Understanding HR Issues Related to the CARES Act and Michigan Executive Orders
The Families First Coronavirus Response Act (FFCRA) provides $104 billion to help fight COVID-19 and protect workers and families from the health and economic impact of the virus.
**Paycheck Protection Program (PPP)**

- **$349 BILLION**
  - $349 billion toward job retention and certain other expenses in key areas such as payroll, health insurance, mortgage interest, rent and utilities from February 15, 2020 - June 30, 2020.
  - Eligible recipients may qualify for a loan up to $10 million determined by 8 weeks of prior average payroll plus an additional 25% of that amount.

- **$10 MILLION**
  - AT LEAST 75% USED FOR PAYROLL

**SBA Debt Relief**

- The SBA Debt Relief program will provide a reprieve to small businesses as they overcome the challenges created by this health crisis.
  - Under this program:
    - The SBA will also pay the principal and interest of new 7(a) loans issued prior to September 27, 2020.
    - The SBA will pay the principal and interest of current 7(a) loans for a period of six months.

**Economic Injury Disaster Loans (EIDL)**

- In response to the Coronavirus (COVID-19) pandemic, small business owners in all U.S. states, Washington D.C., and territories are eligible to apply for an Economic Injury Disaster Loan advance of up to $10,000.

- **LOAN ADVANCE UP TO $10,000**

- **LOANS UP TO $2 million**
  - The SBA’s Economic Injury Disaster Loan program provides small businesses with working capital loans of up to $2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. The loan advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue.

- **FUNDS WITHIN 3 days**
  - Funds will be made available within three days of a successful application, and this loan advance will not have to be repaid.

**SBA Express Bridge Loans**

- Allow small businesses who currently have a business relationship with an SBA Express Lender to access up to $25,000 with less paperwork.

- These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be a term loan or used to bridge the gap while applying for a direct SBA Economic Injury Disaster loan.

- Find an Express Bridge Loan Lender by connecting with your local SBA District Office at www.sba.gov.
Workforce Strategies for Employers
Business leaders considered options that best balance the business with employee needs and safety.

Before Paycheck Protection Program

- Layoff
- Furlough
- Voluntary Leave of Absence
- Termination
- Remote Workforce
- Work Share
The *Emergency Family Medical Leave Act* is an emergency expansion of the Family Medical Leave Act (FMLA). It expands the FMLA to expand employers who now must comply, includes broader employee eligibility and allows coverage for a new category.

**30 Calendar Days**
Any employee who has been employed for at least **30 calendar days** is eligible.

**10-Day Exclusion Period**
**10-day exclusion period** where leave may be unpaid if employee doesn’t have accrued PTO available.

**Fewer Than 500 Employees**
Employers with **fewer than 500 employees** are covered.

**Fewer Than 25 Employees**
Employers with **fewer than 25 employees** may not be required to restore an employee who takes FMLA-covered leave if the employee’s position no longer exists due to an economic downturn or other circumstances caused by a public health emergency.
For qualified employees, the first 10 days of leave is unpaid. Employees may choose to use accrued vacation leave, personal leave, medical or sick leave, but cannot be required to do so. Employees, if qualified, can use 80 hours of Emergency Paid Sick Leave (EPSLA) to cover this period.

One Qualifying Reason

The employee is caring for an individual who is subject to a local quarantine or isolation order, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

Paid Leave

For qualified employees, the first 10 days of leave is unpaid. Employees may choose to use accrued vacation leave, personal leave, medical or sick leave, but cannot be required to do so. Employees, if qualified, can use 80 hours of Emergency Paid Sick Leave (EPSLA) to cover this period.

Payment

After an initial 10-day exclusion period, employers must pay at least two-thirds of an employee’s regular earnings, calculated by using the employee’s regular rate of pay as defined in the Fair Labor Standards Act (FLSA). Payment cannot exceed $200 per day and $10,000 in the aggregate.
The Emergency Paid Sick Leave Act (EPSLA)

Mandates employers pay employees 80 hours of sick leave if an employee is unable to work or remotely work for six clearly defined reasons:

1. The employee is subject to a federal, state or local quarantine, or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who is subject to a local quarantine or isolation order, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
Employee Eligibility

All employees, regardless of length of employment, are eligible. Excluded employees include health care providers and emergency responders from the definition of eligible employee.

Covered Employers

Private employers with 500 or fewer employees must provide paid sick leave. Federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Potential Exemption

Small businesses with fewer than 50 employees may qualify for exemption due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.
## Emergency Paid Sick Leave Act (EPSLA)

Employers would be required to pay employees their full wages, not to exceed $511 per day and $5,110 in the aggregate, for a qualifying need described in (1), (2), or (3) above.

### 100% Wages

Employers would be required to pay employees two-thirds of their wages, not to exceed $200 per day and $2,000 in the aggregate, for a qualifying need described in (4), (5), or (6) above.

### 2/3 Wages

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.
3 CARES ACT UNEMPLOYMENT PROGRAMS

The **Federal Pandemic Unemployment Compensation (FPUC)** program provides an extra $600 a week in benefits.

The **Pandemic Emergency Unemployment Compensation (PEUC)** program extends eligibility for unemployment benefits by up to an additional 13 weeks.

The **Pandemic Unemployment Assistance (PUA)** program provides unemployment benefits to independent contractors, gig workers and the self-employed.
### 2020 Timeline

<table>
<thead>
<tr>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
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</thead>
<tbody>
<tr>
<td><strong>FFCRA</strong></td>
<td>Emergency Paid Sick Leave and Emergency FMLA</td>
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<tr>
<td><strong>CARES</strong></td>
<td>Paycheck Protection Program</td>
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<tr>
<td><strong>CARES</strong></td>
<td>PUA - Pandemic Unemployment Assistance</td>
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<td><strong>CARES</strong></td>
<td>FPUC - Federal Pandemic Unemployment Compensation</td>
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<td><strong>CARES</strong></td>
<td>PEUC - Pandemic Emergency Unemployment Compensation</td>
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</table>

- **FFCRA Signed into law March 18, 2020**
- **CARES Signed into law March 27, 2020**

**Law Passed March 18 - Effective April 1 to December 31**

- ePSL and FMLA+ introduced effective April 1 to December 31, 2020

- Non-enforcement March 18 to April 17

**CARES | Paycheck Protection Program**

- Applications processed by June 30
- Re-Hiring: You have until June 30 to restore your full-time employment and salary levels
- Covered period February 15 to June 30

**CARES | PUA - Pandemic Unemployment Assistance**

- Law Passed March 25 - Effective January 27 to December 31
- Self Employed, Independent Contractors, Gig Workers can access benefits

**CARES | FPUC - Federal Pandemic Unemployment Compensation**

- Eligible individuals will get an extra $600 each week April 6 through July 31. Payments date back to the eligibility date or the date your state signed an agreement to provide the benefits—whichever is later.

**CARES | PEUC - Pandemic Emergency Unemployment Compensation**

- Provides an **additional 13 weeks of state UI benefits**, which will become available after someone exhausts all their regular state UI benefits. All but eight states offer 26 weeks of UI benefits.
10 Reasons for Application of Unemployment

1. Been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis.
2. A member of their household has been diagnosed with COVID-19.
3. Providing care for a family member or member of their household who has been diagnosed with COVID-19.
4. A member of their household for which they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure they are unable to work.
5. Unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency.
6. Unable to work because they have been advised to self-quarantine by a health care provider.
7. Scheduled to start a job but are unable to do so as a result of the COVID-19 public health emergency.
8. Become a “major support for a household” because the breadwinner in the household has died as a direct result of COVID-19.
9. Quit their job as a direct result of COVID-19.
10. The individuals place of employment is closed as a direct result of the COVID-19 public health emergency.
If the individual’s earnings for the week exceed the weekly benefit amount (WBA), then the individual receives $0 in regular UC benefits for that week even though the person is otherwise eligible for regular UC. In such case, the employee also does not receive the $600.

**Not eligible for WBA → $0**
State Specifics
Paycheck Protection Program Begins for 8 weeks
Preparing for Stay at Home Orders Lifted

Whitmer says she’s assessing relaxing Michigan’s stay-at-home order

Michigan Gov. Gretchen Whitmer said Thursday that she’s assessing reopening parts of the state’s economy, as the Democratic governor faced...

21 hours ago

FOX 2 Detroit @FOX2News - 11h
Gov. Whitmer to extend stay at home order until May 15

Gov. Whitmer to extend stay at home order until May 15
The current stay at home policy expires on April 30th. Numerous sources have confirmed the date and also indicate that the governor is...

Fox2detroit.com

NBC News @NBCNews - 22h
Michigan Gov. Whitmer says her state’s stay-at-home order is effectively slowing the rate of coronavirus infections and that she plans to issue an executive order that will extend restrictions while likely permitting some forms of activity.

Michigan gov. plans to extend parts of stay-at-home order while likely e...
"It’s working. We have flattened our curve, which means we have saved lives," Whitmer said.

nbcnews.com
Reopening and Returning Workers

These are the six plans, protocols and policies employers should have in place for reopening

- COVID-19 Preparedness Response Plan
- Compliance Posting of Model Notices for FFCRA
- Plan for complying with State and County orders
- Return to work notices to employees
- Policies for telework/flexible work arrangements and FFCRA leave requests
- Compensation and benefit reinstatement/adjustments

Employee communication and engagement
COVID-19 Preparedness Response Plan

1. Social distancing plans, implementation and training
2. Screening protocols
3. Personal protective equipment (PPE)
4. Cleaning and disinfecting protocols
5. Safety communication plans
6. Protocols for tracking and reporting COVID-19 tests
EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA) or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19.

PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide employees:
- Up to two weeks (80 hours, or a part-time employee’s bi-weekly equivalent) of paid sick leave based on the higher of either the regular rate of pay, or the applicable state or Federal minimum wage, paid at:
  - 100% for qualifying reason #1.0 below, up to $511 daily and $5,110 total;
  - 70% for qualifying reason #1 and 60% below, up to $210 daily and $2,100 total;
  - Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to $200 daily and $12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employees, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19-related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 12 weeks of partially paid expanded family and medical leave for reason #5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. Is subject to a 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).

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
A Federal employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. Is subject to a 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).

ENFORCEMENT
The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave or expanded family and medical leave under the FFCRA. For additional information, see the WHD’s guidance for the FFCRA at WHD.gov.

For additional information call the Wage and Hour Division toll-free at 1-866-487-9243.

Source: https://www.dol.gov/agencies/whd/pandemic
EXECUTIVE ORDER
No. 2020-07
Temporary expansions in unemployment eligibility and cost-sharing
Resolution of Executive Order 2020-04

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-1. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1980, the Emergency Management Act, 1976 PA 300, as amended, MCL 250.501 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In these weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to our economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-43. This order reopened the Executive Emergency Act of 2020-1 and declared a state of emergency in certain areas of the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1980, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act empowers the governor with broad powers and duties to "act with dispatch in this state or the people of this state presented in a manner or emergency," and to "guard the safety, health, and welfare of the people of this state and, to accomplish this purpose, to declare an emergency in the affected area and take all necessary action to protect the health, safety, and welfare of the people of this state.

The Governor, with the advice and consent of the cabinet, may call for a special session of the legislature in case of necessity, and may convene the legislature in open session for the purpose of legislation. The governor may also veto legislation, and the legislature may override the veto by a two-thirds vote of those present and voting in each house. The governor may also declare a state of emergency, which may be extended for a period of 30 days by the legislature or terminated by the governor.

In summary, the governor has broad authority to respond to emergencies and to take necessary actions to protect the health, safety, and welfare of the people of this state. The governor's actions are subject to review by the legislature and the courts.

GRETCHEN WHITMER GOVERNOR
STATE OF MICHIGAN OFFICE OF THE GOVERNOR ANN ARBOR
ANTHONY D. HANFLY ET AL. CO. ATTORNEY GENERAL

Required screening and sick leave distancing measures of open businesses and operations subject to the Government Executive Order 2020-43

This Order is made pursuant to Section 2403 of the Public Health Code, being MCL 333.2403.

Emergency Order [Oakland County 2020-5] imposed similar restrictions. With this order, Emergency Order Oakland County 2020-5 is revoked. This order imposes substantially identical restrictions but removes social distancing guidance as this is encompassed within Executive Order 2020-43.

Emergency Order Oakland County 2020-5 imposed similar restrictions. With this order, Emergency Order Oakland County 2020-5 is revoked. This order imposes substantially identical restrictions but removes social distancing guidance as this is encompassed within Executive Order 2020-43.

Matters concerning the public health of the residents of Oakland County have been brought to the attention of the Oakland County Local Health Officer. The Local Health Officer has determined that controls are necessary to reduce the transmission of COVID-19 to protect the public's health of Oakland County based on the following facts:

1. A biological agent or the effects of a biological agent have been detected within Oakland County
2. A communicable disease Coronavirus which causes COVID-19 has been identified that can be transmitted from person to person
3. In order to control and limit the spread of the communicable diseases, it is necessary to prevent infected people from coming into contact with uninfected people. It is critical that essential personnel be protected.

It is hereby ordered that businesses and operations remaining open under EO 2020-43 must take the following precautions:

1. Develop and implement a daily screening program for all staff.
   a. Screening criteria must include the following questions:
      i. Symptoms including but not limited to fever, cough (including cough due to seasonal or chronic cough), shortness of breath, sore throat, and/or diaphoresis (including diaphoresis due to known medical reason). When a touchless thermometer is available, a temperature check is strongly recommended. A test of vital confirmation.
   b. Any one contact in the last 14 days with someone with a diagnosis of COVID-19.
Return to Work Notices

- Employee health as it relates to COVID-19
- Attendance, hazard yay and vacation policies
- Return to work date, schedule and expectations
- Consequences for not complying with “Return to Work” instruction
- New employee/management response plan
- Questions and support information
Will my employees come back to work?
Fearful employee(s) & Savvy employee(s)
Leave Policy, Forms and Documentation

Policy  Form  Documentation
The amount of EPSL employees receive under the FFCRA depends on whether they are "full" or "part" time; however, the law does not define the terms. In this new Q&A guidance, the DOL makes clear that "full-time" employees for EPSL purposes are those who normally are scheduled 40 or more hours per week.

An employee who is not "full" time is "part" time, and that employee receives a number of emergency paid sick leave hours equivalent to the number of hours the employee works on average over a two-week period. The DOL reminds employers that under FFCRA, FMLA+ “does not distinguish between full- and part-time employees, but the number of hours an employee normally works each week will affect the amount of pay the employee is eligible to receive.”
Definition of Child

Under both the EPSL and FMLA+ entitlements, employees can take leave to care for a child whose school or place of childcare closes, or whose childcare provider is unavailable, due to COVID-19. Although the FMLA+ provisions reference a child under 18 years of age, the EPSL provisions incorporate the broader definition under the pre-FFCRA FMLA.

In a new Q&A, the DOL clarifies that, for both EPSL and FMLA+, the broader FMLA definition will apply, so the definition of child under the FFCRA will also include a child 18 years of age or older with a mental or physical disability who is incapable of self-care due to the disability.
## FFCRA Documentation for EFMLA and EPLSA due to COVID-19

<table>
<thead>
<tr>
<th>GENERAL INFORMATION</th>
<th>EMERGENCY PAID SICK LEAVE</th>
<th>EMERGENCY FAMILY MEDICAL LEAVE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Employee’s name, the dates for which the employee requests leave, the qualifying reason, and an oral or written statement that the employee is unable to work.</td>
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<tr>
<td>SUBJECT TO ISOLATION ORDER</td>
<td>Name of the governmental entity that issued the Order.</td>
<td>N/A</td>
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<tr>
<td>HEALTHCARE PROVIDER ADVISED SELF-QUARANTINE</td>
<td>Name of the health care provider who advised the employee to self-quarantine.</td>
<td>N/A</td>
</tr>
<tr>
<td>CARING FOR INDIVIDUAL SUBJECT TO QUARANTINE, ISOLATION ORDER OR HEALTHCARE PROVIDER ADVISED SELF-QUARANTINE</td>
<td>Either the name of the governmental entity that issued the Order to which the individual being cared for is subject, OR, the name of the health care provider who advised the individual being cared for to self-quarantine.</td>
<td>N/A</td>
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</table>
| CARING FOR A CHILD WHOSE SCHOOL IS CLOSED OR CHILDCARE IS UNAVAILABLE | • Name of the child  
• Name of the school or place of care or child care provider (each defined in the regulations) that has closed or become unavailable, and  
• A representation that “no other suitable person will be caring for the child during the period” the employee is taking Paid Sick Leave or Emergency FMLA for this reason. |  |
Job Restoration

**Job Restoration Rights Expand & Contract**: Although the FFCRA discusses job restoration rights in the FMLA+ context only, the DOL says job restoration rights will be available to employees who take EPSL as well.

Specifically, if applicable, employers must provide employees using EPSL or FMLA+ the same or equivalent job they held before taking leave ("classic" FMLA job restoration rules). The DOL reinforces, however, that if an employer lays off an employee for a legitimate business reason during leave, the employee does not have such a right to reinstatement.

Tax Credits for EFMLA & EPSLA

Private employers with 500 or fewer employees required to provide COVID-19-related paid leave are eligible for a 100% refundable payroll tax credit on the wages paid for leave.
## COVID-19 Employer Tax Provisions Summary

<table>
<thead>
<tr>
<th></th>
<th>Paid Sick Leave Credit</th>
<th>Paid Family Leave Credit</th>
<th>Employee Retention Credit</th>
<th>Employer Payroll Tax Deferral</th>
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<tbody>
<tr>
<td><strong>COVID-19 Conditions</strong></td>
<td>Employee must meet one of six conditions under FFCRA</td>
<td>Employee unable to work due to school/child care closure</td>
<td>Operations impacted by COVID-19 government order or 50% decline in gross receipts</td>
<td>None</td>
</tr>
<tr>
<td><strong>Employee Threshold</strong></td>
<td>Less than 500</td>
<td>Less than 500</td>
<td>None (calculation modified for greater than 100)</td>
<td>None</td>
</tr>
<tr>
<td><strong>Provision Calculation</strong></td>
<td>Up to $511 per day per employee depending on reason – max 10 days/ $5,110</td>
<td>Up to $200 per day per employee – max 12 weeks/$10,000</td>
<td>50% of qualified wages up to $10,000 per employee</td>
<td>Employers 6.2% share of social security</td>
</tr>
<tr>
<td><strong>Qualified Wages</strong></td>
<td>Sick leave wages under FFCRA</td>
<td>Family leave wages under FFCRA</td>
<td>100 or fewer employees: All wages. Greater than 100 employees: Only wages for not providing services</td>
<td>All wages</td>
</tr>
<tr>
<td><strong>Payroll Protection Loan Restrictions</strong></td>
<td>None</td>
<td>None</td>
<td>Cannot utilize if PPL received</td>
<td>Cannot utilize if PPL received and loan forgiven</td>
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<tr>
<td><strong>Method for Utilizing Provision</strong></td>
<td>Reduce payroll tax and federal withholding deposits and file Form 7200 for excess or quarterly 941 reports</td>
<td>Reduce payroll tax and federal withholding deposits and file Form 7200 for excess or quarterly 941 reports</td>
<td>Reduce payroll tax and federal withholding deposits and file Form 7200 for excess or quarterly 941 reports</td>
<td>Reduce 6.2% share of social security deposits; Pay back half in 2021 and other half in 2022</td>
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</tbody>
</table>
Compensation and Benefit Reinstatement/Adjustments

Ancillary Benefits
Pay cuts
Compensation
SPDs
Bonuses
Profit sharing
Short-term disability
Hazard Pay
401k
Employee communication and engagement
Who has the first question?
Find out more
For additional details, talk to your Rehmann advisor or visit

About Rehmann
Rehmann is a fully integrated financial services and advisory firm that provides accounting and assurance, comprehensive technology, accounting and human resource solutions, specialized consulting and wealth management services. For more than 75 years, Rehmann has provided forward-thinking solutions, making it our duty to anticipate our clients' daily and future needs. Rehmann has nearly 900 associates in Michigan, Ohio and Florida. Rehmann is an independent member of Nexia International, offering clients a global approach.