**To all, I’ve done my best to respond to your questions. Remember, I am NOT your lawyer, and this is a very dynamic situation. The “correct” answer to many of these questions won’t be known until the regs come out or lawsuits are filed! Hang in there, Don**

**I greatly enjoyed doing the webinar the other day and hoped it was helpful. 67 questions were asked. I was able to answer many of them on the webinar. In this document I'll seek to answer the rest. Of course, some are duplicative and I will simply eliminate them as a question. Hope that makes sense. Make sure you also look at my latest Corona cheat sheet document that Kevin will provide.**

**Also remember my friends and family deal for access to ThinkHR. If interested don@donphin.com**

1. We currently have an employee on PFL that was supposed to be coming back in April. How will the new benefits associated with the virus situation impact her return?
   1. One of the major challenges is coordinating between city, State and federal leave laws. What's been added to the mix was the two weeks of sick pay. I assume you are in CA. Right now your employee's on paid family leave. If she comes off of that leave because she or a family member not sick and is able to return to work, then she would be able to use that program should she then not be able to work because of her being sick, a family member being sick or being quarantined.
2. With Wisconsin now shutting down if an employee was on light duty. Now state has shut business down. Does firm need to keep paying him to avoid turning into indemnity claim.
   1. Paying an employee to not work will not avoid indemnity being credited to an employee injury. Best advice is to communicate with the claims adjuster as to how/if the forced shutting down of the business may impact this injury.
3. As an employer, when we pay somebody under Emergency Paid Sick Leave or Emergency FMLA, do we have to withhold taxes from employee paychecks? Federal withholding? FICA? State of Iowa?
   1. It's my understanding that regulations will be coming out saying that you will not have to pay those taxes and that you can actually use the sick pay to offset payroll taxes of employees who are still working.
4. If the company sends employee home this sick pay is considered?
   1. Yes. They would get 100% pay up to $511 per day, for 10 days.
5. What if you laid off several employees prior to April 2nd due to Covid19 due to State government?
   1. If those employees have been terminated and are withdrawing unemployment, then you would not be subject to these new laws
6. Just to clarify, does this only pertains to employees initiating sick leave?
   1. No, it applies to those who are initiating sick leave but also those who have been quarantined. It's really about their inability to work. If it's because they're sick or they're quarantined, they get 100% pay. If it's because somebody else is sick or quarantined or can't go to school, they get two thirds pay.
7. Don, you mentioned this doesn't go into effect until 4.2.20. I heard on or before. Which is correct?
   1. They came out on March 25th saying that the deadline is April 1st period
8. Last point on Slide 5 - if an Employer is less than 50 employees, then employer is not required to offer FMLA, but are they obligated to offer EFMLEA if less than 25 Employees?
   1. If an employer is less than 50 employees, they are subject to both the emergency sick leave and childcare FMLA leave. I am still waiting for them to issue the regulation of what they expect to see in a hardship response from the employer.
9. This is all what ifs because it is not passed correct?
   1. No. This is the law.
10. How do we count employees under the FMLA? We employee over 25 students at our three movie theatres, they are all under 18. We have 3 FT employees and 8 PT adults? Are we count per head, counting students, counting FTE?
    1. By head count. This includes both full time and part time employees.
11. If an employee reports that they have COVID-19 symptoms and for an abundance of caution, we send them home. Does this trigger the mandatory 2 weeks’ pay under FMLA, or would it be classified as a temporary layoff under UC, or both?
    1. Yes. It would trigger the mandatory emergency sick leave pay. Remember, the new FMLA is solely related to your kids being at home because the school or daycare is closed.
12. If a state issues a stay-at-home order, is that different, by definition, from isolation and quarantine?
    1. No, it is one and the same. If you are identified as an essential business, it says that you can still keep working.... But that does not mean you have to.
13. How can companies who are not open be forced to pay for the employees if they have no money being generated to pay them?
    1. If they are not on your payroll, you are not subject to these laws. At that point, your employees would be getting unemployment or in some States paid family leave. If they're really sick, they may also apply for short term disability benefits.
14. Law speaks possible exclusion of certain health care providers. What is the definition of "health care providers"? Would an outpatient medical clinic be exempt as a whole or does this only apply to a certain class (i.e., doctors, etc)
    1. Healthcare provider is specifically defined in the bill.

https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/COVID-19%20Amendment%20Language%2003162020%20741%20FINAL.pdf (begins at page 14)

1. Does this mean that employers covered by this law must allow employees to work from home due to COVID-19?
   1. Employers are not required by law to allow somebody to work from home unless they have to do so as an ADA based accommodation. Most employers want employees to work from home if they can. If they can work from home and refuse to do so, they would not be eligible for unemployment unless their excuse is they are sick or taking care of somebody who is sick or taking care of a child home from school or daycare.
2. Do they have to be ill or only for childcare?
   1. Don’t get confused between the two laws. One is a very broad-based sick pay statute for two weeks. The FMLA statute only applies to parents taking care of kids who are home from school or daycare.
3. What is necessary for a company to claim an exemption that paying FMLA would jeopardize the viability of the business as an ongoing concern?
   1. These regulations are still being worked out. It appears that you may not be able to escape having to pay sick pay. The exception may only be available for the extended FMLA leave pay.
4. Where can we find a list of those business considered "essential”?
   1. Most of the states have been issuing definitions of essential businesses in their orders to stay at home. When they issue those orders they also identify essential businesses.
5. 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 is before the April 2nd date?
   1. Looks like you can get a credit for doing that but it does not relieve your obligation under the new laws..
6. Since healthcare providers are excluded from the paid leave. If they are sick or have a sick family member, does this apply then? If an employer chooses to pay a healthcare provider, will the employer get the tax credits?
   1. The bottom line is nobody’s going to terminate a health care provider or a first responder who gets sick. If they do so, there’s a place reserved in hell for them.
7. Question from NC about best way to get maximum unemployment benefits for employees: are we better off laying our people off entirely, or just reducing hours?
   1. As in all states, the first thing is to understand how your state is addressing the unemployment issue. For example, are they waiving the first week of unpaid benefits? Many states have cost sharing closed core programs that will supplement reduced schedules or wages.
8. How do we guide employees-should they use the FFCRA paid sick then FMLA then apply for UI, PFL, DI?
   1. There’s no choice in the matter. You cannot suggest that they use anything other than FFCRA leave after April 1. Once that leave is exhausted, then they can use other resources.
9. Can you lay off Exempt employees if they are no longer doing work for you?
   1. Yes. An employer only has to pay an exempt employee for the days actually worked in their last week of employment.
10. 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 not paying their bills
    1. I feel your pain. This is a challenge for so many people. I would begin applying for an SBA loan now. I would also look into my lines of credit, cut expenses and map out the long-term implications.
11. If you’re a company incorporated in one state, but are doing work in a neighboring state...which state laws apply for purposes of those individual employees?
    1. The state where they are actually doing work.
12. Do we know how the bill defines an employee when they say 500? Does that count all employees or only full/part-time?
    1. This includes all employees. Full time and part time.
13. 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 liability for the employer if they don’t take proper actions?
    1. Employers have an obligation to create a safe workplace. Exactly what that means currently is not clear. If somebody does have all the warning signs of Coronavirus, they should be quarantined until they have been told they are not a risk any longer.
14. For telecommuters- can we agree to a $30 monthly increase for electricity, phone, Wi-Fi, small expenses for home office.
    1. The law requires you to pay actual expenses for an employee’s use of their own utilities, equipment, et cetera. A stipend sounds like a great idea as long as it’s reasonably related to actual expenses. For example, if somebody doesn’t have an ergonomic chair to sit in at home, you would be wise to consider buying one for them.