



TO: NAW Direct Members

FROM: NAW Government Relations Team

**RE: NAW Critical Update Number 40 – May 1 at 3:00 PM**

## 1. Latest on the SBA's Paycheck Protection Program

In the aftermath of the ongoing controversy over the operation of the PPP and the companies which Treasury and the SBA now say should not have received loans, Treasury Secretary Mnuchin has reportedly sent one of his key executives, Deputy Secretary Justin Muzinich, over to the SBA to “sort out” the PPP.

*Deductibility of business expenses:* The IRS has just released a notice – IRS Notice 2020-32 – that could very well impact businesses which receive forgiveness for PPP loans. Specifically, business expenses that are normally deductible will not be deductible to the extent that those expenses were included in forgiveness of a PPP loan. The CARES Act provided that loan forgiveness will not be considered taxable income, and some argue that this new IRS policy effectively reverses that statutory provision by making forgiven expenses non-deductible. However, experts familiar with IRS processes believe that there is little chance that the IRS will reverse its position now that it has released public guidance. Congress very likely could reverse the IRS policy, but with legislation unlikely to be considered for the next several weeks at least, the timeliness of a Congressional remedy is in doubt.

To read IRS Notice 2020-32 go to:

<https://www.irs.gov/pub/irs-drop/n-20-32.pdf>

And to access a KPMG summary of the IRS action go to:

<https://home.kpmg/us/en/home/insights/2020/04/tnf-notice-2020-32-deductibility-of-expenses-when-loan-is-covered-by-paycheck-protection-program-covid-19.html>

Finally: The SBA has still not released guidance on how the forgiveness of PPP loans will work. Given that the SBA/Treasury gave companies which had received loans until

May 7<sup>th</sup> to return those loans in a no-fault environment should they determine that they should do so, it was hoped that the forgiveness guidance would be released in time for companies to factor it into their decisions. We will alert you as soon as that forgiveness guidance is released.

In the interim – and somewhat inexplicably – stakeholders have until May 15<sup>th</sup> to file comments with the SBA in response to the Interim Final Rule on the PPP. NAW is preparing comments and welcomes any feedback member companies would like to provide, particularly on the 75/25 percent ratio of payroll to expenses mandated by the SBA (but not included in the statute) or on the issue of how payroll is defined.

In a telephone interview yesterday, Assistant Attorney General Brian Benczkowski announced that the Justice Department has begun a preliminary inquiry into how taxpayer money was lent out under the Paycheck Protection Program and has already found possible fraud among businesses seeking relief.

“There are unfortunately businesses that are sending in loan applications for large amounts of money that are overstating their payroll costs, overstating the number of employees they’ve had, overstating the nature of their business,” Benczkowski said.

The Justice’s Department’s interest in the coronavirus stimulus funds comes as criticism mounts over the loan program, which was intended to help small businesses but has also sent multimillion-dollar checks to large corporations.

## **2. Latest on Congressional Action on the Next Coronavirus Relief Package “CARES 2.0”**

Senate Majority Leader Mitch McConnell and House Minority Leader Kevin McCarthy signaled again today that they will not support a “CARES 2.0” relief bill unless it provides liability protections for employers.

“As the nation continues fighting this pandemic and parts of our economy begin to emerge from shutdown, Senate and House Republicans are united in our demand that health care workers, small businesses, and other Americans on the front lines of this fight must receive strong protections from frivolous lawsuits,” McConnell and McCarthy said today in a joint statement.

“We cannot let a second pandemic of opportunistic litigation enrich trial lawyers at the expense of Main Street and medical professionals. Senate and House Republicans

agree these protections will be absolutely essential to future discussions surrounding recovery legislation.”

Earlier this week, Leader McConnell called the extra protections his red line. "Let me make it perfectly clear, the Senate is not interested in passing a bill that does not have liability protection... What I'm saying is we have a red line on liability. It won't pass the Senate without it," said Leader McConnell.

Democrats have appeared skeptical of the GOP push, warning that they will not support any language that would weaken protections for workers. Senate Minority Leader Charles Schumer told PBS on Tuesday that he had not seen McConnell's proposal but that "if it's going to help big CEOs, but not the workers, or hurt the workers, that's not going to happen."

White House economic adviser Larry Kudlow said this morning in an interview that liability protections should be included in new legislation among pro-growth measures including payroll tax cuts for workers and business investment expensing.

### **3. Latest on Re-Opening the Economy**

With state and local governments gearing back up to re-open the economy, many employers are seeking answers to the challenging issues they will face as they resume their business operations amidst COVID-19.

#### **U.S. Department of Labor Invites the Public to Participate in National Online Dialogue on Opening America's Workplaces Again**

As the U.S. Department of Labor continues its efforts to support American workers and position the economy for a strong rebound, the department is hosting a national online dialogue on "Opening America's Workplaces Again," to solicit ideas from the public on how best to help employers and workers re-open America's workplaces safely.

The dialogue will run from Thursday, April 30 through Thursday, May 7, 2020, and will include a one-hour Twitter chat on Friday, May 1, 2020, at 2:00 p.m. EDT.

The public – including employers, workers, local authorities and advocacy groups – is invited to share ideas on six topics:

1. Reopening businesses;

2. Commuting safely;
3. Working safely;
4. Accommodating members of vulnerable populations;
5. Supporting America's families; and
6. Reducing regulatory burdens.

To register, go to:

<https://OpeningWorkplaces.ideascale.com>.

### **Attorney General William Barr: Time to Roll Back Virus Restrictions in 'Sensible' Way**

"Now that the curve has been flattened, the rate of spread has been slowed, our system has not been overwhelmed and has time to adjust to the situation it's time to start rolling back some of these restrictions in an orderly and sensible way," Attorney General William Barr said today in a Q&A forum on Twitter according to a Bloomberg News Article.

- Barr says it was appropriate when the virus first emerged to have broad restrictions because not much was known about its transmission and didn't want to overwhelm health care system
- Barr says Justice Department is "on the lookout" for state restrictions that are too widespread, generalized and are unduly discriminatory on religion, speech
- Says agency will try to work with local governments to address these concerns and in certain cases would consider appropriate action

To read the full article, go to:

<https://www.naw.org/wp-content/uploads/2020/05/Barr.pdf>

### **Covington Law Firm to Hold a Briefing Call on May 4<sup>th</sup>**

*Opening the Doors: Making Plans to Return to the Workplace.*

As businesses continue to develop plans for addressing the impact of the COVID-19 pandemic on their workplaces and lay the groundwork for re-opening their worksites, our legal experts and an expert in public health and biosecurity, Rear Admiral Kenneth Bernard, MD, USPHS (Ret.), will offer insights on potential liability risks and discuss practical strategies for bringing employees back to the workplace.

Cross-cutting issues that will be addressed include:

- Navigating COVID-19 return-to-workplace guidance and directives
- Planning for and structuring the return of employees to the workplace
- Assessing and implementing employee health screening measures, including diagnostic testing
- Managing workplace risks in a rapidly evolving and profoundly uncertain COVID-19 environment

Host: Covington Law Firm

Date: Monday, May 4th

Time: 2:00 pm EST

Place: Dial-In Details (access instructions e-mailed upon registration)

RSVP: To register, go to:

[https://covcommunicate.com/25/3109/landing-pages/rsvp-blank.asp?utm\\_source=vuture&utm\\_medium=email&utm\\_campaign=return+to+the+workplace+briefing+call&sid=1af92931-cfcd-43be-a0b2-10219e7b56c8](https://covcommunicate.com/25/3109/landing-pages/rsvp-blank.asp?utm_source=vuture&utm_medium=email&utm_campaign=return+to+the+workplace+briefing+call&sid=1af92931-cfcd-43be-a0b2-10219e7b56c8)

### **Does workers' compensation protect employers from liability arising from workplace transmission of COVID-19?**

*Article published by Reed Smith Law Firm:* As employees begin returning to work over the coming weeks, employers will face unique challenges created by the risk of workplace exposure to the coronavirus. These risks take on an added urgency in a number of states where workers' compensation coverage may not create an absolute bar to lawsuits related to workplace exposure to COVID-19.

To read the full article, go to:

[https://www.employmentlawwatch.com/2020/04/articles/employment-us/does-workers-compensation-protect-employers-from-liability-arising-from-workplace-transmission-of-covid-19/?utm\\_source=Reed+Smith+-+Employment+Law+Watch&utm\\_campaign=2976bee012-RSS\\_EMAIL\\_CAMPAIGN&utm\\_medium=email&utm\\_term=0\\_b40554bd20-2976bee012-78816497](https://www.employmentlawwatch.com/2020/04/articles/employment-us/does-workers-compensation-protect-employers-from-liability-arising-from-workplace-transmission-of-covid-19/?utm_source=Reed+Smith+-+Employment+Law+Watch&utm_campaign=2976bee012-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_b40554bd20-2976bee012-78816497)

As we have previously reported, more state governors are beginning to explore the logistics of how to re-open their states economies. NAW has been monitoring the reports of states re-opening and we are working to identify a central resource for NAW members to utilize in tracking the flow of information. Once NAW identifies a resource that will provide sufficient information we will highlight the location.

**From McGuireWoods Law & Consulting: UPDATE #10: State Governors' "Stay-at-Home" and Prohibition on Elective Procedures Orders: Alabama, Arkansas, California, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Montana, Nevada, New York, Ohio, Pennsylvania, Utah, and Wisconsin**

To read the full report, go to:

<https://www.mcguirewoods.com/client-resources/Alerts/2020/3/state-governors-stay-at-home-prohibition-elective-procedures-orders>

*Stateside Associates* publishes a daily report about State and Local Government responses to the evolving situation. Some of the new developments in today's report include:

- **DC** Mayor Muriel Bowser and the Office of the Deputy Mayor for Planning and Economic Development (DMPED) announced more than \$8 million in additional support for the DC Small Business Recovery Microgrants Program. Award notifications began today and will continue through May 8, 2020.
- **Florida** Governor Ron DeSantis laid out Phase One of his Safe. Smart. Step-by-Step. Plan for Florida's Recovery in a video press conference on April 29.
- **Wyoming** Governor Mark Gordon (R) has announced that new public health orders effective May 1 will allow gyms, barber shops, hair salons and other personal care services to re-open under specific operating conditions designed to Minimize public health risk from COVID-19. Other parts of the phased approach involve easing restrictions on day-cares and issuing guidance to hospitals allowing them to resume elective surgeries.

We are also providing a link to a spreadsheet that includes state and local COVID-19 response information provided by MultiState Associates.

To view their spreadsheet, go to:

[https://docs.google.com/spreadsheets/d/e/2PACX-1vRIJWZJ7OkGUW57\\_rdA2n3xBJ3qjW6u4Z9N6K9Y5L4bM\\_6H7-S308qdKmJfpVstYWf300nyujvZPFSy/pubhtml?urp=gmail\\_link](https://docs.google.com/spreadsheets/d/e/2PACX-1vRIJWZJ7OkGUW57_rdA2n3xBJ3qjW6u4Z9N6K9Y5L4bM_6H7-S308qdKmJfpVstYWf300nyujvZPFSy/pubhtml?urp=gmail_link)

**May 28 NAW Webinar on Economic Outlook:**

We are partnering with NAW senior economic advisor Alan Beaulieu to produce a second critical economic forecast webinar. This webinar, "Distribution Post COVID-19 Outlook," will run Thursday, May 28, from 3:00 to 4:30 PM EDT. Seats are limited, so if you are interested, please purchase your seat today at:  
[www.naw.org/distribution-post-covid-19](http://www.naw.org/distribution-post-covid-19)

**[Click here](#)** for links to Critical Updates sent previously.

Many thanks—

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