



## Q&A from COVID-19 Business Response Webinar on 3/27/20

Link to Webinar [here](#). Please note you will be required to register to access.

*Please note that this information is current as of 3/27/20, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by [CDC and local officials].*

For further questions, please reach out to [Benesch's COVID-19 Task Force](#). We amalgamated the questions so they could be useful to as many of our clients as possible. As stated earlier, these answers are subject to change and to the rapidly evolving legal landscape that is now developing.

*Q. We own a commercial property with tenants. One of the tenants voluntarily closed temporarily. They have told us they will not be paying rent while closed. What can we do? We need our rental payments to pay our mortgage.*

A. Be proactive with your lender to see if you can get some relief from payments. Many real estate owners are facing the same issue right now. There is some specific information in the presentation (link above) to address some talking points to have ready.

*Q. Our Services (I Believe) are considered essential. we are providing cleaning/disinfecting of facilities and emergency management etc. My question is: with regards to SBA loan, we don't have physical damage or loss of inventory however we do have clients closing their sites and loss of revenue. Will that be eligible for the economic disaster SBA loan?*

A. For economic impact disaster loans, yes (note the presentation linked above is not on economic impact disaster loans). You could also qualify under the 7(a) program that was addressed in the presentation.

*Q. Do the sick leave days have to be taken consecutively?*

A. No. The 80 hours in two weeks' limit can be used over two or more periods of leave before December 31, 2020.

*Q. Wouldn't the exceptional circumstances for reasons that are not foreseeable apply to the WARN situation?*

A. That is an argument. It's called the "unforeseeable business circumstances" exception. There is a counter-argument. Employees can argue that their employment losses were

foreseeable and more notice could have been given. It can be very expensive for an employer to prove that the statutorily required notice period could not have been given either with the required notice or more notice, even if they are proven correct.

*Q. WARN notification is still based on # of ees at specific location, correct? Some WARN laws are being waived due to COVID, correct?*

A. The federal WARN Act still applies across the nation, but some states, like California (<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-EO-motor.pdf>), are temporarily waiving the notice period, which will generally affect only smaller employers.

*Q. Are there potential lawsuits from employees, i.e., "my employer was not essential, they stayed open, I got sick and suffered damages"?*

A. Sure, some will try. We do see some employees seeking workers' compensation benefits from getting sick. We'll have to wait to see how this develops, and there will likely be differences by state. We believe there are two theories for employees to seek workers' compensation benefits. They can provide evidence that they were "injured" at work by a specific exposure by a specific employee at work. That could be difficult. They can also provide evidence that their disease was occupational in nature. We believe healthcare workers could prevail on this theory with the right circumstances. Although the workers' compensation costs would not be all that much in the typical situation, a death case would obviously be costly as well as tragic. There are two other possible theories outside of workers' compensation, and these theories would definitely vary by state. There are common law causes of action known as negligent retention, hiring, or supervision. They are not often successful because employers are generally immune from suit by their employees because of workers' compensation. There is also a statutory cause of action in Ohio and elsewhere for employer intentional tort, which can be claimed when an employer subjects an employer to a dangerous condition knowing that the employee would be injured, or something similar.

*Q. Is there a difference between a lay-off w benefits extended vs a furlough w benefits extended?*

A. Answering your question directly, no. "Layoff" means an employer-initiated loss of employment, usually temporary, with an expectation of "recall" after a period of weeks or months. Laid off employees are generally expected to seek unemployment compensation. Employers have layoffs when the work is not sufficient to sustain the full workforce. Generally, employers do not provide benefits to their laid off employees. "Furlough" has various meanings. Although many employers are furloughing employees today, we have seen that term most used when employers go through cost-reduction programs even when the work might be there. Employers oftentimes continue benefits for a short while for their furloughed employees. Furloughed employees also are expected to seek unemployment compensation, but employers are generally required to report any continuation of benefits to the unemployment compensation office, which might prevent the employee from receiving benefits in some states or receiving lower benefits in other states. Today, we are seeing more

employers using the term "furlough" instead of "layoff," because they want to continue providing some benefits and they feel it a more compassionate term.

*Q. I understand that a company must consider Affiliates to determine number of employees, but if all Affiliates are less than 500 employees, can each Affiliate apply separately for payroll protection?*

A. There isn't anything.

*Q. What if a business has been incorporated for less than 3 years?*

A. Take the weekly average revenue and multiply by 52.

*Q. What about embedded contractors? Overall the contractor has more than 500 EEs but there may be less than that on a given site.*

A. If they are an independent contract then they do not count against headcount.

*Q. What is this stimulus loan called if and when i want to search for it online?*

A. Paycheck Protection Program

*Q. Do 'payroll costs' include the compensation paid to independent contractors?*

A. Yes, but subject to the same \$100,000 cap for other employees.

*Q. Can a gig apply for SBA loan?*

A. Yes. Self - employed workers qualify.