



# COVID-19 RESPONSE TEAM

## UPDATE ON LEGISLATION, AGENCY ACTION AND OTHER GOVERNMENT DECISIONS AFFECTING BUSINESSES

MARCH 25, 2020

THE COVID-19 RESPONSE TEAM IS CLOSELY MONITORING THE CONGRESSIONAL STIMULUS PACKAGE. ONCE THE FINAL DOCUMENT HAS BEEN RELEASED TO THE PUBLIC, WE WILL PROVIDE AN UPDATE.

Set forth below is a summary of legislation, agency action and other government decisions that have been adopted or issued at the Federal, State of Florida or local levels to assist businesses in response to the coronavirus. This memorandum will be updated on a periodic basis.

If you would like additional information about any of the below topics, please contact the respective attorneys listed or email [COVID19@shutts.com](mailto:COVID19@shutts.com).

### GOVERNMENT LOANS

- Florida Small Business Emergency Bridge Loan Program - This program offers loans of up to \$100,000 for eligible small businesses in Florida affected by the coronavirus. The loans are interest-free for 12 months and then 12% per annum thereafter. The applicant company cannot have more than 100 employees. Applications are being accepted through May 8, 2020.
- The Federal government is offering loans through the U.S. Small Business Administration (SBA) Economic Injury Disaster Loan Program. The loan amounts are up to \$2 million. The interest rate is 3.75%, and repayment periods of up to 30 years are being offered in order to keep payments affordable.

For more information, please contact Alex Tachmes at 305-347-7341 or Michael Pego at 305-415-9417.

## FEDERAL AND STATE TAXATION

- Every person or entity that has a US Federal income tax payment or Federal income tax return due April 15, 2020, will now have such obligation automatically postponed to July 15, 2020. No formal extension form is required. Interest and penalties will begin to accrue again on July 16, 2020.
- On March 18, 2020, President Trump signed the “Families First Coronavirus Response Act” (the “Act”), which provides refundable tax credits for two types of leave that were created under the Act: 1) a paid sick leave credit; and 2) a paid child care leave credit. Equivalent tax credits are available to self-employed individuals based on similar circumstances. The Act generally applies to employers with fewer than 500 employees, except for certain exceptions for employers with fewer than 50 employees.
- Under the Act, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of their payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit such taxes with the IRS. The payroll taxes that will be available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- The Florida Department of Revenue is considering, on a case-by-case basis, requests for extensions of the deadline for payment of State corporate income and sales taxes.

For more information, please contact Logan Gans at 305-379-9124 or Frank Rodriguez at 305-347-7364.

## LABOR AND EMPLOYMENT

- Under the new Families First legislation, employers with under 500 employees are required to provide 12 weeks of emergency leave to employees who are unable to work due to a need to care for a child under the age of 18 because the school or daycare has been closed or the child’s care provider is unavailable because of the COVID-19 emergency. The first 10 days of leave can be unpaid, and the remainder must be paid at the rate of 2/3 of the employee’s regular compensation (subject to certain caps). With certain exceptions, employers must restore employees to their original positions at the conclusion of the leave. Note that although the first ten (10) days can be unpaid, employees may be entitled to paid time pursuant to the sick leave provision, which also covers absence due to school closures.

- The same legislation requires employers with under 500 employees to provide employees with paid sick time to the extent that employees are unable to work due to COVID-19 either because employees or their family is impacted by COVID-19. Full-time employees are entitled to 80 hours (i.e., 2 weeks) of paid leave, and part-time employees are entitled to paid leave equal to the average number of hours the employee works over a 2-week period. Leave related to employees being sick is paid at 100%. Leave related to a family member being sick is paid at 2/3. As with emergency leave, these payments are subject to certain caps.
- There are many nuances to the new legislation and how it should be implemented that require individualized consultation.
- The Florida Department of Economic Opportunity has created a program called the Short Time Compensation Program. This program is designed to encourage employers to reduce the hours of their employees as opposed to laying off employees. Affected employees can receive funds to supplement their reduced paycheck.
- Further, the actions employers may be taking to reduce their workforce or labor costs, including furloughs or layoffs, raise complicated and case-specific benefits and other employment issues that should be reviewed on an individual basis.

For more information, please contact Mary Ruth Houston at 407-835-6939.

## **FINANCIAL SERVICES**

### *Banks*

In addition to the well-publicized reduction of the federal funds interest rate to near zero, the Federal Reserve has implemented a sweeping set of measures to support financial institutions. These measures include:

- Encouraging banks to use their capital and liquidity buffers (that the Federal Reserve has observed are in excess of regulatory minimums) to lend to households and businesses who are affected by the coronavirus. The Brookings Institution has observed that, “[i]n effect, the Fed is saying that, as a bank regulator, it will not object to, and indeed is encouraging, drawing on liquidity and capital resources as banks meet the elevated credit needs of their household and business customers.”

- The Federal Reserve has now reduced reserve requirements to zero percent, effective on March 26, 2020, which is the beginning of the next reserve maintenance period. The Federal Reserve has stated that this action “will eliminate reserve requirements for thousands of depository institutions and will help to support lending to households and businesses.”
- Encouraging banks to use the Federal Reserve’s “discount window” for sources of funding. While this has typically been considered a sign of distress, the Federal Reserve is encouraging use of the discount window to allow continued flow of credit to businesses and consumers. The Federal Reserve has lowered the primary credit rate at the discount window by 150 basis points to 0.25 percent to encourage depository institutions to meet unexpected funding needs by borrowing at the window. The Board has also allowed depository institutions to borrow from the discount window for periods as long as 90 days.
- Encouraging banks to utilize intraday credit (also known as “daylight credit”) from the Federal Reserve; that is, to temporarily overdraft their Fed accounts if required.
- Establishing a Primary Dealer Credit Facility (PDCF), a Money Market Mutual Fund Liquidity Facility (MMLF) and a Commercial Paper Funding Facility (CPFF), which are designed to support smooth market functioning by providing liquidity for participants involved in the market for critical credit products, like treasury securities, money market mutual funds and commercial paper, which are used by households and businesses.
- The Federal Reserve expects to announce soon the establishment of a Main Street Business Lending Program to support lending to eligible small-and-medium sized businesses, complementing efforts by the SBA.
- In a joint statement, the Federal Reserve, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency pledged to give “favorable consideration” to banks under the Community Reinvestment Act (CRA) for their efforts to assist lower-income borrowers, small businesses and small farms experiencing hardships as a result of the novel coronavirus. The bank agencies outlined examples of actions directed at affected customers that could receive favorable CRA consideration, including forgoing overdraft charges and other account fees, boosting credit limits, expanding short-term loan programs and extending payment deadlines. Modifying the terms on their outstanding loans and easing terms on new loans could also qualify, according to the agencies. “The agencies recognize that such efforts — when consistent with safe and sound banking practices and applicable laws, including consumer

- (cont.) protection laws — serve the long-term interests of these communities and the financial system,” the agencies said in a statement.

### *Credit Unions*

- The National Credit Union Administration announced on March 20, 2020, that it would provide greater flexibility to credit unions in conducting required annual meetings.

### *Public Companies*

- The SEC has provided conditional relief from filing deadlines for publicly traded companies. Pursuant to an order issued on March 4, 2020, the SEC has permitted an additional 45 days to file disclosure reports, including Forms 8-K and 6-K, that would otherwise have been due between March 1 and April 30, 2020. To be eligible for the relief, a company must provide a summary report to the SEC indicating why relief is needed. The SEC also has pledged to consider relief on a case by case basis for other requirements of the federal securities laws, and has encouraged persons affected by COVID-19 (or their counsel) to contact SEC staff to discuss.

### *Investment Advisers*

- The SEC has also granted exemptions, until April 30, 2020, to investment advisers impacted by COVID-19 from various filing obligations and delivery requirements, including Form ADV amendments, delivery of brochures (Form ADV Part 2) to existing clients and Form PF filings. Board meeting and related requirements applicable to registered investment companies under the Investment Company Act of 1940 have also been relaxed. Persons seeking to take advantage of relief must file notice in a specified form with the SEC.

### *Broker-Dealers*

- Notwithstanding COVID-19, the date for compliance with obligations under the SEC's Regulation Best Interest currently continues to be June 30, 2020. In view of COVID-19 and the significant obligations applied to securities firms under Reg. BI, industry representatives, including Shutts, are working on a request to the SEC to extend the Reg. BI compliance date.

- FINRA is also generally allowing extra time for FINRA member broker-dealers to file FOCUS reports (an extra 10 business days) and annual reports (an extra 60 calendar days). Due to the temporary closing of FINRA's outsourced testing centers as a consequence of COVID-19, FINRA is also extending expiring qualification examination windows for registered personnel of broker-dealers, including principals, until May 31, 2020. Subject to certain requirements and limitations, FINRA is also providing temporary relief from manual signature requirements on Form U4 for registered representatives.

For more information, please contact Bryan Wells at 305-347-7300.

## **REAL ESTATE**

- The Florida Supreme Court suspended, through the close of business on April 17, 2020, the issuance of "writs of possession," which is the document a sheriff uses to physically remove a person or a business that has been ordered evicted by a court.
- Various government agencies have issued orders prohibiting the operation of hotel and other lodging establishments. However, these orders can contain exceptions and, if so, will allow the lodging establishment to stay open for certain types of guests. For example, Miami-Dade County Emergency Order 09-20 (the "Order") prohibits hotels, motels, and other commercial lodging establishments from accepting new reservations for persons other than Essential Lodgers (defined below). "Essential Lodgers," as used in the Order, includes: healthcare professionals, first responders, airline crewmembers, patients (and their families) and persons unable to return their home due to COVID-19 impacts on travel.
- A moratorium on foreclosures and evictions for all FHA-insured single family mortgages (for a 60-day period) is currently in effect for sixty (60) days.
- If a business has an existing SBA-backed loan, a lending partner may be able to provide a six-month deferral on loan payments.
- For SBA-backed loans sold on the secondary market, lenders can authorize a one-time 90-day deferment without prior investor consent.

For more information, please contact Matt Chait at 561-650-8550 or Alex Tachmes at 305-347-7341.

## HEALTH CARE

- The Florida Surgeon General has issued an order relaxing certain licensure and practice standards requirements for health care professionals providing care to Floridians in connection with preparing for, responding to, and mitigating the effects of COVID-19.

For more information, please contact James Farrell at 561-650-8539.