

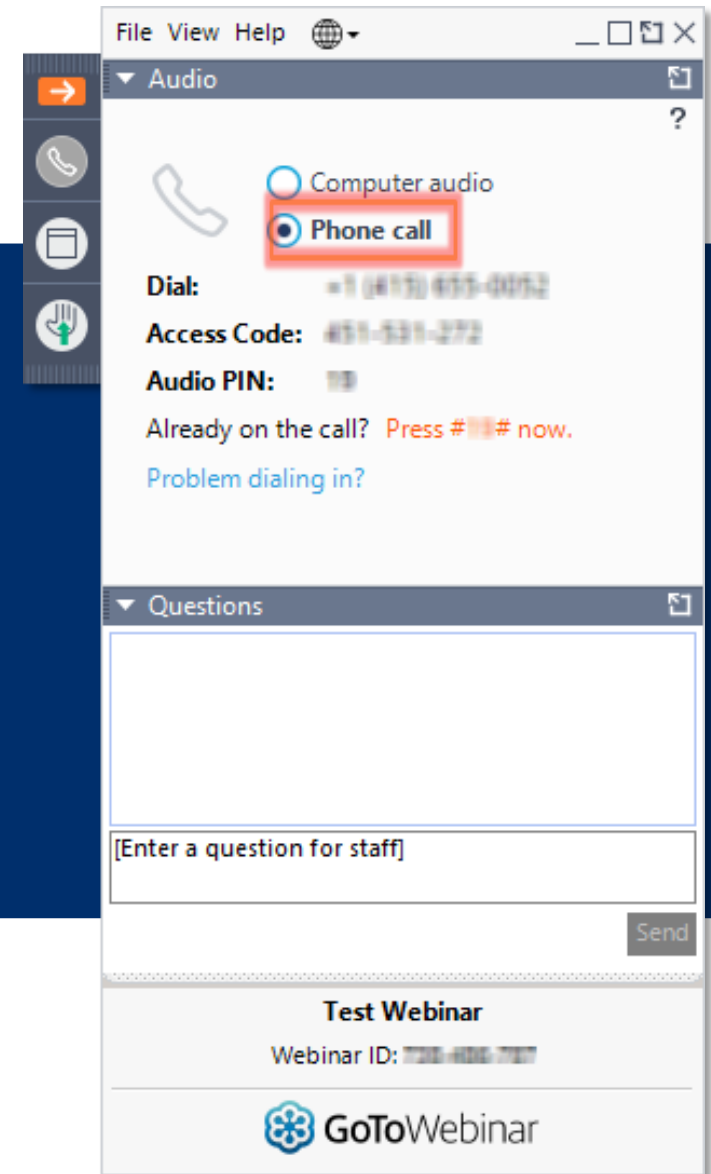


LIVE Webinar Part III

# COVID-19 Challenges for Employers: How to Navigate the Ever-Changing Landscape

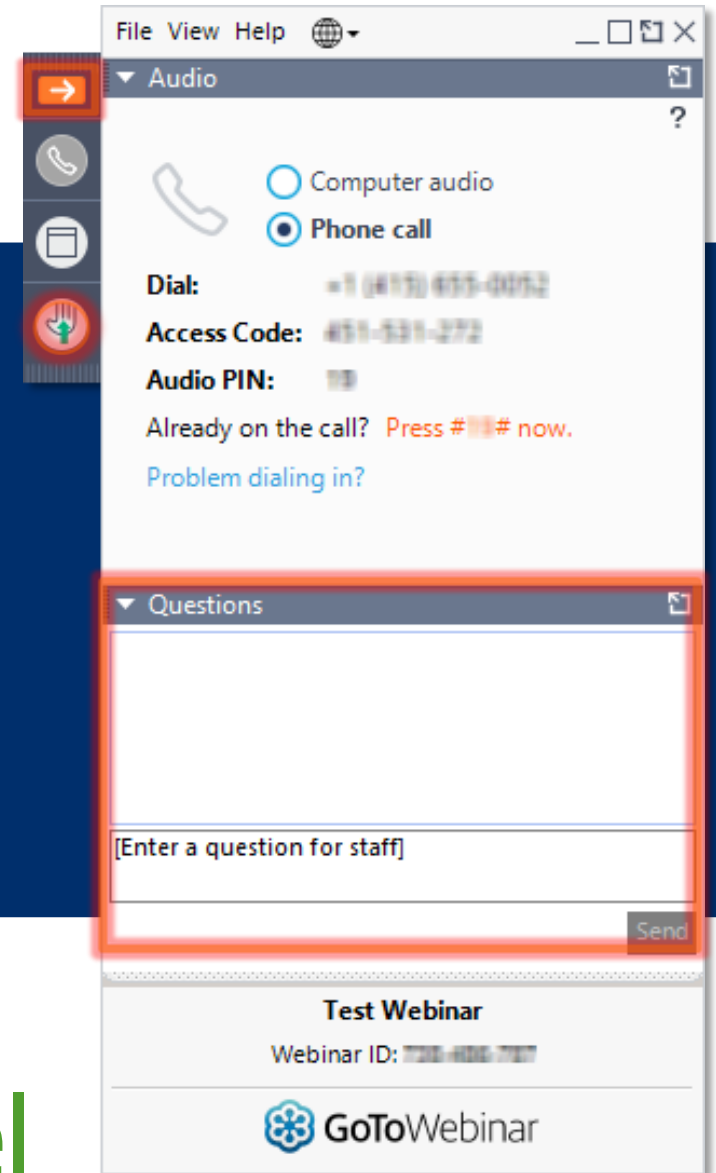
Wednesday,  
May 6, 2020

- Select "Computer audio" to join via VOIP
- Select "Phone call" to dial in



## Audio Instructions

- Grab Tab
- Handouts
- Questions



## Attendee Control Panel

# Objectives

- Discuss managing employment law risks for reopening businesses
- How to avoid statutory claims under OSHA, WARN, FFCRA, ADA, and more
- Review new guidance from the DOL and the IRS providing a broad extension of many ERISA deadlines and relaxes other compliance rules for ERISA notices
- Cover handling the disruption to administrative processes created by extensions of group health plan enrollment deadlines, time to pay COBRA premiums, and other important timing requirements for all types of health, welfare and retirement plans
- Answer questions in real time related to the challenges employers are facing today



**Mark J. Chumley**

Partner  
Labor & Employment

[mchumley@kmklaw.com](mailto:mchumley@kmklaw.com)  
513.579.6563



**Lisa Wintersheimer Michel**

Partner  
Employee Benefits & Executive Compensation

[lmichel@kmklaw.com](mailto:lmichel@kmklaw.com)  
513.579.6462



Meet the Speakers

# Labor & Employment



# Reopening Issues for Employers

- Safety Issues
- Employee Refusal to Return to Work
- Litigation Exposure
- Statutory Issues

# Safety

- Ohio and Other States' Orders Re Re-Opening
  - Practical Considerations re Compliance
    - Face Covering
    - Health Assessments
    - Hygiene/hand washing
    - Cleaning
    - Capacity/social distancing
- OSHA Requirements



# Safety

- Litigation

- *Estate of Wando Evans v. Walmart, Inc.*
- *Rural Community Workers Alliance and Jane Doe v. Smithfield Foods, Inc.*

- Publicity

# Employee Refusal to Return to Work

- Typical Reasons:
  - Fear of Exposure
  - Childcare Issues
  - >\$\$\$ from Unemployment Benefits
- Unemployment Benefits
  - ODJFS asking OH employers to report

# Employee Refusal to Return to Work

- Additional Considerations
  - PPP Loans
  - ADA
  - FFCRA/FMLA/Retaliation/Whistleblower
- Best Practices
  - Written return notices delivered by verifiable means;
  - Discuss with employees refusal to return and document discussion, including reason for refusal;
  - Consider statutory protections.

# Litigation Exposure

- Employer Actions During and After Re-Opening
  - Terminations and RIFs
  - Compensation Changes
  - Reassignment of Duties
  - Reorganization and restructuring
  - Leaves of Absence
  - Accommodation Requests
  - Separation of Employees Refusing to Return to Work

# Litigation Exposure

- Retaliation

- FFCRA
- FMLA
- OSHA
- ADA
- Whistleblower Laws

- Discrimination

- Title VII (race, color, religion, sex or national origin)
- ADEA (age)
- ADA (disability)

# Litigation Exposure

- Best Practices
  - Train Managers;
  - Document Decisions;
  - Anticipate Issues.

# Statutory Issues

- WARN
  - > 50 full time employees; and
  - > 6 months
- Wage and Hour
  - Salary Basis
  - Exemptions

# Employee Benefits & Executive Compensation





## EBSA Disaster Relief Notice 2020-01

- Outbreak Period – March 1, 2020 to 60 days after the announcement of the end of the National Emergency
- Timing of participant contributions – must be COVID-19 reason
- Loan and distribution verification – must be COVID-19 reason
- Notices and disclosures – specific COVID-19 reason not required

## General Guidance

- Amendment due date December 31, 2022 for calendar year plans
- Act reasonably, prudently and in the interest of participants
- Enforcement will emphasize compliance assistance and physical disruption to business

## Final Rule

- Extension of certain timeframes for plans as well as deadlines for participants
- Outbreak Period - March 1 until 60 days after end of National Emergency
- The following slides are examples from the Final Rule that assume the National Emergency ended on April 30, 2020 and the Outbreak Period ends on June 29, 2020 (60 days later)

## Special Enrollment Rights

- Employee A declined participation in group health plan, has a baby on March 31, 2020, and wants to enroll herself and the child, but open enrollment does not begin until November 15 – what is the enrollment deadline?
- Employee A may exercise her special enrollment rights until 30 days after the end of the Outbreak Period – until July 29, 2020
- Premiums for the entire period must be paid

## Electing COBRA

- Employee B has a COBRA event and is given a COBRA election notice on April 1, 2020 – what is the deadline?
- The deadline for the COBRA election period is 60 days after June 29, 2020 – August 28, 2020

## COBRA Premium Payments - Example 1

- Employee C had COBRA coverage on March 1, 2020, and paid the COBRA premium for February, but as of July 1, has not paid for March, April, May or June – when are the premiums due?
- Premiums paid by 30 days after June 29, 2020 (which is July 29, 2020) for March, April, May and June are timely
- Employee C is eligible to receive coverage during this period even though premiums have not been paid

## COBRA Premium Payments – Example 2

- Same facts as Example 1 and by July 29, Employee C pays two months of premiums – what months of coverage are provided?
- Employee C is entitled to COBRA for March and April, but not May or June
- Plan would not cover benefits after April

## Claims Procedure

- On March 1, 2020, Employee D received medical treatment, and the claim was submitted on April 1, 2021, but the plan requires claims to be submitted within 365 days of the treatment – is the claim on time?
- The claim is timely – the Outbreak Period is disregarded so the last day to submit the claim is 365 days after June 29, 2020, which is June 29, 2021



## Internal Appeal – Disability Plan

- Employee E received an adverse benefit determination from his disability plan on January 28, 2020 and the notice provided 180 days to file an appeal- what is the appeal deadline?
- The Outbreak Period is disregarded – the last day to submit an appeal is 148 days (180 minus 32 days which are the number of days from the January 28 notice date until March 1), after June 29, 2020 which is November 24, 2020

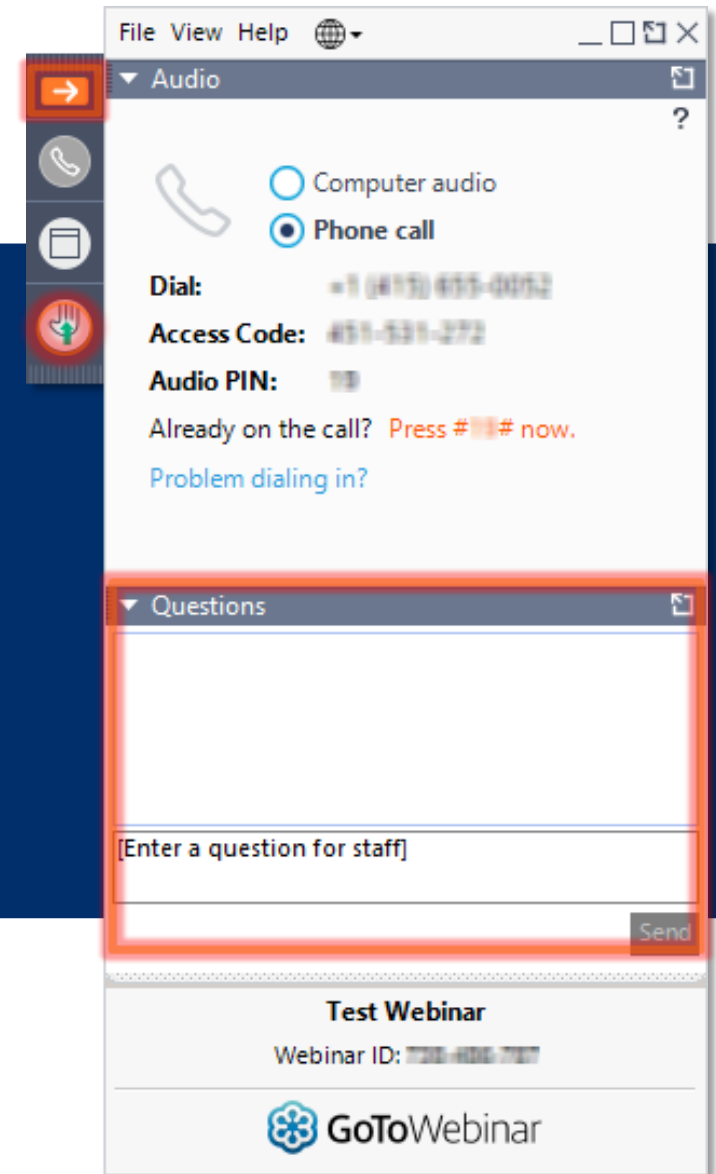
## Internal Appeal – 401(k) Plan

- Employee F receives an adverse benefit determination from her 401(k) plan on April 15, 2020 providing 60 days to file an appeal – what is the appeal deadline?
- The Outbreak Period is disregarded and the last day is 60 days after June 29, 2020, which is August 28, 2020

## More Guidance

- COVID-19 FAQs for Participants and Beneficiaries issued April 28, 2020 by DOL
- Coronavirus-related relief for retirement plans and IRAs questions and answers issued by IRS on May 4, 2020

Please type your message/question in the window pane of the attendee control panel.



## Questions?



**Mark J. Chumley**

Partner  
Labor & Employment

[mchumley@kmklaw.com](mailto:mchumley@kmklaw.com)  
513.579.6563



**Lisa Wintersheimer Michel**

Partner  
Employee Benefits & Executive Compensation

[lmichel@kmklaw.com](mailto:lmichel@kmklaw.com)  
513.579.6462



Contact Us

- Visit [kmklaw.com](http://kmklaw.com) to find our COVID-19 Response Team's most recent insights and analysis under the News & Resources and Blogs tabs.
- Subscribe to our Employee Benefits & Executive Compensation "Monthly Minute" Newsletter.

## Monthly Minute

### Employee Benefits & Executive Compensation

By: Lisa Wintershimer Michel, John F. Meisenhelder, Helana A. Darrow, Antoinette L. Schindel, and Kelly E. MacDonald

Most of us are familiar with the changes related to COVID-19 legislation including the CARES Act. In this *Monthly Minute*, we are highlighting some practical CARES Act administrative items that you will want to consider as well as pre-pandemic benefits changes and issues that can help guide plan sponsors through the long road ahead.

[READ MORE](#)



## Additional Resources



Cole D. Bond  
KMK Law Partner  
513.579.6558  
cbond@kmklaw.com

Kasey L. Bond  
KMK Law Partner  
513.579.6491  
kbond@kmklaw.com

Melanie Cheek  
KMK Law Associate  
513.579.6445  
mcheek@kmklaw.com

Mark J. Chumley  
KMK Law Partner  
513.579.6563  
mchumley@kmklaw.com

John M. Milligan  
KMK Law Associate  
513.579.6532  
jmilligan@kmklaw.com

Caroline K. Musekamp  
KMK Law Associate  
513.579.6571  
cmusekamp@kmklaw.com

Gregory J. Robinson  
KMK Law Associate  
grobenson@kmklaw.com  
T: 513.579.6584



Labor & Employment



Helana A. Darrow

KMK Law Partner

513.579.6452

hdarrow@kmklaw.com

Kelly E. MacDonald

KMK Law Associate

513.579.6409

kmacdonald@kmklaw.com

John F. Meisenhelder

KMK Law Partner

513.579.6914

jmeisenhelder@kmklaw.com

Antoinette L. Schindel

KMK Law Partner

513.579.6473

aschindel@kmklaw.com

Lisa Wintersheimer Michel

KMK Law Partner

513.579.6462

lmichel@kmklaw.com



Employee Benefits &  
Executive Compensation