Kevin:

Good afternoon everyone. Kevin Ring, lead worker's comp analyst for the Institute of Work Comp Professionals, here. Very excited to have you on board and very glad to see so many folks joining in. We are excited to be joined today by probably the smartest person I know, Don Finn, who has from the very beginning of this current virus outbreak situation, been on top of the information that employers need to know, which seems to be changing every day. We put this webinar together after this initial relief package was passed by Congress last week because there are just some really important things that all employers need to know as we process through this. This call is being recorded and a recording will be sent to everyone who's on the call who registered. You'll be getting that tomorrow at the latest and you'll be able to share that with your colleagues.

Kevin:

Your lines are muted. We're approaching 400 people on the call now, so certainly we can't unmute lines, so your lines are muted. If you have questions, please put them in the questions control panel or the questions piece of your webinar control panel. We will get those here. We will pass those along to Don as time permits, but we have someone on the line who's recording all of those questions and I will make sure that those make it to Don after the webinar and we'll make every effort to pass that information out as we're able to put it together. Also, one last thing before I turn things over to you Don, there is a copy of the slides and some other resources under the handouts tab on your webinar control panel. You can download that PDF right now. So with that, Don, I'll turn it over to you. Thank you so much.

Don:

Kevin, I'm going to encourage you also to send out that Word doc that I've constantly been building up and add that to the documents.

Kevin:

Right. I'll make sure that that's included along with the recording email that goes out.

Don:

Great. So hello everybody. I just wanted to get you on the screen so I can see you before I go running into this PowerPoint and I disappear into a little tiny box someplace or not at all. I'll just shut down the webcam, so the PowerPoint takes up the whole page. I'm out here in California. Obviously we have challenges here like everybody else around the country, and I've been staying on top of this dynamic situation with the laws coming out. Obviously I can only address what's going on in some of the states, not all 50 states. Not all 50 states have something going on. Many of them are still limited to what's going on federally. But I will touch on that today.

Don:

My background is as an employment lawyer since 1983 so that's been awhile, and I can remember going through helping a lot of companies when we lived in Florida for a couple of years with the hurricanes. I worked with South Florida Manufacturers Association to put together systems to dealing with hurricanes and how you deal with workers and pay and all that stuff. So I'm a little bit familiar from that. But this is a unique situation for all of us, me included. It's very rough when your savings get diminished greatly, when your income stops completely, and you figure out how can I be of service? I said, "This is the way I can help people right now." So let me close this out, stop the video, get the slide show going.

Don:

Okay. So we've just been bombarded through the press and social media with things here, and one thing we really do have to watch is being overwhelmed by this. I remember in Florida everybody would watch the red dot go across the TV screen and constantly [inaudible 00:04:33]. Is the red dot getting closer? Is it getting closer? Same thing is going on here in a sense. Everybody's looking to see are there more cases, are there more cases, are there more cases? Obviously as the testing comes along, there's going to be more cases. We have the whole idea around social distancing and I'm not going to spend much time on that. I did see a whole bunch of people, I take these solo hikes, and I saw people in large groups, saw people at the beach in large groups.

Don:

I'm like, really? But that's the way it's going to be. Especially young people feel they're invincible when all this goes on, but it's really a nasty situation and I've heard from physicians and nurses on the frontline, and if young people think they are immune from the worst of this, they are not. So let's get moving right away to some of the laws involved and what we're going to discuss. So we're going to talk about what Trump signed, which was the Emergency Paid Sick Leave Act as well as the mandatory sick leave and paid family leave amendments. I'm going to talk about the difference between terminating people either through a layoff or a furlough. one means you basically all fired. The other one means that we're going to try to keep you on payroll even if we're not paying you right now, we'll continue your benefits, things like that.

Don:

There are definitely wage and hour concerns in all of this. There's what's known as One Act, when you terminate any large group of employees. You have so many laws involved in this, the ADA, FMLA, HIPAA, OSHA, work comp. Then of course you've got what's going on at the state level on top of all of this. Now we're doing these mandatory shutdowns and the question is what's an essential operation, what's not, as well as some best practices as we go through all of this. So I am not in a rush. I will go through all this and answer as many questions as I can. If people start trailing off at the end and don't want to listen to all the answers to the questions, I get that. But I'll keep trying to answer questions as they come in.

Don:

So with all of that, the first thing that came down last week was the House put together bill, Trump said he would sign it, went to the Senate, they made some modifications and they signed it. So on a cheat sheet I send everybody, you will see the bill and it's actually, if you look at the languaging of it, it's very skinny. They haven't had a chance to think through a lot of this. They will be issuing regulations that help clarify what they mean in a couple of things. I'll give you an idea of where I still don't know the answers to things and the other lawyers don't know the answer to things. But this is what we do know, is that it will take effect on April 2nd, it would apply to companies under 500 employees. I just kept wondering why was that the case? It was interesting, the Democrats did not want to fund large corporations and give them this tax break for paying people.

Don:

They figured they can take that out of their own pocket instead of out of the government trying to finance that. So that's why they said under 500 employees. They figured that those companies are more vulnerable, and if you remember the Family Medical Leave Act only applies to companies with 50 or more employees. Well, they said this applies to everybody under 500, but we're going to give you the option to opt out of it if you have less than 50 employees. But they have not given us the guidelines of what that means yet. It's almost like an undue hardship argument when it comes to ADA accommodation, so we'll have to see just what that is. We don't have the regs on it. I'm not going to guess. I haven't seen anything leak out about what the regs would be, so we'll know a little bit more right away.

Don:

The traditional FMLA rules apply around, when it comes to revised FMLA, all those traditional rules about being 50 employees within 75 mile radius, that is gone. That is not part of the legislation. It's still part of traditional FMLA but not this revised legislation, and when it comes to the Emergency Paid Sick Leave Act, you're talking about what a lot of companies doing anyway, continuing to pay people for the first couple of weeks of this whole thing, but this is mandating that companies do that. Somebody could have just started working for you last week and they're included in it. It includes part-timers, and if somebody's part-time, they say, all right, what's the average workload over six months? You'll have to pay them that. If you don't have that, what was the anticipated workload if they just started for you as a part-timer. So people get up to two weeks pay and if it's part time, they'll get less than full two weeks pay, if you will. Less than 80 hours.

Don:

So one thing that's very important to understand here is that the employer can't say, "Hey, I'm not going to pay you a cent until you use your PTO, the state mandated sick pay that I have to pay for you." All those types of things, and Congress said, "Nope, this is just a straight, almost continued employment for two weeks." It's very interesting the way they split it up. You see the first three things here, and I'll go a little slower now, if they're subject to federal, state or local quarantine isolation, well that's almost everybody unless they are an essential businesses. Now, some states haven't been hit with it very hard yet.

Don:

They haven't done a mandatory shutdown. The fed hasn't done it for the whole country. It's being governed state by state, but California has it. New York has it, a lot of places have it now. So all of those employees that if they're mandatory shutdown and they can't work from home, they're going to be covered in this. They've been told by their doctor, somebody else, to self quarantine or the company sent them home and said, "Hey, you seem too sick. We don't want you around here." So the first three things you're really talking about, I am sick, number one, two, and three and you get 100% pay if you're sick, as you see at the bottom there, up to $511 per day and a total of $5,110. Now if they're taking care of somebody else, that's four or five and six and it could because somebody else is sick or the school is closed or something like that.

Don:

For that person they said two thirds pay and up to $200 per day or 2000 in total. Now this is something that people are not going to have to apply for. You just keep their payroll going. You're going to have to adjust their pay. Just make sure that when we talk about wage an hour later on, that when you adjust this pay down to the two thirds level, you don't take people out of their exemptions and things like that. But we'll come back around to that. So this is basically continued payroll for two weeks and almost everybody is going to be in one, two, three as the weeks go along here. Remember this doesn't take place till April 2nd, so no requirement to pay them right now. You'll have to, as we'll talk about in a minute, decide if you even want somebody to be an employee as of April 2nd, because if you have them as an employee as of April 2nd, then all of a sudden, you kicked into the system.

Don:

So there's going to be notices that you've got to post up right along your all in one posters. They have not created them yet. After these two weeks are over, they may kick into the new Emergency Family Medical Leave Expansion Act or traditional FMLA, or at that point they can use their own sick pay or PTO. They say check managing general agreements. So in other words, if you're with a union and a union has some funds available, that's going to be part of this whole equation. Basically what the government is doing is saying that we're going to pay you back for all of this. We just can't implement it that quick. We're going to borrow the money from you for two weeks and then we'll pay you back in terms of tax credits. Oh by the way, if you need a loan, we're going to give you a loan too.

Don:

Now I'm not going to spend a lot of time on payroll tax credits or loans. I'll show you something a little while that I heard from somebody else about what might happen in that. But they haven't been very clear about that yet. So one thing that you should do is keep an a separate line item in your accounting for all the time and the dollars that have been devoted to this. All the time and dollars in a separate line item so that later on you have it available when you go to apply very quickly.

Don:

So now this is FMLA and they extended it out very simply to take care of kids. All right? So if somebody's school has been closed, which just about all of them are, if somebody's daycare is closed, which just about all of them are, then this person's allowed to have job protection for 12 weeks. Traditional FMLA gives them up to 12 weeks. Who knows if things are going to be closed that long, if they're going to need all 12 weeks? The first 10 days are unpaid. So that's when you get to use this emergency, if you apply under the emergency thing, or your PTO. Now somebody may say that, "You know what? I'm not sick. I'm not taking care of anybody sick. I don't have a kid at home. I just am not coming to work and I'm going to use my vacation." They have the right to do that for up to 10 days and then they can kick in to this if in fact kid's at home, but they may not have anybody at home. At that point, they have no more resources other than unemployment, which we'll talk about too.

Don:

So here you get two thirds payment benefit because remember, you're taking care of somebody else. Now how they figured out that you get 100% if you're the one who's sick or just two thirds of you taking care of somebody else, but that's the way they did it.

Don:

So the traditional FMLA is still going to be available, which is continued benefits. Healthcare benefits very important right now, but it's unpaid, so if you're taking care of other family members and your own health after this two week period, then you can still get traditional FMLA. Remember, you have to be diagnosed as having something more than a common flu. Traditional FMLA is very forms driven. Interestingly, they haven't indicated going back to the emergency payment for the first two weeks, what type of documentation would be required, and right now the reality is it might be very hard for somebody to get any documentation because the doctors are on overwhelm. They can certainly go to telemed and see if somebody will say, "Hey, yeah, you probably should stay home," and perhaps they can give a note to that employee somehow, but that's still getting worked out.

Don:

Again, there's going to be these notice requirements that the DOL is currently creating. They haven't completed them yet. Then the question is about job restoration. So FMLA guarantees somebody's employment once they come off of it. So if your business is still up and running, and this person's out on FMLA, when I get off the FMLA, they have a right to their job. Now, they did say if you've got less than 25 employees that you don't have the obligation. Remember, on 50 or more, unless the job has been eliminated, people have to come back to that job. So if 25 or less, they say no obligation restore them if that position no longer exists and you make an effort to find a similar position for the employee, and oh, by the way, if a job opens up within a year's period of time, you've got to let them know about that. By then they probably have another job, but that's what they say you got to try and track them down and let them know about it.

Don:

So I am sure this is a lot here. I'm going to be moving fast and I'm going to spend a lot of time answering questions around all of this at the end. So let me just summarize just a little bit. If I'm an employee and I have a problem, I get 100% pay up to $511 each day for up to 80 hours. If somebody else has a problem, I get two thirds pay up to the maximum of 200 bucks a day for up to 80 hours, and if I'm a part-time employee, I get a prorated amount. The FMLA benefit applies to employees have to stay home with a child whose school or childcare facilities close due to corona virus, which is all kids at this point. One thing you can certainly find out if both parents, if there's two parents in the household, are they both required to be staying home with the kid?

Don:

So there's no pay for those first 10 days. Some of them will get the emergency sick pay. Pretty much everybody's going to get that unless they just choose not to work or they're teleworking, so there'll be no pay for the first 10 days, but they can also use their vacation leave, personal leave, medical leave, the state mandated sick leave that might exist. Quarantined workers are those who were caring for affected family members are not eligible for the FMLA paid benefit. They may be eligible for continued insurance and job protection, but they won't get paid in the process. It's just for the people who have had to watch kids.

Don:

So here is really thinking through what do I do? I get this. It's not that complicated. Remember, two weeks, you're basically going to pay people unless you fire them before that. Then, if they've got kids they're watching at home, they're going to have to get some pay for that.

Don:

So what do I do? If I terminate an employee today, I send them into the unemployment world and a lot of the state unemployment has said, we're not going to have a one week waiting period, not going to require to get another job right away. We're going to pay you. Some states like California have paid family leave as well as New York. It's almost like unemployment insurance, but because somebody's sick. Now if you terminate somebody after April 2nd, you can generate a retaliation claim. Well, you terminate me because you didn't want to pay these sick benefits. So my generic advice is if you're going to let somebody go, I'd rather see you do it before April 2nd, because after April 2nd you're really going to have to show that the hardship, financial hardship, is why you had to let them go. Arguably, people can make retaliation claim anytime because people can file a lawsuit anytime they feel like it.

Don:

Now if you let somebody go, then you've got a whole bunch of notices that have to go out. So for example, in California you have to have a change of status notice, being terminated. You have to give unemployment notices, you have to issue Cobra. I'll talk about One in a minute. There are benefit plan notices around 401k plans and things like that, so you may also have to pay out accrued vacation where it's required to do so such as in California, again, by law. Many states have laws that saying vacation is accrued. The federal standard is depends what your contract or practice is in paying that stuff out. So if you're terminating somebody, they may have accrued a lot of vacation that all of a sudden you have to pay out. If you're going to lay somebody off, basically meaning that your intention is to bring them back as soon as the economy's upticked, then you're subject to the emergency payments as well as the extended FMLA laws.

Don:

So one thing that a lot of companies are doing right now is they're trying to share the burden. So why don't everybody goes half time? We'll either work half the hours or half the weeks or something like that.

PART 1 OF 4 ENDS [00:22:04]

Don:

... believe that work half the hours or half the weeks or something like that. And most unemployment departments have said, "Good, we'd rather have you work half time than no time, so we'll pay unemployment for the half the time you're not working and we won't pay you while you are working." You've really got to look at your employment development department, your unemployment departments, and see what arrangements they have for these part-time work arrangements. A lot of companies are also are saying, "Hey, Mr. Big Executive, we're going to cut your pay because..." Especially these very large companies.

Don:

Now, most of the companies at 500 and under are not going to have the type of pay that these public company CEOs have that average $11 million a year. Well, at an almost a million dollars a month, you can pay the wages of a lot of employees if you cut your pay in half. So there's going to be a lot of conversation around that. And if you want to be good with the consumer and your employees, you're going to have to take a hit if you're at the top of that food chain. But you have to decide. So in languaging, a furlough is, you're out.

Don:

A layoff is, we're going to try to have you come back. I said that backwards. See, this is what happens when you do this so much time. My apologies. So when you're terminating people, you're laying them off. When you're furloughing them, you're asking them to come back. Sorry about that. All right, so now wage and hour. Now we can reduce wages down, but they can't be reduced below minimum wage. And when it comes to exempt employees, you don't want to bring it down below their exemption threshold. And federally, they just updated it last year. Remember during the Obama administration, they were trying to change the thresholds for exempt employees. Well, the Trump administration didn't make the drastic change that the Obama administration wanted to, but they made a slight change up to 684 a week. That's roughly $28 an hour, roughly 35 grand a year.

Don:

And for highly compensated employees, it's $107,000. If you want to say, look, they don't fit under the exemptions, but we pay them so much, we're going to treat them as exempt. Now, California has different minimum wage. California has two times minimum wage in order to be exempt. So you're going to have to look at your state laws, and there's also local wage rates. So the minimum wage in San Diego is different than LA and different in San Francisco. So you're going to have to know these things. Now, one of the things, we can certainly do what we want with wage and hour employees that are not exempt. So if you're just paying them by the hour, you can determine, hey, we're only going to have them work five hours this week. The rest, they can go for unemployment. Or if they're disabled, they can apply for disability payments.

Don:

Exempt employees still have to be paid for an entire week. So if they decide not to show up for personal reasons other than sickness and accident and they had work to do, then you don't have to pay them for that day. So if they in a sense just chicken out of coming to work because they don't want to get sick but nobody told them they have to stay home, then you don't have to pay them for that day. Otherwise you have to pay them for the whole week. That's still the traditional rule that has been around forever with exempt employees. If they work one day in a week, you have to pay them for the entire week.

Don:

Now the WARN Acts or worker adjustment reemployment notice acts, if I remember that if right, it's really for mass layoffs. But what they've done right now is they said, "Listen, this is just such an overwhelming reality that we're not going to require you to have these far in advance notices. You're just going to have to provide as much notice as practical." And they did the same thing in California, had its own WARN Act and there's some other what you might call mini WARN acts that apply, and pretty much all of them are going to say, "Hey, in a case of circumstances not reasonably foreseeable like this, you have to provide as much notice as practical." So that's at least some relief to all the employers from a compliance standpoint.

Don:

Now, the ADA applies in all of this, and if somebody has coronavirus they are certainly limited in a major life activity. They can't go to the store and shop, they can't do certain things, they can't go to work. So telecommuting is a reasonable accommodation for these people unless it's an undue hardship. So for example, I have clients at a running printing company. Some of the employees can come work at home if they have the coronavirus and they choose to work. Other people, just because a lot of people can work sick at home and they do and they always have, so if people choose to do that and you say, "Yeah, I'd rather have your partial productivity than none," well, they have the right to telecommute. But you can't say that, "Hey, we've never let anybody telecommute." You basically have to let people try to telecommute and if it doesn't work out, you can say, this doesn't work out.

Don:

Now interestingly, this is going to be a real challenge because under ADA and FMLA, you're still allowed to get certification of somebody's problem. In fact, the ADA doesn't have a formal form process like the FMLA does, but the FMLA has always had a very traditional form process. My argument around all of this is to try to ask somebody for any of that right now is going to be very difficult because the medical system is overwhelmed to get you these notices, including a return to work notice. So you might say, "I'm not going to let you come to work unless you're better."

Don:

Well, you might not be able to get a doctor note for that, but if they've been gone for 14 days and quarantined the whole time, the chances are they can come back to work. You can't test them for fever. A lot of conversation, "Can I test all my employees?" Right now, HIPAA doesn't prevent you from testing employees and they've come out with some languaging around that. In California, there's a Consumer Privacy Act notice, but the bottom line is in any of these things, nobody's going to get in any trouble for testing the temperature of their employees.

Don:

One of the things that's really challenging is most people who think they might have coronavirus don't. They have the traditional flu, which of course as we all know and been reminded is very dangerous, or a common cold, and we're all paranoid that they're about to die from coronavirus. So you really want to know about the common systems, and remember fever and a dry cough are two of the main things you're looking at. Some of the people said they've caught it like any flu, the achy first, they're running a fever and it's a dry cough, not a wet cough. Remembering that the common flu and common cold are not FMLA covered events.

Don:

So OSHA requires employers to provide a safe workplace. That's a legal requirement of all employers to provide a safe workplace. And I would think that that's everybody's, we've got to look at people's health and safety before we look at dollars. And if you put dollars ahead of all of this, I think there's a place that we reserve for you on the other side. So health care first. And there are some protections for people who are dealing with healthcare workers and first responders. They're exempted from a lot of these laws because we need these people. We don't want our healthcare workers staying home. We need them. That's what they signed up for, and now that they signed up for it, we need them to do their work.

Don:

And so OSHA came out with this Occupational Risk Pyramid. You can see the link there. And it's just saying this is what you're looking at. So if somebody's in a hospital situation, it's very high on the pyramid. If you've got a whole bunch of people infected, non-healthcare environment, that's pretty high. If you're in a situation maybe where you're working outdoors and people don't work together, you have a low risk. So people going into and cleaning offices that are empty at night and they're an individual cleaning person might be at very low risk as long as they're following the basic protocols of washing their hands and things like that. And nobody's going to sneeze on them in an empty office. So they just have to make sure then that when they touch things, they sanitize their hands afterwards. Now one of the questions is, will people be able to file a work comp claim?

Don:

And a lot of that came up right away. But the reality is with unemployment, you're going to get pretty much the same benefit. This comes down to math for a lot of people, and it's different in every state, what they get from worker's comp, what they get from unemployment. So somebody might say, "Hey, I'll get paid more if I go into work comp versus disability versus unemployment." Well then a question is, all right, is this really an occupational injury? So if it's an ordinary disease of life like the common cold or flu, then no it won't be. But if it is a unique situation, so if a nurse gets it, that's an occupational hazard, something like this. They're probably going to be able to get work comp. I just don't think there's going to be a big impact on the system. Now somebody asked me, "Are these emergency payments I have to make? When somebody's not working, are they going to affect my work comp premium?"

Don:

And my answer to that is who the heck knows yet? People haven't worried about those questions just quite yet because they're not a negligent question to be answered. They're going to figure that out sooner or later. They're even talking about, on some of this, eliminating the payroll taxes so you just have to pay that employee the $511 a week, but you wouldn't have to pay all the payroll taxes, nor would the employee have to pay a portion of payroll taxes on that. But that's still working its way through Congress. And this is again a very dynamic and fluid situation.

Don:

Let me get a drink here. So now there's a ton of state laws, and I'm going to show you a few of these things in a minute. I'll get out of the PowerPoint deck and actually show you some things. So they're sick pay, which can apply for preventative care for people depending on the state law. So California's got mandated sick pay of three days, and you go to the different counties or different cities, might have five days or six days. And those matrixes are all over the place. What are the sick pay laws in my state or my city? You'll find that stuff really quick.

Don:

Again, they're specific laws. California has more workplace laws than the federal government has passed. So out here, we haven't found a law though we haven't liked to pass. So there school or daycare closure leave laws, there's the paid family leave, you got state disability, you've got unemployment, and you've got the vacation accrual laws that I had mentioned earlier on. So the state laws are going to remain very important in all of this. Now I'll give you an example of those in a minute. I want to stay in a PowerPoint, then I'll go to some websites and things.

Don:

So now you've got these mandatory shutdowns going on. Of course, California leading the way, first in San Francisco, then LA, then the whole state. And a question is, am I an essential critical infrastructure that I'm supporting? And let's say it's construction, I'll just use that as an example. So you don't see the word construction here any place. But if you're doing construction for let's say helping to build an emergency facility, well then you're going to be protected. So if your work is for an essential business, then it's going to be considered. But if you're in construction, house remodeling is not going to be considered essential critical infrastructure work. So same thing that's telling everybody stay away from elective surgeries and things like that. So anything that's elective, voluntary, you don't have to do it, but I'd like to do it, it's not going to be considered essential business. So the government put together a website, I'll show you many states. New York's laid it out, California has laid it out, Illinois laid it out. A bunch of states have already laid out what they consider to be their essential critical infrastructure.

Don:

Now we also have business continuity to work out on top of all this. And I think that Bain, B-A-I-N, has put together the best document I've seen about this. There's the link to it. So if you're a business owner, you definitely want to take a look at this thing, and you can see some of what we've got to think about. This is again very dynamic, and we still have to think about all of these things. So for example, amongst the Vistage CEO executives that I've been helping, a lot of them are talking about, "Hey, have you found an app that's good for tweeting to all of our employees?" And people found apps to do that. Have you found another way to communicate this way or communicate that way? So your own industry networks are going to be very important because I'm doing a very broad conversation, but I'm also going to be on a webinar tomorrow for the cleaning industry that's got very specific concerns. So if you're an association like that, find out what they're doing to help specifically with your industry.

Don:

Now, one of the things I tell everybody when you're going through this, all of a sudden we have this time. It's kind of funny, some of my clients that I'm coaching said, "You know what, Don, I've actually gotten some good night's sleep for the first time in a long time," because they just don't have the work. They can't go into the office. They're not wasting two hours commuting every day. They're actually kind of catching up some work. So if anybody wants a PDF of the book that I wrote, a good book to go through all this, because a lot of this feels unfair to us. How are we going to handle it? As I say, the way we want to handle this situation is both with responsibility. That's a logical question to ask. What do I have to do to be responsible in this situation? Because if you answer that properly, then there will be no guilt, regret, or remorse logically.

Don:

The other part of it is how do I show up gracefully in a situation? If you do that, there'll be no guilt, regret or remorse emotionally. So I might be really right, but I come across as an idiot. That's not going to help anybody. So it's those two things. This is a good time when a lot of your clients are not going to be very busy. You can run surveys, tests, do focus groups, Zoom chats with them. I love LinkedIn learning. You can open up the premium LinkedIn and get a lot of great training there. I've put together a couple of programs. I'll give everybody enormous discounts to them if you're interested in them. This is a good time for people to get that certification they've been waiting to get and to dive into something they've been curious about. So this is a really good opportunity, especially if you're paying people to stay home, that they actually, if they can't be busy all day long, make sure they use some of that time learning something so that when they come back to work, they're more valuable than ever.

Don:

And that's how we want to think about this. Taleb Nassim in his book, Antifragile, says that "When we're hit with a black swan event like this, we want to grow from it. And when you grow from it, that's what makes you antifragile." I love the metaphor he uses. He goes, "You want to be like the fire emblazoned by the wind." Well, you've got some wind coming your way and let's see if you catch on fire with it. Where are we going to go with this? So there's my contact information, but I'm going to come out of this thing now and I'm going to dig into some questions I've been asking and some websites I want to show all of you. So let's start off with the websites. Okay, so I'm just going to use a couple of states because, the biggest ones, the odds are most people are going to be from California, second from New York just by population size of these things.

Don:

So you'll see the EDD talking about disability and paid family leave, what benefits are available, what documentation is required. So they've done a pretty good job of putting together these facts. Then California has got what they consider to be critical infrastructure. Now interesting, listen to a conversation with the governor's office where people are calling and asking questions. Is my nail salon considered an essential infrastructure? Well, maybe on the Claws TV show, but that's about it. And then very interestingly, somebody asks if their gun shop was considered critical infrastructure. And I'm like, yeah, if this thing gets out of hand, people might really want a gun. There is the second amendment too.

Don:

But we're in a situation where we kind of get to override, almost like martial order, where we're overriding a lot of these things. So California has the most extensive breakdown, of course. It just goes on forever to see if you're in there. So those tools are available. They're all on the document I'm going to show you that Kevin is going to make sure everybody gets. Now we go over to New York state. They have the whole essential business thing going on again there. What's an essential business? And they've defined that down. Not as in detailed as the California one.

Don:

And then here's what's very interesting. New York probably has the most aggressive thing for all size employers. So if you got 10 or fewer employers, job protection throughout the quarantine order, which might last for a long time. Then if you've got more than 10 employees, you're going to have to give at least five days sick pay. Then it goes up to 14 days sick pay, and then it goes up. So you've really got to know what's going on in your state.

Don:

Last thing I'm going to show you in terms of websites, this is very interesting. I've been part of these conversations on a network with the Vistage CEOs, and talking about all the different challenges, but here's one the guy said the Senate bill was leaked about they really don't want people laying people off. They're going to say, "We'll loan you money to pay them and we'll pay you back later on, but please don't lay people off." You're going to have to pay to increase unemployment rates. I'm going to have to pay to increase work comp rates, and from all these other things. So why don't we just be straight up and help people through what could be as long as three months? And so you can hopefully read this, if I can make the screen a little bit bigger. There.

Don:

I'm just going to give you a second to read through this. Now John has a CFO background, so I don't pretend to be the guy on the financial side. I'm on the employment law side, but there's going to be a lot of money allocated, and get your butts there fast. One way to get there, there'll be some form you've got to submit, but one way to get there fast is make sure you have a separate line item, as I mentioned early on for this, so that you can just dump that stuff as quick as humanly possible into those forms and get in line quick. Now, the document, so I updated this just this morning and this is how serious this is. It's really amazing how people think that, "Hey, I'm not over 60 I'm not really at risk." Doctors talking about...

PART 2 OF 4 ENDS [00:44:04]

Don:

... Over 60, I'm not really at risk. Doctors talking about very, very healthy, 30 and 40 year olds dying. Okay? Pink ooze coming out of their lungs, because their alveolar sacs have been blown up by the Coronavirus. So, do not take this lightly. I don't care what kind of shape you're in or how old you are. Now, there's the actual Act itself and I'm telling you, if you actually click on it, you'll see how skinny it is. There's not a lot there, because again, they're scrambling now to put out regulations to explain some of this even further. You see all their mercy paid leave acts summary. Then you've got the FMLA expansion summary. Then you've got all the resources from the federal government, from all the different wage and hour, HIPAA, ADA, FMLA, [inaudible 00:44:55] OSHA, CDC stuff, IRS's stuff, health services.

Don:

This is a good, the national state legislature is a really good resource, because they're always looking at what everybody is doing at the state level. So this'll tell you what legislation has come about with Coronavirus and if anybody's ever done anything, all right? So you can see some States haven't done anything yet. The gray ones have not done anything, all right? California has passed stuff and it's continued to pass stuff. Washington passed stuff, continues to. All these other States, you're under federal law, all right? If there's pending legislation, you might want to know what the pending legislation is. So they're updating this on a daily basis and it breaks down, this is just an amazing, excellent resource.

Don:

So take advantage of that link and when you're looking to see what your state has done, and you might want to find out if anything has also done, if anything's happened on a local level. All right? Going back to my word doc here. So then, I go through all the California, Illinois, I didn't do every state. People ask me questions, I dug in real quick. New York, Texas, then some excellent articles, I saw. This is that Bain Insights one. I was telling you about it. It's absolutely excellent. So, let me see if I can open that up for you, show you what they've done there.

Don:

This is just really well done. What actions you should take. We're going all the way through your P and L, all operations, growth things, what's going to happen next, setting up your war room. Oh, I think just an, they did an amazingly good job with this. The best of anything I've seen. All right? So take a good look at that. There's things about remote work. Now, long story short here, ThinkHR is a program that a lot of brokers have. Many of your, you brokers may have it and provide to your clients. If they don't, I sold my company to ThinkHR. I got a bunch of licenses at a friend and family rate, and during this Coronavirus, I have up to 25 of them I can give to people at a very reduced rate.

Don:

So if you want, send me a link and I'll send you a discount in order to get access to that. You can see some of the things that they've been working on. They've done a great job of gathering a lot of resources and tools. All right? So now let's, I want to get into some of the questions and answers that I've already gotten. Then I'll ask Kevin to give me ones that have not been, that I have not answered just quite yet. All right? So, let me see if I can actually make this page a little bit bigger. No, I don't know how to do that. All right.

Don:

So question number one, let's assume an employee is out with COVID-19 symptoms. The employee has exhausted their PTO. That might be happening because before April 2nd, people are using up these policies, right? With the law start, April 1st is actually April 2nd, it's correct that this employee will not have emergency sick time available to him until April 2nd? That's correct. All right? But they can get unemployment or short term disability benefits. And that's one thing you might want to do for your employees. Put together a little cheat sheet for them to make it easy so they know where to apply to these things. Give them the links in here and just try to make their life as easy as possible. All right? Now, what do we have to do, required to demonstrate that the employees experience symptoms of the COVID-19 and tell them, go home, you need to get this checked out. Well, my advice is don't play doctor. I don't care if you slept at a Holiday Inn, right?

Don:

Most of your healthcare providers in this, something you want to look into and give employees easy access to are going to these tele-med arrangements. So, have the employee contact tele-med doctors and find out, Hey, given my symptoms, should I be quarantining myself or not? All right, that's a good way to do it. But remember, they'll probably have a dry cough and a fever as well.

Don:

Now, if the employee is sent home by the company, does this meet the requirements of isolation? The answer's yes. So the bottom line is, anybody who's at home and they're not teleworking and they're not fired, will most likely be protected by these laws. All right?

Don:

What verifications required from the employer that they or somebody else is sick? Again, as I mentioned earlier, that's not really been addressed. We'll have to see what the regs say. And doctor fallibility is a real issue. Traditional FMLA is very form driven. There's no word right now on whether or not we're going to require people to use those forums. Because remember, the extended FMLA is basically just saying that the kids' school is closed, the daycare is closed, they're all closed. So we don't have to worry about any documentation for that. You know, if they've got kids, they're going to have to stay home.

Don:

You might want to ask them, Hey, what's your spouse doing? Are they home? Are you home? And remember, it's got to be licensed daycare. Just because grandma was watching the kids, and grandma's going to self quarantine now, doesn't mean that you've lost your daycare, because it's not a licensed daycare arrangement. All right?

Don:

Number five here. Are there special circumstances for business with less than 50 employees? Less than 25 employees? So the bottom line in this, is we don't have the reg yet. They just threw this out there. There's going to be some hardship exemptions. And there's going to be some criteria, like, are you running profitably? Do you have the cash on hand? Do you have essential work available to you to do? All the, what percentage of your employees can work from home? There's going to be a lot of dynamic in that. We don't know the answer to it yet. Theoretically, we're going to have an answer to it before April 2nd and a process for people to go through, whether it's online or a form that's sent in or something like that to make sure they're deciding right here. All right?

Don:

Recap how small businesses will be compensated. Yes, there will be a tax credit. In other words, they are loaning you the money and will be credited back later on through the tax system and they are going to be willing to loan you money to do this as well.

Don:

What do the bookkeepers need to file and report to the state federal agencies? We don't know the exact answer to that. Remember, just keep a line on them. Do we take their word for it and sign an affidavit? They're not doctors either. Okay, so everybody's going to use their best judgment in this situation and that's all I can tell you. There is no form driven anything just quite yet.

Don:

Now, unemployment insurance, clarify how the tax leaf for small business will work and how we'll be compensated. I think I already explained that the best I can. What evidence do we have to gather to confirm the employee's eligibility for unemployment? The fact that they're unemployed. I mean that's the bottom line with that.

Don:

What's the proper way to terminate a staff member to ensure eligibility for unemployment? They're just terminated. Once they're terminated and if it wasn't for a cause that they did something wrong, in other words, they refused to come into work or to telecommute when they had every opportunity to do so, well then you can give them a termination notice and tell them why they're being terminated and you can fight that on unemployment down the road when everybody's got time to catch up on that. Determine how the termination is to be reported and recorded. Just like they always are with unemployment, there's nothing special. Now again, this whole business of going to unemployment to say we want to do partial layoffs or partial days taken off, they'll negotiate with you to say, Hey, we'll pay, 50% of their income will be attributed to unemployment, the other 50% you're paying. So, you can work that out.

Don:

Clarify how we'll be compensated on sick leave. Same answer. Confirm how staff members must request sick leave to ensure eligibility. Same answer. Hey, I think I'm kind of sick here. Well, what makes you think... Well, my sister's really sick and I'm starting to not feel so good. Oh good. Then please stay home. Well, I might have a little cough. Well, why don't you stay home for two days and see if it gets better or if it gets worse. Again, common sense has to prevail in all of this.

Don:

Next one. We own a small business in Southwest Illinois at 20 time, 22 full time employees. They issued a stay at home order. How are we supposed to handle our employees? Well, they're supposed to stay at home. You have to basically, again, terminate them or lay them off, right, for all of them say we're going to furlough you and as soon as work comes back, you're going to come back. But in the meantime, you are entitled to unemployment. All right?

Don:

So again, you have to look at what they consider to be essential work and if you're not within the world of essential work, then these people will be given unemployment. You're going to have to decide if you want to terminate them completely and cut them out of the emergency two weeks of pay or the potential FMLA continued pay, at the risk of not having them available when you are open for business and losing some loyalty in the process. So this is a chance to figure out who we're really about. You know, you read the stories in business literature about the warehouse that burned down where all the employees were kept on payroll during the three months while it's rebuilt and those people were the most loyal and dedicated, low turnover, all that type of stuff. This is where we get to make business decisions, right?

Don:

Number nine. We only have 10 employees. My question, regard to part-time alley workers. I do not have work for them to do and I'm uncertain if I should lay them off immediately. I'll try to pay them for another couple of weeks. Now remember, if you pay them for a couple of weeks past April 2nd, you get kicked into those laws. So that's the kind of good and bad of it. You have to make some decisions, hard decisions there. They'll be able to collect unemployment if they lose a partial days pay and they'll get partial unemployment. Everybody's going to perhaps be able to do that.

Don:

Can I keep some, layoff others? The answer's yes, but you're going to make sure it's non-discriminatory. What is interesting, if I say, look, give them what the government said, anybody who's over 60, I'm going to send home. Is that age discrimination or is that caring about age? It is age discrimination, but is there any exemption for that? I'm not sure how the courts will come out with that.

Don:

Can I keep some or rather, tax [inaudible 00:57:02] will be available, it's not just a full time, it's also two part time employees as I mentioned. And if I keep them on the payroll event, even though they're not working and then they get sick, will I be able to lay them off? Yes. So the challenge is if there's business reasons, even if they're in this advanced FMLA where they're staying at home, watching a kid. If you cannot, if your business is going into the red and you can't afford to keep it and you've got to cut all your expenses as a survival mechanism, the FMLA says if a job is legitimately eliminated, then a job is legitimately eliminated and those people go into unemployment and then you have to issue Cobra and all those types of things.

Don:

Does the 75 mile requirement still apply for FMLA? And the answer to that is no, because they didn't say anything about that applying in those, in that statute that was passed. So that's a whole bunch really fast here. Kevin, are you with me?

Kevin:

Yes sir.

Don:

All right, so let's see what additional questions we have now. I'm sure there's more. So-

Kevin:

Yes, there are lots of questions here and we'll move through them as quickly as we can. There's so much information, I can't even be 100% certain what you've answered and what you've not. So the first thing, if you, after we wrap up, if you would just send me the most current version of this word doc. I know I have earlier versions of it. I will make sure that goes out to everyone along with the recording. The Bain PowerPoint presentation that Dawn mentioned, is also in the handouts section and that will also go out with the recording.

Don:

Yeah, I did. I did have a rough PowerPoint, but I think Bain took that down. So they just have the online version of the same document, which is what you gave him, that link too.

Kevin:

Okay. So, yeah, that one that you had had sent to us earlier on, is in the handouts.

Don:

Yeah.

Kevin:

So starting at the top, we have an employee that is currently on paid family leave that was supposed to be coming back in April. How will the new benefits associated with the virus impact her return? She was supposed to come back in April to her job, but may not-

Don:

There may not be a job for her to come back to.

Kevin:

Right.

Don:

If paid family leave is exhausted, then she'd go on into unemployment or state disability leave at that point.

Kevin:

With Wisconsin now shutting down, if an employer was, an employee was on light duty, but now our business can't work, should the firm keep paying them to avoid turning it into an indemnity claim? Well, I know the answer about the indemnity claim, but the, and I'm happy to speak to that if you want, but the bigger question to my mind is if certainly people who are on some sort of modified duty would, you would think would be the first ones eliminated if jobs need to be eliminated. So what do you recommend there?

Don:

I would agree with you Kevin. You know, you're still going to, it's still the lifeboat exercise, right? Who do I really need at the core to keep running this business and keep the doors open. And they have made, in a lot of these businesses about who you can keep people on, is if you need somebody to, if you're running a nursery and somebody's got to water the plants or the whole thing dies. Well people could come in and water the plants. Okay, so there, if somebody has got to come in to run the steam to keep the plant warm because it still needs to be heated, otherwise things go bad. Those types of things, those essential functions within a job are still going to be protected in a situation.

Don:

And as far as somebody who is on light duty, of you have them on light duty after April 2nd and you terminate them, then they kick into the benefits of the two weeks of pay at the rate that they were getting on the light duty if you reduced their pay on light duty for two weeks. And they might have somebody at home they've got to watch, so they'll kick into that FMLA for as long as they're, those schools are closed.

Kevin:

Great. And then on the indemnity claim piece, you aren't allowed to pay someone not to work to avoid indemnity. So if you continue to pay them, it would turn into an indemnity claim anyway. As an employer, when we pay somebody under emergency paid sick leave or emergency FMLA, do we have to withhold taxes from employee paychecks?

Don:

We don't know the answer to that yet. So, that's something that they're trying to work through in Congress right now. Somebody said, Hey, you're going to make us pay benefits on top of this? So my guess reading the tea leaves is that they won't require people to take out any tax payments or disability or unemployment payments or anything like that. But we don't know the answer to that yet.

Kevin:

So if the company sends an employee home, I'm not sure I understand that question. It was probably asked in the context of exactly what you were saying at that moment. I apologize. What if you laid off several employees prior to April 2nd due to COVID-19, due to state government, I suppose that relates to-

Don:

The mandatory closure?

Kevin:

Right.

Don:

Yep. Then you're going to have to decide if you want to continue to pay them, continue to give them benefits or you're going to have to terminate them and issue Cobra. You might terminate them and still be willing to pay part of Cobra, keep the same arrangement that you did before with them for three months or something like that. This, the whole idea is this thing's going to last three months. So that's a decision you'll have to make.

Don:

Now, if I, again, everybody, everybody, Kevin, everybody gets to the same spot. If we make a decision before April 2nd to terminate somebody, it makes it a lot easier than making decisions after April 2nd to terminate people. But you'll still have the ability to terminate people after April 2nd. The question is, will that cut off their emergency sick leave pay, or will that cut off their FMLA? And theoretically, the answer is yes. With the emergency sick pay, if I have them employed by April 2nd I'm going to pay them those two weeks and not mess with that. When it comes to the FMLA, it's the same FMLA laws always apply. If a job is truly eliminated, then they're kicked out of the FMLA and they're put into the unemployment and disability system.

Kevin:

Right. So you had mentioned that this goes into effect April 2nd. Someone on the call had heard that it was going to be on or before April 2nd-

Don:

No, if it's 15 days from the day it was passed, then the math says that the paycheck starts on April 2nd.

Kevin:

Great.

Don:

And that's what I've heard from the other law firms too. I gave you links to a lot of what the big law firms, because, you know, I'm a smart guy, but I want to see what all the other lawyers are saying too. And there's some consistency in what everybody's saying. So I'm not crazy.

Kevin:

And to confirm this is, because one of these things said, this is all what if's, because it's not passed. But everything that we've talked about, with the exception of that visage piece you showed that had maybe some late language from the bill that's currently under consideration, everything that we've talked about otherwise has been part of the legislation that's already been made law, yes?

Don:

Another convoluted question, but the bottom line is the law itself is very short. If I take it back, this whole thing, just so you actually see what I'm talking about-

PART 3 OF 4 ENDS [01:06:04]

Don:

I take it back to this whole thing, just so you actually see what I'm talking about. This is the law. All right? And they're talking about some tax payer stuff, Indian health services. You get into a lot of different things. Veterans affairs. So there's a lot that goes in. Now you get into what we're talking about, and if you see there's just not a lot there. So eligible employees, they work at least 30 calendar days. Fewer than 500 employees, 50 or more working each day during 20 or more calendar a year, it's substituting from the existing act. That's interesting. They're talking about substituting, but they say nothing about the 75 mile thing here. So because they say it's nothing about 75 miles, you can't guess that you still have... It's only 50 employees within 75 miles. That has really nothing to do with it at this point.

Don:

What's a childcare provider? So it's got to be a licensed child care provider, a eligible childcare provider, not grandma. What's a school? So these aren't... This is not really in depth. I've shared with you everything in there. They talk about the multi... Especially with all the healthcare providers and emergency responders, and that was it. That was the whole FMLA thing. Then you got the Emergency Paid Sick Leave Act and it's again... It's not very complicated. That's it. That is the whole law right there.

Kevin:

What if you have an employee that's coming back from spring break in Florida, outside of the fact that you should just punch him in the face, and wants to return to work? The employer is a landscaper, but has employees with asthma and his clients are elderly. The employer advised the employee that he had to quarantine for 14 days before coming back to work. Can the employee collect pay from the Emergency Fund?

Don:

No. Not unless he's an employee on April 2nd. He would go into unemployment or state disability.

Kevin:

So if the employer's telling him today to quarantine for 14 days, is he essentially laying him off and telling him to come back later?

Don:

This is where we get into funny situations about definitions, and being clear with what you're telling employees. So if you're saying, "Look, you've got your job, when you come back in 14 days, you'll have your job." And if at that point there's still the ability for him to have his job, it wasn't shut down, because landscaping's not going to be considered essential, I'm telling you that right now. If there's a business about, there's got to be some basic watering so everything doesn't die. That might be a little different than making it look really nice. These definitions are not... We'll know after the fact better than we do know right now the clarity of these definitions. But in that situation, I would tell that person to quarantine, and that if a job is available to him after those 14 days, then I would have him in there. And if he's an employee as of April 2nd, and he's still getting treated like an employee who's just out on leave in a sense, then he would be entitled to those emergency payments... Because he's been quarantined.

Kevin:

Right. How can companies who are not open be forced to pay for the employees if they have no money being generated to pay for them?

Don:

They don't. They can, for a time, terminate the employees and that's the end of the story.

Kevin:

So they'll terminate them before April 2nd?

Don:

Yes.

Kevin:

Right. If an employee reports they have COVID-19 symptoms and, for an abundance of caution, we send them home, does this trigger the mandatory two week pay under FMLA? Or would it be classified as a temporary layoff under unemployment compensation, or both?

Don:

Both, because it'd be temporary layoff right now until April 2nd, then they'd get the payments. So they'll have... And the challenge is they haven't talked about the coordination between state benefits and federal benefits, whether theoretically they're not going to allow for double dipping, in a sense that one will, whichever is a greater benefit to the employee, they'll be able to choose. Maybe the state is more generous than the feds are. They'll be able to choose the state benefit, but they don't get to get both the state benefit and the federal benefit.

Kevin:

What is necessary for a company to claim an exemption that paying FMLA would jeopardize the viability of the business as an ongoing concern?

Don:

We don't know the answer. And that's really for companies with less than 50 employees, because there is no exemption if you're over 50. We don't know the answer yet. I talked about some of the criteria that they're going to look at like, where's your profitability? If you're flush with cash and everybody's making bank, and you've got recurring revenue, that's not going to fly very well compared to somebody who's really under financial stress.

Kevin:

We furloughed all employees last week. Our next payroll is next week. If I pay everyone under the 14 Day Emergency Act, will that cover my requirement under this act, even though it's before the April 2nd date?

Don:

No. Doesn't take effect until April 2nd, so if they're an employee as of April 2nd, you'll be committed to paying them for basically two weeks.

Kevin:

Since healthcare providers are excluded from the paid leave, if they are actually sick or have a sick family member, does this apply then? The employer chooses to pay a health care provider, will the employer get the tax credits?

Don:

Yes.

Kevin:

Okay. If a state issues a stay-at-home order, is that different, by definition, from isolation or quarantine?

Don:

No. It's a state-imposed quarantine, so same thing.

Kevin:

How does this apply to nonprofits with no tax liability?

Don:

It does apply to nonprofits, and they can issue a... Remember I'm not the CPA in all of this. I've got to believe that they'll be able to request for some funds to pay them back. I think that's what that previous slide was... That note from that guy was talking about, from that CFO.

Kevin:

I have restaurants. Originally we told everyone to go on unemployment if they felt they needed to. We since have opened up takeout. We've told them that they all have jobs. If we can pull through this, is there anything different I should do?

Don:

I don't know what that means. If bottom line is you can bring some of your employees back, maintain social distancing at work, and be able to provide takeout, that's a great idea. They would just get paid and be on unemployment, but now all of a sudden if that employee becomes sick, or somebody else becomes sick, they get their two weeks, and if they have to take care of daycare, they get their 12 weeks.

Kevin:

If an employee gets sick with COVID-19 and was in the workplace, what obligation is there for the employer to prevent other employees from getting sick? Is there a liability for the employer if they don't take proper actions?

Don:

That's where I don't play doctor. That's where I ask for advice from my local health care authority. "Okay, this person was sick. Do I now need to quarantine the rest of my workforce?" I don't know the answer to that. I'm not a doctor, and I'm not going to pretend I am. I'm going to rely on healthcare professionals, the county health services.

Kevin:

The current EEOC Guidance says that an employer may ask a sick employee to go home and that we may request a doctor's note clearing them for return to work. If an employee willfully returns to the job site after admitting to having symptoms similar to COVID-19, what do we do if they refuse to go home?

Don:

Okay, so assuming that they've passed the 14 day quarantine period, so they've been home and self-quarantining for 14 days, I go back to what I said earlier. It's going to be very hard for people to get notes from doctors saying, "You're fine." The availability of the doctors is just not going to be there. The best shot you have is maybe somebody from a Teladoc being able to say, "Yeah, I think you should be able to go back to work now just fine."

Kevin:

How would you know-?

Don:

The challenge, as you know, is there's not a lot of tests available to say, "Hey yeah, I can't even get a test, so you're going to tell me I can't come back to work until I can get a test?" Well, employers might want people to come back to work, as long as they've been quarantined, and may not be able to get a test or some type of blessing before they come back to work. So again, common sense prevails in all of this.

Kevin:

Do we know how the bill defines an employee when they say 500? Does that count all employees, or only full/part-time?

Don:

All employees. It goes to the part-time employees.

Kevin:

[crosstalk 01:16:42].

Don:

Part-time employees are part of this whole thing. You just get a proportional... A proportional... So if we go back, they're going to have definitions in here. (silence) See it just says eligible employee. Somebody who has been employed for at least 30 calendar days. It doesn't talk about part-time, full time, or anything like that. Under the Emergency Family Medical Leave Act, it doesn't say that they have... Remember, traditional FMLA, people have to work for 1,250 hours before they get coverage. That's all eliminated in all of this. They just have to work for 30 days, and they have coverage. It doesn't say that they have to work 30 days full time.

Kevin:

Excellent. Can you lay off exempt employees if they're no longer doing work for you?

Don:

Absolutely. Just if you lay them off on Wednesday, then you got to pay them for Wednesday, Thursday and Friday, because they worked Monday and Tuesday.

Kevin:

So this person says the online relief requests online have crashed in the middle of the questionnaire. How do you go about getting financial help to pay for employees when you don't have enough cashflow to keep going? Other companies are just not paying their bills.

Don:

Look, I can't solve people's financial problems, nor government websites. So this is going to be a challenge for everybody. A lot of these sites are going to be overwhelmed, and it's just a matter of them getting their act together from a technology standpoint to handle all of this. I think that if you're economically in a position where you have to cut all these expenses and cut everything as much as possible just to survive, then that's what you have to do. If you can take the hit... It's like 2008, 2009, if you can take the hit... You try to help people through all of this, but you still have to have the business survive. It doesn't do anybody any good if you self-sacrifice and go out of business.

Kevin:

Does this law mean that employers covered by the law must allow employees to work from home due to COVID-19?

Don:

If they can telecommute the answer is yes, because that... Let me back up. If they're home... They want you telecommuting. But people don't have to be sick to telecommute. They just have to be quarantined to telecommute. So they don't have to necessarily be sick, we're just saying as a preventive measure, we're going to have you telecommute where you can. Now some companies will say, "You know, we don't want anybody telecommuting, and we're not going to do that. We're just going to terminate you." You can do that as long as that person doesn't have a disability where telecommuting may be an accommodation. Then you go through the undue hardship reality of whether or not you can even afford to have them telecommuting because there's no work for them to do.

Kevin:

I repair cars, and our work is quickly drying up. If I lay off employees after April 2nd due to lack of work, will I then have to pay them just the two weeks and then an additional 12 weeks? Or will my employees be eligible for unemployment?

Don:

Okay. So if you go back to, just go right back to this thing, because the answer is not always very easy to find. There's reason for leave for these first three things: they've been quarantined... It doesn't say anything about you don't have the finances. So if you don't have the finances at this point in time, and yet being laid off because you can't afford them at all, because you're going to go bankrupt and go under, then I don't think they even get this. Then they'll go into unemployment. There's going to be some argument at some point by some lawyers because that's what happens in stuff like this that, "You know what? You retaliated against him because you could have paid for this. You didn't want to, you could have gotten a loan to pay for this. You didn't want to." I think they're going to be fairly kind on employers in this situation.

Kevin:

We still have, I'll bet, 30 questions that are out here not answered, and we are going to need to wrap up unfortunately. Jackson is collecting all of these questions. I really apologize that we can't keep going. There was one question here. You had mentioned you're doing a webinar tomorrow for, I forget which particular industry, if you're able to share that, at least a couple of people had asked about that. We will pass all the other questions-

Don:

Look, I'm doing it for the clean... I'm doing it for ISO, which is the cleaning industry, and I'm on a panel with other people that I'm doing it for. Okay?

Kevin:

Okay.

Don:

Email me and I'll find out if they want to invite you. Put it that way. I'll forward it over to the head of that group.

Kevin:

Excellent. Can you throw your contact information back up on the screen?

Don:

Absolutely. There we go. And Kevin do this, when I get those questions, I'm sure some of them have already been answered...

Kevin:

Yes.

Don:

The ones that are unique, what I'll do is I'll make sure that I will try to answer them. Either I'll just do a quick zoom recording, we'll answer them and send that out, because that'll actually be faster than typing all this stuff up. Just send it over to me and I'll get on that and get back to everybody with questions that have not been answered yet.

Kevin:

Outstanding. And we will be sending this recording out, as well as the resources that Don has mentioned throughout the call. You'll be getting that tomorrow. If you have questions, shoot them Don's way. We certainly hope this was helpful and really appreciate you joining us. Thanks so much everybody. Take care, and have a good day. Bye-bye.

Don:

Thanks, Kevin, and be well everybody.

Kevin:

Thanks, Don.

Don:

All right, buddy, bye-bye.

Kevin:

Bye-bye.

PART 4 OF 4 ENDS [01:24:32]