OUR PRACTICE

Coronavirus (COVID-19): Navigating the Path Ahead

To help our clients and communities navigate the growing impact of the coronavirus (COVID-19) pandemic, Baker Donelson’s Coronavirus Task Force is monitoring the rapidly changing situation and updating this site with helpful and current resources. The Task Force includes leading professionals from multiple Baker Donelson practice areas with a range of experience in the many operational, legal, regulatory and governmental issues that are vital to ensuring our clients receive comprehensive guidance on how to respond to their unique challenges.

A Message From Our CEO: Baker Donelson has a comprehensive business continuity plan that ensures our Firm’s continued operation and uninterrupted service to our clients throughout the duration of this public health crisis. Our hope is that the duration will be limited, but regardless of how long it lasts, we will have ample resources to service our clients and keep our people safe. Your partnership, friendship and trust mean more now than ever. We look forward to continuing to serve you and we wish safety and good health to everyone. – Timothy M. Lupinacci

Coronavirus (COVID-19) Updates
(This page will be updated often with new information.)

August 1, 2023

- Recent Trends in FEMA COVID-19 Appeal and Arbitration Decisions
  Recent Federal Emergency Management Agency (FEMA) second appeal decisions and United States Civilian Board of Contract Appeal arbitration decisions indicate that FEMA is narrowly construing its policy language governing eligibility of COVID-19 costs. Applicants should be prepared to address these five trending eligibility traps.
  Read More

May 12, 2023

- May 2023: A Policy Look-Ahead for Health Care and Pharmaceuticals
  As the COVID-19 era comes to an end, health care legislation, and policy continue to evolve. May 2023 has been a busy month for new pharmaceutical legislation and policy. The 118th Congress continues to introduce new health care and pharmaceutical bills. 435 bills have been introduced, but only three have passed the House and none in the Senate.
  Read More

May 9, 2023

- Making Sense of the Varying End Dates of Telehealth Waivers and Flexibilities When the PHE Ends on May 11th
  With the COVID-19 Public Health Emergency (PHE) ending on May 11th, providers and practitioners must carefully consider the dates when various telehealth waivers and flexibilities end. This requires understanding the authority for each waiver or flexibility and any recent extensions. At the beginning of the PHE, several mechanisms were used to make it easier to provide telehealth services in response to the pandemic. These included legislation, 1135 waivers, and interim final rules. Providers need to understand how various waivers and flexibilities originated, and whether more recent legislation and rulemaking extended these policies or made them permanent to get clarity regarding
when longstanding regulations go back into effect. Here is a summary of the end dates of several telehealth waivers and flexibilities that were frequently relied upon by providers and practitioners to facilitate the use of telehealth during the PHE.

Read More

- **COVID-19 Public Health Emergency Set to End May 11, 2023, Along with Many Waivers and Flexibilities**
  
  After more than three years, the Public Health Emergency (PHE) related to COVID-19 is scheduled to end on Thursday, May 11, 2023. The PHE declaration under the Public Health Service Act has allowed the Secretary of the Department of Health and Human Services to temporarily modify or waive certain Medicare, Medicaid, CHIP, and HIPAA requirements to provide flexibility during the pandemic. After the PHE ends on May 11, waivers, and flexibilities still in effect that were contingent on the Secretary's PHE-related authority will end unless they have been specifically extended under other authority.

  Read More

  April 18, 2023

  
  On Monday, April 10, 2023, President Biden signed legislation ending the COVID-19 National Emergency immediately. This legislation ends the National Emergency one month earlier than the May 11 date previously announced by the White House and federal regulators.

  What impact does this have on employer-sponsored benefit plans? None.

  The legislation changed only the expiration date of the National Emergency; it did not change the scheduled end date, May 11, 2023, of the Public Health Emergency on which the tolling of various employee-benefit related deadlines was based. Therefore, the employee-benefit related mandates will still end as previously scheduled.

  Read More

  February 17, 2023

- **Certain Health Care Products Could Have Section 301 Duties Reinstated**
  
  The United States Trade Representative (USTR) is likely to reinstate Section 301 tariffs on 81 COVID pandemic-related products. USTR is requesting public comment about whether to extend the current Section 301 exemption for the identified health care products for up to six months. Users (including hospitals), importers, domestic manufacturers, and any other interested party may submit comments to USTR. The deadline to comment about whether to extend or end each exclusion is March 7, 2023.

  Read More

  February 7, 2023

- **Biden Administration Announces Planned End of Emergency Declarations**
  
  This past week, President Biden issued a Statement of Administration Policy announcing an intention to end both the Public Health Emergency (PHE) and the National Emergency declarations on May 11, 2023. While the administration's announcement coincided with the House of Representatives' consideration of legislation to terminate the PHE and National Emergency immediately, such legislation's Senate prospects appear sufficiently dim that affected parties can likely rely on the declarations continuing through May 11, 2023.

  Read More

  January 18, 2023
• **Public Health Emergency Declaration Again Extended; Key Flexibilities Decoupled**

On January 11, 2023, Department of Health and Human Services (HHS) Secretary Xavier Becerra again renewed the declaration of a Public Health Emergency (PHE) under the Public Health Service Act, extending the declaration through April 11, 2023. HHS has repeatedly publicly committed to providing 60 days' notice before the termination or expiration of the PHE. Therefore, if mid-February passes without such notice, it is likely that there will be at least one further renewal beyond April 11, 2023.

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• **Post-Covid-19 Pandemic Outlook — Restaurant Ground Leases**

As businesses begin to emerge from the COVID-19 pandemic, brick-and-mortar retail and restaurant leasing is showing strong growth. U.S. retail vacancy fell to 6.1 percent in the second quarter of 2022, the lowest level in at least 15 years, while asking rents for U.S. shopping centers in the quarter were 16 percent higher than five years ago, according to real-estate services firm Cushman & Wakefield. Most developers are opting to renovate outdated shopping centers rather than building new ones. The development of outparcels or pads in re-developed shopping centers, catering to national restaurant brands, also saw unabated growth during the pandemic. Restaurants with drive-throughs have seen especially strong performance.

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October 18, 2022

• **COVID-19 PANDEMIC: Extension of PHE and Impact to FEMA Claims**

On October 13, 2022, the Secretary of the U.S. Department of Health and Human Services (HHS), Xavier Becerra, once again renewed the declaration of a Public Health Emergency (PHE) under the Public Health Service Act due to the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic. This latest extension, if allowed to remain effective the full 90 days as usual, will mean that the PHE is officially extended into the New Year. However, there are numerous indications that this may be the last such extension and the PHE for the COVID-19 pandemic, first declared on January 31, 2020, may end on January 11, 2023, nearly three years after it began.

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September 29, 2022

• **DOJ Signals Increased Investigations and Prosecutions of Pandemic-Related Fraud: New Strike Forces in MD, FL, and CA Commence Operations**

Earlier this month, the Department of Justice (DOJ) announced another new measure in its ongoing efforts to combat, prevent, and prosecute COVID-19-related fraud: Strike Force Teams. According to DOJ, the Strike Force Teams, are designed to enhance and "accelerate the process of turning data analytics into criminal prosecutions," a signal that more investigations and prosecutions are likely as DOJ continues to advance its commitment to hold those responsible for pandemic-related fraud accountable.

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July 19, 2022

• **Public Health Emergency Declaration Extended Through Mid-October**

On July 15, 2022, Department of Health and Human Services Secretary Xavier Becerra again renewed the declaration of a Public Health Emergency under the Public Health Service Act, averting a July 15, 2022, expiration and extending the declaration through October 13, 2022.

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June 14, 2022
Supply Chain Risks Cause Challenges and Provide Opportunities
In light of ever-growing complex business arrangements, companies are increasingly dependent on cross-border supply chain networks. Supply chains networks, which usually encompass development, sourcing, production, procurement and logistics related to goods and services (or a mixture of the foregoing), face disruption due to ever-changing global developments. These networks have been impacted by governmental measures to continue combating the COVID-19 pandemic, the Russian invasion of Ukraine, and raw material and labor shortages. Due to these, supply chain management and the ability to timely address challenges have become critical to companies' ability to operate in numerous industries.

Read More

May 24, 2022

Public Health Emergency Set for Extension: Lack of Notice Implies Renewal through Mid-October
The declared Public Health Emergency (PHE) under the Public Health Service Act will apparently be renewed at least one further time beyond its current July 15, 2022 expiration, as the Department of Health and Human Services (HHS) has repeatedly committed to provide a 60-day notice prior to the termination or expiration of the PHE, and mid-May has passed without any such notice. Assuming that HHS issues the maximum 90-day renewal in line with the length of past renewals, such a renewal would extend the PHE through October 13, 2022.

Read More

April 29, 2022

FEMA Seeks Public Comment on Proposed Public Assistance COVID-19 Policy on Deadlines and Overlapping Sources of Funding
FEMA is now accepting public comment on its draft Coronavirus (COVID-19) Pandemic: Public Assistance Programmatic Deadlines policy. Comments will be accepted through 5 p.m. Eastern on May 24, 2022.

Read More

April 22, 2022

The Post-Emergency Declarations Horizon: Bracing for Impact: Most Recent Public Health Emergency Declaration Extension Establishes New Dates to Monitor
On April 12, 2022, Department of Health and Human Services (HHS) Secretary Xavier Becerra again renewed the declaration of a Public Health Emergency (PHE) under the Public Health Service Act, averting an April 16, 2022 expiration and extending the declaration through July 15, 2022.

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April 5, 2022

BREAKING: FEMA Sets Deadlines Applicable to Pandemic Claims
On April 1, 2022, new information was released regarding the final date that Federal Emergency Management Agency (FEMA) will accept new applicants into its Public Assistance (PA) Program and setting a deadline for submission of claims related to costs incurred from the beginning of the pandemic through July 1, 2022. FEMA has yet to issue an official memorandum or statement publicly on these updates, but the information is being distributed through various channels, including through multiple state recipients. We will update this brief as further information is released.

Read More

March 28, 2022
• The Post-Emergency Declarations Horizon: Telehealth Flexibilities Get Another Shot through a Temporary Extension under the Omnibus Spending Bill
On March 15, 2022, President Biden signed the Consolidated Appropriations Act, 2022, an omnibus bill which includes, among other spending measures, a five-month extension of regulatory flexibilities that have allowed for expanded coverage of telehealth in response to the COVID-19 pandemic. Authority for many of these flexibilities originated from the Coronavirus Preparedness and Response Supplemental Appropriations Act and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which allowed the Centers for Medicare & Medicaid Services (CMS) to waive the statutory restrictions on coverage for telehealth services. The duration of these flexibilities was tied to the United States Department of Health and Human Services (HHS) Secretary’s declaration of a public health emergency (PHE) pursuant to Sec. 319 of the Public Health Service (PHS) in March 2020, which empowered CMS to issue waivers to Medicare program requirements to support health care providers and patients during the pandemic. The popular telehealth flexibilities offered due to the COVID-19 pandemic allow Medicare coverage for telehealth visits, regardless of where the patient lives relative to the health care provider.

Read More
March 21, 2022

• The Post-Emergency Declarations Horizon: Navigating Your Organization Through the Termination of COVID-19 Emergency Declarations
After two years, a multitude of factors are pointing toward the end of the formal public health emergency declaration, related emergency declarations, and associated waivers in connection with COVID-19, including declining case counts and improving therapeutics, a shifting political landscape and sheer societal exhaustion, as well as signals from key governmental bodies.

Read More
March 17, 2022

• OSHA Issues COVID-19 Priority Inspection Initiative for Hospitals and Skilled Nursing Care Facilities
As many state and local agencies continue to pull back on mask mandates and COVID-19 restrictions, the Occupational Safety and Health Administration (OSHA) is doubling down. On March 2, 2022, OSHA announced its three-month COVID-19 focused inspection initiative for certain employers in the health care industry. The initiative began on March 9, 2022, and will continue through June 9, 2022. OSHA's stated goal for this initiative is to increase its presence and visibility in "high-hazard health care facilities" and to encourage employers in these sectors to take the necessary precautions to protect their employees from the potential hazards of COVID-19. According to OSHA’s memorandum announcing the initiative, the short-term inspection initiative is directed at hospitals and skilled nursing care facilities that treat or handle COVID-19 patients. As part of this initiative, OSHA issued guidance to its inspectors, supplementing the COVID-19 National Emphasis Program, providing that OSHA will assess employer compliance efforts, including their readiness to address any ongoing or future COVID-19 surges.

Read More
March 2, 2022

• UPDATED: President Biden Extends 100 Percent Cost Share for COVID-19 Public Assistance
On March 1, 2022, President Joe Biden extended the 100 percent federal cost share for Public Assistance through July 1, 2022. In a subsequent advisory announcement from FEMA, the agency announced that after that date, the Federal share of COVID-19 costs will change to 90 percent.

Read More
February 25, 2022
• **Immediate Jeopardy: Handling EMTALA Complaints in a COVID-19 World**
Before the COVID-19 pandemic, Emergency Department (ED) visits had risen more than 60 percent since 1997 to about 146 million, with nearly 46 visits per 100 persons in 2016. With waves of COVID-19 cases overwhelming the health care system, hospital EDs continue to be at or past capacity, and overworked physicians and hospital staff are forced to make daily decisions to deal with associated crowding and increased overall ED patient lengths of stay. The Emergency Medicine Treatment and Labor Act (EMTALA) presents specific challenges for EDs operating in a COVID-19 pandemic world. Read More

February 16, 2022

• **REMINDER: Your OSHA Form 300A is Due by March 2, 2022**
With all of the turmoil surrounding COVID-19 and what rules regulatory agencies can and cannot enforce, don’t forget that your Form 300A must be submitted electronically by March 2, 2022. OSHA has highly publicized this March 2 deadline, and we expect the Administration to closely monitor compliance with the submission requirements. Read More

February 11, 2022

• **Florida Health Care Associations Release New Form to Improve Patient Transfer Status**
Florida’s major health care associations, in conjunction with the Agency for Health Care Association, have joined forces to create a new voluntary Patient/Resident COVID-19 Transfer Status Communication tool that will quickly communicate the latest information about a patient's COVID-19 status from a transferring facility to another health care or long-term care facility. Currently, there are no state restrictions or prohibitions on transferring COVID-19 patients/residents whom a physician has medically cleared to a long-term care facility, amid ongoing efforts to manage the virus in all health care settings as cases in the community rise. Read More

January 28, 2022

• **Planning for Increased Health-Related Enforcement Efforts in 2022: Responding to Government Audits and Investigations**
The Department of Justice (DOJ) has made numerous recent public statements reflecting increased priorities for enforcement, especially in the health care industry. The DOJ has a variety of tools at its disposal to enforce civil and criminal laws and has several methods of obtaining information during health care fraud and abuse investigations. Precious time will be lost, and important steps will be inadvertently missed, if an organization waits until an investigation is underway to decide how it and its employees should react to a government inquiry for information. Read More

January 26, 2022

• **Is COVID-19 Enforcement Stayed? OSHA’s Path Forward After the Supreme Court’s Decision**
Following the Supreme Court’s ruling staying the Occupational Safety and Health Administration’s (OSHA) Emergency Temporary Standard (ETS) on vaccination and testing, U.S. Secretary of Labor Marty Walsh issued a statement providing guidance for employers on how they should currently be protecting employees from COVID-19. Although Secretary Walsh urged employers to either require workers to get vaccinated or tested weekly to most effectively fight COVID-19 in the workplace, he specifically referred employers to prior guidance issued by OSHA in January 2021 and updated most recently on August 13, 2021. Walsh advised that OSHA would proceed under the COVID-19 National Emphasis Program and would cite employers, where necessary, under the General Duty Clause.
• **Explaining the Supreme Court's Decision: Why the OSHA ETS Was Placed on "Stay"cation**

On January 13, 2022, in a per curiam opinion, the Supreme Court granted the application for a stay of Occupational Safety and Health Administration's (OSHA) ability to implement and enforce the "Vaccine or Test" Emergency Temporary Standard (ETS). The Supreme Court held that the applicants are likely to succeed on the merits of their claim that the Secretary of Labor lacked authority to impose the ETS.

*Read More*

**January 25, 2022**

• **Travel to U.S. by Land and Ferry: New Vaccination Requirements and Exceptions Announced**

Following through on its announcement last November, the Department of Homeland Security (DHS) has implemented the administration's COVID-19 vaccination requirement at land and ferry ports-of-entry as of January 22, 2022. These new restrictions mirror those that have applied to air travel since October 25, 2021, with one exception: Travelers entering via a land or ferry port-of-entry are not required to complete any pre-entry COVID-19 testing; they must only present proof of vaccination to be admitted. Air travelers are required to present both proof of vaccination and negative test results from a COVID-19 test taken within one day of travel.

*Read More*

**January 13, 2022**

• **Supreme Court (Effectively) Strikes Down OSHA's "Vaccine or Test" ETS**

As we summarized in previous alerts, on December 17, 2021, the Sixth Circuit Court of Appeals dissolved the stay previously placed on OSHA's "Vaccine or Test" (Emergency Temporary Standard) ETS by the Fifth Circuit Court of Appeals. Immediately following the Sixth Circuit's decision, emergency applications were filed with the United States Supreme Court. Each emergency application asked the Supreme Court to again stay the ETS. On, January 13, 2022, the Supreme Court granted the emergency applications.

*Read More*

**December 29, 2021**

• **Federal Agencies Announce Enforcement of Vaccine Rules As Supreme Court Prepares to Hear Arguments in Legal Challenges**

Recent announcements by OSHA and CMS provide some clarity on next steps for the enforcement of the existing federal vaccine and testing mandates, although the legal landscape is still changing.

*Read More*

**December 27, 2021**

• **U.S. Land Border COVID-19 Restrictions Change to Vaccination Focused**

The U.S. Department of Homeland Security (DHS) has published on its website that full COVID-19 vaccination will become much more central to U.S. land border travel "in January." The announcement is supported by Federal Register notices published on December 23, 2021, concerning entry from Canada or from Mexico.

*Read More*

**December 20, 2021**

• **Collaborative Compliance: Tax and Employment – Old Issues, New Lens**

The pandemic is ending, or at least there is light at the end of the tunnel as vaccines are being administered and employees are coming back to the office. Or are they? The "workplace" landscape...
has permanently changed in that remote work, at least in some form, is here to stay. Both employees and employers see the advantages of remote work – reduced overhead, expanded hiring pool, flexibility, no commute, improved morale, etc. – and are figuring out the details of remote work going forward, whether employees will work fully remotely or on a hybrid schedule. While workers and management are excited, human resources and tax/accounting departments are left to navigate new legal landmines, often landmines they did not even know exist. Changes are coming fast and furious and it feels as if we've been drinking from a regulatory firehose for the last 18 months.

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December 17, 2021

- **Fifth Circuit Reversal of Nationwide Stay Leaves Enforcement Status of CMS Vaccine Mandate Uncertain**
  After two federal courts issued preliminary injunctions preventing the Centers for Medicare and Medicaid Services (CMS) from enforcing its November 5, 2021 vaccine mandate nationwide, CMS issued a memorandum stating that it would not enforce the CMS Vaccine Mandate while these injunctions were in place. On December 15, 2021, a federal circuit court issued a ruling limiting the scope of one of the preliminary injunctions to only the plaintiff states involved in the two federal cases, leaving the CMS Vaccine Mandate enforceable in the remaining non-plaintiff states. This update discusses what this ruling means for providers.

Read More

December 15, 2021

- **CMS Rolls Out New Plan for State Survey Agencies to Address Skilled Nursing Facility Survey Backlogs**
  On Friday, November 12, 2021, the Centers for Medicare & Medicaid (CMS) issued QSO-22-02-ALL designed to help State Survey Agencies (SSAs) address the backlog of skilled nursing facility (SNF) annual recertification and complaint surveys which have been delayed during the COVID pandemic.

Read More

December 6, 2021

- **CMS Further Relaxes Visitation Restrictions for Nursing Facility Residents**
  On Friday, November 12, 2021, the Centers for Medicare & Medicaid Services (CMS) issued a revision to QSO-20-39-NH which substantially relaxes restrictions on nursing facility visitation.

Read More

December 3, 2021

- **Federal Courts Pause Enforcement of CMS Vaccine Mandate Nationwide**
  Earlier, we wrote about ten Plaintiff States that filed a lawsuit in a Missouri federal district court challenging the Centers for Medicare and Medicaid Services' (CMS) November 5, 2021 Interim Final Rule with Comment Period entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination" (CMS Vaccine Mandate). Since then, 12 more Plaintiff States have filed a separate but similar lawsuit in a federal district court in Louisiana.

Read More

December 3, 2021

- **Revitalizing and Rebuilding America – Issue 7: Path Forward for the Build Back Better Act**
  Baker Donelson's Public Policy Group and the Daschle Group are pleased to provide our seventh update on developments regarding infrastructure and appropriations legislation. This is a brief status update on appropriations legislation, and a more in-depth review of where the Build Back Better Act (BBBA) stands and what provisions are likely to be changed as the Senate considers the legislation.

Read More
November 15, 2021

- **Ten States Challenge CMS' COVID-19 Vaccine Mandate**
  On November 10, 2021, the States of Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, and New Hampshire (plaintiff states) filed an action in the U.S. District Court of the Eastern District of Missouri challenging the Centers for Medicare and Medicaid Services' (CMS) November 5, 2021 Interim Final Rule with Comment Period (IFC) entitled "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination" (CMS Vaccine Mandate) 86 Fed. Reg. 61,555 (Nov. 5, 2021). In this article, we address what the CMS Vaccine Mandate requires and how the legal challenge may impact these requirements.
  
  Read More

November 12, 2021

- **Revitalizing and Rebuilding America – Issue 6: Driving the Auto Sector into the Future**
  Baker Donelson's public policy group and the Daschle Group are pleased to provide our sixth update on developments regarding infrastructure and appropriations legislation. This update is intended to provide information for the automotive sector on major policy implications of the recently passed Infrastructure Investment and Jobs Act that will soon become law. Additional updates on this legislation and the Build Back Better Act, also known as the reconciliation bill, will be provided.
  
  Read More

November 10, 2021

- **President Biden Extends 100 Percent Cost Share for COVID-19 Public Assistance**
  On November 9, 2021, President Joe Biden extended the 100 percent federal cost share for Public Assistance through April 1, 2022. This may indicate that the incident period and period of performance for the COVID-19 disasters will remain open through that date as well.
  
  Read More

November 9, 2021

- **Legal Challenges to OSHA's "Vaccine or Test" ETS: Your Questions Answered**
  As we summarized last week, OSHA's "Vaccine or Test" ETS was released on November 4 and published on November 5, 2021. It was met with an avalanche of lawsuits, and by November 6, the ETS had been stayed by the Fifth Circuit Court of Appeals. Is this a nationwide stay? Is it a temporary stay? What does this mean going forward? We answer these questions and more below.
  
  Read More

November 5, 2021

- **OSHA Issues Emergency Temporary Standard Requiring COVID-19 Vaccinations or Tests**
  On November 4, 2021, the Occupational Safety and Health Agency released the highly anticipated COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) covering employers with at least 100 employees. This ETS is expected to be published on November 5, 2021, and will be effective upon publication. Employers must comply with many of the requirements within 30 days and begin required testing within 60 days of the November 5, 2021, effective date.
  
  Read More

November 4, 2021

- **Build Back Better and Infrastructure Bills**
  After months of negotiations, the Democrats in the House of Representatives have released the legislative text of the Build Back Better Act (BBBA), HR. 5376. This package is less ambitious than previous iterations, but retains major social programs, tax changes, and climate provisions. Centrist
Democratic Senators have indicated that the House BBBA needs adjustments to pass the Senate. Progressive House members continue to tie passage of the BBBA to a vote on the infrastructure bill, the $1 trillion Infrastructure Investment and Jobs Act (IIJA). The passage of both the BBBA in some form and the Senate-passed IIJA is likely, but hurdles remain. Complications surrounding the BBBA have slowed down action on appropriations legislation this year.

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November 3, 2021

- Tennessee General Assembly Enacts COVID-19 Legislation that Impacts Tennessee Employers
  Over the weekend, the Tennessee General Assembly enacted legislation that significantly restricts private businesses and public schools from taking certain protective measures to prevent the spread of COVID-19. The law, which will be effective upon signature by Governor Bill Lee, provides new directives to businesses, employers, and schools regarding some of the following topics: COVID-19 vaccine mandates, whether an entity can compel proof of COVID-19 vaccination, face coverings, unemployment benefits, monoclonal antibodies, and liability for COVID-19 infections.
  Read More

October 28, 2021

- FEMA Denies Public Assistance to County Government for Contact Tracing, Social Distancing, and Teleworking to Prevent the Spread of COVID-19
  In a recent Second Appeal decision, the Federal Emergency Management Agency (FEMA) denied Scott County, Iowa’s (the County) claims for Public Assistance (PA). From March 11-August 20, 2020, the County purchased contract services and equipment to support its contract tracing program and implement social distancing protocols in its facilities. The County requested FEMA PA funding for contract services including information technology support, security, maintenance, and licensing and elevator key card installation. Additionally, the County requested PA funding for computer and communications hardware such as printers, webcams, microphones, adapters and phones.
  Read More

October 27, 2021

- Air Travel to the U.S.: Testing and Vaccination Requirements, Exceptions and Old Bans Dropped
  On October 25, 2021, the White House issued a new COVID-related Proclamation about air travel to the U.S. effective at 12:01 EST on November 8, 2021. It revoked prior country-specific bans in favor of a complex combination of recent test results or recovery, and either full vaccination or exemptions with certain conditions involving post-arrival testing and vaccination, self-isolation and quarantine. Read more for critical details derived from confusing Centers for Disease Control and Prevention (CDC) implementation documents including attestation forms.
  Read More

October 13, 2021

- Texas Joins Montana in Banning Private Employer COVID-19 Vaccine Mandates
  On October 11, 2021, Texas Governor Greg Abbott issued Executive Order (EO) GA-40 which bans any entity, including private employers, from requiring the COVID-19 vaccination for employees or customers. Texas now joins Montana as the only two states that ban private employers from requiring the COVID-19 vaccination as a condition of employment. In July 2021, Montana’s Governor Greg Gianforte signed House Bill 702, which specifically prohibited an employer from refusing employment to a person, barring a person from employment, or discriminating against a person in compensation or in a term, condition, or privilege of employment based on the person’s vaccination status or
whether the person has an immunity passport. Texas employers should understand the reasons for the issuance of the executive order, the parameters of EO GA-40, and whether legal challenges should be expected.

September 28, 2021

• Covered Federal Contractors and Subcontractors Must Comply with Biden Administration Vaccine Mandate by December 8, 2021

On September 9, 2021, President Biden issued a COVID-19 Action Plan, Path Out of the Pandemic, with the objective of getting more people vaccinated. As part of the Plan, President Biden signed Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

September 20, 2021

• U.S. Travel Bans to Drop for Vaccinated Travelers

The Biden Administration has disclosed preliminary plans to provide exemption to the ban on visas and entry for travelers to the U.S. from many countries if they are fully vaccinated and submit to enhanced contact tracing through data submitted through airlines. This could take effect in November, and aspiring travelers should obtain vaccination with proof.

September 14, 2021

• HRSA Announces New COVID-19 Relief Funding for Providers and Reporting Grace Period

On September 10, the Health Resources and Services Administration (HRSA) announced $25.5 billion in new funding that will be made available to health care providers to reimburse health care related expenses and revenue losses due to COVID-19. HRSA will make $17 billion available through the Provider Relief Fund (PRF) and $8.5 billion available to providers that serve rural patients through American Rescue Plan (ARP) funds. Providers will be able to apply for new funding starting September 29, 2021.

September 10, 2021

• What Every Employer Should Know About President Biden’s Path Out of the Pandemic Plan

On September 9, 2021, President Biden unveiled his Path Out of the Pandemic COVID-19 Action Plan (the Path Out Plan or Plan). To date, there are over 175 million fully vaccinated Americans. The President's Path Out Plan squarely addresses the nearly 80 million Americans eligible to be vaccinated who have not yet gotten their first shot. The Path Out Plan contains six major prongs and represents a sweeping overhaul of current COVID-19 measures for a staggering number of Americans.

August 26, 2021

• OSHA Updates: COVID-19 Guidance Based on CDC Mask Recommendations

On Friday, August 13, 2021, OSHA updated its Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace. In this August 13 update, OSHA adopted the July 27, 2021 CDC public health recommendations for fully vaccinated people, recognizing the impact of the Delta variant and providing that fully vaccinated people should wear a mask in public indoor settings if they are in an area of "substantial or high transmission" (as defined by the CDC). OSHA also recommends that fully vaccinated employees who have come into close contact with someone with suspected or confirmed COVID-19 be tested 3-5 days after exposure, and to wear a mask in public indoor settings for 14
days or until they receive a negative test result. OSHA reiterates that employers should facilitate their employees getting vaccinated, by granting paid time off for employees to get the vaccine and recover from any side effects. The update also reorganized Appendix recommendations for Manufacturing, Meat and Poultry Processing, Seafood Processing, and Agricultural Processing Industries.

Read More

August 25, 2021

- **Infrastructure Bill: Revitalizing and Rebuilding America – Issue Four**
  Baker Donelson's public policy group and the Daschle Group are pleased to provide our fourth update on developments regarding infrastructure legislation. This series is designed to keep you informed of the negotiations underway and the progress being made.

  Read More

- **What to Do When Your Borrower/Operator is in Financial Distress**
  It is no surprise to lenders to operators of long term care facilities that such facilities have faced what may seem an insurmountable obstacle as we transition into our second full year of a pandemic. Long term care operators can experience financial distress due to any number of factors, such as organic operating challenges, reimbursement issues, government enforcement actions, and landlord difficulties. These financial challenges have been compounded by the COVID-19 pandemic with its unexpected additional care requirements and the attendant increased costs. Add in staffing shortages and reduced census, and lenders in this industry have good reason to monitor these loans proactively, preparing to deal with a borrower in distress.

  Read More

August 23, 2021

- **Vaccine Mandates: What Employers Need to Know**
  Governments and private employers continue to grapple with how to achieve a safe workplace for their employees in light of COVID-19 and the Delta variant. Due to recent and ongoing changes in the legal landscape, the trend toward vaccination is becoming somewhat clearer and many employers are implementing vaccination mandates to help reach the goal of a safe workplace, but questions and uncertainty, with some corresponding risk, remain.

  Read More

August 20, 2021

- **Nursing Home Staff Vaccine Requirements Are Coming – What Happens Next?**
  On August 18, 2021, President Biden announced that he would use the regulatory authority of the Executive Branch to increase the COVID-19 vaccination rate among nursing home workers. President Biden directed the Department of Health and Human Services to draft an emergency regulation that would require that all staff within all the nation's Medicare- and Medicaid-participating nursing homes be vaccinated against COVID-19 as a condition of the nursing home’s continued receipt of Medicare and Medicaid funding. The new regulation, expected to be issued in September 2021, would apply to nearly 15,000 nursing home facilities, which employ approximately 1.6 million workers and serve approximately 1.3 million nursing home residents. Reports indicate that agency officials are still finalizing the details of the new policy, so no definitive information regarding the emergency regulation’s effective date or penalties was available at the time of publication.

  Read More

- **COBRA Subsidy: Don’t Forget – 2nd Notice Deadline is Looming**
  As a reminder to employers, the COBRA premium assistance provided under the American Rescue Plan Act of 2021 (ARPA) is coming to an end for all assistance eligible individuals (AEIs) on
FEMA: Extension of Full Federal Funding for Pandemic Costs; Expansion Coming for "Safe Opening and Operation" Policy
On April 17, President Biden ordered FEMA to maximize its support for state, local, tribal, and territorial governments' COVID-19 response and recovery. The president authorized FEMA to continue funding otherwise eligible COVID-19-related costs at 100 percent federal cost share through December 31, 2021. The directive will also allow states to receive 100 percent federal reimbursement for costs associated with the "safe opening and operation" of public facilities dating back to January 20, 2020.

EDA Publishes NOFOs Worth $3 Billion in American Rescue Plan Act Grants
On July 22, 2021, the U.S. Economic Development Administration (EDA), a bureau within the U.S. Department of Commerce, announced that it will implement a series of programs, collectively called "Investing in America's Communities," to equitably invest the $3 billion it received from the American Rescue Plan Act. The funds are intended to benefit communities that have been denied full access to economic prosperity and who have been disproportionately impacted by the coronavirus pandemic.

Infrastructure Bill: Revitalizing and Rebuilding America – Issue Three
Baker Donelson’s public policy group and The Daschle Group are pleased to provide our third update on the recent developments regarding infrastructure legislation. This is the third in a series of weekly updates designed to keep you informed of the negotiations underway and the progress being made.

Infrastructure Bill: Revitalizing and Rebuilding America – Issue Two
Baker Donelson’s public policy group and the Daschle Group are pleased to provide our second update on developments regarding infrastructure legislation. This is the second update in a series of weekly alerts designed to keep you informed of the negotiations underway and the progress being made.

Infrastructure Bill: Revitalizing and Rebuilding America – Issue One
With the almost certain passage of an infrastructure bill, we are on the verge of a once-in-a-generation funding and policy shift that will have massive ramifications across numerous and diverse industries. Some of the coming policy changes will have immediate implications, for example, the investments in power grid improvements, while others will shape markets over the next decade, for example, the commitment to dramatically increase broadband and invest in public transit including electric transit vehicles and charging stations. The Daschle Group and Baker Donelson’s public policy group are tracking these developments and will share with you the most relevant information in a timely fashion. This is the first of what will be a series of alerts designed to keep you informed of the negotiations underway and the progress being made.
Updated IRS Guidance: FFCRA Benefits Available under ARPA Regarding Paid Leave for Vaccination-Related Reasons
As we discussed here, the American Rescue Plan Act of 2021 (ARPA) provided that employers could again voluntarily extend Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave Expansion Act (EFMLEA) provisions of the Families First Coronavirus Response Act (FFCRA) to employees and receive those tax credits. Under ARPA, the extension runs through September 30, 2021, and the ARPA further modified the benefits that employees may receive if covered employers decided to voluntarily extend the benefits as of April 1, 2021. On July 29, 2021, the IRS provided updates on vaccine-related benefits that extend to family members of employees.

On July 9, 2021, the Centers for Disease Control and Prevention (CDC) issued updated guidance for COVID-19 prevention in K-12 schools. This updated guidance should be carefully considered and integrated into schools' health and safety policies and protocols as the 2021-2022 school year approaches.

HHS Updates Provider Relief Fund (PRF) Deadlines for Use of Payments and Reporting Requirements
On Friday, June 11, 2021, the Department of Health and Human Services (HHS) announced the deadlines by when health care providers must use COVID-19 Provider Relief Fund (PRF) payments and submit reports to HHS on use of payments. HHS first began issuing PRF payments in April 2020 to reimburse providers for health care-related expenses and revenue losses attributable to COVID-19.

Texas Prohibits Businesses and Employers from Requiring Customers to Show Vaccine Passports
On June 7, 2021, Texas Governor Greg Abbott signed into law Senate Bill 968 which prohibits a business from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination. "Texas is open 100 percent, and we want to make sure you have the freedom to go where you want without limits," Governor Abbott said before signing the law in a video he posted Monday on Twitter. He continued by stating that "Vaccine passports are now prohibited in the Lone Star State."

Texas Federal Court Rules in Employer’s Favor on Groundbreaking Mandatory Vaccine Lawsuit
On April 1, 2021, Houston Methodist Hospital (the Hospital) announced a policy requiring all covered employees to receive COVID-19 vaccinations (the Policy). The Policy permits exemptions for medical contraindications and sincerely held religious beliefs. If an employee fails to either provide proof of vaccination or request an exemption by the applicable deadline, the employee receives an unpaid suspension of up to 14 days. If the employee fails to come into compliance with the Policy during the
14-day period, the employee will be terminated.

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- **Federal Court Affirms Ebola Case: What Does it Mean for Projects Impacted by COVID-19?**
  Approximately one month after the coronavirus was declared a global pandemic, the United States Civilian Board of Contract Appeals (Board) issued an opinion denying a contractor's claim for additional compensation due to disruptions caused by an Ebolavirus outbreak in Sierra Leone. See *Pernix Serka JV v. Dept. of State*, CBCA 5683 (U.S. Civilian Bd. of Contract App. Apr. 22, 2020). The contractor appealed to the United States Court of Appeals for the Federal Circuit, and the case was watched with great anticipation because it might have provided insight into how coronavirus-related claims would be handled. On June 9, 2021, the Federal Circuit issued a "nonprecedential" per curiam opinion affirming the Board's decision. Thus, while the Board's underlying decision sheds light on how coronavirus-related claims may be analyzed, it remains to be seen how appellate courts will rule on the issues raised.

Read More

**June 11, 2021**

- **The Wait is Over: OSHA Issues COVID-19 Emergency Temporary Standard for Healthcare Workers and Updated Guidance for All Other Industries**
  On June 10, 2021, OSHA announced the long-awaited issuance of a COVID-19 Emergency Temporary Standard (ETS), applicable only to the health care industry. OSHA has proposed only nine emergency rules in the past 40 years. Although a specific date has not been set, this standard becomes effective when it is published in the Federal Register. OSHA also issued updated guidance for employers that are not covered by the ETS.

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**June 2, 2021**

- **FEMA Applicants and American Rescue Plan Fiscal Recovery Fund Recipients Should Know About Updates to Procurement Requirements**
  Entities that enter into contracts funded by federal grants like FEMA's Public Assistance program or the Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan, must ensure their procurements and contracts meet the requirements of 2 C.F.R. Part 200, also referred to as the "Uniform Rules." Last fall, the Office of Management and Budget revised 2 C.F.R. Part 200, including the procurement standards. These updates apply to awards made or disasters declared after November 12, 2020, although a few provisions are retroactive to August 13, 2020.

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- **OIG Reports Lessons Learned from the CARES Act and Advises on American Rescue Plan**
  Last year, the CARES Act authorized the U.S. Department of the Treasury (Treasury) to make $150 billion payments to state, local, territorial, and tribal governments from the Coronavirus Relief Fund (CRF). Treasury issued guidance on how the funds could be spent, but recipients were not required to sign assistance agreements and funds were not considered by the agency to be "grants" subject to most of the requirements of 2 C.F.R. Part 200, the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. With enactment of the American Rescue Plan Act (ARP), Treasury is now poised to pay $350 billion to state, local, territorial, and tribal governments from the Coronavirus State and Local Fiscal Recovery Funds (FRF). On May 17, 2021, the Department of the Treasury Office of Inspector General (OIG) issued a Memorandum entitled *American Rescue Plan – Application of Lessons Learned from the Coronavirus Relief Fund*, recommending that Treasury implement additional controls as it provides ARP relief.

Read More
June 1, 2021

- **EEOC Updates Technical Assistance Questions and Answers on Mandatory Vaccinations and More**
  On May 28, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) posted updated and expanded technical assistance related to the COVID-19 pandemic. The May 28 update replaces Section K, Vaccinations, with a new version that also addresses incentives under the Americans with Disabilities Act (ADA) and the Genetic Non-Discrimination in Employment Act (GINA). The updated Technical Assistance Questions and Answers (Technical Assistance) were prepared prior to the CDC's new guidance for fully vaccinated individuals issued on May 13, 2021, and do not specifically address that new guidance. The EEOC notes on its website that it is considering any impact of the CDC's new guidance on its Technical Assistance.

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May 19, 2021

- **Borrowers Should Build a Record to Prepare for PPP Loan Forgiveness Appeals**
  The Small Business Administration's (SBA) Paycheck Protection Program (PPP) loan forgiveness data shows that more than 182,000 PPP loan forgiveness applications are currently "under review" by the SBA. A March 22, 2021 joint letter to SBA's Administrator, which was jointly written by all fifty state banking associations, confirms that lenders and borrowers are struggling with the significant uncertainty that is caused by SBA's delays in completing loan reviews. However, as SBA continues to work through this review process, borrowers can take steps now to build a record for any potential appeal of the denial of loan forgiveness by the SBA. Borrowers that do not build a record during the SBA review process may find it difficult to do so later during an appeal of the denial of loan forgiveness.

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May 12, 2021

- **PPP Oversight: Congress Turns Its Focus to the Agency Diligence**
  On March 25, 2021, Chairwoman of the House Committee on Oversight and Reform Carolyn Maloney and the Select Subcommittee on the Coronavirus Crisis released a staff memo highlighting "new evidence" of the Trump Administration's mismanagement of the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program. The Committee memo, which recognizes that these programs played a crucial role in helping small businesses during the pandemic, estimates that nearly $84 billion in potentially fraudulent loans were made due to the "refusal" to implement "basic program controls" or safeguards.

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May 11, 2021

- **Treasury Releases Guidance for Coronavirus State and Local Fiscal Recovery Fund**
  This week, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Fund, established by the American Rescue Plan Act of 2021, to provide $350 billion in emergency funding for eligible state, local, territorial, and Tribal governments. According to Treasury's statement accompanying its launch of the program and release of related guidance, the intent is that these funds will "provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery."

Read More

May 11, 2021

- **Employers' Top Five COVID-19 Vaccination Questions Answered**
  The introduction of COVID-19 vaccines has created many questions in the workplace for employers.
In this alert, we address five of the most popular vaccine-related questions, including vaccine mandates, mask mandates, and ADA accommodations.

April 28, 2021

- **The FCC’s COVID-19 Telehealth Program Round 2 Application Window is About to Open for a Narrow One-Week Timeframe**
  The Federal Communications Commission (FCC) announced that it will accept applications for Round 2 of the COVID-19 Telehealth Program (the Program) from 12:00 p.m. ET Thursday, April 29 to 12:00 p.m. ET Thursday, May 6, 2021.

April 20, 2021

- **SBA Releases Application and Guidelines for $28.6 Billion Restaurant Revitalization Fund**
  The American Rescue Plan Act of 2021 (ARPA) includes a $28.6 billion subsidy for eligible restaurants. Termed the Restaurant Revitalization Fund (RRF), these funds are intended to help eligible restaurants offset revenue losses due to COVID-19. On April 19, 2021, the Small Business Administration (SBA) released the application and guidelines for this grant program. This release indicates that the SBA is on track to roll out the grant program by late April or early May. Since funds will presumably be distributed on a first-come-first-served basis, eligible business owners should review this draft application, complete the calculation of funding amount, and accumulate the required documentation to ensure that they are ready to submit their application when allowed.

April 8, 2021

- **New OSHA COVID-19 Enforcement Efforts Lead to Substantial Penalties**
  Over the last year, OSHA has been criticized for not doing enough to ensure that employers are protecting their employees from coronavirus risks. The March 12, 2021 implementation of a National Emphasis Program (NEP) on coronavirus may quickly be changing that perception. Shortly after the effective date of the NEP, OSHA imposed fines on a tax preparation service due to its failure to protect its employees from COVID-19.

April 1, 2021

- **State of Play in Business and Family Immigration**
  More than 78 days into the Biden Administration, less dust than expected or hoped has settled on the landscape for business and family immigration to the U.S. This article briefly assesses the state of play concerning COVID-based proclamations, appointment availability, and other issues.

April 1, 2021

- **COVID Vaccines for Long Term Care Employees: To Mandate or Not to Mandate?**
  With three COVID-19 vaccines authorized by the U.S. Food and Drug Administration (FDA) for emergency use and states across the U.S. prioritizing vaccinations for essential health care workers, long term care (LTC) facilities everywhere are grappling with the same question: "May I require my employees to get vaccinated?"

April 1, 2021

- **Florida’s Broad New COVID-19 Liability Protections**
  On March 29, 2021, when Governor Ron DeSantis signed Senate Bill 72 into law, Florida became the largest of a growing number of states to implement broad COVID-19 liability protections applicable to
businesses, health care providers, schools, and non-profit and governmental entities. The law became effective upon signing. It applies, with an exception for existing defendants in already-commenced litigation, to all past and future claims related to COVID-19.

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- **The American Rescue Plan Provides Significant Debt Relief to Minority Farmers**
  Socially disadvantaged farmers, including African American, Hispanic, Native American and Asian American farmers, will receive aid in the form of debt relief, grants, training and education as a part of the American Rescue Plan Act of 2021 (the ARPA). This aid will provide significant relief to disadvantaged farmers who have faced economic hardships and a disproportionate adverse impact from the COVID-19 pandemic.

  Read More

  March 25, 2021

- **PPP Recipients May Qualify For Expanded Employee Retention Credit**
  Multiple federal laws enacted during the pandemic have provided assistance to struggling employers, including assistance through the Paycheck Protection Program (PPP) and the employee retention tax credits (ERC). PPP and ERC, once considered mutually exclusive, are now complimentary and jointly useable by employers with some conditions.

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  March 19, 2021

- **COVID-19 Relief: New Funding Available for Schools**
  COVID-19 relief is on the way to schools. On March 17, 2021, the Department of Education announced each state's allocation of American Rescue Plan (ARP) Elementary and Secondary School Emergency Relief (ESSER) funds. Though the ESSER funds represent the vast majority of ARP funding available to educational institutions, the ARP also provides an additional $39 billion in funding for higher education, through the ARP Higher Education Emergency Relief (HEER) fund, and nearly $3 billion in funding for non-public schools, through the ARP Emergency Assistance to Non-Public Schools (EANS) fund. In all, the Education Stabilization Fund contains approximately $165 billion earmarked to help students and educators safely return to the classroom.

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- **Key Health Provisions in the American Rescue Plan Legislation**
  On March 11, 2021, President Biden signed into law the American Rescue Plan Act, a $1.9 trillion package to provide relief related to the COVID-19 public health emergency. The final legislation, which passed with support from only Democrats and received no Republican votes in either the House of Representatives or the Senate, includes a number of health care related provisions. Key health provisions include direct funding for health care providers and certain nonprofit organizations; funding for federal agencies and state, local, and territorial governments and tribal organizations that could be issued to providers; and changes and expansions to health care coverage intended to improve affordability and access to care.

  Read More

  March 18, 2021

- **Continued Development of Business Interruption Insurance Claims in Second Year of Pandemic**
  As we enter another year of the pandemic, the legal landscape for COVID-19-related insurance coverage claims continues to evolve. For business interruption claims, this is particularly true, as lawsuits on COVID-19-related business income insurance claims continue to be filed and courts issue
varying interpretations of the insurance policies' clauses.

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March 17, 2021

- **Updated OSHA Return-to-Work Guidance**
  On January 29, the Occupational Safety and Health Administration (OSHA) issued updated guidelines outlining steps employers can take to facilitate a seamless return-to-work plan after COVID-19 subsides. Although guidelines are helpful, employers should take note, prepare, and incorporate a return-to-work plan to prevent OSHA liability.

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- **Does Your State Require Employers to Foot the Bill for Employees' Remote Work Expenses?**
  As the COVID-19 pandemic hit, several states and localities implemented shelter-in-place orders to slow the spread of the coronavirus. Consequently, many workforces were thrust into remote work models without adequate time and resources to develop thoughtful remote work plans and fully contemplate the impact of the shift on their businesses. While a remote work model has key benefits for employers and employees, there are additional considerations, such as costs for employees' laptops, printers, desks, postage, telephone and internet, and office supplies such as paper and ink. While current statistics have shown a decline in new COVID-19 cases, many employers are contemplating continued remote work as part of their new normal. This shift raises the all-important question of who foots the bill for these expenses going forward. That answer depends on where your workforce is located.

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- **FFCRA Credits Extended, but Leave is Not Mandated**
  When President Biden announced the American Rescue Plan, his stimulus plan for COVID-19, one of the top priorities was renewing and expanding the Families First Coronavirus Response Act (FFCRA) through September 30, 2021. The mandatory provisions of the FFCRA expired on December 31, 2020, while the employer tax credits were extended through March 31, 2021. On March 11, 2021, the American Rescue Plan Act of 2021 was signed into law by President Biden.

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March 12, 2021

- **Pro Bono in a Pandemic: The Emergence of a Virtual Community**
  We are living in a world where the concepts of "remote work" and "virtual meetings" were thrust upon us by the COVID-19 pandemic; however, these virtual work environments are here to stay. Finding ways to continue pro bono participation in a virtual environment has given legal advocates opportunities to be creative and even cast their nets a little further when it comes to seeking attorney participation. Now, with various virtual pro bono platforms at an attorney's disposal, there are three key opportunities we can take advantage of in order to provide the most effective assistance in the virtual world of pro bono service: (1) participate in virtual legal clinics, (2) attend virtual trainings, and (3) conduct virtual training for lawyers within your practice area, so they too can assist on pro bono matters.

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- **American Rescue Plan Act of 2021: Significant PPP Changes Benefit Nonprofits and Internet Publishing Organizations**
  On March 12, 2021, the President signed the American Rescue Plan Act of 2021 (the Act), a $1.9 trillion package intended to help recovery from the COVID-19 pandemic. Among other things, the Act injects an additional $7.25 billion into the Paycheck Protection Program (PPP) and expands eligibility
for forgivable loans under the PPP for nonprofit organizations and "Internet Publishing Organizations."

March 8, 2021

- **OSHA's New Guidance on COVID-19 in the Workplace**
  For employers still working to manage COVID-19 in the workplace, the Occupational Safety and Health Administration (OSHA) has provided some guidelines to help strengthen your policies and procedures. The guidance, *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, reiterates that employers should implement a COVID-19 Prevention Program. If you are creating a COVID-19 prevention program, or beefing up the one you have, OSHA suggests you include these key elements.

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March 4, 2021

- **Déjà Vu All Over Again: Pandemic Renews Focus on Ongoing False Claims Act Enforcement Priorities**
  There are few areas that the pandemic has not touched, directly or indirectly. The Department of Justice Civil Division knows no different, as is reflected in its current statements regarding priorities for False Claims Act (FCA) enforcement. The obvious potential for fraud arising from misuse of stimulus program funds is just a modern telling of an old tale of fraud against the government, which the nearly 150-year-old FCA is already well suited to handle. Beyond the obvious anticipated prosecutions for Paycheck Protection Program and Coronavirus Aid, Relief, and Economic Security Act chicanery, however, the pandemic has exacerbated many existing areas for fraud – and the Civil Division wants you to know they have not forgotten about those.

Read More

February 24, 2021

- **Texas Lifts Statewide Mask Order and Reduced Capacity Restrictions**
  On March 2, 2021, Texas joined the list of 11 states that have lifted or lessened their COVID-19 restrictions. Governor Abbott issued an Executive Order, to be effective on March 10, 2021, beginning the re-opening of Texas in response to COVID-19.

Read More

January 26, 2021

- **Managing Stress During a Pandemic: Ways to Improve Your Employees' Mental Health**
  Although the major holidays are now behind us, stressors continue to come from all directions. What can employers do to help alleviate some of the stress that affects their workforce? The following tips can help your employees improve how they manage the stress that has been created during this pandemic.

Read More
January 21, 2021

- **Chambers of Commerce and Trade Associations Become Eligible for PPP Loans, With Certain Conditions**
  COVID-19 has, without question, tragically impacted our health as well as irrevocably altered much of our way of life. Federal assistance in the form of the Coronavirus Aid Relief, and Economic Security Act (CARES Act), signed March 27, 2020, provided much needed emergency assistance in many ways across numerous sectors for our personal and economic wellbeing. Included as part of that Act was the creation of the Paycheck Protection Program (PPP), which has provided essential loans intended to assist in the survival of eligible for-profit businesses as well as certain non-profit organizations described in Section 501(c)(3) of the Internal Revenue Code (Code).
  Read More

January 11, 2021

- **COVID-19 Outbreak Leads to Handcuffs for Holyoke Soldiers' Home Leadership**
  The tragic outcome at Soldiers' Home is one that prosecutors have determined could have been avoided and rises to the level of criminal misconduct. As we search for lessons learned amidst this tragedy, the following are suggestions for putting your caregiving teams in the best possible position to avoid a criminal investigation and for defending your decisions if necessary. First, it is no secret that proper documentation is critical. Memories fade, and each witness' truth may look quite different, but contemporaneous documentation is steadfast, and often, life-saving. Here are some critical items to document.
  Read More

January 8, 2021

- **Paycheck Protection Program: A Second Round of Funding for Some New and Existing Borrowers; Other Changes to Benefit All Borrowers**
  On December 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 (the "Appropriations Act"), which includes a new round of funding for certain qualifying, existing Paycheck Protection Program (PPP) borrowers, opens the PPP to some previously ineligible entities, authorizes additional business expenditures that are eligible for forgiveness, and makes other changes to the PPP. The changes to the PPP are part of the "Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act" (the "Economic Aid Act") included as part of the Appropriations Act. In addition to the changes made to the PPP through the Economic Aid Act, the Appropriations Act provides other benefits to small businesses. Congress funded the PPP with an additional $284 billion (some of which is from cancellation of unused authority from the first and second round of PPP funding) and extended the PPP until March 31, 2021.
  Read More

Posts from 2020:

December 23, 2020

- **COVID-19 Vaccinations: Will K-12 Students Be Mandated to Take Them?**
  Following the Thanksgiving holiday, a new surge in coronavirus cases hit the nation. With the pandemic worsening, many schools have been forced to close for in-person learning and pivot to remote learning again, just as they had begun reopening. Now, with the U.S. administering its first COVID-19 vaccinations on December 14, 2020, and a second COVID-19 vaccine approved by the FDA and slated to begin distribution soon, many schools are considering whether they can or should mandate that their K-12 students receive the COVID-19 vaccination once it becomes more widely available.
  Read More
December 22, 2020

• **Key Health Care Provisions in New COVID-19 Stimulus Legislation**
  On December 21, 2020, the House and Senate passed fiscal year (FY) 2021 federal omnibus appropriations legislation that included the fifth measure passed by Congress to address the COVID-19 pandemic. In addition to providing $1.4 trillion to fund the federal government through FY 2021, the legislation includes $900 billion in relief funds to address COVID-19. The bill also includes significant health care provisions unrelated to COVID-19, including a ban on surprise billing by health care providers.
  Read More

December 21, 2020

• **CMS Issues Guidance for COVID-19 Treatments & Vaccines**
  Over the past weeks, CMS has issued billing and coding guidance for newly authorized COVID-19 vaccines and treatments. This guidance information further implements policy and regulatory revisions made by CMS in the Interim Final Rule published in the Federal Register on November 6, 2020 (IFR), the agency’s fourth COVID-19 rulemaking. Since the issuance of the IFR, CMS has provided instructions and toolkits via its website concerning billing for COVID-19 vaccines and monoclonal antibody COVID-19 infusion, and most recently, on December 18, 2020, for the new COVID-19 Treatments Add-On Payment payable to hospitals under the Medicare Inpatient Prospective Payment System (IPPS).
  Read More

December 10, 2020

• **OSHA’s Frequently Cited Standards Related to COVID-19 Inspections**
  Since the start of the coronavirus pandemic in mid-March, the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) has issued over 200 citations for violations related to COVID-19, resulting in proposed penalties totaling more than $3,000,000.00. While there is no federal OSHA standard covering COVID-19, certain standards have been more frequently cited than others.
  Read More

December 2, 2020

• **COVID-19 Vaccinations: Should You Require Employees to Take Them?**
  Over 13 million total cases and more than 266,000 deaths from COVID-19 infections have been reported to the Center for Disease Control and Prevention (CDC) since January 21, 2020. For more than a month, the United States has reported more than 100,000 daily infections of COVID-19. The growing number of COVID-19 infections and the growing number of daily hospitalizations, which are reported here by the COVID Tracking Project, are concerning. Governors are considering or have already re-implemented safety and stay-home measures, and employers are striving to stay open and keep their workforce safe. With recent reports by Pfizer and Moderna that their COVID-19 vaccinations are effective and safe, many employers are considering whether to mandate vaccinations as a COVID-19 safety measure once the vaccines are ready for distribution. There are a number of issues employers should consider, including federal, state and local law, federal guidance, other safety measures and employee morale.
  Read More

November 16, 2020

• **Fraudulent Unemployment Claims on the Rise: What Should Employers Do?**
  Government agencies are grappling with the theft of millions of taxpayer dollars through unique fraud
schemes directed at state unemployment programs. Employers often are the first to discover these schemes when they learn that current employees have somehow been receiving unemployment benefits for weeks while working. What can employers do?

Is Your Business Adequately Providing Accommodations in the Wake of the Pandemic?
The COVID-19 pandemic has disrupted many aspects of our daily lives, including how we socialize and interact with others in public. By now, we are all very familiar with the Centers for Disease Control and Prevention (CDC) recommendations to mitigate the risk of exposure to and spread of COVID-19 by avoiding handshakes and hugs, social distancing, wearing a mask, limiting contact with surfaces and washing your hands as often as possible (or using sanitizer when soap and water are unavailable). These new social norms have not only impacted how we interact with family and friends, they have also impacted how we shop for goods and inquire about services offered by businesses.

PPP: SBA Issues Guidance on Changes in Ownership and Full Forgiveness Eased for Smaller Loans
As a result of Congress creating the Paycheck Protection Program (PPP) as part of the Small Business Administration’s 7(a) loan program, Congress encumbered PPP loans with many of the rules, regulations and standard operating procedures applicable to 7(a) loans, a good number of which may be unfamiliar to the typical PPP borrowers as well lenders that have not historically made many 7(a) loans. One of these 7(a) requirements is that the SBA must approve any change in ownership of a borrower in the first year following disbursement of a 7(a) loan under SBA Standard Operating Procedure 50 57.

Main Street Lending: Practical Insights
For six months, the Federal Reserve has been developing and refining the products, purpose and eligibility for the Main Street Lending Program. The portal finally opened for loans at the end of July, and in September, the Federal Reserve started accepting Main Street loans with multiple borrowers. There are many legal and cost issues that banks and borrowers need to consider when evaluating the utilization of a Main Street loan, but if the bank and its customer decide it is an appropriate facility for the borrower's current situation, there are a few practical matters to consider.

S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #10
Due to COVID-19, the Internal Revenue Service announced extensions of deadlines to pay various taxes and file various tax returns, with such extensions generally being through July 15, 2020. Those IRS extensions, followed in whole or in part by many states, were very helpful to taxpayers. While these IRS extensions have now expired, many states continue to adjust their tax and related requirements to address specific objectives such as raising revenues to assist with depleted governmental budgets, providing incentives to support business employers, and to assist taxpayers generally in dealing with the realities of COVID-19. This special edition reviews certain updates by several states which may be important to taxpayers.
• **Businesses Should Prepare for EEOC’s Decision to Resume Issuance of Charges**
  COVID-19 interrupted business operations around the country. Furloughs, terminations and other cost-driven measures resulted in the separation of employees from businesses under unfavorable circumstances, which in turn created disgruntled employees. To help alleviate some of the ongoing complications of COVID-19, on March 21, 2020, the EEOC suspended issuance of claim dismissals or right-to-sue letters, unless a Charging Party requested a dismissal.

  **Read More**  
  **September 25, 2020**

• **The Evolving Risk of Fraud in the Wake of COVID-19**
  Earlier this summer, the Department of Justice (DOJ) updated its Evaluation of Corporate Compliance Programs guidance. As the recent updates make clear, one of the hallmarks of an effective corporate compliance program is the ability to conduct well-scoped, appropriately funded, independent, objective, and well-documented investigations. The current workplace realities created by the COVID-19 pandemic (remote workers, social distancing, limited travel, new technologies, etc.) have changed how internal investigations are conducted. Despite some of the current difficulties associated with internal investigations, the DOJ compliance program guidance makes it clear that internal investigations remain a critical element of any well-functioning compliance program.

  Performing internal investigations under current circumstances requires flexibility and the use of appropriate (and in some cases new) technology.

  **Read More**  
  **September 21, 2020**

• **Washington Budget and Appropriations Outlook**
  The Senate has not passed any FY21 Appropriations Bills as of the Labor Day break. The problem relates to the parallel consideration of the next round of COVID funding. The Republicans have insisted on assurances from the Democrats that no COVID or Police Reform Amendments would be considered as amendments to the regular bills. The Democrats have been unwilling to give such assurances given the difficulty the Senate has experienced in advancing the next round of COVID bills.

  **Read More**

• **CARES Act: Next Steps**
  The COVID-19 pandemic – the size, scale, and relative absence of knowledge as to how best to treat, prevent, and monitor – has resulted in a host of different initiatives.

  **Read More**

• **The Status of State CARES Act Funding**
  The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided $150 billion to the Department of Treasury to be issued to states and local governments through the Coronavirus Relief Fund (CRF), also referred to as "State CARES Act funding."

  **Read More**

• **FEMA Actions: Interim Policy on "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance"**
  FEMA has issued an Interim Policy on "Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance" that appears to limit the costs incurred to prevent the spread of COVID-19 that are eligible for FEMA funding. The Interim Policy applies to work performed on or after September 15, 2020, and states that it has extended the deadline for performing emergency eligible work and will give notice of the deadline completing eligible work 30 days prior to establishment of the deadline."
• **Tax Extenders: What Is Likely To Be Expanded or Modified?**
The Coronavirus Aid, Relief, and Economic Security (CARES) Act has provided important benefits for taxpayers in many ways. The Coronavirus Aid, Relief, and Economic Security (CARES) Act has provided important benefits for taxpayers in many ways.

• **Liability Protection Provisions in the New Republican COVID Relief Package**
Throughout the summer, Senate Majority Leader McConnell has emphasized that any additional COVID relief package would include COVID-related liability protections. While negotiations on an additional COVID package between the White House and Congress sputtered over August, on Tuesday, September 8, McConnell introduced a Republican so called "skinny" relief bill that included liability protections along with extension of the Paycheck Protection Program (PPP) funding, unemployment assistance, child care support, and other education funding.

• **CMS Amps Up Penalties on Long Term Care Facilities for Failing to Report COVID-19 Data and Mandates Staff Testing for the Virus**
Effective September 2, 2020, the Centers for Medicare and Medicaid Services (CMS) implemented an interim final rule with comment period to bolster its regulatory authority in addressing a number of issues relating to CMS's response to the COVID-19 public health emergency (PHE). Among other provisions, this wide-ranging rule contains two notable directives that nursing homes and other federally regulated long term care (LTC) facilities should be aware of and that will directly impact operations: (1) an increase in civil monetary penalties (CMP) for failure to timely report information relating to COVID-19; and (2) a new requirement for LTC facilities to conduct COVID-19 testing of residents and staff. The directive regarding civil monetary penalties is applicable for one year beyond the expiration of the PHE. CMS believes that the urgency of the PHE constitutes good cause to waive the normal notice-and-comment process, and the agency has already issued some guidance to LTC facilities and surveyors describing the implementation of the testing provision. We also note that, while the federal government is setting standards under the rule regarding testing frequency, individual states may also require more frequent testing by law, rule or order. Comments must be received no later than 5 p.m. ET on November 1, 2020.

• **Navigating COVID-19: Tax Nexus, Withholding Taxes, and State Unemployment Taxes**
COVID-19 has caused many companies to introduce or expand a remote work policy for employees, either in a temporary capacity or in a more permanent one. With a large number of companies' employees working remotely, several important tax issues need to be considered and addressed. Baker Donelson's Tax attorneys have fielded numerous calls from companies, as well as accountants and other professionals, to address these concerns. Three of the most significant issues include income tax nexus, withholding taxes, and state unemployment taxes.

• **Executive Order "Deferring" Taxes: Notice 2020-65 Postures Guidance**
The President's Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 12, 2020 (Order), directs the Secretary of the Treasury "to defer the withholding, deposit, and payment" of the employee's share of FICA taxes funding Social Security for
the period of September 1, 2020, through December 31, 2020 (Deferral Period). That Order also directed the issuance of guidance to implement the Order. Since the Order was issued on Wednesday, August 12, there have been concerns expressed from many different business sectors regarding the need for prompt and clear guidance addressing a number of issues related to this Order as it seemed to place an undue burden on employers. Just one such issue is whether employers will be responsible for the unpaid deferred taxes with respect to employees who are no longer with the employer when the deferred taxes are to be withheld and deposited.

**Read More**

**August 31, 2020**

- **DOL Releases New FFCRA Child Care Guidance**
  Late last week, the Department of Labor (DOL) answered three questions related to being eligible for leave under the Families First Coronavirus Response Act (FFCRA) for child care needs. The new guidance addresses difficult questions facing employers and employees as we venture into the fall school semester and parents potentially face several more months of school closures and distance learning. You may recall that at the end of last month, the DOL issued updated guidance which made clear that parents with children at home due to the child's school or place of care "mov[ing] to online instruction or to another model in which children are expected or required to complete assignments at home" are eligible for FFCRA leave. The DOL explained that in the event the "physical location" where the child "received instruction or care is now closed," that school or place of care is considered "closed" under the definitions articulated by the FFCRA. The DOL made clear that this is the case regardless of whether some or all instruction provided to the child is through "distance learning" or a similar format.

**Read More**

**August 26, 2020**

- **"ZOOM-ing" In on Virtual Trials: Four Key Considerations for Success**
  COVID-19 has touched nearly every aspect of personal and professional life. The legal profession has not been spared, with nearly every court in the country implementing systems to reduce the number of in-person court appearances. While some cases are being postponed, others are moving forward utilizing virtual meeting platforms, such as Zoom, which allow the parties to present their case remotely.

**Read More**

- **Remote Depositions: A Great Tool for Litigators During Coronavirus**
  Litigators can strike a balance between actively moving their cases forward and adhering to coronavirus guidance and orders by remotely conducting depositions. To conduct a successful remote deposition, litigators should consider the following factors.

**Read More**

**August 24, 2020**

- **Tennessee Joins States Extending Immunity to Businesses for COVID-19 Liability Issues**
  On August 17, 2020, Tennessee Governor Bill Lee signed legislation (S.B. 8002 / H.B. 8001) passed in a special session called by the Governor to address a stalemate between the Tennessee House and Senate on the scope of liability protection for businesses (including health care providers and schools) for COVID-19-related claims. The separate Houses of the Legislature were unable to agree upon retroactivity provisions in competing versions of the bill during the regular session. The leadership in both Houses, working with the Governor, were able to resolve their differences in a special session, which resulted in legislation providing a broad array of protections to Tennessee health care providers, businesses and schools on this issue. The legislation became effective on
August 18, 2020.

Read More

August 20, 2020

- **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #9**
  Due to COVID-19, the Internal Revenue Service announced extensions of deadlines to pay various taxes and file various tax returns, with such extensions generally being through July 15, 2020. Those IRS extensions, followed in whole or in part by many states, were very helpful to taxpayers. While these IRS extensions have now expired, many states continue to adjust their tax and related requirements to address specific objectives such as raising revenues to assist with depleted governmental budgets, providing incentives to support business employers, and to assist taxpayers generally in dealing with the realities of COVID-19. This special edition reviews certain updates by several states which may be important to taxpayers.

Read More

August 18, 2020

- **What Georgia’s COVID-19 Pandemic Business Safety Act Means for Your Business’s Liability**
  Georgia Governor Brian Kemp signed Georgia Senate Bill 359 into law last week. Georgia’s COVID-19 Pandemic Business Safety Act (the Act) is an undoubted win for businesses, health care and otherwise, as Georgia’s legislature cited the need for “additional flexibility to provide critical assistance and care during the unprecedented COVID-19 pandemic.” In what is likely a sign of similar pieces of legislation and executive action to come, businesses in other states need to be on the watch for similar acts to be best prepared to face COVID-19 claims.

Read More

August 14, 2020

- **COVID-19 Pandemic Trickles Into Some Aspects of SNF PPS FY 2021 Final Rule**
  On August 5, 2020, CMS issued its final rule updating FY2021 payment rates used under the prospective payment system (PPS) for Skilled Nursing Facilities (SNFs). The FY 2021 payment rates will be implemented to reflect the use of the Patient Driven Payment Model (PDPM) case-mix classification system from October 1, 2020 through September 30, 2021. The rule also made notable updates to the payment system’s wage index as a result of CMS’ adoption of OMB’s 2018 statistical area delineations. Additional policies made changes to the case-mix classification code mappings used under the SNF PPS, minor revisions in the regulatory text, and an update to the SNF value-based purchasing (VBP) program that affects Medicare payment to SNFs. The changes set forth in the final rule will be effective October 1, 2020.

Read More

August 12, 2020

- **Executive Order "Deferring" Taxes: What Are The Employer's Options?**
  On August 8, 2020, President Trump issued the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster (Order). The Order directs the Secretary of Treasury to defer the "withholding, deposit, and payment" of the employee's share of FICA taxes funding Social Security for the period of September 1, 2020, through December 31, 2020 (Deferral Period). Under the Order, that deferral "shall be made available with respect to any employee the amount of whose wages or compensation, as applicable, payable during any bi-weekly pay period generally is less than $4,000, calculated on a pre-tax basis, or equivalent amount with respect to other pay periods."

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August 4, 2020
• **Potential Provider Protections: How the Proposed SAFE TO WORK Act Impacts Liability Claims Against Health Care Providers**
   
   On July 27, 2020, Senate Republicans unveiled the "Safeguarding America's Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy Act," or the "SAFE TO WORK Act" (the Act). The proposed legislation is intended to "establish necessary and consistent standards for litigating certain claims specific to the unique coronavirus pandemic," to "prevent the overburdening of the court system with undue litigation," to "encourage planning, care, and appropriate risk management" by businesses, health care providers, and others, to "prevent litigation brought to extract settlements and enrich trial lawyers rather than vindicate meritorious claims," and to "protect interstate commerce from the burdens of potentially meritless litigation," among other purposes. The Act offers extremely broad liability and immunity protections to businesses, schools, and, in a separate section, "health care providers."
   
   [Read More](July 30, 2020)

• **OSHA Expected to Issue More COVID-19 Citations in Light of Recent Lawsuit**
   
   The Occupational Safety and Health Administration (OSHA) has increased pressure on health care facilities, and long term care providers specifically, by issuing COVID-19-related citations and initiating COVID-19-related investigations.
   
   [Read More](July 27, 2020)

• **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #8**
   
   Due to COVID-19, the Internal Revenue Service announced extensions of deadlines to pay various taxes and file various tax returns, with such extensions generally being through July 15, 2020. Those IRS extensions, followed in whole or in part by many states, were very helpful to taxpayers. While these IRS extensions have now expired, many states continue to adjust their tax and related requirements to address specific objectives such as raising revenues to assist with depleted governmental budgets, providing incentives to support business employers, and to assist taxpayers generally in dealing with the realities of COVID-19. This special edition reviews certain updates by several states which may be important to taxpayers.
   
   [Read More](July 16, 2020)

• **COVID-19 (and Other) Relief for the Marine Industry**
   
   Representatives Sean Patrick Maloney (D-NY) and Peter DeFazio (D-OR) have recently introduced the Maritime Transportation System Emergency Relief Act (MTSELA) to provide financial relief to the maritime industry for losses due to COVID-19 or other natural disasters or emergencies, which are defined as any natural disaster such as a hurricane or flood, as well as any catastrophic failure from an external cause that impacts the U.S. maritime industry. The bill specifically states that the COVID-19 pandemic shall be treated as an emergency for purposes of funding under this Act.
   
   [Read More](July 16, 2020)

• **Tips for Trusting Teleworkers with Trade Secrets**
   
   As more and more American workers are logging into their jobs remotely, many employers have been forced to enact teleworking policies on a massive scale. Some of these work-from-home policies may have been implemented in a haphazard way so that employees could begin working remotely within a matter of days. The need for speed in sending employees home may have left some employers without time to consider the potential impact of massive-scale teleworking on a company’s protected
confidential information. Due to the increased risk that employees may be able to expose confidential trade secrets to unauthorized individuals based on the nature of remote working, it is important that employers remain vigilant in protecting confidential and trade secret information.

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- **DOL Regulations Address Potentially Overlooked Employee Protections Against Discrimination and Retaliation Contained in the EPSLA and the EFMLEA**
  By now, most employers are hopefully aware of the new employee leave requirements of the Families First Coronavirus Response Act (FFCRA), which became effective on April 1, 2020 and will last through December 31, 2020. More specifically, Division E of the FFCRA, the Emergency Paid Sick Leave Act (EPSLA), entitles certain employees to take up to two weeks of paid sick leave for qualifying absences related to the COVID-19 pandemic while Division C, the Emergency Family and Medical Leave Expansion Act (EFMLEA), permits certain employees to take up to 12 weeks of expanded family and medical leave, ten of which must sometimes be paid, for specific reasons related to the pandemic. Considering the widespread discussion of the major provisions of the FFCRA, it would be hard for an employer to have missed these leave requirements. Not as widely reported, however, are the non-discrimination and anti-retaliation provisions contained in the same legislation.

Read More

**July 15, 2020**

- **Spotlight on Alabama: Alabama Announces $100 Million Small Business Grant Program**
  On July 8, 2020, Governor Ivey announced the launch of "Revive Alabama," a new $100 million grant program to assist small businesses in Alabama affected by the ongoing coronavirus pandemic. The grant program is funded from amounts received by the state from the federal CARES Act.

Read More

**July 14, 2020**

- **Home Health COVID-19 Telecommunications Technology Expansions are Here to Stay**
  On June 25, 2020, Centers for Medicare and Medicaid Services issued a proposed rule to make permanent all the flexibilities concerning the use of technology and telecommunications systems introduced for home health providers during the COVID–19 Public Health Emergency.

Read More

- **Directors and Officers: Key Considerations for Continued Response to COVID-19**
  As COVID-19 cases spike in many jurisdictions throughout the Southeast, corporations are forced to quickly adapt to an ever-changing environment. Despite the need to act quickly, corporate boards must remain mindful of, and diligently adhere to, their legal duties owed to the corporation and its shareholders. As discussed below, boards should ensure that they fulfill their duties in approving the corporation's continued response to the COVID-19 pandemic.

Read More

**July 13, 2020**

- **CARES Act Coronavirus Relief Fund Compliance: Enter the OIG**
  On July 2, 2020, the U.S. Department of Treasury Office of Inspector General (OIG) issued a memorandum providing a glimpse into how it will monitor the receipt, disbursement, and use of financial assistance from the Coronavirus Relief Fund or CRF. Congress provided $150 billion for the CRF through the CARES Act to provide much needed funding to state, local, and tribal governments, the District of Columbia, and U.S. territories navigating the impact of the COVID-19 outbreak. Treasury made direct CRF payments to governmental entities with populations over 500,000 with the
expectation that those recipients would transfer funding to local units of government that did not meet the 500,000 population threshold. The funds may be used for expenses necessary to address the COVID-19 pandemic, including, e.g., testing and contact tracing; support for public and private hospitals; economic support to individuals and small businesses; support for distance learning; and improving telework capabilities. Now, roughly 90 days following the deadline for recipients to submit the certifications required to receive the funds, OIG has issued additional guidance on reporting and record retention requirements. OIG will require recipients to submit their first interim report by the end of this week — July 17, 2020.

**July 9, 2020**

- **OSHA Issues Guidelines for Oil and Gas Industry Workers and Employers**
  The Occupational Safety and Health Administration (OSHA) recently issued guidelines for oil and gas workers and employers during the Coronavirus (COVID-19) pandemic. While similar to guidelines issued previously by various governmental authorities, this guidance is specific to oil and gas industry workers and employers.

**Read More**

**July 7, 2020**

- **Paycheck Protection Program Extended; SBA Releases Borrower Data**
  On July 4, President Trump signed S. 4116 extending the deadline for applying for a loan under the Paycheck Protection Program (PPP) from June 30 to August 8, 2020. Other than extending the deadline for applying for a PPP loan, S.4116 makes no statutory changes to the PPP or borrower eligibility although as noted below, SBA continues to ease certain eligibility requirements.

**Read More**

**July 1, 2020**

- **EPA Plans to Terminate COVID-19 Enforcement Flexibility Policy**
  The EPA announced on June 22, 2020, that "in the near future" it will terminate its policy from earlier this year granting industries discretion from meeting compliance obligations under environmental regulations as a result of COVID-19. On March 26, 2020, the EPA issued a policy directive that said it does not intend to enforce against violations where compliance is not possible as a result of COVID-19. The EPA indicated that, while entities should attempt to comply with compliance obligations, if it is not practical to do so as a result of COVID-19 they are only obligated to "act responsibly under the circumstances in order to minimize the effects and duration of any non-compliance caused by COVID-19," and "return to compliance as soon as possible." The response to EPA's loosening of enforcement led to extensive controversy, with several state attorneys general filing suit against the EPA and U.S. Senate Democrats expressing strong concerns.

**Read More**

**June 30, 2020**

- **COVID-19 Economic Downturn: Consider a Special Litigation Committee to Protect Your Company from Meritless Shareholder Derivative Suits**
  COVID-19 has forced significant changes to the way business is conducted, often requiring corporations to adjust quickly in the face of challenging conditions. Moreover, economic downturn frequently results in increased commercial litigation, some of which may involve meritless shareholder derivative suits. These suits are sometimes brought by shareholders seeking to blame management or the board of directors for the corporation's losses that were caused by market forces. As will be discussed below, formation of a Special Litigation Committee (SLC) can be an effective way to minimize the impact of these frivolous suits.
• **DOJ Compliance Guidance Update: Flexibility and Data Centric Programs**
   Earlier this month, the Department of Justice (DOJ) updated its *Evaluation of Corporate Compliance Programs* guidance. The updated guidance does not suggest that corporations will be rewarded for deemphasizing or not financially supporting effective compliance programs during these difficult and uncertain times. Rather, the guidance states that an evaluation of the efficacy of compliance programs should "address the sufficiency of the personnel and resources within the compliance function." One measure of the sufficiency of personnel and resources is funding. If funding cuts are made in compliance areas, those cuts need to be offset with increased efficiency and process improvements. And DOJ emphasizes its own flexibility in evaluating corporate compliance programs and recognizes that one size does not fit all. There must be "a reasonable individualized determination in each case." Thus, factors to be considered by DOJ include a company's "size, industry, geographic footprint and regulatory landscape."

    Read More

    **June 29, 2020**

• **Human Resources and Employment Counsel Beware: Increase in Malware Attacks Raising New Concerns for Employers**
   Human resources can no longer just rely on their IT and legal counsel to focus on the concerns and issues surrounding cyberattacks. As more companies re-open and unemployment rates grow, cyber criminals are continuing to exploit the global crisis in a myriad of ways. Cyberattacks are the best example of how this exploitation can create chaos. The month of May saw an increase in the record of cyberattacks, including employment-themed campaigns.

    Read More

• **CORONAVIRUS: Recent Policy and Guidance Updates on FEMA Public Assistance**
   Building upon our prior alerts for the COVID-19 Pandemic, including guidance on eligible medical care costs and alternate care sites, the FEMA streamlined application and specific tips for hospitals and other medical providers applying for FEMA funds, we now provide an update on recent developments that impact consideration of a claim to the FEMA Public Assistance (PA) program.

    Read More

    **June 25, 2020**

• **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #7**
   Due to COVID-19, the Internal Revenue Service (IRS) announced extensions of deadlines to pay various taxes and file various tax returns. Although some of these extension dates are different, most are automatically granted to July 15, 2020. However, the IRS announcements may not govern tax payment and return filing requirements imposed by states. This special edition reviews updates by several states which may be important to taxpayers.

    Read More

    **June 24, 2020**

• **A Challenge to EPA's Enforcement and Compliance Assurance Program in the Wake of COVID-19**
   On March 26, 2020, the U.S. Environmental Protection Agency ("EPA") issued a memorandum loosening enforcement for non-compliance of certain environmental laws and regulations as a result of the COVID-19 pandemic. Essentially, EPA indicated that while entities should make every effort to comply with environmental compliance obligations, if compliance is not reasonably practical as a
result of burdens caused by COVID-19, such entities should attempt to "act responsibly under the circumstances in order to minimize the effects and duration of any non-compliance caused by COVID-19," and "return to compliance as soon as possible."

**June 23, 2020**

- **Update on HHS Provider Relief Fund Payments and Reporting Requirements**
  On June 9, 2020, the Department of Health and Human Services (HHS) announced additional payments under the COVID-19 Provider Relief Fund to reimburse providers for health care related expenses and revenue losses attributable to COVID-19. These new distributions will provide $25 billion in payments to safety net hospitals and Medicaid/CHIP providers and follows the roughly $100 billion already issued. The announcement also includes plans to issue $10 billion to hospitals through a second High Impact Distribution.
  Read More

**June 18, 2020**

- **SBA Issues New Paycheck Protection Program Forgiveness Applications and Forgiveness Guidance**
  As a result of the passage of the Paycheck Protection Program Flexibility Act (the "Flexibility Act"), the SBA has issued two new Forgiveness Applications and provided additional guidance on forgiveness under the Paycheck Protection Program. The Forgiveness Applications, instructions and other guidance are available on the [US Treasury website](https://www.treasury.gov) and the [SBA website](https://www.sba.gov). We previously discussed provisions of the Flexibility Act in an alert issued on June 5. The new Forgiveness Applications and additional guidance were expected due to the changes made by the Flexibility Act. Many borrowers will benefit from the new, streamlined Forgiveness Applications.
  Read More

**June 17, 2020**

- **Navigating PPP, Employer Tax Deferral, and Tax Credits Under the FFCRA and CARES Act**
  The President, Congress, the Treasury Department, the SBA and the IRS have been busy enacting and interpreting legislation intended to provide assistance to employers during the coronavirus pandemic, including the much-discussed Paycheck Protection Program (PPP).
  Read More

- **COVID-19: Is Your Business Protected by Louisiana’s Limited Liability Legislation?**
  Governor John Bel Edwards has signed a set of bills that will limit the liability for Louisiana businesses and governmental entities from (most) COVID-19-related claims for injuries or death. House Bill 826 (now Act No. 336) provides that no individual (natural or juridical) or governmental entity will be liable for civil damages resulting from exposure to COVID-19 in the course of business, unless there is evidence that the business or governmental entity was not in substantial compliance with applicable COVID-19 procedures and the injury or death was caused by the business or governmental entity's gross negligence. Of note, the bill recognizes the probability of multiple sources of applicable safety procedures from the federal, state, and local levels, and provides that the business/governmental entity only needs to substantially comply with any one applicable set of procedures.
  Read More

- **COVID-19: Much-Needed Liability Relief for Louisiana’s Restaurant Industry**
  At a time when restaurants across Louisiana are struggling financially due to the COVID-19 lockdown, the Louisiana Legislature has provided some much-needed relief from civil liability during
its 2020 Regular Session.
Read More

• A General Counsel's View on Advising Through COVID-19
Corporate legal departments have been faced with unique challenges as a result of COVID-19. We asked Clark Atlanta University (CAU) General Counsel Jennifer L. Ervin to provide insight for other in-house counsel on how to serve internal corporate clients despite the ever-changing legal landscape in light of new laws and guidance.
Read More

• A Baker's Dozen: Tips from In-House Counsel
The current normal requires intentionality and flexibility. Below, in-house counsel from various organizations share a Baker's Dozen tips on how to manage and work through remote work, home life, and other impacts of COVID-19.
Read More

• How Leaders Can Retain Diverse Talent During the COVID-19 Pandemic
As COVID-19 continues to fuel uncertainty and financial loss, resulting in furloughs, layoffs, terminations, reduced salaries, and other tough business decisions, recent headlines provide fresh perspectives on the reality that the last time this country faced a significant crisis – the 2008 Recession – a disproportionate number of lawyers of color were the first to experience layoffs and terminations as workloads declined. Businesses, including law firms, that are not intentional and vigilant about how short-term, economic-based employment decisions could impact their diverse talent could easily repeat history. Consequently, while maintaining diverse and inclusive work environments is critical during the current pandemic, retaining diverse talent is equally important.
Read More

• Revisiting 2020 Goals During the COVID-19 Pandemic
Where do you see yourself on December 31, 2020? In a time of social distancing, working from home, and having more "free" time than we could have anticipated at the beginning of this year, this is a question more of us should consider. We are primed for self-reflection and taking time to set professional and personal goals for not only the remainder of 2020 but for this new decade. Regardless of your position or where you work, here are some best practices to help you take advantage of your "free" time.
Read More
June 11, 2020

• Congress CARES (Act): Expect Oversight Investigations
Congressional activity is already underway to begin oversight related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Based on historical trends and the current political environment, oversight and resulting investigations by Congress will likely increase. Those inquiries will come from multiple sources, often overlapping in focus and objective. This alert provides an overview of the CARES Act provision for oversight, a brief summary of Congressional investigative authority, and some general advice about what to do if a letter/subpoena arrives from Congress.
Read More
June 8, 2020

• Organ Transplant Rates Remain Low: What Hospitals Need to Know to About Their Obligation to Help
It may come as no surprise that, in the wake of the COVID-19 pandemic, the national organ
transplantation rate has plummeted. Despite CMS's recently published guidance identifying transplants as Tier 3b procedures that should not be postponed, and even as elective surgeries resume, transplant rates remain abysmal.

Read More

June 5, 2020

- Congress Makes Significant Changes to Paycheck Protection Program
  Since the Small Business Administration (SBA) and United States Treasury (Treasury) issued the first Interim Final Regulations on April 2, 2020 under the Paycheck Protection Program (PPP), borrowers, potential borrowers and even members of Congress have raised questions over whether the PPP, as implemented, would provide the relief borrowers need and Congress intended when it enacted the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Questions arose such as whether the PPP requirement that 75 percent of the forgivable amount be used for payroll costs provided sufficient flexibility for businesses with higher fixed costs and whether the two-year note term mandated by the SBA and Treasury allowed a sufficient time for repayment of non-forgiven amounts.
  Read More

June 4, 2020

- From the Classroom to Court: Tuition Reimbursement Lawsuits
  Following the move by institutions of higher learning to an online learning environment as a result of COVID-19, students nationwide are filing class action lawsuits demanding tuition reimbursement. The students’ complaints allege online learning is an inadequate substitute for their traditional classroom education and that the institutions breached their contracts when they moved classes online and then enriched themselves with tuition revenue they should have returned to the students. Many of the complaints allege the institutions should have pro-rated the spring 2020 semester tuition and reimbursed the students for services not provided.
  Read More

- Long Term Care Facilities Face Stricter CMS Enforcement Actions for COVID-19 Deficiencies
  On June 1, 2020, the federal Centers for Medicare and Medicaid Services (CMS) issued both a press release detailing its expansion of enforcement actions against skilled nursing facilities and nursing facilities (LTC Facilities) with infection control deficiencies; and new guidance for states about COVID-19 reporting and infection control. The two releases describe how COVID-19 data collected from individual LTC Facilities will be made available to the public, the timeline by which states will conduct surveys of LTC Facilities, and set out enhanced penalties for infection control deficiencies identified during the surveys.
  Read More

- COVID-19 Expected to Create a Tidal Wave of Workers' Compensation Claims: Is Your Business Ready for the Tsunami?
  When managing the 2019 novel Coronavirus (COVID-19) pandemic, employers who are already navigating the ever-changing landscape of federal, state, and local laws frequently overlook the potential liability and costs associated with increasingly complex workers' compensation claims. The number of workers' compensation claims are expected to balloon exponentially, thanks in no small part to COVID-19. Workers' compensation claims can implicate a host of other laws, including federal and state employment and discrimination laws as well as the Occupational Health and Safety Act of 1970 (OSHA). Employers are already beginning to see a host of new claims associated with diagnosed cases of COVID-19 purportedly from workplace exposure.
  Read More

June 3, 2020
• **Spotlight on Tennessee: Governor Announces Relief Payments to Small Business**
  On June 1, 2020, Tennessee Governor Lee announced the Tennessee Business Relief Program for small businesses affected by the pandemic. That Program will be funded with $200 million from the federal Coronavirus Relief Funds provided to the state, and payments under the Program to small businesses will be administered through the Tennessee Department of Revenue.
  Read More
  June 2, 2020

• **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #6**
  Due to COVID-19, the Internal Revenue Service (IRS) announced extensions of deadlines to pay various federal taxes and file various federal tax returns, including Notice 2020-18 (March 21, 2020), Notice 2020-20 (March 27), and Notice 2020-23 (April 8). Although some of these extension dates are different, most are automatically granted to July 15, 2020. However, the IRS Notices may not govern tax payment and return filing requirements imposed by states. This special edition reviews specific updates by several states regarding short-term taxpayer responsibilities as a result of the pandemic.
  Read More
  May 26, 2020

• **How Will the Coronavirus Pandemic Impact Litigation and Dispute Resolution in the Future?**
  The practice of law certainly has changed significantly since ancient Greek and Roman times, when unregulated groups of "advocates" presented cases on behalf of ordinary citizens. In the 21st century, technology has been at the forefront of these continuing changes in legal practice. The economic shutdown resulting from the coronavirus pandemic, however, has made the importance of technology even more prominent in the legal system. From the U.S. Supreme Court holding its first oral arguments by phone (with a toilet apparently flushing in the background) to trials, depositions and mediations being held via videoconference, judges, lawyers and other participants in the legal system must accept technology more than ever. So, with such acceptance, it seems inevitable that some aspects of the legal system currently being conducted remotely may become the norm, presenting both opportunities and challenges for clients and their lawyers.
  Read More
  May 21, 2020

• **Regulators Issue Small Dollar Lending Principles**
  Earlier in March, the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA) and Office of the Comptroller of the Currency (OCC and collectively with the FRB, FDIC and NCUA, the "Regulators") issued a joint statement encouraging supervised institutions to offer small dollar loans to both consumers and small businesses in response to COVID-19. The Regulators offered little specific guidance on implementing and administering a small dollar lending program (SDLP) in a cost-effective manner while maintaining compliance with applicable law.
  Read More
  May 19, 2020

• **CMS’s Second Interim Final Rule Further Expands Telemedicine, Service Availability and Payment Flexibilities Related to the COVID-19 Pandemic**
  CMS recently issued its second round of changes to the Medicare regulations in response to the COVID-19 Public Health Emergency. CMS published its first interim final rule with comment period
addressing the PHE in the April 6, 2020 Federal Register, effective March 31, 2020.

**May 18, 2020**

- **Small Business Administration Issues Initial PPP Loan Forgiveness Application**
  On Friday, May 15, 2020, the Small Business Administration (SBA) issued a Paycheck Protection Program Loan Forgiveness Application form (the "Forgiveness Application"), which provides the first guidance on how the SBA will require borrowers to seek forgiveness for Paycheck Protection Program (PPP) loans. The Forgiveness Application provides the SBA's initial perspective on the qualifications for loan forgiveness under the CARES Act.

- **COVID-19 – Cybersecurity Risks for Health Care and Research Institutions are Heightened**
  The health care industry and research organizations searching for vaccines and/or improved treatment protocols are on the front lines of the battle against COVID-19. There are obvious inherent risks to treating COVID-19 patients and performing research on infectious diseases, exposure to the virus chief among them. Another risk for COVID-19 health care providers and researchers that has been exacerbated by the COVID-19 crisis is the threat of cyber-attack.

- **Wisconsin’s Supreme Court Strikes Down Executive Branch’s COVID-19 Stay-at-Home Order**
  Governors, mayors, and other members of executive branches are contemplating leaving COVID-19 emergency stay-at-home orders, which have entered their third month, in place for months to come. This has led to public protests and push-back from the legislative and judicial branches. The latest example is from Wisconsin, where public protests against the stay-at-home orders have recently mounted and where the Supreme Court recently ruled in favor of the legislative branch by striking down a COVID-19 stay-at-home order issued by the executive branch.

**May 14, 2020**

- **Return to Work Analysis for Vulnerable Employees During COVID-19**
  As phased reopening of the economy occurs during COVID-19, some employees may be fearful to return to work. While fear alone is not a sufficient legal basis to remain at home, a medically vulnerable employee or an employee caring for a medically vulnerable individual may be entitled to benefits under the Families First Coronavirus Response Act1 or an accommodation under the Americans with Disabilities Act. The Family Medical Leave Act should be considered as well.

- **COVID-19 Health Care Provider Immunity Update**
  As the COVID-19 pandemic continues to dominate the legal landscape, approaches to establishing immunities for health care providers have rapidly evolved. Since mid-March, 23 states and the District of Columbia, through executive orders and/or legislation, have given health care providers limited grants of immunity for care provided to patients during the pandemic. When combining these new state actions with existing laws protecting health care providers from liability during states of public emergency, at least 33 states and the District of Columbia currently offer some level of immunity with respect to care provided during the pandemic.

**May 13, 2020**
• **Welcome News on PPP Need Certification: Safe Harbor for Loans Below $2 Million, More Clarity for Loans Above $2 Million**

Earlier today, the Small Business Administration (SBA) issued FAQ 46 that provides additional guidance related to the certification of need that is required for a Paycheck Protection Program (PPP) loan. As we discussed in a prior alert, on April 23, 2020 (20 days after applications could first be submitted for a PPP loan), the SBA issued FAQ 31 that significantly increased the requirements surrounding an applicant's certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." When it initially issued FAQ 31, the SBA also created a Safe Harbor Deadline of May 7, 2020 to return PPP loans, which was then later extended to May 14, 2020. Borrowers that return a PPP loan by the Safe Harbor Deadline will be deemed to have certified in good faith their need for the loan.

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• **New FEMA Guidance on Eligible Medical Care Costs and Alternate Care Sites**

Building upon our prior Alerts summarizing the President's March 13 nationwide emergency declaration for the COVID-19 pandemic and subsequent state and territory specific Major Disaster Declarations, and information provided regarding the resulting eligible emergency protective measures costs, including specific tips for hospitals and other medical providers applying for these funds, we now provide an update on eligibility of medical costs available pursuant to the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program. FEMA Assistant Administrator, Keith Turi, approved FEMA Policy FP 104-010-04 on May 9, 2020, which provides details on eligible reimbursement for medical care costs. FEMA followed this policy with the Fact Sheet issued on May 12, 2020 to provide more information regarding FEMA's reimbursement for temporary and expanded medical facilities (Alternate Care Sites).

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• **Overview of HHS Provider Relief Fund Payments and Updated Guidance**

On May 1, 2020, the Department of Health and Human Services (HHS) announced additional payments under the COVID-19 Provider Relief Fund to reimburse providers for health care related expenses and revenue losses attributable to COVID-19. The new distributions provide $12 billion to 395 hospitals with high numbers of COVID-19 admissions and $10 billion to rural providers. The payments follow $50 billion already distributed to providers based on revenues.

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• **Reopening New Orleans: Laissez Les Bon Temps Rouler? Not So Fast!**

Mayor LaToya Cantrell has announced that the City of New Orleans will move to its Phase One Re-Opening on May 16 at 6 a.m. What will this look like? Some restrictions will remain in place while others will be relaxed.

Read More

• **File Your Patents & Trademarks NOW!**

As businesses and offices prepare to reopen, the United States Patent and Trademark Office (USPTO) shows its ongoing support for innovation and entrepreneurship during the novel coronavirus outbreak. Silver linings for trademark owners and patent applicants are highlighted below.

Read More

May 8, 2020

• **CMS Publishes Rule and Guidance Requiring Long Term Care Facilities to Conduct Additional COVID-19 Reporting to CDC and Residents**

The federal Centers for Medicare and Medicaid Services (CMS) has published a new interim final rule
and additional guidance and FAQs that, among other portions applicable to other health care providers, address the new requirement that Medicare and Medicaid certified skilled nursing facilities and nursing facilities (LTC Facilities) not only report communicable diseases, health care-associated infections, and potential outbreaks to State and Local health care departments, but also report COVID-19 data to the federal Centers for Disease Control and Prevention (CDC) and to their residents.

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- **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #5**
  
  Due to COVID-19, the Internal Revenue Service (IRS) announced extensions of deadlines to pay various federal taxes and file various federal tax returns, including Notice 2020-18 (March 21, 2020), Notice 2020-20 (March 27), and most recently, Notice 2020-23 (April 8). Although some of these extension dates are different, most are automatically granted to July 15, 2020. However, the IRS Notices may not govern tax payment and return filing requirements imposed by states. This special edition reviews specific updates by several states regarding short-term taxpayer responsibilities as a result of the pandemic.

  Read More

May 6, 2020

- **SBA Extends Safe Harbor Deadline to May 14, 2020 and Confirms that Foreign Affiliate Employees Must be Counted for Size Purposes**
  
  Late on May 5, 2020 the Small Business Administration (SBA) issued another round of Frequently Asked Questions (FAQs) that extended the Safe Harbor Deadline to return Paycheck Protection Program (PPP) loan funds from May 7, 2020 to May 14, 2020. Significantly, the SBA also confirmed that its rules regarding foreign affiliates are applied to PPP applicants in the same manner as its other programs. Loan applicants should closely review the most updated version of the SBA’s FAQs and talk to their counsel about the best way to proceed.

  Read More

May 5, 2020

- **EPA and CDC Guidance on Cleaning and Disinfecting Public Spaces, Workplaces, Businesses and Schools**
  
  As part of Opening Up America Again, the U.S. government's plan in response to the COVID-19 pandemic, the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) released joint guidance on April 29, 2020 on cleaning and disinfecting practices for public spaces, workplaces, businesses and schools. The guidance states that some of the practices can also be applied to home settings.

  Read More

May 1, 2020

- **Federal Reserve Board Expands Main Street Lending Program**
  
  On April 30, 2020, the Federal Reserve Board (FRB) announced an expansion in the scope and eligibility of the Main Street Lending Program (MSLP). The FRB previously provided term sheets on two facilities under the MSLP and requested public comments. In response to the thousands of public comments received, the FRB has revised the existing MSLP programs and added a third.

  Read More

April 30, 2020
• **Reopening Considerations for Retail & Mixed-Use Property Owners**

COVID-19 shelter-in-place and stay-at-home restrictions are beginning to expire or loosen, allowing businesses in retail and mixed-use properties to resume or expand their day-to-day operations. In preparation, owners of retail and mixed-use properties (and their property managers) should be evaluating and, where appropriate, modifying typical operational practices at their properties. As they prepare for the resumption of business at retail and mixed-use projects, property owners and managers may wish to consider taking some of the following steps.

Read More

• **CMS Alerts Nursing Homes of Additional COVID-19 Reporting Requirements to CDC and Residents**

On April 19, 2020, the Centers for Medicare and Medicaid Services (CMS) announced that in addition to requiring that nursing homes report communicable diseases, healthcare-associated infections, and potential outbreaks to State and Local health care departments, CMS will soon require that nursing homes report this data to the Centers for Disease Control and Prevention (CDC) through the National Healthcare Safety Network (NHSN). The impending rule will also impose new requirements for COVID-19 reporting to residents and their representatives: nursing homes will have to keep their residents and residents' representatives timely informed of the facilities' status and mitigation efforts surrounding COVID-19.

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• **Chipotle’s Record $25 Million Fine Sends Tough Message as the Restaurant Industry Begins Reopening**

Chipotle Mexican Grill Inc. agreed to pay a $25 million criminal fine, the largest ever in a food safety case, to resolve criminal charges related to the company's involvement in foodborne illness outbreaks that sickened more than 1,100 people between 2015 and 2018, the Department of Justice announced last week. This news is a wake-up call for the nation's restaurant industry as it prepares to reopen this week in several states amid concerns about employee and customer safety. The message is simple: despite the burdens of reopening under "social distancing" guidelines, this is no time for restaurants to cut corners on food safety, particularly with food inventories that pre-date the shutdown and working capital stretched to the breaking point.

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April 29, 2020

• **Increased Scrutiny of Paycheck Protection Program Loans Coming**

The Paycheck Protection Program (PPP) created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) has proven to be very popular with businesses and nonprofit organizations throughout the United States, so much so that Congress had to replenish the initial funding of $349 billion with an additional $310 billion through the Paycheck Protection Program and Health Care Enhancement Act.

Read More

• **At the Crossroads: Legal Considerations Where Government Investigations Overlap with Tort Risk in Long Term Care**

In roughly the seventh week after a majority of states and the federal government issued emergency declarations or "lock down" executive orders, the true impact of COVID-19 is only beginning to be fully transparent. In long term care facilities, such as skilled nursing facilities (SNFs) and assisted living facilities (ALFs), the collection and close proximity of some of the most at-risk and vulnerable patients to a sickness that is still not fully understood has felt some of the gravest impact. News reports from across the country leave little doubt as to the disproportionate effect this industry, its
patrons and their families have felt. 

Read More

April 28, 2020

• No Time to Rest: HHS Marches Ahead with Interoperability and Information Blocking Updates
On April 21, 2020, the U.S. Department of Health and Human Services released a series of announcements signaling its intention to finalize and enforce certain aspects of the Office of the National Coordinator (ONC) Cures Act Final Rule and the Centers for Medicare and Medicaid Services (CMS) Interoperability and Patient Access Final Rule. The announcements provide little breathing room for health care providers, payers, and IT companies currently responding to the COVID-19 public health emergency. Although organizations now have additional time to develop and implement compliance strategies, they should not abandon ongoing efforts to address the interoperability and information blocking rules.

Read More

• CMS Announces Changes to Five Star Quality Rating System for Nursing Homes and Responds to FAQs
On April 24, 2020, CMS announced that, due to the interruption of routine inspections and shift to targeted inspections, it would temporarily hold the health inspection domain for the Nursing Home Five Star Quality Rating System constant as of March 3, 2020. CMS expressed concern that there would likely be an over-weighting for those facilities inspected on or after March 4, 2020, when its targeted program was first implemented, which could potentially mislead consumers. CMS has not indicated when it will again update the health inspection domain.

Read More

• Key Takeaways from Knoxville and Knox County Phased Reopening Plan
On April 27, 2020, a joint city/county task force convened by the Knox County Health Department released "A Community Strategy for Phased Reopening," a comprehensive and collaborative plan for the gradual, phased-in reopening of businesses in Knox County and the City of Knoxville starting May 1, 2020. We highlight in this Alert the most pertinent items within the Plan for consideration by affected businesses.

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April 27, 2020

• FEMA Releases "Streamlined" Project Application in 33-Page Guidance Document
The President has now approved 56 major disaster declarations under the Stafford Act, one for each of the 50 states, five territories, and Washington, D.C., giving FEMA the authority to reimburse eligible applicants for costs incurred related to the COVID-19 pandemic. FEMA has now issued its Streamlined Project Application that will form the basis for how these entities apply for funding under FEMA’s Public Assistance Program. The "simplified" application includes four sections and six supplemental schedules, the applicability of which can be determined using a table provided in FEMA’s guidance document. This alert provides a summary of the application process.

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• State and Local Enforcement of Executive Orders on the Rise as Businesses Reopen Across America: Be Prepared to Respond
In the challenging world of COVID-19, state executive orders governing day-to-day business operations across industries have become commonplace. While traditional investigations may have slowed as regulators and investigators are also under stay-at-home orders, robust enforcement efforts by federal, state and local authorities of COVID-19-related executive orders and local public
health laws already have begun across the country and are expected to increase as states begin to reopen businesses and modify current restrictions. These enforcement actions typically stem from a company's failure to comply with social distancing and other related requirements in the workplace, and often are brought to the attention of regulators by an employee or competitor complaint. Like other state laws, a violation of an executive order can lead to significant fines, the shutdown of a business or even imprisonment.

April 24, 2020

- **Long Term Care Liability During the COVID-19 Pandemic: Ways State Governments Can Ensure Protection**
  Long term care facilities and providers are bearing the brunt of caring for the nation's largest and most vulnerable populations of COVID-19 patients. And they're doing so in the face of considerable uncertainty, insufficient supplies, and staffing shortages. One of the most significant concerns of facilities and providers caring for long term care residents during the coronavirus pandemic is legal liability exposure. As matters now stand in most states, this risk will continue long after the virus curve flattens and the nation develops a "new normal" for post-pandemic life. Long term care facilities and providers can take practical steps to reduce, but not to fully eliminate, their significant exposure to risks in caring for this vulnerable patient population. The most effective risk mitigation measures, of course, are federal and state protections.

Read More

April 23, 2020

- **Alabama Malpractice Liability and Immunities During COVID-19 Pandemic**
  With the rapid and expansive spread of the COVID-19 pandemic, Alabama health care providers may face a shortage of critical supplies, including ventilators and dialysis machines, which would require difficult decisions regarding which patients should receive treatment with those supplies. Recently implemented protocols have expressly called for the rationing and reallocation of supplies in a way that aims to save the most lives. Accordingly, Alabama health care providers may be concerned about the potential legal liability that may arise from implementing the protocols. Fortunately, the federal government and the state of Alabama are equipped with the ability to limit liability for providers and offer immunity in certain situations. Providers should be aware of the liability limits and immunities and take necessary steps to protect themselves.

Read More

April 22, 2020

- **New Health Care Provider Opportunities in Fourth COVID-19 Bill and HHS Plans to Distribute Additional Funds**
  On April 23, 2020, the House of Representatives passed the Paycheck Protection Program and Health Care Enhancement Act, which previously passed the Senate on April 21, 2020, and is expected to be signed into law by the President. The legislation is the fourth emergency stimulus legislation enacted by Congress to address COVID-19 and is being referred to as "stimulus 3.5," as it provides additional funding to programs enacted under the third stimulus bill, the CARES Act.

Read More

- **Trump's "Suspension of Immigrants" is Relatively Limited and Brief, for Now**
  President Trump's April 22, 2020 Proclamation narrowly delays for 60 days the issuance of immigrant visas for certain categories of family and employment-sponsored immigrants and diversity lottery winners. It has no effect on a wide range of other immigrants or any temporary visitors and workers.

Read More

April 22, 2020
• **Coronavirus: Force Majeure and Managing Your Business Risk, Part III: Moving Forward – How to Negotiate Future Contracts**
  Until the recent COVID-19 pandemic, whether you included a force majeure clause in a contract, and more specifically, what that language meant, likely drew little attention. For better protection in the future, careful analysis of your specific business, and the types of factors that would cause performance interruption, cancellations or undue delay, must be addressed.
  Read More

• **Class Action Lawsuits Attack Banks’ Implementation of CARES Act Lending Program**
  As a result of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), more than 1.6 million businesses received $349 billion in forgivable loans to pay their employees and certain other operating expenses during the COVID-19 crisis. Now many of the banks involved in making those loans through the Small Business Association are facing actual and threatened class action lawsuits arising out of the implementation of the Paycheck Protection Program (PPP).
  Read More

• **New CMS Guidance for Long Term Care Facilities with COVID-19 Residents**
  As long term care (LTC) facility cases of COVID-19 continue to rise, the Centers for Medicare and Medicaid Services (CMS) remains vigilant in its efforts to regulate the delivery of adequate care to those residents with COVID-19, while protecting those residents without the disease.
  Read More
  April 21, 2020

• **Tidal Wave of COVID-19 Lawsuits on the Way**
  As the "new normal" sinks in with social distancing and government-imposed shutdowns, some businesses are struggling to stay afloat. Now, many are about to be slammed with a tidal wave of litigation as consumers and injured parties seek compensation for COVID-related losses. A recent flurry of class action and other mass filings gives us a hint of what lies ahead – and they appear to be only the tip of the iceberg. This article will summarize the developing litigation landscape and provide guidance for businesses that may find themselves in the crosshairs.
  Read More

• **Is a COVID-19 Infection Recordable or Reportable to OSHA? It Depends.**
  On Friday, April 10, 2020, OSHA issued Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19), answering certain questions about whether employers need to be recording confirmed COVID-19 infections on Form 300 under 29 CFR Part 1904. Essentially, OSHA divides employers into two categories: (1) employers in the health care industry, emergency response organizations, such as ambulance services, firefighters and law enforcement, and correctional institutions; and (2) all other employers.
  Read More

• **Estate Planning to Take Advantage of Low Applicable Federal Rates**
  For those with significant assets, the current economic environment, although scary, is also an estate planning opportunity. The applicable federal rate (AFR), which is used to determine the minimum interest rate for related party loans, is 0.91 percent for short-term loans and 0.99 percent for mid-term loans in April 2020, and is set to go down to .25 percent for short-term loans and .58 percent for mid-term loans in May 2020. This is an especially good time for transfer techniques that are keyed to AFR.
  Read More
• **Estate Planning is for Everyone**
No matter the size of your estate, an estate plan can help to take care of both you and your family. We recommend reviewing your estate plan at least every five years or if you have had a major change in your family structure, such as a birth, death, or divorce.

[Read More](#)

• **Include Health Care Planning in Your Estate Planning**
The COVID-19 pandemic has given all of us a chance to take inventory of our lives and consider the "what ifs" of our health care situation. Advance care planning is for everyone. As we have seen, COVID-19 can impact anyone, no matter your age or state of health. Likewise, anyone can suffer a brain injury or neurocognitive impairment from automobile accidents, anesthesia accidents or cardiac arrest. Advance care planning optimizes end-of-life care when the patient is unable to make health care decisions. Advance care planning is a recurring process because patients often change their end-of-life treatment preferences unpredictably. Periodic conversations with your health care provider and legal counsel are helpful as you change stages of life and/or health.

[Read More](#)

April 20, 2020

• **CARES Act – Recipients Must Identify, Understand, and Comply with Grant and Contract Requirements**
Numerous commentaries predict an outbreak of False Claims Act investigations and cases related to allegations of misuse, fraud, waste, and abuse of funding provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Such predictions are surely accurate. With the tremendous sums of money at issue and the likely difficult economic conditions faced by many recipients, there are countless opportunities and temptations to misuse CARES Act funds.

[Read More](#)

April 17, 2020

• **OSHA’s Guidance on Preparing Workplaces for COVID-19**
The Occupational Safety and Health Administration (OSHA) has set forth the following guidelines for all employers in order to reduce the risk of exposure to the novel coronavirus, which is the virus that causes COVID-19, in workspaces across the country. The guidelines can be simplified into a four-step plan.

[Read More](#)

• **Part 2: Can the Government Do That? – But I Own that Beach and It Is My Backyard!**
Over the past month, our vocabularies have expanded to include new terms like: "COVID-19," "coronavirus," "epidemiologist," "stay at home," and "shelter in place." Now, private landowners are reintroducing governments to terms like "due process," "private property rights," and "just compensation." More than 20 owners of the Gulf of Mexico private beach-front property are reminding Walton County, Florida, of those terms as they challenge the constitutional validity of the county’s COVID-19 order that prohibits "any person" using "the beaches within Walton County."

[Read More](#)

• **Spotlight on Tennessee: Governor Lee Issues Executive Order Permitting Remote Execution of Legal Documents**
On April 9, 2020, Tennessee Governor Bill Lee issued Executive Order No. 26, "An Order Suspending Provisions of Certain Statutes and Rules in Order to Facilitate Remote Notarization and Witnessing of Documents" (sometimes, the "Order"). The Order specifically permits remote execution and notarization of many documents commonly used in estate planning, including trusts, wills, living
wills, and durable health care powers of attorney. Documents commonly used in real estate transactions such as deeds are also specifically authorized to be executed remotely. The Order also provides more generally that "other legal documents" may be executed remotely.

**April 16, 2020**

- **EPA Releases Interim Guidance on Site Field Work Under Superfund, RCRA, and Other Programs**
  On April 10, 2020, the U.S. Environmental Protection Agency (EPA) issued a Memorandum regarding "Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19." The EPA acknowledged that response field activities are underway at sites across the country under a number of EPA programs, in particular the Superfund program, RCRA corrective action, TSCA, the Oil Pollution Act, and the Underground Storage Tank program. The purpose of the interim guidance is for response actions related to cleanup and emergency response sites where EPA is the lead agency or has direct oversight of responsibility for the work. This interim guidance is necessitated by the challenges posed by the COVID-19 situation and is intended to ensure that continuing on-site activities are consistent with protection of public health and safety, and maintaining EPA's ability to respond as needed to environmental emergencies.

- **Three Key Takeaways for Health Care Employers from April 14, 2020 CDC Guidance**
  On April 14, 2020, the Centers for Disease Control and Prevention (CDC) updated its various guidance on COVID-19 in health care settings. In addition to other helpful information about infection control and personal protective equipment (PPE), the CDC addressed three important employment issues related to health care employees. The guidance and links to the separate documents are below. The guidance addressing strategies for mitigating health care personnel (HCP) shortages is particularly important for long term care providers, who should follow it as closely as possible, so they can point to their adherence in response to lawsuits alleging they did not adequately staff the facility.

- **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #4**
  Due to COVID-19, the Internal Revenue Service (IRS) announced extensions within which to pay various federal taxes and file various federal tax returns, including Notice 2020-18 (March 21, 2020), Notice 2020-20 (March 27), and most recently, Notice 2020-23 (April 8). Although some of these extension dates could be different, most of the extensions are automatically granted to July 15, 2020. However, the IRS Notices may not govern tax payment and tax return filing requirements imposed by states. This special edition reviews similar reactions thus far by several states regarding short-term tax payment and return filing responsibilities implemented as a result of the pandemic.

**April 15, 2020**

- **FCC Rolls Out $200 Million COVID-19 Telehealth Program**
  On April 2, 2020, the Federal Communications Commission released a Report and Order establishing the COVID-19 Telehealth Program (Program). The Program will provide $200 million in funding made available as part of the CARES Act to help eligible health care providers provide connected care services to patients in their homes or mobile locations in response to the coronavirus pandemic. Funding under the Program can be used to purchase telecommunications services, broadband connectivity services, information services, and devices necessary to provide connected care services, whether for treatment of coronavirus or other health care conditions during the pandemic.
The Program is not a grant program. To receive disbursements, eligible health care providers must apply and be approved for participation.

April 14, 2020

- **Forgive and Forget? Important Practical Advice for Borrowers Receiving a PPP Loan and Seeking Forgiveness**
  While small businesses across the country are looking for much needed relief and assistance in the wake of COVID-19, they are focusing on pressing topics like payroll, keeping bills paid, and the immediate needs of their employees, customers and owners. The rush to access government funds, like the Paycheck Protection Program (PPP), Economic Injury Disaster Loans (EIDL), and other funds is often accompanied by a flurry of paperwork, the proverbial "fine print" and constantly changing agency guidance on process, eligibility requirements, and disqualifiers. For most business owners, the threat of losing the business is a more pressing concern than some theoretical threat of enforcement due to an improperly completed application or a misunderstanding on how the proceeds may be used once received.

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April 10, 2020

- **Franchise Disclosure Documents and COVID-19 Impact**
  Franchisors renewing their Franchise Disclosure Documents (FDD) for 2020 with the intent of actively resuming franchise sales activity may be wrestling with how best to disclose the impact of the COVID-19 Pandemic on their business. Since essentially all jurisdictions have shelter in place or safe at home quarantine orders in effect, and there is no official guidance on when these orders will be lifted, the FDD is virtually an educated guess at what evolution will take place in its franchise business model during the continuance and aftermath of the public health emergency.

Read More

April 9, 2020

- **HHS Pays $30 Billion in CARES Act Emergency Relief Payments to Health Care Providers**
  Health care providers are beginning to receive payments from the Department of Health and Human Services (HHS) to address expenses and revenue losses related to coronavirus (COVID-19). On April 10, 2020, HHS announced the distribution of $30 billion from the $100 billion emergency fund created under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the third COVID-19 stimulus bill enacted by Congress.

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- **SEC Signals How Examinations Will Focus on Compliance with Reg BI and Form CRS**
  The countdown to June 30, 2020 is on – the deadline by which broker-dealers with retail customers must comply with Regulation Best Interest (Reg BI), and broker-dealers and investment advisers must comply with Customer Relationship (Form CRS) requirements with respect to their retail customers/investors.

Read More

April 9, 2020

- **Coronavirus: Force Majeure and Managing Your Business Risk Part II: Dispute Resolution – How to Assess Options in Breach of Contract Matters**
  As discussed in Part I of our commercial contracts series, we addressed the implications of force majeure clauses and why the language chosen by the parties and incorporated into their contract is of the utmost importance. The force majeure language may be boilerplate in nature and not result in the specificity needed to cover the COVID-19 pandemic, or your contract may have no force majeure
clause at all, so the limited common law defenses to performance of impracticability or frustration of purpose would likely apply. Given the uncertainties and economic realities businesses are facing, the first step you should take is to reach out to the other party and try to negotiate a path going forward. The other party is likely equally unsettled and concerned about what the future holds. While the language in the contract may or may not be what you would hope had this crisis been predicted, consider how the parties can work together to modify the contract despite its language. Recognizing the challenges faced by all, adopting a voluntary and business-like approach will likely be the most beneficial initial strategy under these unique circumstances.

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- **New Readiness Grant for Small and Rural Hospitals in Tennessee**
  On Monday, April 6, Tennessee Governor Bill Lee announced in COVID-19 Bulletin #13 that the State of Tennessee will allocate $10 million to support small and rural hospitals that are facing financial strain due to the ongoing response to COVID-19. These funds will be distributed by the State's Department of Finance & Administration in the form of small and rural hospital grants. These grants are available up to $500,000 per hospital as patient volumes decline and new federal funds become available. The applications for these grants are currently active, and the State plans to accept applications until early May or until funds are expended – whichever occurs first.
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- **USDA Opens Second Application Window for Distance Learning and Telemedicine Grant Program**
  The U.S. Department of Agriculture (USDA) Deputy Under Secretary for Rural Development Bette Brand announced that USDA is opening a second application window for funding under the Distance Learning and Telemedicine (DLT) grant program. The USDA is providing this second window for those who were unable to meet the initial deadline of April 10, 2020 due to the COVID-19 National Emergency.
  Read More

  *April 7, 2020*

- **SBA's Paycheck Protection Program: Additional Guidance Issued on April 6**
  On March 27, President Donald Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which among other COVID-19 relief items, provides $349 billion in Paycheck Protection Program (PPP) loans for small businesses as well as other businesses and non-profit organizations that meet certain criteria. On April 2, the Small Business Administration (SBA) issued an interim final rule implementing the PPP.
  Read More

- **Health Care Provider Liability During the COVID-19 Pandemic: Ways to Ensure Protection**
  This Alert explores the authority and efforts of the federal government, as well as of various state governments, to limit the scope of potential liability of health care providers resulting from the care of patients during this period of crisis. Some of these limits and immunities exist in long-standing statutes and regulations that are applicable to the present emergency. Others have been put in place recently in direct response to the COVID-19 crisis. Providers need to be aware of all of them, and they also need to take practical steps to protect themselves against future liability claims.
  Read More

- **Understanding FDA Terminology in the COVID-19 Pandemic**
  Over the last several weeks it has become apparent that there is a great deal of confusion about FDA regulated products including drugs, diagnostics, medical devices (including personal protective
equipment) and prevention strategies of various types. This confusion arises because most people, including the press and public, and even some in the very highest offices within government, do not understand the hierarchy of the FDA's well-established regulatory process.

- **The Department of Homeland Security Issues Additional Guidance on Who is an "Essential" Construction Worker**
  On March 28, the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) issued new guidance that identifies specific areas where construction workers will typically be considered "essential" and therefore, can work during the COVID-19 pandemic. CISA initially released guidelines on March 19 in response to shelter-in-place orders issued by the governors of California, New York, and Illinois. The most recent guidance was issued in response to shelter-in-place orders issued in all but a handful of states.

- **CMS Approves Georgia's Section 1135 Waiver Request for Medicaid and PeachCare for Kids**
  On April 2, 2020, Georgia Governor Brian Kemp and the Georgia Department of Community Health announced that the Centers for Medicare and Medicaid Services approved Georgia's Section 1135 waiver request. The waivers will provide health care providers and members flexibility with certain requirements of Medicaid and PeachCare for Kids so that they may better combat the public health emergency presented by COVID-19.

  **April 6, 2020**

- **Tips for Working With Your Lender in These Uncertain Financial Times**
  From the C-suite of Fortune 500 companies to the corner mom-and-pop business, everyone is worried about the financial future of their business. After a decade of unprecedented economic growth, our economy has been humbled by a virus. Entire industries have been shut down as we shelter in place or stay at home in record numbers. Many businesses will soon need accommodations from their lenders. As businesses' financial situations deteriorate, some relationships will be transferred from the familiar loan officer to the lender's "special asset group" or "loan recovery department." In either case, it could lead to fear and anxiety.

- **Cybersecurity Concerns when Considering Furloughs**
  Due to the changing and challenging economic circumstances brought on by COVID-19, companies are now having to consider furloughing employees. All companies must consider how they will handle such moves with respect to their information technology infrastructure. The confidential information on IT systems should be protected during this time, especially with regard to customer information, personal information of customers and employees, trade secrets and other confidential information (all "Confidential Information") maintained by organizations. Human resources professionals handling these issues must consult with their management team, including IT, to consider this complex but very significant issue.

- **Fair Pricing in Times of Need: Price Gouging Controls Expanded at Federal and State Levels in Response to COVID-19**
  The COVID-19 pandemic has sparked great and inspiring humanitarian aid efforts but has also brought out some baser human instincts: email scams and frauds are rampant and there is much buzz about hoarding and price gouging of critical services and goods. The United States Department
of Justice (DOJ) and many states have targeted these activities to protect consumers and to assure critical supplies get where they are needed. In particular, the U.S. Attorney General has formed a COVID-19 Hoarding and Price Gouging Task Force to address concerns on the federal level and many states have prohibitions against price gouging in emergency situations. All are encouraging the reporting of concerns and a complaint could lead to investigation and enforcement action. Business owners should protect their legitimate business activities by knowing about these enforcement mechanisms, what the general prohibitions are, and how to avoid pitfalls. This Alert explains the Task Force aims and outlines the price gouging prohibitions in several states in the Baker Donelson footprint.

Can the Government Do That? – New Class Action Challenges Pennsylvania’s COVID-19 Order as Unconstitutional

Why can’t I open my business? Where is my due process? The public health risks of COVID-19 are very real. But, the question remains whether some of the COVID-19 shutdown orders have taken private property for "public use, without just compensation" in violation of the Fifth Amendment? The forthcoming wave of litigation challenging these orders as unconstitutional is likely to test the extent of the government's police powers to protect the health, safety, and welfare of its citizens during a health pandemic.

Summary of Key Points from SBA's April 3 Additional Guidance for Affiliation Rules Under the Paycheck Protection Program

On Friday, March 27, 2020, President Donald J. Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which among other COVID-19 relief items, provides $349 billion in Paycheck Protection Program (PPP) loans for small businesses as well as other businesses and non-profit organizations that meet certain criteria. On March 30, 2020 Baker Donelson issued an alert describing the SBA's loan eligibility requirements, including affiliation rules and how those rules could impact eligibility for PPP loans. On April 2, 2020, the SBA issued an Interim Final Rule addressing further eligibility items, along with a draft application which we summarized in an alert. Late on April 3, 2020 the SBA issued further PPP Affiliation Guidance that supplements the April 2 Interim Final Rule and a summary addressing Affiliation Rules Applicable to SBA Paycheck Protection Program (PPP Loan Affiliation Rules).

CARES Act Paycheck Protection Program Applications Now Available: Guidance for Lenders and Borrowers

On April 2, the Small Business Administration (SBA) issued an Interim Final Rule (the Rule) implementing the Paycheck Protection Program (PPP) created under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Act and the PPP became law on March 27, but many of the specifics of the implementation and administration of PPP loans was left to the Department of Treasury and SBA to decide. The Rule clarified and expanded guidance from the Treasury Department in the form of information sheets addressed to lenders and borrowers, an overview, and an application. Notably, the Rule clarified the loan terms from the text of the Act. The interest rate for all loans has been set at 100 basis points (1 percent), the term set at two years, and payment deferments set for six months.
• **DOE Extends 85-804 Indemnification to Contractors Supporting COVID-19 Response**
  On March 26, the Secretary of Energy authorized Department of Energy (DOE) contracting officers to extend indemnification under Public Law 85-804 to contractors and subcontractors performing assignments directed or authorized by DOE or the National Nuclear Security Administration (NNSA) in response to COVID-19.
  
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• **Food Producers and Manufacturers Face Uncertain Future as COVID-19 Pandemic Drags On**
  During the current COVID-19 pandemic, the United States food industry has done an admirable job keeping food on the table of Americans with few shortages or disruptions reported, thanks in part to federal regulators easing up on enforcement of often burdensome food regulations. As the pandemic became mainstream, the Department of Homeland Security acted quickly to explicitly designate food and agriculture as essential critical infrastructure that must be preserved and protected in the interest of national security. But as the virus has now spread nationwide and the number of cases has soared, we are seeing strains on the system as food producers and their employees scramble to adjust to the new normal of COVID-19.
  
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• **HHS Issues Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures**
  On March 25, 2020, the Department of Health and Human Services (HHS) issued a Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures Under Executive Order 13910 and Section 102 of the Defense Production Act of 1950. This Notice designates certain health and medical resources as scarce or threatened materials that are subject to hoarding prevention measures authorized under Executive Order 13910 and the Defense Production Act (the Act).
  
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• **Does the Florida Governor’s Executive Order Stay Commercial Foreclosure Cases?**
  On April 2, Florida Governor Ron DeSantis issued Executive Order Number 20-94 (the “Order”), which purports to “suspend and toll any statute providing for a mortgage foreclosure cause of action under Florida law for 45 days.” While it appears that the intent and spirit of the Order is that it apply to "single-family mortgages" as is recited in several paragraphs of the preamble of the Order, Section 1 of the Order does not explicitly limit its application to single family mortgage foreclosures. Section 2 of the order, which addresses eviction actions, is limited solely to residential tenancies, which implies that the Governor could have limited Section 1 to single-family residential mortgages if that was his intent. The fact that he did not use similar language in Section 2 leads to a reasonable interpretation that both residential and commercial mortgage foreclosure actions are stayed for 45 days.
  
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• **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #3**
  Federal Treasury Secretary Steven Mnuchin previously announced a 90-day deferral for individuals and many businesses in making certain tax payments to the IRS. Separately, recently published IRS Notice 2020-18 has advised that the April 15 due date for return filing purposes will be moved to July 15 to coincide with the 90-day payment deferral and that there is no limitation on the amount of the payment that may be postponed to July 15. This special edition reviews similar reactions thus far by several states regarding short-term tax payment and return filing responsibilities implemented because of this pandemic.
  
  Read More
April 2, 2020

• Coronavirus: Notification to Tenants of a Confirmed Coronavirus
  Now that our communities have seen the rapid spread of novel coronavirus and the resulting COVID-19 disease, many landlords are asking for advice regarding if or how they should be communicating positive cases to other tenants or employees. Baker Donelson has researched the applicable law and best practices and provides this information to support our landlord clients. The enclosed information should be tailored to your specific situation and you should seek the advice of your counsel to address particular needs.
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• Can the Government Commandeer My Hotel to Fight COVID-19?
  With the COVID-19 pandemic in full swing, can the government take private hotel rooms to expand the capacity to care for individuals with or exposed to the virus?
  Read More

• Florida Stay at Home Order: What Florida Businesses Need to Know
  On April 1, 2020, Governor Ron DeSantis issued Executive Order Number 20-91 in response to the COVID-19 pandemic, requiring all persons in Florida to limit their movements and personal interactions outside of their homes to only those necessary to obtain or provide "essential services" or conduct "essential activities." The order is effective as of 12:01 AM on Friday, April 3, 2020 and is intended to minimize person-to-person transmission of COVID-19 in Florida via social distancing measures and encourages Florida individuals to work from home.
  Read More
  April 1, 2020

• Coronavirus: USPTO and U.S. Copyright Office Extend Deadlines due to COVID-19 Pandemic
  On March 31, 2020, the U.S. Patent and Trademark Office (USPTO) and the U.S. Copyright Office both announced grace periods for certain fees and deadlines during the coronavirus (COVID-19) public health emergency. Leaders of both offices cited the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the $2 trillion relief bill signed by the President on March 27.
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• FEMA Extends Filing Deadlines Due to COVID-19 Pandemic
  On March 30, 2020, FEMA headquarters issued a memorandum to its Regional Administrators advising that the agency is extending filing deadlines for Public Assistance net small project overrun requests, first and second appeals, and requests for arbitration. The deadlines established by 44 C.F.R. § 206.204 (small project overruns), 44 C.F.R. § 206.206 (appeals), 44 C.F.R. § 206.209 (arbitration), and FEMA's § 423 Arbitration Fact Sheet will be extended until May 30, 2020.
  Read More
  March 31, 2020

• CMS Issues Physician Self-Referral Law Blanket Waivers Under Section 1135
  On March 30, 2020, the Centers for Medicare & Medicaid Services (CMS) issued physician self-referral law "blanket waivers" under Section 1135 of the Social Security Act (Section 1135). The waivers are effective nationwide as of March 1, 2020. They provide broad relief from sanctions under the physician self-referral law for activities related to addressing COVID-19 purposes during the public health emergency as declared by the President and HHS Secretary Alex Azar.
  Read More
Coronavirus: 5 Lessons Learned from Tennessee Governor's Executive Orders to Stay at Home
Governor Bill Lee announced the implementation beginning April 1 and continuing through April 14 of two executive orders closing certain nonessential businesses and urging his citizens to stay at home. But the Governor made clear this order is no mandate to shelter in place. Unlike his counterparts in Virginia and North Carolina, Governor Lee's order is one of encouragement, not requirement.
Read More
March 30, 2020

CARES Act: Understanding SBA's Loan Eligibility Requirements, Including Affiliation Rules
On Friday, March 27, 2020, President Donald J. Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which among other COVID-19 relief items, provides $349 billion in Paycheck Protection Program loans for small businesses as well as other businesses and non-profit organizations that meet certain criteria. Prior to the passage of the CARES Act, Disaster Declarations made available separate small business loans through the Small Business Administration (SBA) Economic Injury Disaster Loan Program (EIDL).
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CARES Act Expands the Small Business Reorganization Act – Lenders Beware
The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) expands a new law that streamlines the Chapter 11 bankruptcy process for small businesses to include a larger group of small businesses. The Small Business Reorganization Act of 2019 (SBRA) went into effect in February 2020. Under the original provisions of SBRA, a small business debtor filing under SBRA could not have more than $2,725,625 in noncontingent, liquidated, secured, and unsecured debts as of the petition date, excluding debts owed to affiliates or insiders. The CARES Act, signed into law by President Trump on March 27, expands the debt cap to $7,500,000 (effective for only one year), which will greatly increase the number of debtors who can utilize the debtor-friendly provisions of SBRA. It is widely expected that SBRA will increase the small business debtor's ability to successfully reorganize, retain control of its business, and reduce the procedural costs and burdens ordinarily associated with Chapter 11 filings.
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U.S. Immigration System Plagued by Coronavirus
As the White House extends its social distancing guidelines another month through April 30 in recognition of the still-increasing pace of COVID-19 infections and deaths in the U.S., it appears that many U.S. immigration implications will continue or increase for the foreseeable future. We summarize them, to date, below. We don't mention expected expirations of special situations, because no one really knows when they will end. Travel remains generally unadvisable, and planning international placements is more than difficult. Here is a roundup of the implications so far.
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Coronavirus: CARES Act Takes Significant Step Toward Modernizing Part 2
Congress significantly eased restrictions on disclosing information that identifies substance use disorder (SUD) patients, while simultaneously strengthening protection for SUD patients from discrimination and liability based on their treatment, in legislation signed into law March 27, 2020.
Read More

S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #2
Federal Treasury Secretary Steven Mnuchin previously announced a 90-day deferral for individuals...
and many businesses in making certain tax payments to the IRS. Separately, recently published IRS Notice 2020-18 has advised that the April 15 due date for return filing purposes will be moved to July 15 to coincide with the 90-day payment deferral, and that there is no limitation on the amount of the payment that may be postponed to July 15. This special edition reviews similar reactions thus far by several states regarding short-term tax payment and return filing responsibilities implemented because of this pandemic.

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- **Coronavirus: FMCSA Acts to Protect Against CDL and CLP Expirations**
  On March 24, in response to COVID-19's impact on state driver licensing agencies, medical examiners, and the operators of commercial motor vehicles (CMVs), the Federal Motor Carrier Safety Administration (FMCSA) issued a grant of waiver from certain regulations applicable to commercial driver's licenses (CDL), commercial learner's permits (CLP), and certain related federal regulations effective March 20 through June 30. The pandemic has left many CDL and CLP holders unable to renew their CDLs and CLPs and obtain new medical certificates. FMCSA acted to ensure continued transportation of essential supplies, equipment, and persons by an adequate supply of licensed and trained commercial drivers.
  Read More  
  March 29, 2020

- **The IRS Wants to Help**
  The Internal Revenue Service (IRS) has just announced a "sweeping series of steps" to help taxpayers address the challenges of COVID-19 related issues. The IRS "People First Initiative," announced Wednesday March 25, 2020, includes the following two overarching aspects: 1.) Easing of certain payment related matters; and 2.) Postponement of certain compliance actions. These create some interesting opportunities and much needed relief for taxpayers.
  Read More  
  March 27, 2020

- **Coronavirus: Significant Tax Provisions in the CARES Act for Businesses and Individuals**
  President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) today, providing liquidity and other economic relief to individuals, families, and businesses facing the hardships of the coronavirus (COVID-19) pandemic. As part of the legislation, there are important tax provisions, which are in addition to the previous actions taken by President Trump and Congress in response to COVID-19.
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- **Third Coronavirus Stimulus Package Includes Considerable Funding for Health Care Providers and Other Health Care Provisions**
  The CARES Act appropriates significant funding to federal agencies, both to allow federal, state, and local governments to support COVID-19 treatment and prevention and to directly provide financial support to health care providers.
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- **CARES Act: Understanding SBA Loan Programs to Determine Eligibility and Best Fit for Your Company**
  As a result of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), multiple avenues of relief will be available to small businesses through programs administered by the Small Business Administration (SBA). Notably, the size limits for consideration as a "small business concern" have been changed, making many more entities eligible for assistance through programs.
• **Coronavirus: Tips for Hospitals Navigating State Emergency Management and FEMA Funding**
  As the COVID-19 outbreak response intensifies and the number of patients continues to grow, stakeholders are working hard to strengthen the health care community and ensure that sufficient capacity is available to meet the need. The President's unprecedented nation-wide national emergency declaration on March 13, 2020 notes that, "It is incumbent on hospitals and medical facilities throughout the country to assess their preparedness posture and be prepared to surge capacity and capability." This includes establishing additional intensive care unit (ICU) beds, procurement of additional personal protective equipment (PPE), and augmentation of professional staff.
  
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• **Coronavirus: Implications for EPA’s Enforcement and Compliance Assurance Program**
  On March 26, 2020, the U.S. Environmental Protection Agency (EPA) issued a Memorandum entitled "COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program," in response to the COVID-19 pandemic. In an unprecedented action, the EPA essentially suspended all environmental enforcement action with certain limited exceptions. The policy is retroactive for any applicable noncompliance as of March 13, 2020.
  
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• **PODCAST – Managing Teams Remotely - Part One of the Work from Home Series (DRI)**
  Managing Teams Remotely: Part One of the Work from Home Series Our speakers talk about managing your team remotely to maximize success. In this current climate surrounding COVID-19 and the many shelter in place orders, many lawyers and staff are working from home for the first time. This podcast discusses how to motivate, manage, and cultivate a successful remote team that can enhance client service, retain key employees, and meet internal goals for success.
  
  Listen
  
  March 26, 2020

• **Coronavirus: What the Georgia Governor's Shelter-in-Place Order Means for Health Care Providers**
  As Georgians continue to grapple with the effects of the consistently rising number of COVID-19 cases, Governor Brian Kemp issued two Executive Orders in an attempt to slow the impact of the highly contagious disease on the health care system and protect Georgia's most vulnerable populations.
  
  Read More
  
  March 25, 2020

• **Coronavirus: Managing Your Business Risk – Applicability of Force Majeure to COVID-19**
  Do you have a contract where performance is likely an issue? Does it contain a force majeure clause? Is COVID-19 covered by your contract's force majeure clause? How does this affect your business? A force majeure clause in a contract excuses or delays a party's contractual obligations if a "Force Majeure Event" takes place. The definition of what constitutes a "Force Majeure Event" can vary widely from contract to contract.
  
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• **Coronavirus: DOL Issues Initial Q&A Guidance and Fact Sheet on the Families First Coronavirus Response Act**
Yesterday, the U.S. Department of Labor issued initial guidance in response to general questions posed by employers about the Emergency Family and Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA) of the Families First Coronavirus Response Act (FFCRA). Today, the DOL released a Fact Sheet for employers that also provides helpful information, as well as a model notice employers may use to notify employees about these laws. The DOL is expected to issue regulations in April 2020, but the Fact Sheet and Q&A guidance clarifies certain aspects of the EFMLEA and EPSLA. Below are highlights from the Q&A, which is available on the DOL's COVID-19 and the Workplace webpage.

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- **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities, Supplement #1**
  Federal Treasury Secretary Steven Mnuchin previously announced a 90-day deferral for individuals and many businesses in making certain tax payments to the IRS. Separately, recently published IRS Notice 2020-18 has advised that the April 15 due date for return filing purposes will be moved to July 15 to coincide with the 90-day payment deferral, and that there is no limitation on the amount of the payment that may be postponed to July 15. This special edition reviews similar reactions thus far by several states regarding short-term tax payment and return filing responsibilities implemented because of this pandemic.

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- **Coronavirus: Identifying Essential Activities and Businesses under Harris County Stay Home Order**
  A large number of Texas' biggest urban cities and counties are ordering residents to stay indoors and work from home. On March 24, Harris County Judge Lina Hidalgo, in a joint press conference with City of Houston Mayor Sylvester Turner, issued a "Stay Home, Work Safe" Order requiring residents of Harris County (the largest county in the state) to remain in their homes in an attempt to flatten the spread of coronavirus. Specifically, residents of Harris County should stay at home, only leaving to perform Essential Activities or to provide or perform Essential Governmental Functions or to operate Essential Businesses.

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  March 24, 2020

- **Coronavirus: FEMA Simplifying the Public Assistance Process to Expedite Payment**
  While communities that regularly experience natural disasters like hurricanes, tornadoes, and earthquakes are familiar with FEMA's Public Assistance process, the President's recent declaration of a nationwide emergency under the Stafford Act encompasses every state, including tens of thousands of eligible applicants (if not more) for disaster assistance, many of which are navigating unfamiliar territory. Recognizing the logistical and bureaucratic challenges this unprecedented response effort will bring, FEMA is actively working to develop a simplified application and funding process. In this alert, we provide an overview of the Public Assistance process for COVID-19 – for new and experienced applicants.

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- **Coronavirus: Resources Materials Available for Small Business Administration Economic Injury Disaster Loans**
  While Congress continues to debate stimulus bills and how best to assist small businesses, the Small Business Administration's Economic Injury Disaster Loan (EIDL) Program is now available to small businesses in most if not all areas of the country – including all 50 states, Puerto Rico, the United States Virgin Islands, Guam and the Northern Mariana Islands. The EIDL Program provides loans to
small businesses in an amount of up to $2,000,000 per borrower that carry an interest rate of 3.75 percent and are repayable over a term of up to 30 years. Proceeds of the loans may be used to pay existing fixed debt, employee payroll, accounts payable and other expenses of operation.

**Coronavirus: Identifying Essential Activities and Essential Businesses under Atlanta’s Stay at Home Order**

On March 23, 2020, Atlanta Mayor Keisha Lance Bottoms issued a "Stay at Home" order (the "Order") to curb the spread of COVID-19. The Order states that it "shall be effective at midnight" on Tuesday, March 24, 2020. The Order directs all residents living within the jurisdictional limits of the City of Atlanta to stay at their place of residence and maintain social distancing of at least six feet from any other person when they are outside. However, there are exemptions for Essential Activities, Health Care Operations, Essential Infrastructure, Essential Governmental Functions, and Essential Businesses.

**Coronavirus: Significant HIPAA Relief in Telehealth Context Due to COVID-19 Response**

There is no question that COVID-19 has brought unprecedented change to our world. The temporary relaxation of HIPAA's requirements is one of many examples of the government's efforts to address the public's health care needs during this crisis. Over the last month, the Office for Civil Rights (OCR) has issued temporary waivers and associated guidance regarding HIPAA and telehealth services rendered during the public health emergency. The most recent guidance was released on Friday, March 20, 2020 (the Enforcement FAQs and OCR Press Release), and it confirms the loosening of the HIPAA requirements first described in the Notification of Enforcement Discretion issued on March 17, 2020 (the Notification). These temporary measures are intended to encourage the use of telehealth services and enable social distancing.

**Coronavirus: What Lenders Should Do Now**

With cash flow, liquidity, and credit tightening drastically across industries, and in the face of historically low interest rates, lenders will face several new and unique challenges over the coming months as the full effects of the coronavirus pandemic are felt throughout the economy. Baker Donelson's Commercial Restructuring and Bankruptcy Group is monitoring and responding to the challenges of this changing environment for the benefit of our clients.

**Coronavirus: Executive Order Relaxes Regulatory Requirements on Health Care Facilities, Physicians, and Pharmacists in Georgia**

On March 20, 2020, Georgia Governor Brian Kemp issued an Executive Order "Reducing Regulations to Assist the State's Response to the Spread of COVID-19" (the Order). The purpose of the Order is to reduce "certain restrictions on the State's health care system." In the Order, the Governor exercised his power under the "Emergency powers of Governor" statute (O.C.G.A. § 38-3-51(d)(1)) to suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, and regulations of any state agency, if strict compliance would interfere with necessary action in addressing the Public Health Emergency presented by COVID-19. This Order directs three important Georgia health care agencies in the state (the Georgia Composite Medical Board, the Georgia Board of Pharmacy, and the Georgia Department of Community Health) to relax and/or eliminate a variety of requirements related to the provision of health care during the emergency.
Coronavirus: Identifying Essential Workers under Louisiana’s Stay-at-Home Order
On March 22, 2020, Governor John Bel Edwards issued a "Stay at Home" order that will take effect at 5:00 PM on Monday, March 23, 2020. The Order directs residents to shelter at home and intends to limit unnecessary movement to non-essential services. Essential workers are permitted to continue to work, and are identified in this article.

On March 20, 2020, the Deputy Director for Management at the U.S. Office of Management Budget (OMB) issued important guidance to federal government agencies about how they should handle various contract performance issues resulting from the novel coronavirus (COVID-19).

As state governors in California, New York, and Illinois issued "Stay at Home" Orders and limited activity to essential activities, services, and businesses, the Cybersecurity and Infrastructure Security Agency (CISA) issued a Guidance on March 19, 2020 intended to assist state and local officials in ensuring continuity of critical functions, while safeguarding economic and national security during the COVID-19 response. Under the Homeland Security Act of 2002, CISA is responsible for providing strategic guidance and coordination of federal effort to ensure the security and resilience of U.S. critical infrastructure.

Coronavirus: How Louisiana’s Stay-at-Home Order May Affect the Construction Industry
On March 22, 2020, in response to the COVID-19 pandemic, Governor Edwards issued Proclamation Number 33 placing all individuals within the State of Louisiana, with limited exceptions, under a general stay-at-home order. Individuals are directed to stay home unless they are performing certain essential activities, like obtaining food, medicine, or medical care. Individuals whose job functions are deemed essential are also excepted and may continue to work. The Governor’s order takes effect Monday, March 23, 2020 at 5:00 p.m. and runs through Monday, April 13, 2020 at 5:00 p.m.

Coronavirus: Maryland’s COVID-19 Public Health Emergency Protection Act of 2020 Establishes Protections for Employees and Businesses
Maryland’s Emergency Management Agency Act grants the Governor the authority to establish protections for the people of Maryland during a state of emergency.1 Accordingly, Governor Larry Hogan signed the COVID-19 Public Health Emergency Protection Act of 2020 (COVID-19 Act) into law on March 19, 2020. The COVID-19 Act contains three key provisions that address (1) employees’ access to unemployment insurance benefits, (2) the termination of employees during the COVID-19 pandemic, and (3) alternative workweeks for employees of State-owned or operated health care facilities.

Coronavirus: D.C. Council Passes Emergency Legislation to Amend the D.C. Unemployment Compensation Act and D.C. Family and Medical Leave Act in Response to COVID-19 Pandemic
On March 17, 2020, the Council of the District of Columbia (the Council) unanimously passed the
COVID-19 Response Emergency Amendment Act of 2020 (the Act) to expand existing protections for workers and businesses in the District that have been affected by the coronavirus pandemic. This emergency legislation was signed into law by Mayor Muriel Bowser on March 17, 2020 and will remain in effect until June 15, 2020. The Act will require a second vote by the Council to ensure that it remains in effect for an additional 270 days.

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- Coronavirus: Lenders Navigate Providing Relief to Borrowers and Acting Prudently to Manage Lending Risk
  We've heard from representatives of both federal and state banking regulators that they intend to work with banks as banks work with their customers in addressing the potential business impacts of COVID-19 (coronavirus). The regulators are encouraging financial institutions to take prudent steps to assist customers and communities affected by the global health pandemic. For example, banks can receive credit under the Community Reinvestment Act for lending to low- and moderate-income borrowers and small businesses. In addition, lenders – banks and unregulated financial institutions – are receiving numerous requests from borrowers for payment and other relief from commercial loan obligations. It is important that lenders carefully consider the position they will take in response to these requests.
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- Coronavirus: Interim CDC Guidance on Preventing Spread in Retirement Communities and Independent Living Facilities
  Very late last week, the CDC issued interim guidance titled "Preventing the Spread of COVID-19 in Retirement Communities and Independent Living Facilities" aimed at owners, administrators, operators, workers, volunteers, visitors, and residents of retirement communities and independent living facilities (ILFs) that are not health care facilities. This guidance was last reviewed by the CDC on March 20, 2020. Below is a summary of the CDC interim guidance as well as suggested best practices for senior housing providers as they navigate COVID-19 issues in their communities.
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  All aspects of the maritime industry, from global ocean-going shipping to domestic inland brown water transportation and offshore energy, have been and will continue to be profoundly affected by the COVID-19 crisis, perhaps even more than other industries given that mobility and inter/trans-national movement of people and goods are their very lifeblood. Unsurprisingly, the regulatory response from the myriad federal agencies has been, and will continue to be, dynamic and evolving.
  Read More
  March 22, 2020

- Coronavirus: Oil and Gas Industry – Essential Workers under Louisiana’s Stay-at-Home Order
  On March 22, 2020, Louisiana Governor John Bel Edwards issued a proclamation declaring that "all individuals within the state of Louisiana are under a general stay-at-home order and are directed to stay home unless performing an essential activity." Essential oilfield workers appear exempt from the proclamation, which can be accessed here. Section 3(C) of the proclamation lists various essential worker activities, but does not expressly reference the oil and gas industry. However, the proclamation also refers to the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) for an outline of other essential workers not listed.
  Read More
  March 20, 2020
• **Coronavirus: FEMA Guidance on Eligible "Emergency Protective Measures" and Sheltering**
  Building upon our prior [alert](#) summarizing the effects of the President's March 13 nationwide emergency declaration, we now provide an update on the type of assistance potentially available pursuant to FEMA's Public Assistance Program. States and local governmental entities and certain private non-profits can now apply for funding for "eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials." FEMA has now published a [Fact Sheet](#) providing guidance as to what emergency protective measures may be considered eligible and a separate [Fact Sheet](#) on eligible sheltering costs.
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• **Coronavirus: Latest Tax Provisions Implemented in Coronavirus Pandemic Resource Response as of Friday Morning, March 20, 2020**
  The President and Congress are taking emergency actions to provide liquidity and other financial relief to taxpayers in response to the coronavirus pandemic. Tax relief has played, and will continue to play, a substantial role in such actions. In fact, a third stimulus bill is being developed which is anticipated to provide even more immediate relief.
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• **Coronavirus: Health Care Provisions in The CARES Act**
  On Thursday, March 19, Majority Leader Mitch McConnell introduced the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which contains provisions to provide emergency assistance for individuals, families and businesses. Senator McConnell has begun discussions with Democrat Leader Schumer and is hopeful an agreement can be reached on a final package to be considered by the U.S. Senate within the coming days. While the legislation covers a variety of issues, what follows is a summary of some of the key health care provisions along with links to the more detailed lists prepared by the committees of jurisdiction. Should you require further information, please do not hesitate to let us know. We fully expect this will not be the final action related to the current crisis.
  Read More

• **Coronavirus: Relief for Behavioral Health Providers in Agency Waivers, Guidance**
  As federal agencies scramble to provide regulatory relief from the fall-out of the coronavirus pandemic taking hold in the United States, several waivers and bulletins provide guidance specifically applicable to substance use disorder and mental health treatment providers. Here is a round-up of the agency activity relevant to the behavioral health industry that we’ve seen so far.
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• **Coronavirus: Review Your Business Interruption Insurance Policy Now**
  As our nation deals with the far-reaching consequences of the coronavirus (COVID 19), the impact will range from grocery store shortages, school closings, and many businesses closing or reducing hours or services, to casinos closing in many jurisdictions, all for the benefit and safety of their employees, customers, and the general public. As closures increase, we will see many of these impacted businesses pursuing claims on their business interruption policies, which protect businesses from interruptions in their respective operations.
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• **Coronavirus: DEA Allows Delivery of Medication-Assisted Treatment Drugs to Quarantined Patients**
  A waiver granted by the Drug Enforcement Administration may provide a solution for long term care providers with opioid-addicted residents who are unable to access medication-assisted treatment due to coronavirus-induced quarantine.
Coronavirus: Georgia Governor Declares Public Health Emergency to Combat COVID-19
On March 13, with uncertainty as to the impact of coronavirus (COVID-19) on the United States, President Trump declared a national emergency citing the need to open access to as much as $50 billion in aid and lower legal barriers in an attempt to respond to the pandemic. The move comes as the U.S. Surgeon General and American College of Surgeons issued guidelines as a further means of insulating hospitals against an expected surge in COVID-19 cases nationwide.

Coronavirus: Impact on Water Treatment
The rapid and intense escalation of the COVID-19 pandemic has impacted business operations on a global scale. We have been repeatedly advised by the CDC, World Health Organization and others to practice "social distancing" and to work remotely where possible. Over the past 48 hours, several counties have gone beyond mere advisories and issued "shelter in place" edicts via Public Health Orders. These Orders limit activity, travel and business functions to only the most essential needs. The term "shelter in place" means to stay in your home and not leave unless necessary for an expressly defined "essential activity" or to work for an "essential business."

March 19, 2020

Coronavirus Legislative Recap
As we have noted in prior Alerts, Congress has passed several pieces of legislation designed to provide important relief around various aspects of the coronavirus health crisis in the past two weeks. See below for a brief recap of these bills.

HHS Authorized to Direct Production and Distribution of National Health Supply Chain
After invoking the Defense Production Act for the COVID-19 pandemic, President Trump issued an "Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid-19" on March 18, 2020. The Executive Order includes the finding that personal protective equipment and ventilators meet criteria to be considered "scarce and critical material essential to the national defense" under the DPA, which has previously been applied to emergencies and critical infrastructure matters.

S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities
Federal Treasury Secretary Mnuchin has recently announced a 90-day deferral for individuals and many businesses in making certain tax payments to the IRS. However, it appears that the IRS will not be changing return due dates, although extensions are still available. This update reviews similar reactions thus far by several states regarding short-term tax payment and return filing responsibilities implemented because of this pandemic virus.

Coronavirus: What Government Contractors Should Do Now to Address Possible Delays or Suspensions of Work
The coronavirus (COVID-19) outbreak has caused business disruption across the globe and government contractors are not immune. The U.S. Government and the medical community's fight to contain COVID-19 requires a broad-based commitment to social distancing and self-quarantines, which directly impacts contract completion times and employee productivity. Contractors should now review the Federal Acquisition Regulation (FAR) clauses included in their contracts related to delays, suspensions, and changes to ensure that they know their rights and how to protect their rights by
providing the required written notice and adequate documentation.

Read More

- **Coronavirus: How Louisiana Businesses Can Apply For SBA Economic Injury Disaster Loans**
  On March 17, 2020, Louisiana Governor John Bel Edwards officially requested the Small Business Administration to provide Economic Injury Disaster Loans to all Louisiana parishes. Effective immediately, Louisiana businesses may now apply for these loans.
  Read More

- **Coronavirus: FDA Offers Guidance for Food Industry Stakeholders**
  On March 18, 2020, the United States Food & Drug Administration (FDA) held a call to answer questions from food industry stakeholders related to the impact of Coronavirus Disease 2019 (COVID-19), with an emphasis on food safety and food supply.
  Read More

- **S.A.L.T. Select Developments – Tax Payment and Return Filing Responsibilities**
  Federal Treasury Secretary Mnuchin has recently announced a 90-day deferral for individuals and many businesses in making certain tax payments to the IRS. However, it appears that the IRS will not be changing return due dates, although extensions are still available. This special edition reviews similar reactions thus far by several states regarding short-term tax payment and return filing responsibilities implemented because of this pandemic virus.
  Read More

- **Watch – COVID-19: The Employment View**
  COVID-19 is on everyone’s mind – employers should implement the common sense steps recommended by the CDC and medical experts, while staying vigilant of the need to regularly evaluate their workplaces to protect employees and their business interests. Many employers have questions about leave, remote work, wage and hour issues, unemployment eligibility, and recent federal and state law COVID-19 developments.
  Watch
  March 18, 2020

- **President Signs the Families First Coronavirus Response Act into Law**
  On March 14, 2020, the House passed HR 6201, the Families First Coronavirus Response Act. The Act, among other things, would amend the Family and Medical Leave Act (FMLA) to provide paid emergency leave to eligible employees and would require covered employers to provide paid sick leave to employees in need of such leave due to the coronavirus pandemic. The Act also provides reimbursable tax credits to covered employers for the costs associated with providing this paid leave and sick time.
  Read More

- **Defense Production Act is Invoked by President Trump**
  On March 18, 2020, President Donald Trump announced his invocation of the Defense Production Act (DPA), which authorizes the President to direct industries to produce critical equipment. The Trump Administration has not yet provided details as of the time of this alert on how the DPA will be applied specifically within the context of COVID-19, but it was invoked presumably to address shortfalls in health care supplies in the face of the coronavirus (COVID-19) pandemic.
  Read More
• Coronavirus: Privacy and Cybersecurity Considerations for Financial Institutions
  Financial institutions are continuing to address the immense business impact of coronavirus (COVID-19). The Federal Financial Institutions Examinations Counsel (FFIEC) has issued its updated guidance on pandemic planning and regulators have encouraged financial institutions to work with customers affected by COVID-19. However, special attention must be paid to privacy and cybersecurity implications as financial institutions refine business continuity plans. The following is a brief overview of some of the key privacy and cybersecurity issues financial institutions should be considering in managing the increased risk created by COVID-19.

  Read More

• Coronavirus: Expanded Coverage of Medicare Telehealth Services During Pandemic
  The Coronavirus Preparedness and Response Supplemental Appropriations Act, which was enacted on March 6, 2020, allows the Secretary of the United States Department of Health and Human Services (HHS) to waive certain restrictions on Medicare coverage for telehealth services. On March 17, 2020, the Secretary issued waivers that will apply retroactively from March 6, 2020 until the end of the COVID-19 public health emergency. The new expanded coverage allows beneficiaries to receive telehealth services without having to travel to a health care facility.

  Read More

• Coronavirus: Construction Industry Impacts
  In early March, COVID-19 seemed like a distant threat, but we are now all too well aware of its rapid intercontinental spread. In the less than three months since the first case out of Wuhan, China was reported to the World Health Organization (WHO) on December 31, 2019, COVID-19 has spread to every continent, except Antarctica, and has been declared a pandemic and national, state, and local emergency. To date, more than 205,000 cases have been reported worldwide, with approximately 6,500 of those in the United States. Concerns about COVID-19 have impacted multiple facets of our day-to-day lives, from business and school closings and restrictions on travel and public gatherings, to stock market volatility.

  Read More

• Coronavirus: Temporary Child Care Solutions Could be Subject to Extensive State Regulations
  The ultimate impact of the coronavirus (COVID-19) cannot be predicted at this time; however, the disruption of commerce and family life has commenced in the United States. The sudden lack of reliable child care providers such as grandparents and daycare facilities has thrown carefully orchestrated family plans out the window. While the federal government has taken financial action such as making low-interest loans available to small businesses affected by the pandemic, it has yet to provide a solution for child care as schools and daycare facilities close their doors across the nation. There is no national mandate or consensus on daycare facility closures. For example, in Georgia, Governor Brian Kemp has suggested daycare facilities close if they feel it is prudent, but has not mandated closure. News reports have noted that in Ohio, Governor Mike DeWine plans to eventually close all daycare facilities in the state. Kentucky's governor, Andrew Beshear, has alerted residents that all daycare centers in the state must close on Friday, March 20.

  Read More

• Insights from First Securities Fraud Class Action Suit Against a Drug Manufacturer Developing a COVID-19 Vaccine
  The claims made in McDermid, et al. v. Inovio Pharmaceuticals, Inc., et al., No. 2:20-cv-01402-GJP (E.D. Pa., filed March 12, 2020), a securities fraud class action, illustrate why publicly traded companies, and particularly drug manufacturers, must exercise great care when publicizing their
activities, as their statements may be used against them by investors seeking damages who contend they were misled into buying stock. McDermid, who invested in Inovio Pharmaceuticals, Inc. (Inovio), now seeks to represent a class of investors who bought or acquired Inovio common stock (NASDAQ: INO) between February 14, 2020, and March 9, 2020, at purportedly artificially inflated prices that resulted from public statements made on behalf of Inovio. He names Inovio and its CEO as defendants, claiming they are liable for having made false and misleading statements in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. While McDermid is making his claims through private litigation, claims of this nature often spawn investigations by the United States Securities and Exchange Commission and can lead to parallel administrative, civil, and even criminal proceedings, along with significant fines, penalties, and restitution orders.

**Online Security Tips for Working from Home**
Read the Federal Trade Commission’s blog posting on this important topic, that businesses should be on top of, for all those working remotely.

**March 17, 2020**

**Coronavirus: Nationwide Emergency Declaration – Access to Disaster Relief Fund**
On Friday, March 13, 2020, President Donald J. Trump declared a nationwide emergency under the Stafford Act. This unprecedented action allows Federal Emergency Management Agency (FEMA) to provide funding to state and local governments and eligible non-profit entities in response to the outbreak of the coronavirus (COVID-19). These entities, including non-profit hospitals, clinics, and nursing homes (among others), may receive Disaster Relief Funds appropriated by Congress to reimburse the cost of emergency measures to protect the public health and safety. Congress will enact, and the President will direct, additional measures within the next week. This article provides a summary of what we know to date as to what the emergency declaration means for eligible entities.

**Supplemental Coronavirus Legislation H.R. 6201 - Families First Coronavirus Response Act**
On March 14, 2020, the House passed H.R. 6201, known as the Families First Coronavirus Response Act. An issue arose regarding a needed "technical amendment" that required further action by the House. That work was completed last night, and the bill was finally sent to the Senate. Today the Senate Majority Leader announced the Senate would stay in session to consider the House passed Second Stimulus. It is expected the Senate will pass the House bill as is and initiate work on a far broader and more comprehensive stimulus.

**Coronavirus: Small Business Administration to Make Economic Injury Disaster Loans Available in Response to Pandemic**
Although the ultimate impact of the coronavirus (COVID-19) cannot be predicted, the pandemic has and will continue to affect commerce in the United States as well as abroad. Disruptions to the supply chain for imported goods, diminished customer demand and increased costs for operation are all affecting businesses in the United States. Among the hardest hit will be small businesses which have the least cushion for absorbing the economic consequences of the pandemic.

**Coronavirus: HHS Announces Limited Waivers of HIPAA Penalties and Sanctions**
On March 16 and 17, the United States Department of Health and Human Services (HHS) Office for Civil Rights (OCR) announced limited waivers of penalties and sanctions with respect to certain
HIPAA requirements due to the ongoing COVID-19 outbreak. The waivers provide some relief to hospitals with respect to certain aspects of the Privacy Rule and to all health care providers seeking to provide telehealth services.

**Coronavirus: Impact on Moving People and Immigration**

As governments around the world react with increasing vigor to flatten coronavirus curves, employers must urgently re-evaluate travel plans and immigration maintenance. While the absolute number of infections and deaths worldwide so far appears less than those imposed by other influenzas, government policymakers are anticipating the prospect of quickly spiraling real numbers of very sick people overwhelming medical capabilities with drastic scenarios they desperately want to avoid. This is leading governments to impose limitations on travel and services, especially internationally, that are unprecedented in modern times.

**Coronavirus: Implications for Business Interruption Insurance Coverage**

Bars and restaurants are closing. Airline travel is discouraged. Supply chains are interrupted. Hotels and motels are empty. Because of its impact on every segment of the economy, the coronavirus (COVID-19) pandemic undoubtedly will spawn coverage disputes and litigation over the availability of insurance coverage for resulting economic loss. With regard to business interruption coverage, two issues likely will be front and center.

**National Institute of Standards and Technology (NIST) through their Cybersecurity Insights blog posted about "Preventing Eavesdropping and Protecting Privacy on Virtual Meetings".**

They provide us a great reminder, during this time of increased remote work, to become more security-conscious in our online interactions. [https://www.nist.gov/blogs/cybersecurity-insights/preventing-eavesdropping-and-protecting-privacy-virtual-meetings](https://www.nist.gov/blogs/cybersecurity-insights/preventing-eavesdropping-and-protecting-privacy-virtual-meetings)

**March 16, 2020**

**Coronavirus: Regulators Encourage Banks to "Work with Customers"**

Both the FDIC and the OCC issued letters on Friday responding to bankers’ requests to acknowledge that the regulators will provide some leniency to banks as they work with their customers in addressing the potential business impact of COVID-19 (coronavirus). More specifically, the regulators are encouraging financial institutions to take prudent steps to assist customers and communities affected. They recognize that efforts to work with customers and communities affected by the coronavirus can be consistent with safe and sound banking practices and in the public interest.

**Coronavirus: Impact on Office, Retail and Industrial Leases**

The intensity with which the COVID-19 outbreak and the response to it has escalated continues to impact both landlords and tenants under commercial leases. It is safe to say that landlords and tenants will be viewing certain routine boilerplate language in leases differently in the future. Right now though, the COVID-19 pandemic’s impact on businesses and business operations is raising uncertainty under commercial leases about issues best addressed with proactive assessment from tenants and landlords regarding their lease obligations, with a particular eye toward the following lease provisions.
House Passes Coronavirus Bill with Immediate Impact on Employers Upon Enactment

On March 14, 2020, the House passed H.R. 6201 known as the Families First Coronavirus Response Act (the Act). While there are reported talks about potential "technical corrections" to the Act that may warrant a second vote by the House, it is anticipated that any such changes will be addressed and that the Act will be considered by the Senate and possibly signed into law soon. The current version of the legislation provides paid leave, establishes free testing for the coronavirus, protects public health workers, and provides benefits to children and families. Employers should watch the Act closely because the provisions contained therein, including three key provisions relating to the workplace, would take effect immediately upon enactment. This alert will provide a brief overview of the current version of these key provisions.

Read More

March 15, 2020

The UK Government has updated its foreign travel advice with respect to travel to the United States by UK citizens. The Foreign and Commonwealth Office advises against all but essential travel to the United States due to the travel restrictions imposed by the United States that will go into effect at midnight on March 17 in response to the outbreak of the novel coronavirus (COVID-19). A link to the full advisory and other information to assist UK citizens traveling to the United States, including services that are offered, may be found here: https://www.gov.uk/foreign-travel-advice/usa

March 14, 2020

Health Care Providers: President's Emergency Declaration Paves Way for Additional Regulatory Flexibility

With the emergency declaration under the National Emergencies Act related to the coronavirus (COVID-19) on March 13, 2020, President Trump paved the way for CMS to temporarily waive certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements. The President's declaration is intended to provide much needed regulatory relief to our nation's hospitals and other care providers who treat government program beneficiaries. These actions are authorized under Section 1135 of the Social Security Act, which allows the Centers for Medicare & Medicaid Services (CMS) to temporarily waive or modify certain requirements to ensure that sufficient health care items and services are available to meet the needs of government program beneficiaries (Section 1135 Waivers).

Read More

March 13, 2020

CMS and CDC Guidance for Addressing Coronavirus Risk in Long Term Care: Practical Considerations for Implementation

As new confirmed COVID-19 cases emerge daily in the United States and countries around the world, the various federal agencies tasked with overseeing health care have issued a steady stream of guidance that aims to assist health care providers in managing risks related to the outbreak. Increasingly, the available evidence shows that the elderly are among those most likely to be affected by severe forms of the disease. Thus, providers that serve this vulnerable population – including, most particularly, nursing facilities, but also including assisted living facilities and home-based providers – are well-advised to ensure that they are taking all necessary and appropriate steps to protect their residents and patients.

Read More

The Coronavirus Challenge: What Hospitality Businesses Should Consider Doing Now

As the novel coronavirus continues to spread, the landscape is constantly changing. New information is coming to light faster than it can be internalized and the economy, at the moment, is in constant flux. To date, the hospitality industry has borne the brunt of this upheaval. In these trying
circumstances, it is important for hotels, restaurants, transportation servicers and travel companies to focus on implementing sensible policies to limit not only the spread of the virus, but also mitigate the risk of any potential legal liability.

- **Coronavirus: What Multi-Family Housing Complexes Need to Do Now**
  If you own or operate a multi-family housing complex, addressing the rapidly spreading COVID-19 virus is crucial. Baker Donelson is staying up-to-date on the latest advice for the sector from the CDC and national housing groups and we have highlighted the following actions for our multi-family clients. Avoid "failure to prepare" liability by acting now!

- **Coronavirus: Small Business Administration to Make Economic Injury Disaster Loans Available in Response to Pandemic**
  Although the ultimate impact of the coronavirus (COVID-19) cannot be predicted, the pandemic has and will continue to affect commerce in the United States as well as abroad. Disruptions to the supply chain for imported goods, diminished customer demand and increased costs for operation are all affecting businesses in the United States. Among the hardest hit will be small businesses which have the least cushion for absorbing the economic consequences of the pandemic.

  - March 11, 2020

- **Coronavirus: Implications of an Emergency Declaration**
  As the situation continues to unfold, the outbreak of the coronavirus (COVID-19) in the United States is prompting increased federal and state action. There is much confusion regarding the implications of an emergency declaration and the significance of individual state emergency declarations. This article provides a summary of the current landscape and general recommendations that affected entities should consider in the event they may be eligible for federal or state reimbursement funding for costs incurred related to this outbreak.

- **Coronavirus: Key Aspects of $8.3 Billion Spending Package**
  The Coronavirus Preparedness and Response Supplemental Appropriations Act was signed by the President on March 6 and provides $8.3 billion in multi-year funds to combat the growing public health threat. The Act funds a comprehensive response to COVID-19, which includes funding for federal, international, and local preparedness and response capabilities.

- **Coronavirus: New Guidance for Medicare Advantage and Part D Plans**
  On Monday, March 9, 2020, the Centers for Medicare and Medicaid (CMS) released information on permissible flexibilities and obligations that are in effect during a disaster and emergency resulting from COVID-19.

  - March 10, 2020

- **Coronavirus: What K-12 Schools Should Do Now**
  The outbreak of the coronavirus (COVID-19) in the United States is prompting leaders to shut down schools from Washington State to New York City after parents or students tested positive for the virus. Many schools in all parts of the country are watching information on the spread of the coronavirus closely to determine how to navigate this evolving situation. This article provides action items for schools to think through and implement now.

  - March 9, 2020
• **Coronavirus and Financial Institutions Preparedness: What Banks Should Do Now**
  All financial institutions should regularly review and update their business continuity plans (BCPs), but with the increased possibility of business disruption caused by the spread of coronavirus (COVID-19), financial institutions should ensure adequate pandemic planning is in place as a supplement to a BCP.
  Read More
  March 3, 2020

• **Don't Forget About Cyber Hygiene During Coronavirus (COVID-19) Outbreak**
  As organizations prepare for certain contingency work arrangements in response to the coronavirus (COVID-19) outbreak, companies must also focus attention on ensuring appropriate cyber hygiene. Companies are anticipating more individuals working remotely from the safety of their own homes to avoid contracting the virus and other companies are planning for potential quarantines and school closings. The flexibility of working remotely, however, involves real cybersecurity risks that companies should be aware of and work to mitigate in the face of the COVID-19 outbreak. With increased remote work, there is increased risk of employees accessing data through unsecured and unsafe Wi-Fi networks, using personal devices to perform work, and not following general security protocols established by the company. As individuals are approved or otherwise authorized to work remotely, there must be a multi-departmental focus on maintaining proper controls. Management should be coordinating with the Human Resources (HR) and Information Technology (IT) departments to establish security controls and ensure employees are properly trained on those controls in the remote work context.
  Read More
  February 28, 2020

• **Legal Implications of the Impact of Coronavirus (COVID-19) on Business in Italy, including labor and employment, privacy, commercial contracts, and other business transactions provided by Rodl & Partner Italy.**
  Read More. For updated information click here: https://www.roedl.com/insights/.
  February 25, 2020

• **UPDATE – New CDC Travel Restrictions for South Korea, Italy and Japan**
  Recently, the CDC raised its travel advisory for travel to South Korea to Level 3, its highest level, recommending that travelers avoid all nonessential travel to South Korea. The CDC also raised its travel advisory for travel to Italy and to Japan to a Level 2. Under a Level 2 advisory, the CDC has confirmed that both Italy and Japan are experiencing sustained community spread of the COVID-19 virus. As a result, the CDC recommends that high risk travelers (i.e., elderly, immunocompromised, or pregnant) should consider postponing nonessential travel. Others should take special precautions when traveling to these countries, including avoiding contact with sick people and exercising good hygiene practices (washing hands frequently and avoiding touching your face/eyes with your hands). The CDC also has noted that other countries in Southeast Asia, including Singapore, Taiwan, Thailand, and Vietnam, also are experiencing "apparent community spread" of the virus. However, because the virus spread is not sustained or widespread enough, the CDC has not issued a travel notice yet.
  February 24, 2020

• **UPDATED Factory Reopening Schedule**
  The Hubei provincial government announced late last week that the date for businesses to reopen throughout the province has been pushed back until March 11 (originally February 21). While most provinces have allowed businesses to reopen, some are still struggling to return to 100% capacity
due to difficulties in obtaining raw materials and components due to issues with their upstream suppliers returning to full capacity and some employees from Hubei are unable to return to work due to continuing travel restrictions. The closer the factory to Hubei, the more likely it is experiencing extended downtime and delays in returning to full capacity. We recommend that you communicate with your suppliers to determine capacity and ability to comply with contractual obligations, including quantity and time for delivery. Be prepared to compromise in the short term in order to receive some, if not all, of your orders in a reasonably timely manner. The virus outbreak has pushed many Chinese companies, already suffering from the US/China trade war, to the breaking point. Therefore, take the time to verify that your supplier can perform before sending payment/deposits.

February 20, 2020

- Handling Packages and Raw Materials from China

A recent article published by a major news outlet suggests that the COVID-19 virus may live on certain untreated surfaces for many days. This has prompted questions regarding the safety of handling products and raw materials arriving from China now that factories and companies are returning to work.

An expert healthcare professional with whom we have consulted on the medical aspects of the COVID-19 outbreak indicated that the article we cited references data for SARS and MERS – not the novel coronavirus causing COVID-19. She also instructed us to be very cautious in how we apply data from these other viruses to this current situation, as these are unique pathogens with their own characteristics. In addition, she indicated that an article identified within the news story specifically provides that "data on the transmissibility of coronaviruses from contaminated surfaces to hands were not found". The healthcare professional also indicated that to her knowledge, there is currently no evidence that spread of the virus from surfaces/objects to humans is a driver of the ongoing epidemic in China.

The Center for Disease Control FAQ page also includes helpful information:

Q: Am I at risk for COVID-19 from a package or products shipping from China?

A: There is still a lot that is unknown about the newly emerged COVID-19 and how it spreads. Two other coronaviruses have emerged previously to cause severe illness in people (MERS-CoV and SARS-CoV). The virus that causes COVID-19 is more genetically related to SARS-CoV than MERS-CoV, but both are betacoronaviruses with their origins in bats. While we don't know for sure that this virus will behave the same way as SARS-CoV and MERS-CoV, we can use the information gained from both of these earlier coronaviruses to guide us. In general, because of poor survivability of these coronaviruses on surfaces, there is likely very low risk of spread from products or packaging that are shipped over a period of days or weeks at ambient temperatures. Coronaviruses are generally thought to be spread most often by respiratory droplets. Currently there is no evidence to support transmission of COVID-19 associated with imported goods and there have not been any cases of COVID-19 in the United States associated with imported goods. Information will be provided on the Coronavirus Disease 2019 (COVID-19) website as it becomes available.

If you have medical questions related to COVID-19, the CDC FAQ page is an excellent resource for current health related information regarding the COVID-19 virus and should help dispel many of the myths that tend to be propagated during times of outbreak.

With that in mind, we reiterate the importance of continuing to educate your employees by providing them with correct, updated information regarding the COVID-19 outbreak. If any of your employees continue to express concerns regarding handling products or raw materials arriving from China, consider offering them gloves and encouraging them to wash their hands after handling products and before touching their
eyes and noses. If the employees expressing concerns are immunocompromised or pregnant, you could try to find other work for them to do on a temporary basis, or allow them to take an unpaid leave of absence until this situation resolves. There is no legal requirement for doing so at this juncture (and you would never want to force an employee in this situation to take leave), but this may be a better for your business than having an employee in this situation disrupting operations or unduly stressed by the fear of contracting the illness, unfounded as that fear may be.

February 19, 2020

- An online tracker developed by Johns Hopkins University delivers information and tracks cases of COVID-19 in real-time. The tracker pulls data from a variety of sources, including the WHO, CDC and China's National Health Commission

February 17, 2020

- Verify that China Business has Reopened and is Operating at Full Capacity
  Most provinces in China have allowed companies to reopen since the Lunar New Year holiday. The city of Wenzhou in Zhejiang Province will permit businesses to reopen beginning February 17, 2020. Beijing, Hainan, and Sichuan Province are permitting companies to have flexibility concerning when to reopen. The port city of Tianjin has not announced a date when companies will be permitted to reopen. Hubei Province has announced that businesses will be able to reopen on February 21, 2020. However, we believe this date is fluid and should be confirmed closer to February 21. It also is important to note that there are still a number of regional travel restrictions in place that will prevent some number of employees from returning to work. In addition, companies may be required to satisfy certain requirements/obtain approvals from provincial and/or local governments and landlords before they are allowed to reopen. Also, many companies have run short of raw materials/components as a result of the extended holiday. Due to the sheer number of companies trying to reopen, missing employees, and a lack of raw materials/components, your supplier or customer may not be able to reopen or return to full capacity for several weeks after the date announced by the government. Due to this lag in obtaining approval to reopen and the economic hardships experienced by companies as a result of the virus, we are hearing about an increase in fraud by suppliers claiming that they are open and requesting deposits for orders when, in fact, the suppliers remain closed or have shut down permanently. As we have said many times before, “trust but verify” before sending deposits to your suppliers.

- Update on Ocean Cargo Delivery from China
  While cargo is beginning to move again from China, delivery times are being impacted. Due to a major decrease in demand for shipping (because China factories are slow to return to business), ocean carriers are removing vessels out of rotation or diverting vessels from Southern China to other ports located in Southeast Asia. Verify shipping times in advance and modify your supply agreements accordingly.

February 16, 2020

- Application of Force Majeure and COVID-19 (novel coronavirus)
  Expect claims to excuse performance by your Chinese supplier or customer under the force majeure provision of your contracts. The China Council for the Promotion of International Trade has established an application process by which a Chinese party may obtain a force majeure certificate. While persuasive, the certificate, alone, is not sufficient to excuse performance. The supplier or customer must still demonstrate that the facts of the particular case warrant application of force majeure under applicable governing law or applicable contract. If your contract is governed by Chinese law or must be adjudicated in China, overriding state interest it is unlikely that a Chinese
court or arbitrator will sanction a Chinese supplier or customer that is unable to perform in 
accordance with the terms of any contract. Even if your contract is governed by non-Chinese law or 
may be adjudicated outside of China, it also is unlikely that any judgment against a Chinese supplier 
or customer will be enforced in China under the current circumstances. In the short term, you should 
consider reaching some sort of settlement of the dispute and/or find alternative sources of supply 
outside of China.

- **Cybersecurity Attacks using COVID-19 to steal data are on the increase**
  Attackers are exploiting the COVID-19 outbreak by sending malicious e-mails aimed at various 
groups, including businesses located in geographic areas impacted by the virus and industries that 
may be impacted by shipping disruptions. Based on recent reports, the attack includes a malicious 
Microsoft Word document that exploits an old vulnerability and installs AZORult, an information 
stealing malware. Security experts are advising that recipients of COVID-19 related e-mails treat such 
e-mails with extreme caution before opening the e-mails or attachments.

- **Current Travel Restrictions Between China and U.S.**
  Effective February 5, 2020, President Trump signed an executive order suspending entry into the US 
of all foreign nationals who have visited China at any time during the 14 days prior to arrival in the 
US, except immediate family members of US citizens. In addition, all US citizens entering the US 
after visiting Hubei Province in China at any time during the 14 days prior to their arrival in the US are 
subject to a mandatory quarantine of up to two weeks.

Resources

- HHS COVID-19 Provider Relief Fund
- COVID-19 Legal Considerations Checklist
- SBA Loans Flowchart
- At-A-Glance Chart: OSHA Classification and Protection of COVID-19 Exposed Employees