COVID-19 Update

Presented by
The Franklin Partnership, LLP
August 27, 2020
About The Franklin Partnership

• Bi-partisan Washington, D.C.-based government relations firm
• Provide direct lobbying services on Capitol Hill, White House, Federal Agencies
• Strategic consulting on impact of government actions on clients
• Speak to business, associations about impact of Washington on their operations
• Supply chain risk analysis
• Clients include:
  - Manufacturing companies and associations
  - Defense manufacturers
  - Hospitals,
  - Cities

The Franklin Partnership is not a law firm and nothing contained herein shall be construed as legal advice.
Agenda

• Where to Find State Mask Orders, Travel Restrictions
• CDC: When to Quarantine, Return to Work
• CDC: Employer Investigations and Cooperating with Health Departments
• CDC Poster: Prevent the Spread when Carpooling to Work
• CDC: How to Communicate with Employees
• CDC: Communicating with Employees about Outside Work Activities
• MSLF, EIDL, PPP Status Updates
• PPP Interim Final Rule on Ownership Issued
• President COVID Actions
• Status of COVID-19 Legislation
• Questions

All information presented as of August 26, 2020
Where to Find State Mask Orders (34 State mandates)

Indiana

Statewide order: Yes

Gov. Eric Holcomb's order requiring Hoosiers age 8 and up to mask themselves in most public settings took effect July 27 and will run through at least Aug. 26. It also sets detailed mask requirements for reopening schools, with students in grades 3-12 and all adults required to cover their faces when on school property, until further notice.

Learn more: Read Indiana’s mask order.

Ohio

Statewide order: Yes

The state mandate took effect July 23, replacing an alert system in which mask orders were imposed on individual counties deemed to be at high risk for coronavirus spread. Gov. Mike DeWine's directive applies to people age 10 and older when in public indoor spaces and outdoors when unable to maintain 6-foot social distancing.

Learn more: Read a statement from the governor’s office announcing the mask order.

Pennsylvania

Statewide order: Yes

Pennsylvania’s mask mandate took effect July 1 on orders from state Health Secretary Rachel Levine. It requires most people age 2 and up to cover their faces in public places, indoors and out. It expanded a prior order that made masks mandatory for employees and, where relevant, customers at essential businesses.

Learn more: Read Pennsylvania's mask order.


August 5, 2020
Before you travel, consider the following:

Is COVID-19 spreading at your destination?
The more cases at your destination, the more likely you are to get infected during travel and spread the virus to others when you return.

Do you live with someone who might be at increased risk for severe illness from COVID-19?
If you get infected while traveling, you can spread the virus to loved ones when you return, even if you don’t have symptoms.

Are you at increased risk for severe illness from COVID-19?
Anyone can get very ill from the virus that causes COVID-19, but older adults and people of any age with certain underlying medical conditions are at increased risk for severe illness from COVID-19.

Does your destination have requirements or restrictions for travelers?
Some state, local, and territorial governments have requirements, such as requiring people to wear masks and requiring those who recently traveled to stay home for up to 14 days. Check state, territorial, tribal, and local public health websites for information before you travel. If you are traveling internationally, check the destination’s Office of Foreign Affairs or Ministry of Health or the US Department of State, Bureau of Consular Affairs, Country Information page for details about entry requirements and restrictions for arriving travelers, such as mandatory testing or quarantine.


August 21, 2020
Where to Find State Travel Orders – Know Before You Go!

Chicago

There are no statewide restrictions, but a 14-day quarantine is required for visitors heading to Chicago from Alabama, Arkansas, Arizona, California, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nevada, Nebraska, North Carolina, North Dakota, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Utah and Wisconsin.

Connecticut

Any traveler coming from a state that has a positive rate of 10 out of 100,000 people or a 10% or higher positivity rate must self-quarantine for 14 days. The traveler must have spent more than 24 hours in said state for the rule to apply. Everyone also needs to complete a travel health form.

Visitors can opt out of the 14-day quarantine if they can provide proof that they have had a negative Covid-19 test in the past 72 hours.

Massachusetts

Beginning August 1, all visitors and residents must complete a travel form before arriving in Massachusetts (unless they are arriving from a state designated by the Department of Public Health as low risk).

Travelers must "quarantine for 14 days or produce a negative COVID-19 test result that has been administered up to 72 hours prior to your arrival in Massachusetts."

Those waiting on test results need to quarantine until they receive their negative results.

Failure to comply with these directives may result in a $500 fine.


August 5, 2020
CDC Guidance – When to Quarantine

Who needs to quarantine?

Anyone who has been in close contact with someone who has COVID-19.

This includes people who previously had COVID-19 and people who have taken a serologic (antibody) test and have antibodies to the virus.

What counts as close contact?

- You were within 6 feet of someone who has COVID-19 for at least 15 minutes
- You provided care at home to someone who is sick with COVID-19
- You had direct physical contact with the person (hugged or kissed them)
- You shared eating or drinking utensils
- They sneezed, coughed, or somehow got respiratory droplets on you

Steps to take

Stay home and monitor your health

- Stay home for 14 days after your last contact with a person who has COVID-19
- Watch for fever (100.4°F), cough, shortness of breath, or other symptoms of COVID-19
- If possible, stay away from others, especially people who are at higher risk for getting very sick from COVID-19


August 3, 2020
# Considerations for returning to work

**Are you or someone in your household at increased risk of severe illness?** You may need to take extra precautions.

- If you are at increased risk for severe illness, check with your employer to see if there are policies and practices in place to reduce your risk at work, like telework or modified job responsibilities.

**Are you the primary caregiver for your child or someone else?** If so, here are some things to think about:

- If someone else will be taking care of your child, ask them to review information about caring for children.
- If someone else will be providing care for a household member that is at increased risk of severe illness or needs extra precautions, ask them to review this information.

**Are there ways you can minimize the number of people you interact with?**

- In addition to any measures your business may have implemented to reduce your risk (e.g., installed barriers), take additional steps to minimize the number of people you interact with.
- Interacting with more people raises your risk since some people may have the virus and not know it since they have no symptoms.
- Can you have virtual meetings to limit the number of in-person interactions?
- When interacting with other people, are policies in place for colleagues or customers to wear a mask and to keep 6 feet of space between others?

**What’s the length of time that you will be interacting with people?**

- Spending more time with people who may be infected increases your risk of becoming infected.
- Spending more time with people increases their risk of becoming infected if there is any chance that you may already be infected.

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August 3, 2020
The health department may ask the employer for help in a number of ways, including:

• Ask the employer for help in understanding the risk for transmission in the workplace and identifying exposures and contacts in the workplace
• Rely on the employer to identify workplace contacts
• Conduct workplace contact tracing without directly engaging the employer

What employers can do to assist the health department in the response to COVID-19:

• Establish a COVID-19 coordinator or team
• Create and implement a preparedness, response, and control plan
• Collect information about the workplace
• Support employees and conduct workplace hazard evaluation and prevention activities
• Communicate with employees

CDC Prevent the Spread When Carpooling

Here are ways that you can help prevent the spread of COVID-19 when carpooling:

- Wear masks in a shared vehicle
- Use fresh air through vents or windows
- Cover coughs and sneezes
- Clean and disinfect surfaces often
- Limit the number of people
- Use proper hand hygiene
- Ride to work with the same people
- Stay at least six feet apart while waiting

If you are sick or had close contact with a person with COVID-19, stay home unless seeking medical care. For more information on how to stay safe at work, visit cdc.gov/coronavirus


August 6, 2020
CDC Communicating with Employees

Worksite television monitors

- Employers can use existing videos on a variety of COVID-19 health topics, some of which are available in multiple languages (Section 3).
- To further capture employees’ attention, employers can develop their own videos. The videos should be in languages commonly spoken by employees and could feature employees who speak these language(s).
  - Transcripts for various health topics are already developed and available (Section 3).
- Content should rotate frequently to attract and maintain employees’ attention.

Social media

- Employers should consider using or developing a closed/private, company-only Facebook, Twitter, WhatsApp, or other social media page and encourage employees to follow it online.
- Routine postings that reinforce health information and infection prevention behaviors can be shared on social media.
- Employers may wish to develop their own messages, or they can use existing relevant prevention messages tailored to social media that have already been developed by CDC (Section 3).

Company text messaging programs

- Employers with a text messaging program can send workers brief text messages, which are automatically translated to preferred languages, to reinforce prevention measures and remind employees about company policies and benefits.
- Urgent messages can be sent rapidly using the same mechanism, as needed.


August 4, 2020
CDC: Message to Employees on Outside of Work Activities

“Prevention practices outside of work” messages

- Stay home as much as possible and avoid travel.
- Avoid large gatherings, as defined by your local or state health department.
- Keep at least 6 feet between yourself and other people when in public and in shared spaces within employer-provided congregate housing.
- Some people may be able to spread the virus even if they don't have signs and symptoms.
- The virus can live on different surfaces. If you touch something that has the virus on it, and then touch your face (eyes, nose, or mouth), you might become sick.
- Wash your hands with soap and water often, for at least 20 seconds.
- When using hand sanitizer, rub it all over your hands and fingers until your hands are dry. This should take around 20 seconds.
- Clean and disinfect frequently touched surfaces at home like tables, doorknobs, light switches, countertops, handles, desks, phones, televisions, toilets, faucets, sinks, and computers.


August 4, 2020
An employer is required to pay its employees for all hours worked, including work not requested but suffered or permitted, including work performed at home, See 29 C.F.R. § 785.11-12. If the employer knows or has reason to believe that work is being performed, the time must be counted as hours worked. An employer may have actual or constructive knowledge of additional unscheduled hours worked by their employees, and courts consider whether the employer should have acquired knowledge of such hours worked through reasonable diligence. See Allen v. City of Chicago, 865 F.3d 936, 945 (7th Cir. 2017), cert. denied, 138 S. Ct. 1302 (2018). One way an employer may exercise such diligence is by providing a reasonable reporting procedure for non-scheduled time and then compensating employees for all reported hours of work, even hours not requested by the employer. Id. If an employee fails to report unscheduled hours worked through such a procedure, the employer is not required to undergo impractical efforts to investigate further to uncover unreported hours of work and provide compensation for those hours. Id. However, an employer’s time reporting process will not constitute reasonable diligence where the employer either prevents or discourages an employee from accurately reporting the time he or she has worked, and an employee may not waive his or her rights to compensation under the Act. Id. at 939; see also Craig v. Bridges Bros. Trucking LLC, 823 F.3d 382, 388 (6th Cir. 2016).
$400 Unemployment Supplement Agreements

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A state must sign an agreement with FEMA to contribute at least $100 towards $400. Signing agreement doesn’t mean state will pay; Arizona only state to start payments.

https://www.fema.gov/fact-sheet/lost-wages-assistance-approved-states  
August 24, 2020
Reminder: Unemployment Compensation is Taxable

IRS: Unemployment compensation is taxable; have tax withheld now and avoid a tax-time surprise
IR-2020-185, August 18, 2020

WASHINGTON — With millions of Americans now receiving taxable unemployment compensation, many of them for the first time, the Internal Revenue Service today reminded people receiving unemployment compensation that they can have tax withheld from their benefits now to help avoid owing taxes on this income when they file their federal income tax return next year.

By law, unemployment compensation is taxable and must be reported on a 2020 federal income tax return. Taxable benefits include any of the special unemployment compensation authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted this spring.

Withholding is voluntary. Federal law allows any recipient to choose to have a flat 10% withheld from their benefits to cover part or all of their tax liability. To do that, fill out Form W-4V, Voluntary Withholding Request (PDF), and give it to the agency paying the benefits. Don’t send it to the IRS. If the payor has its own withholding request form, use it instead.

If a recipient doesn’t choose withholding, or if withholding is not enough, they can make quarterly estimated tax payments instead. The payment for the first two quarters of 2020 was due on July 15. Third and fourth quarter payments are due on September 15, 2020, and January 15, 2021, respectively. For more information, including some helpful worksheets, see Form 1040-ES and Publication 505, available on IRS.gov.

Still No Treasury Guidance on Payroll Tax Deferral

• Memorandum: Delays payroll tax collection for those making under $104,000
  - Trump instructs the U.S. Treasury to halt collection of payroll taxes from Sept. 1 through Dec. 31 for workers who earn less than $4,000 every two weeks (people earning under $104,000 a year). Will still need to pay the tax unless Congress passes a full tax holiday, not deferral. **BE VERY CAREFUL WITH THIS**

• September 1st implementation date days away
• Mass confusion, many believe this is a holiday for the employee payroll tax portion
• Treasury Secretary says not mandatory for employers and employees may “opt out”
• **Executive Branch (President) does not have authority to mandate a permanent tax holiday**
• Congress would have to pass a law; very unlikely to proactively implement a holiday
• Democrats, many senior Republicans worried about impact on Social Security
• Employers may have to claw back deferred payments if not held for employee

*If too many Americans are in a “bind”, thinking it is a holiday, Congress may have to retroactively bail them out by passing a law – maybe in tax extenders in December*
The Fourth Report of the Congressional Oversight Commission

The Main Street Lending Program has seen modest initial activity thus far. As of August 19, 2020, eligible lenders had issued loans totaling $496.8 million under the program. The Federal Reserve’s participation amount in these loans is $472 million—about 0.07% of the program’s $600 billion lending capacity. As of August 10, 2020, 522 lenders have registered with the program, although only 160 had publicized that they are accepting loan applications from new customers.

August 21, 2020

EIDL Status

SBA Disaster Assistance Update
Nationwide EIDL Loans / COVID-19

August 15, 2020

| Loans Approved | 3,497,081 | Dollars Approved | $184,464,635,819 |

- EIDL grant portion out of money – no more grants
- Loans still available but the $10,000 grant is closed

PPP Loan Application Period Closed Aug. 8

Notice: Paycheck Protection Program closed August 8, 2020

Current law dictates that the Paycheck Protection Program (PPP) close at the end of August 8, 2020. As such, SBA is no longer accepting PPP applications from participating lenders.

PPP Forgiveness Calculations: Wage Reduction

Example 3: An employee earned a wage of $20 per hour between January 1, 2020 and March 31, 2020 and worked 40 hours per week. During the Covered Period, the employee’s wage was not changed, but his or her hours were reduced to 25 hours per week. In this case, the salary/hourly wage reduction for that employee is zero, because the hourly wage was unchanged. As a result, the borrower would enter $0 in the Salary/ Hourly Wage Reduction column for that employee on the PPP Schedule A Worksheet, Table 1. The employee’s reduction in hours would be taken into account in the borrower’s calculation of its FTE during the Covered Period, which is calculated separately and may result in a reduction of the borrower’s loan forgiveness amount.

5. Question: For purposes of calculating the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees, are all forms of compensation included or only salaries and wages?

Answer: For purposes of calculating reductions in the loan forgiveness amount, the borrower should only take into account decreases in salaries or wages.

1. Owners

Are any individuals with an ownership stake in a PPP borrower exempt from application of the PPP owner-employee compensation rule when determining the amount of their compensation that is eligible for loan forgiveness?

Yes, owner-employees with less than a 5 percent ownership stake in a C- or S-Corporation are not subject to the owner-employee compensation rule. The First Loan Forgiveness Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 85 FR 38304, 38307 (June 26, 2020), caps the amount of loan forgiveness for payroll compensation attributable to an owner-employee. There is no exception in the rule based on the owner-employee’s percentage of ownership. The Administrator, in consultation with the Secretary, has now determined that an owner-employee in a C- or S-Corporation who has less than a 5 percent ownership stake will not be subject to the owner-employee compensation rule. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated.
b. Are rent payments to a related party eligible for loan forgiveness?

Yes, as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020.

Any ownership in common between the business and the property owner is a related party for these purposes. The borrower must provide its lender with mortgage interest documentation to substantiate these payments. While rent or lease payments to a related party may be eligible for forgiveness, mortgage interest payments to a related party are not eligible for forgiveness. PPP loans are intended to help businesses cover certain non-payroll obligations that are owed to third parties, not payments to a business’s owner that occur because of how the business is structured. This will maintain equitable treatment between a business owner that holds property in a separate entity and one that holds the property in the same entity as its business operations.
COVID Phase 4 – The Timing of a Bill

• House passed Post Office bill
• Senate GOP “Skinny Bill” close to 51 Senate votes
• McConnell wants negotiations to resume

• Is the White House angling for a deal now?
  - White House Chief of Staff “stopped by” Speaker’s office Saturday, she was unavailable
  - Chief of Staff Meadows popped into McConnell’s office last month, Leader McConnell was out, staff said, “you really should have called first…”

• Pelosi holding out against smaller, piecemeal approach White House, Senate GOP want
• Pelosi getting pressure from moderate House Democrats to address PPP, other issues
• GOP wants to tie next COVID bill to government shutdown, Pelosi resisting
COVID Phase 4 – Key September Dates

• September 1 – Payroll deferral could begin
• September 4 – August Jobs Report
• September 8 – U.S. Senate returns to Washington, D.C.
• September 14 – U.S. House of Representatives returns to Washington, D.C.
• September 15 – quarterly estimates impact PPP deduction of expenses
• September 18 – Jewish holidays – no Congressional action until Sept. 22
• September 27 – Section 1112 of CARES Act expires for SBA principal, interest payments
• September 27 – First Presidential debate
• September 30 – Federal government runs out of money after 11:59 PM Eastern (shutdown)
Questions?

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