the current COVID-19 pandemic.

Balancing the rights between the business, the workforce, and individual employees from both a short-term and long-term perspective is critical. Primary concerns are the health and safety of the business' employees and other constituents and ensuring legal compliance in all personnel actions. Secondary but nonetheless important concerns include cost-effective management of the company's human resources and making personnel decisions that position the company for increased productivity when the crisis has passed.

## Health and Safety of Employees and Other Constituents

A primary goal is for the business to take all reasonable steps to safeguard the health and safety of its employees and other constituents, such as customers, vendors, independent contractors, and the general public.

The first step in accomplishing this is to obtain information from reliable sources. Currently, the Department of Labor recommends the following resources from the Occupational Safety and Health Administration (OSHA) to help employers prepare for and respond to the COVID-19 threat in the workplace:

- [OSHA Guidance on Preparing Workplaces for COVID-19](#)
- [Temporary OSHA Guidance on Respiratory Protection Standard](#)
- [COVID-19 Webpage](#)

Another reliable source for general information regarding the coronavirus threat is the Centers for Disease Control and Prevention (CDC) website: <https://www.cdc.gov/>

Plan on checking these resources often, as information and best practices can change rapidly.

Use common sense and, where appropriate, make changes in the way you do business. This can include:

- Permitting (or requiring) employees to work from home, where feasible (make sure accurate time records are kept)

- Being flexible with work schedules either at the company location or from home, as employees may also be juggling childcare or caregiver responsibilities
- Don't be afraid to send employees home if they are exhibiting symptoms, or if they tell you they have been exposed
- Provide resources such as hand sanitizer, soap, disinfectant wipes, and tissues in the workplace
- Discontinue in-office meetings in conference rooms, and meet by telephone, Skype, or other electronic means
- Remind employees to stay a reasonable distance apart, and not to gather in breakrooms or other common areas
- Ensure that additional office cleaning measures are taken, such as disinfecting door handles, elevator buttons, and other commonly touched surfaces regularly
- Suspend disciplinary policies related to attendance (You don't want employees to conceal symptoms out of fear of being fired for missing too much work)
- Limit the access of nonemployees to the work premises
- Look for creative ways to serve your customers' needs while avoiding personal contact between customers and employees to the extent practicable
- Ask your employees for suggestions as to additional changes in the workplace to discourage the spread of COVID-19 (but remember to vet suggestions at a reliable source)
- Consider whether it makes sense to furlough or lay off certain categories of employees (discussed more fully below)

Taking reasonable steps to protect the health and safety of your employees and other constituents may slow down business operations during the crisis, but it can also help ensure that your business – and your employees – survive the crisis and are able to resume normal operations at a later date.

### Legal Compliance

It is critical for a business to consult with labor and employment law counsel regarding changes to the laws governing employment practices during a crisis such as the COVID-19 pandemic, to ensure that the business remains compliant. Failing to comply with the law could leave the business at risk not only for enforcement action by government agencies (including fines and penalties), but also civil liability to employees who file legal actions against the company.

### Understanding the Families First Coronavirus Response Act

**IMPORTANT NOTE:** THIS ANALYSIS IS CURRENT AS OF March 30, 2020. THE ANALYSIS CONTAINED HEREIN IS SUBJECT TO CHANGE AS REGULATIONS ARE PROMULGATED.

On March 18, 2020, Congress passed the Families First Coronavirus Response Act, which includes the Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Expansion Act. These laws go into effect on April 1, 2020, and they change (for now) the way sick leave and FMLA leave is treated.

A copy of the full text of this Act is available here:

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

Please note that this law contains many other provisions unrelated to employment, pertaining to areas such as health care, veterans' services, social services emergency funding, school lunches, SNAP, and more, all related to a public health emergency. Also contained in the Act are specific provisions regarding federal funding for unemployment benefits, which also is not discussed here.

### The Emergency Paid Sick Leave Act

Under the Emergency Paid Sick Leave Act (Section 5101 *et seq*) employers must provide additional paid sick leave to employees specifically for COVID-19 related issues. (Note: There are some exemptions for health care workers and emergency response personnel, which is discussed separately below). An employer cannot require an employee to use up their Paid Time Off (PTO) before using the paid leave provided for under this law. This law, which applies to all companies with up to 500 employees, provides that employees can take leave if:

- The employee is subject to a quarantine order
- A health care provider instructed the employee to self-quarantine
- The employee is experiencing symptoms of COVID-19

The employer must pay the employee their regular rate up to a max of \$511 per day for two weeks (i.e. 10 workdays) for full time employees (prorate it for part time employees – they would get paid for the number of days they ordinarily work in a two-week period).

Employees may also take this leave under the following conditions, but are only paid up to \$200 per day:

- Caring for an individual who is quarantined
- School closed and no childcare is available for the Employee's minor children\*
- Other conditions to be specified by the Department of Health and Human Services and the Department of Labor

\*(There is a provision in the law that the Secretary of Labor may promulgate regulations that would exempt a business with less than 50 employees from providing leave under No. 5 above if such leave would "jeopardize the viability of the business as a going concern.")

The employer then receives a tax credit off their FICA contribution in the amount paid to employees, as explained in more detail below. The idea is that the government is in effect paying for this – but it’s coming out of the business’s pocket first.

Until regulations are released, it is not entirely clear how this law will be applied with respect to salaried exempt employees. Under the Fair Labor Standards Act (FLSA), if an exempt employee works any part of a week, they must be paid their full salary for that week. The FLSA does provide, however, for absences to be deducted from a bona fide sick leave plan and, once those days/hours are exhausted, an exempt employee’s salary may be docked for full-day absences. However, under the Act, an employee cannot be required to exhaust their sick leave before using the emergency paid sick leave, which would indicate that the employer could not deduct a COVID-19 related absence from the exempt employee’s sick leave bank.

The best practice at this point, pending further clarification in the upcoming regulations, is to count the first 10 days of absence as protected under the Act and don’t deduct from the sick leave bank. If the exempt employee then goes out on FMLA, use any accrued sick leave in their bank to pay them at their regular salary level for those initial two weeks (or until their sick leave bank is exhausted). Then pay them in accordance with the Emergency Family Medical Leave Expansion Act.

### The Emergency Family Medical Leave Expansion Act

The new Emergency Family Medical Leave Expansion Act (Section 3101 *et. seq.*) also applies to all employers up to 500 employees, not only to employers with 50 or more employees covered under the original FMLA. The Act specifically provides that the Secretary of Labor can issue regulations that would exempt small businesses with fewer than 50 employees from the paid leave requirement described below if that requirement “would jeopardize the viability of the business as a going concern.” However, those regulations have not been issued yet. (Note: There are some exclusions for health care workers and emergency response personnel, which is discussed separately below).

In addition to removing the 50 employees requirement in the FMLA this new leave eligibility, the law adds the following as a basis for FMLA leave: “a qualifying need related to a public health emergency.” COVID-19 is, of course, a public health emergency. The law defines a qualifying need as: “the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

Under the Act, the employees can take up to 12 weeks off if they are needed to care for a child under age 18 if the schools have been closed by a government order and no daycare is available. This leave is available to all employees who have been employed at least 30 days. The first two

weeks are unpaid (because they are already being paid under the Emergency Sick Leave Act discussed above).

After the first two weeks:

- Employee must be paid at 2/3 of regular rate
- Pay is capped at \$200 per day and \$10,000 in aggregate over the full ten weeks

The job restoration requirement at the end of the FMLA leave has been relaxed somewhat for employers who have less than 25 employees, if the position no longer exists due to business changes that resulted from the effect of COVID-19 on the business. However, the employer must make reasonable efforts to restore the employee to a similar job, and if there is none, must contact the employee later if one becomes available. The obligation to contact the employee continues for one year from the earlier of the date the public health emergency ends or the date the employee began their leave. (See Section 3102 (b), amending FMLA 29 U.S.C. 2611 *et seq* to add Section 110, Public Health Emergency Leave, amending Section 104(a)(1) Restoration to Position).

As of now, this expansion of the FMLA is in effect until December 31, 2020.

It is anticipated that regulations will be issued by the Department of Labor in mid-April 2020 that will hopefully provide more clarity.

The best practice for employers right now – particularly since changes in the law and regulations to be promulgated under it can occur rapidly - is not to make any decisions about sick leave or other leave related to COVID-19 without contacting labor and employment law counsel first.

Note that this Act does not affect sick leave or FMLA leave for any other reason separate from the current COVID-19 threat to public health.

### Exclusions for Health Care workers and Emergency Responders

Both laws authorize the Secretary of Labor to provide certain exclusions for “health care workers and emergency responders,” but neither law defines those terms.

Although as of March 30 the Department of Labor (DOL) has not promulgated official regulations yet, the DOL has posted a list of FAQ’s on its website that provides at least a preliminary definition of those terms. See <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Under FAQ No. 56, the DOL defines “Health Care Provider” under the Act as follows:

*For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or*

*entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.*

*This definition includes any individual employed by an entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.*

*To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt health care providers from the provisions of the FFCRA.*

Under FAQ No. 57, the DOL defines “Emergency Responder” under the Act as follows:

*For the purposes of employees who may be excluded from paid sick leave or expanded family and medical leave by their employer under the FFCRA, an emergency responder is an employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.*

*To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.*

Until the regulations are released, it makes sense to review not only the above definitions but also to keep in mind the definitions of COVID-19 “essential critical infrastructure workforce” that have been compiled by the U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA). Workers holding these jobs are, in the guidance released by CISA, critical to maintaining the country's infrastructure during this period of crisis. The guidance and the full list is available here:

[https://www.cisa.gov/sites/default/files/publications/CISA\\_Guidance\\_on\\_the\\_Essential\\_Critical\\_Infrastructure\\_Workforce\\_508C\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf)

Understand, however, that the CISA list is much broader than the terms “health care workers and emergency responders” noted in the Act, as it also includes agricultural workers, bank employees, and a number of other categories. However, it can be helpful to review who the DHS includes as “health care and public workers” in its definition, specifically: “Hospital and laboratory personnel, caregivers, mental health workers, doctors, nurses, researchers, pharmacists, dentists, social workers, technicians, as well as funeral home and cemetery workers.”

The DHS defines “law enforcement, public safety, and first responders” as: “Emergency management personnel, including police officers, firefighters, paramedics, and emergency medical technicians. The list also includes 911 call center workers and those who oversee emergency service operations” and has a separate category for “Other community-based government operations and essential functions,” which are defined as: “Elections personnel, building employees, security staff, trade officials, weather forecasters, customs workers, and educators.”

To be clear, no one would be excluded from taking leave if they are in fact quarantined because they have contracted COVID-19, but employees on the excluded list would be ineligible to take time off for childcare due to school closings.

We can anticipate more clarity once the Department of Labor promulgates specific regulations to guide businesses in compliance with the Act. For now, Employers can rely on the definitions on the DOL website’s FAQs in making immediate decisions. Employers should continue to monitor the Department of Labor website at [www.dol.gov](http://www.dol.gov), and consult with labor and employment counsel for assistance.

### [Tax Credits for Paid Sick and Paid Family and Medical Leave](#)

Under Sections 7001 and 7003, of the Act, employers can take 100% credit against the tax imposed by Section 3111(a) or 3221(a) of the Internal Revenue Code for qualified sick leave or emergency FMLA leave paid to employees.

Sections 7002 and 7004 contain provisions for self-employed individuals to take credit against their taxes for qualified leave they would have been eligible for if they were employed by an employer instead of by themselves.

### [Penalties for Noncompliance](#)

Under the Emergency Paid Sick Leave Act, an employer who discharges or otherwise retaliates against an employee for taking leave under the Act or filing a complaint about noncompliance under the Act, will be treated as if they failed to pay minimum wages under the Fair Labor Standards Act, and subject to liquidated damages (2 x amount owed) and other penalties imposed by the Department of Labor. (See Section 5101).

The penalties for noncompliance under the original FMLA also apply to this new expansion, with the exception that a business with less than 50 employees may not be subject to a civil lawsuit under Section 107(a) of the FMLA. (I say ‘may’ because the language is not altogether clear on this point.) Such businesses, however, would still be subject to enforcement action by the Department of Labor. (See Section 3014).

## Frequently Asked Questions on the Family First Coronavirus Response Act

Understanding and navigating the relationship between new leave entitlements under the Act, a company’s regular leave policies, and federal and state laws governing the workplace can be challenging for both employers and employees, particularly when no official regulations interpreting the Act have yet been released.

To assist with compliance until the regulations are issued, the DOL has published a list of 59 FAQs on its website: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

This should be your first stop for questions such as how leave is administered, eligibility, what documentation may be required, whether employees can combine emergency paid leave and regular sick leave, how intermittent FMLA leave is handled, specific questions about teleworking, and other issues.

Once the regulations are issued, they will likely contain more detailed compliance information than is currently addressed in the FAQs.

## Compliance with Other Federal Discrimination Laws

The EEOC has issued a new fact sheet (updated March 19, 2020) describing actions employers may now take regarding job applicants and existing employees that would ordinarily be considered violations of the Americans with Disabilities Act (ADA) but are now deemed appropriate in the interests of public health.

These include additional health information you can obtain from an employee who calls in sick, taking the temperature of employees when they report to work, requiring that employees who exhibit symptoms stay home, issues involving requirement of doctors’ notes, screening job applicants for COVID-19, and withdrawing job offers.

The fact sheet is in a user-friendly format and is available here:

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

So long as a business applies these new requirements without regard to race, sex, disability, national origin, religion, and any other legally protected class, they will not run afoul of the employment discrimination laws.

## Cost-Effective Management of Human Resources

The paid leave provided for under the Families First Coronavirus Response Act contemplates an ongoing business that continues its operations while some of its employees need time off for one

of the COVID-19 related issues enumerated in the Act. However, not all businesses are able to maintain normal operations during the crisis.

Consider whether you need to lay off or furlough employees. In many cases it's better to take that action now, rather than deplete the company's resources trying to stay in business when revenue is not being generated. Being in a position later to reopen and recall your employees is better than struggle on until the business fails.

For example, a restaurant that can now only provide take-out services due to a government directive does not need the same number of servers and table bussers. Likewise, a business that caters to the tourist industry does not need the same number of employees when there are few if any customers buying their products or using their services. In this situation, employees can be laid off or furloughed, and will be eligible for unemployment compensation.

A lay off is a permanent termination of employment. The employment relationship is severed, although you certainly could rehire an employee at a later date. If they were part of an employee group health insurance plan, the terminate then triggers their rights under COBRA.

A furlough is not permanent. It could be recurring (as in, employees are directed not to come to work every other week, or to come in for reduced hours), or it could be for an indefinite period going forward (as in, don't come back to work until we recall you). A furloughed employee is still an employee of the business – it's like being on an unpaid leave of absence. Businesses should check with their group health insurance provider regarding coverage during this time. Many health insurance plans have a minimum hours of work requirement for employees to remain eligible.

It remains legal and appropriate for a business to lay off or furlough employees for normal business reasons, or due to the changing needs of the business that result from COVID-19. However, a business cannot lay off or furlough an employee because they request time off due to COVID-19 or because the business owner anticipates the employee might request such time off.

### Long-term Practical Considerations

Before making any decisions regarding short-term employee management during the crisis, it is good planning to consider the impact of those decisions in position the company for increased productivity when the crisis has passed. Consider the following factors:

- Are there sound business reasons for employee retention? In some cases, it may be worthwhile for a business to provide extended partial-paid leave in excess of what is required under the Act in order to retain employees the business wishes to recall in the future. Consider not just the costs to be incurred now, but also the future cost of training new employees if you must replace your entire workforce.
- Are there other assignments you can give employees instead of their regular duties? The Internet was recently charmed by the Twitter feed of the head of security at a

museum who was reassigned to social media duties when the museum closed to the public as a result of COVID-19.

- What steps can you and your employees take to maintain customer relationships while you are unable to provide your normal services? When the crisis is over, you will want those customers to return.

Remember, how you treat your employees can impact the reputation and goodwill of your business long after the crisis has passed. In dealing with employees during this or any similar crisis the key is transparency and effective communications. Even if you don't have all the answers – and few businesses do in the midst of a crisis – making an effort to keep employees informed regarding the status of business operations goes a long way to ease whatever difficult decisions must be made.

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# NAVIGATING DISASTER LOAN ASSISTANCE

## Small Business Administration

By Harry Haigley, MBA-CVA, Business Value Center, Inc.

### **\$10,000 Advance Available on Economic Injury Disaster Loan**

On March 30, the SBA posted the following:

*“We know you are facing challenging times in this current health crisis. The U.S. Small Business Administration is committed to help bring relief to small businesses and nonprofit organizations suffering because of the Coronavirus (COVID-19) pandemic.*

*On March 27, 2020, President Trump signed into law the CARES Act, which provided additional assistance for small business owners and non-profits, including the opportunity to get up to a \$10,000 Advance on an Economic Injury Disaster Loan (EIDL). This Advance may be available even if your EIDL application was declined or is still pending and will be forgiven.*

*If you wish to apply for the Advance on your EIDL, please visit [www.SBA.gov/Disaster](https://www.sba.gov/disaster) (<https://www.sba.gov/funding-programs/disaster-assistance>) as soon as possible to fill out a new, streamlined application. In order to qualify for the Advance, you need to submit this new application even if you previously submitted an EIDL application. Applying for the Advance will not impact the status or slow your existing application.*

*Also, we encourage you to subscribe to our email updates via [www.SBA.gov/Updates](http://www.SBA.gov/Updates) and follow us on Twitter at @SBAgov for the latest news on available SBA resources and services. If you need additional assistance, you can find your local SBA office and resource partners at [www.SBA.gov/LocalAssistance](http://www.SBA.gov/LocalAssistance). If you have questions, you may also call 1-800-659-2955.”*

Two things to note about the application process:

1. You will need your bank routing number. This number may not be on a business checking account check.
2. You must answer this question:  
*“Applicant does not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.”*

## **Economic Injury Disaster Loan**

*As of March 30, 2020. Updates will be provided.*

The web site: <https://disasterloan.sba.gov/ela/Account/Login/>.

Key Facts:

- Deadline is December 18, 2020.
- On March 18, 2020, the SBA declared all Florida businesses and non-profits in Florida as eligible for disaster loan assistance.
- The program is retroactive to January 31, 2020.

The SBA says:

### **Economic Injury Disaster Loans (EIDL)**

“If you have suffered substantial economic injury and are one of the following types of businesses located in a [declared disaster area](#), you may be eligible for an SBA Economic Injury Disaster Loan (EIDL):

- Small business
- Small agricultural cooperative
- Most private nonprofit organizations

### **Loan Amounts and Use**

Substantial economic injury means the business is unable to meet its obligations and to pay its ordinary and necessary operating expenses. EIDLs provide the necessary working capital to help small businesses survive until normal operations resume after a disaster.

The SBA can provide up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. Your loan amount will be based on your actual economic injury and your company's financial needs, regardless of whether the business suffered any property damage.

### **Eligibility and Terms**

The interest rate on EIDLs will not exceed 4 percent per year. The term of these loans will not exceed 30 years. The repayment term will be determined by your ability to repay the loan.

EIDL assistance is available only to small businesses when SBA determines they are unable to obtain credit elsewhere.

A business may qualify for both an EIDL and a physical disaster loan. The maximum combined loan amount is \$2 million.”

## Data Needed for SBA Economic Injury Disaster Loan Application<sup>1</sup>

The website: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>.<sup>2</sup>

The application process may take from 2 to 4 hours **IF** you have all the information that you need on hand before you begin. Data you are very likely to have at hand: name, address, contact information, legal name of the company, percentage ownership, etc.

Information that you may need to get in advance:<sup>3</sup>

- Federal Employer Identification (FEI) number
- Details on business interruption insurance, if you have it.
- Whether you “have been engaged in the production of any product or services that has been determined to be obscene by a court of competent jurisdiction.”
- Contact information on anyone who helped you prepare the application and the fees paid.
- If you are seeking physical damage loans and, if so, what was damaged.
- Home ownership:
  - Date of purchase of the home
  - Original cost
  - Current value
  - Mortgage account number
  - Mortgage balance
  - Monthly payment
  - Status of the mortgage (current)
- Assets:
  - Cash on hand
  - Savings account
  - Life insurance surrender value
  - Value of stocks and bonds
  - Value of autos, loans on cars, monthly payments
- Other assets
- Liabilities: debt and other liabilities including credit card balances

General advice: It make up to five minutes for the software to enter individual elements of data (round spinning circle while you wait). Be patient. If, for example, you are uploading a document, push the upload button as many times as needed for the document to be accepted. In one case, it took 65 button pushes. Frequently push the “Save” button on the upper right. There are five

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<sup>1</sup> This is not an SBA document, but the information reflects the experience of one loan applicant.

<sup>2</sup> All Florida counties were included in the program on March 18, 2020 retroactive to January 31, 2020 with a deadline of December 18, 2020. Business interest rate is 3.750. Non-profit interest rate is 2.750.

<sup>3</sup> This is not a complete list but illustrates data that may require research.

application pages. Be prepared to start over if the page drops, i.e. print as you go so you retain the information if the page drops.

### **Florida Small Business Emergency Bridge Loan Program**

*As of March 30, 2020. Updates will be provided.*

The web site: <https://floridadisasterloan.org/>

#### **Key Facts:**

- Deadline for application: May 2, 2020.
- Florida provides short-term, interest-free working capital loans.
- The loans are intended to “bridge the gap” between now and when longer-term recovery, revived sales and profits occurs, receipt of business interruption insurance or receiving an SBA crisis loan.
- Businesses must be in place prior to March 9, 2020.
- One loan per eligible business.
- Up to \$50,000 for each eligible business. Loans of up to \$100,000 may be made in special cases.
- Loans must be repaid in full. This is not a grant.

Loans are interest free for one year. The interest rate will then be 12% annually.

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