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A blue rectangular graphic with white and red text. At the top right, 'COVID-19' is written in large white letters, with '19' in red. Below it, 'RESPONSE TEAM' is written in white. Underneath that, the email address 'COVID19@APPLEGROWTH.COM' is written in smaller white letters. On the left side, there are two red, spiky virus-like icons. At the bottom left, the Apple Growth Partners logo is repeated in smaller white text: 'APPLE GROW+H PARTNERS Healthy Growth.'. At the bottom right, the text 'YOUR PARTNERS FOR NAVIGATING COVID-19 UPDATES FOR BUSINESS OWNERS' is written in small white letters.

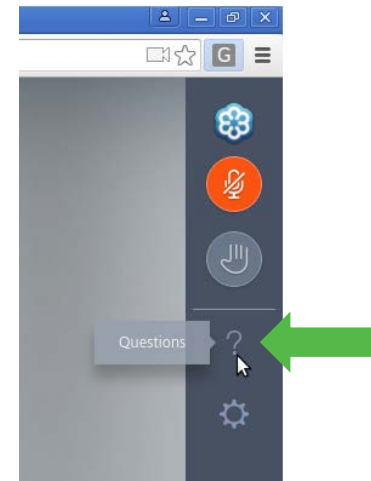
COVID-19
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YOUR PARTNERS FOR NAVIGATING
COVID-19 UPDATES FOR BUSINESS OWNERS

COVID-19 Legislation Employment, Unemployment and Payroll Tax Relief

PRESENTED BY KATHY DAVIS, ROBERT JACKSON, AND SUE PEIRCE
SPECIAL GUESTS - MAX DEHN AND MADILYN MARUNA - CAVITCH

Welcome

- + All attendees are placed on listen-only mode
- + Submit a confidential question at any time
- + Questions will be reviewed by our team and followed up after the webinar
- + Contact information will be provided
- + Today's webinar recording will be sent via email within 2 hours



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COVID-19 Response Team

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+ **FAMILIES FIRST CORONAVIRUS RESPONSE ACT FACT SHEET**
+ **Emergency Family and Medical Leave Act**

+ **Effective Date:** April 1, 2020

+ **Expiration Date:** December 31, 2020

+ **Covered Employer:**

- + Private employers with fewer than 500 employees and certain public employers.
- + Small businesses with fewer than 50 employees MAY be exempt when the imposition of these requirements would jeopardize the viability of the business. Small businesses will need to apply for this exemption benefit to be considered exempt from compliance, but information on this process has not been released.

+ **Eligible Employee:**

- + Any full-time or part-time employees that has been on your payroll for 30 calendar days.
- + Excludes employees who are health care providers or emergency responders.

+ **Reason for FMLA Leave:**

- + Eligible employees are entitled to take up to 12 weeks of FMLA leave for “a qualifying need related to a public health emergency.”
- + Employee is unable to work (or telework) to care for a minor child if the child’s school or place of childcare has been closed or is unavailable due to a public health emergency.

+ **How Much Pay is Required during FMLA Leave?**

- + The first 10 days are unpaid, but employers may substitute accrued paid leave, including emergency paid sick leave (see Emergency Paid Sick Leave Act later in this document).
- + Remaining 10 weeks are paid at 2/3 of the employee's regular rate, for the number of hours the employee would otherwise be scheduled to work.
- + Maximum payment of \$200 per day and \$10,000 total.

+ **Small Employers Can't Be Sued:**

- + Law exempts employers with fewer than 50 employees from civil FMLA damages in an FMLA lawsuit.

+ **Restoration to Position After Leave Ends:**

- + Emergency FMLA leave is job-protected for employers with 25 or more employees.
- + Employers with fewer than 25 employees have an exception to this requirement if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency. Employers do need to make reasonable efforts to contract a displaced employee for up to one year after they are displaced if an equivalent position becomes available.

+ Tax Credits:

- + Refundable tax credits (equal to 100 percent of qualified family leave wages required to be paid by the Emergency Family and Medical Leave Expansion Act that are paid by an employer for each calendar quarter) for employers providing paid emergency sick leave or paid FMLA.

+ **Emergency Paid Sick Leave Act**

- + **Effective Date:** April 1, 2020
- + **Expiration Date:** December 31, 2020
- + **Covered Employer:** Any of the following:
 - + • Private employer with fewer than 500 employees
 - + • Public agency
 - + • Any other entity that is not a private entity (this is not defined)
 - + • Anyone acting directly or indirectly in the interests of the employer (this is not defined)
- + **Eligible Employee:** All employees are immediately eligible

+ **Reason for Sick Leave:** All employees who are unable to work or telework because:

+

- + 1. Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- + 2. Employee has been advised by a health care provider to self-quarantine because of COVID-19;
- + 3. Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- + 4. Employee is caring for an individual subject or advised to quarantine or isolation;
- + 5. Employee is caring for a child whose school or place of care is closed, or childcare provider is unavailable due to COVID-19 precautions; or
- + 6. Employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

- + **How Much Paid Leave Is Required?** Employees are entitled to the following:
 - + • Full-time employees: 80 hours at regular rate of pay for reasons 1-3. a
 - + • Full-time employees: Two-thirds the employee's regular rate for reasons 4-6.
 - + • Part-time employees: The number of hours that the employee works, on average, over a 2-week period.
 - + • Law limits paid leave to \$511 per day (\$5,110 in total) when leave is taken for reasons 1-3; i.e. an employee's own illness or quarantine.
 - + • Law limits paid leave to \$200 per day (\$2,000 in total) when leave is taken for reasons 4-6; i.e. when caring for others or school closures.

+ Sequence of and Rules for Leave

- + **Requires that employers allow employees to first use sick leave as provided under this sick leave law, then decide to use any remaining accrued paid leave under an employer's policy.**
 - + Employer cannot require employees to use accrued leave under an employer policy first.
 - + Any paid leave provided by an employer before the law is effective cannot be credited against the employee's paid leave entitlement. Hours cannot be carried over after 12/31/20 and an employee's right to take paid sick leave ends after they return from their leave.
- + **Retaliation:** New act includes anti-retaliation protections and provides for penalties for failure to pay wages.

- + **Tax Credits:** Refundable tax credits (equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act that are paid by an employer for each calendar quarter) for employers providing paid emergency paid sick leave. These credits will be used as a reduction of your current employment taxes. Any excess amount is to be refunded in two weeks, for which we are waiting for the procedure.
- + **Posting Requirement:** Employers will be required to post a notice of the new emergent emergency paid sick leave act provisions and a model notice will be released by the Secretary of Labor seven days after enactment
 - + *DOL – FFCRA Poster Attached*

Layoffs

- + Guidelines on who to layoff – decision based on your company needs, making sure that your decisions are not discriminatory in any way.
- + What guidance do the employees need:
Ohio Department of Job and Family Services has given instruction to share the mass lay-off number <2000180> to speed the processing of claim. Distribute the attached form to expedite the claim process. <http://www.odjfs.state.oh.us/forms/num/JFS00671/pdf/>
- + The claims during the emergency declaration period will be charged to the mutualized account rather than the employer account. They are also waiving penalties for late reporting and payments during Ohio's emergency declaration period.
- + ***Attached is a question and answer employer information regarding layoffs associated with Coronavirus from ODJFS.***

- + **What if I keep core employees on the payroll at reduced hours?**
- + An old program the State offers is called SharedWork Ohio. If the reduction in the hours is more than 10% and but no more than 50 percent, then it is possible to pay the employees for the reduced hours while they are collecting unemployment benefits for the reduced hours. For more information see JFS 20142 “SharedWork Ohio Guide for Participating Employers and Employees”. There is an application and approval process. There is a ***Fact sheet from the ODJFS attached.***

The CARES Act 3-27-20

“Relief for Workers Affected by the Coronavirus Act”

- + **Unemployment Insurance Provisions**
- + The program provides for an extended unemployment insurance program, which expands the eligibility and offers workers an additional \$600 per week for four months on top of what the State pays in unemployment! It also extends the benefit to December 31st. AND self-employed, independent contractors.
- + **Eligibility**
 - + The law expands the scope of individuals who are eligible for unemployment benefits, including those who are furloughed or out of work as a direct result of COVID-19, self-employed or gig workers, and those who have exhausted existing state and federal unemployment benefit provisions.
 - + The only individuals expressly excluded from coverage are those who have the ability to telework with pay and those who are receiving paid sick leave or other paid benefits (even if they otherwise satisfy the criteria for unemployment under the new law).

+ Administration of Benefit

- + The benefits are administered by each state and upon the state’s written agreement with the Secretary of Labor to provide the specific benefits. States that enter into such an agreement with the Secretary of Labor will be reimbursed in whole or in part for the cost of the benefits plus administrative expenses.

+ Types of Benefits Provided

- + The law provides an increase of \$600 per week in the amounts customarily available for unemployment under state law.
 - + Applies for unemployment payments made from the date of the law’s enactment through July 31, 2020 (approximately four months).
- + States can agree to provide pandemic emergency unemployment compensation to individuals who have either exhausted all of the benefits under existing state and federal law or who are not otherwise eligible for benefits under existing state and federal law.
- + States can agree to waive the waiting period.
- + The federal government will temporarily fund short-time compensation under existing state plans.

+ Time Periods for Expanded Benefits

- + The law provides unemployment benefit assistance to covered individuals who are not otherwise entitled to benefits under existing state or federal law for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19.
 - + January 27, 2020 through December 31, 2020.
- + The total benefit may not extend beyond 39 weeks (including any unemployment benefits or extended benefits received under existing state or federal law)
 - + Applicable to weekly payments made through the end of July 2020.

+ Protections Against Fraud and Overpayment

- + Any fraudulent intent or misrepresentations to obtain payments to which an individual is not entitled will result in ineligibility for any other unemployment compensation benefits under the new law as well as criminal prosecution. Overpayments may be clawed back by the state agencies.
- + Social Security Treatment
- + The additional unemployment compensation provided is not considered “income” for purposes of Medicaid and CHIP.

Payroll Tax Relief

List of Credits

- + Federal Tax Credits under Division G the FFCRA (Families First Coronavirus Response Act):
 - + Payroll Credit for **REQUIRED Sick leave paid** under the EPSLA (Emergency Paid Sick Leave Act - which is Division E of the FFCRA).
 - + There is also an equivalent income tax credit for self-employed individuals on their personal income tax return for 2020 if the self-employed individual would have been eligible for sick leave pay if they were an employee of their business.
 - + Payroll Credit for **REQUIRED Family medical leave paid** under the EFMLEA (Emergency Family and Medical Leave Expansion Act - which is Division C of the FFCRA).
 - + There is also an equivalent income tax credit for self-employed individuals on their personal income tax return for 2020 if the self-employed individual would have been eligible for family medical leave pay if they were an employee of their business.

Payroll Tax Relief List of Credits

- + Payroll Tax Credits under the CARES Act (Coronavirus Aid, Relief, and Economic Security Act):
 - + Payroll Credit for Retention of Employees (“Employer Retention Credit”).
 - + While this is the only credit under the CARES Act – the CARES Act also provides for a deferral of the employer’s share of social security tax for certain employers. In addition, similar to the FFCRA credits, there is an equivalent deferral for self-employment tax of individuals in the CARES Act.

Payroll Tax Relief FFCRA Credits

- + Key Points of both credits under the FFCRA (sick leave credit and family medical leave credit) –
 - + Payments to employees and related credits begin 4/1 and end on 12/31/2020 (calendar quarters 2 through 4)
 - + Payments are made due to COVID-19 related reasons

Payroll Tax Relief FFCRA Credits, cont'd

+ Specific Rules for the Credits –

- + The credit is the sum of –
 - + 100% of the Required Leave Paid, plus
 - + Allocable amount paid by the employer for group health plan costs that were not taxed to the employee
- + The credit is generally limited to the Social Security Tax due on all employees for the quarter.
 - + While the credit is technically limited to the amount above, the amount that is limited is also refunded.
 - + Thus, the employer gets reimbursed for the required payments under the EPSLA and the EFMLEA plus the allocable health care costs, whether by credit or excess refund.
- + The employer also receives a credit for the employer's share of the Medicare tax due on the required leave.
- + Employers can reduce their payroll tax deposits by the Required Leave (and allocable health care costs) to receive reimbursement faster.
 - + Employer Forms have not been updated for the credits and there is no Form yet for refunding any excess.
- + No Credit under the FFCRA for leave paid in excess of amounts required to be paid under the act.
- + The employer credit is elective – you choose to take the credit on a quarterly basis.
- + Self-employed equivalent previously mentioned – this is not subject to an election.

- + Other Related Rules for the Credits -
 - + The leave pay not subject to the employer's portion of the social security tax (i.e. the 6.2% tax)
 - + If you take the credit - the wages cannot be used for the Employer Retention Credit under CARES, or the existing paid leave credit .
 - + Income of the employer must be increased by the credit amount.
 - + The wages required to be paid are NOT included in "payroll costs" for purposes of the Paycheck Protection Program under CARES (i.e. the new loan program).
 - + No changes for the employee - paid leave is subject to the same payroll and income taxes as their normal wages.

Payroll Tax Relief CARES Act

+ Employer Retention Credit –

- + Refundable payroll tax credit up to 50% of qualified wages per eligible employee, per eligible quarter.
- + Applies to qualified wages paid after 3/13/20 and before 12/31/20 – assuming employer is eligible for the calendar quarter the wages were paid.
 - + Qualified wages are generally social security wages, less wages paid under the FFCRA (sick and family medical leave pay), less certain related party wages, plus the allocable amount paid by the employer for group health plan costs that were not taxed to the employee
 - + Max qualified wages for entire year for each employee is capped at \$10,000.
- + Eligible employees do not include those for which you are taking a work opportunity credit for the same quarter.

+ Employer Retention Credit – Cont'd

- + Roughly speaking – a calendar quarter is eligible when there is a government order limiting commerce (like what we have now) during the quarter or the calendar quarter falls within the receipts decline period.
 - + The receipts decline period BEGINS with the calendar quarter in which your gross receipts for the quarter are < 50% of the equivalent (same) quarter in 2019, and ENDS with the calendar quarter following the calendar quarter where the gross receipts are > 80% of the equivalent (same) quarter in 2019.
- + The credit is more restrictive for Employers who had > 100 average full-time employees in 2019. In this case – only wages paid to employees who were retained but are not currently working qualify.
- + **EMPLOYERS WHO RECEIVE A PAYCHECK PROTECTION LOAN (ONE OF THE NEW LOANS UNDER THE CARES ACT) ARE NOT ELIGIBLE FOR THE CREDIT.**
- + The credit is elective for each quarter. *No tax deduction is allowed for wages equal to the credit allowed.*
- + No effect on the taxation of the employee.

- + Deferral of Payroll Taxes –
 - + Eligible employers can defer their portion of the social security tax (i.e. 6.2% of social security wages) on all social security wages paid between 3/27/20 and 12/31/20.
 - + The due date for ½ of the deferred amount - on or before 12/31/2021.
 - + The due date for the remaining ½ of the deferred amount - on or before 12/31/2022.
 - + **An employer is not eligible if the employer has a Paycheck Protection Loan forgiven.**
- + Deferral of SE Taxes – All self-employed individuals get an equivalent deferral for 50% of the OASDI component of SE tax.
 - + 50% deferral amount is not treated as a tax liability for 2020 for purposes of the estimated tax underpayment penalty calculations.

- + Other COVID-19 Wage Related Items Worth Noting
 - + Section 139 Relief – as a result of the declaration by the President under the Stafford Act – certain relief payments made by employers are eligible for Section 139 relief.
 - + Eligible Payments made under Section 139 are deductible by the employer and are not taxable to the employee, including for payroll taxes.
 - + Of the various categories of expenses eligible under Sec. 139, the probable category for the COVID-19 disaster are payments to reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred as a result of a qualified disaster.
 - + There are no other limits to the employer, other than the expenditures falling into the eligible categories.
 - + Payments for actual services rendered would not fall within any of the categories.

Other Relief of Note, cont'd

- + Existing Income Tax Credit under Section 45S – For 2020, there is an existing credit for paid family and medical leave under Section 45S of the Internal Revenue Code.
- + The credit starts at 12.5% of leave pay and can rise to 25% depending on the rate of payment (i.e. % of the employee's normal pay). The amount of leave pay that can be taken into account is limited to 12 weeks.
- + Wages used for the FFCRA credits or the Employer Retention Credit under the CARES Act cannot be used in calculating the credit under Section 45S.

- + Existing Income Tax Credit under Section 45S -
Cont'd
 - + Some key pre-requisites to taking the credit are -
 - + MUST have a written policy that meets certain requirements in effect **before** the employer becomes entitled to a credit (but the employer is not required to notify employees that a policy is in place)
 - + Leave pay that is required to be paid by a state or local government is NOT eligible for the credit
 - + Leave MUST be paid for one or more FLMA purposes to an employee that was a qualifying employee at the time the leave was taken.

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Thank You

Part 2 - Understanding the SBA Loan | Wednesday, April 1 | 1 - 2 PM
Register at applegrowth.com/COVID19