

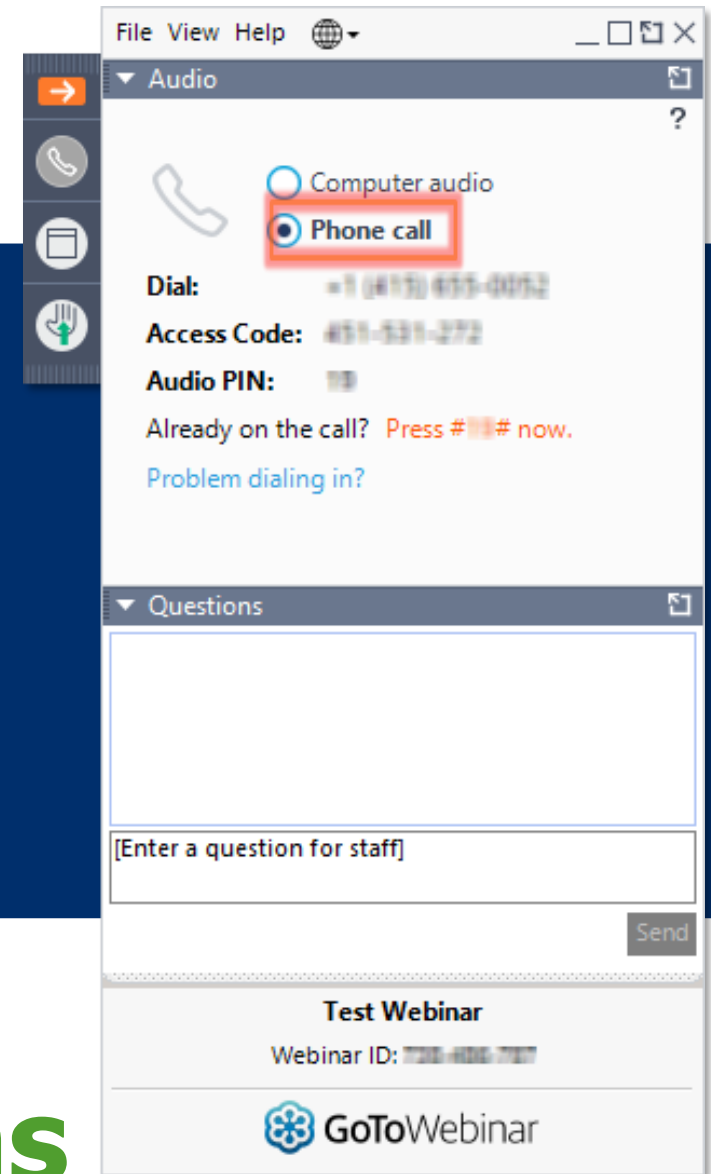


LIVE Webinar:

Continuing to Navigate COVID-Era Regulations For Employers

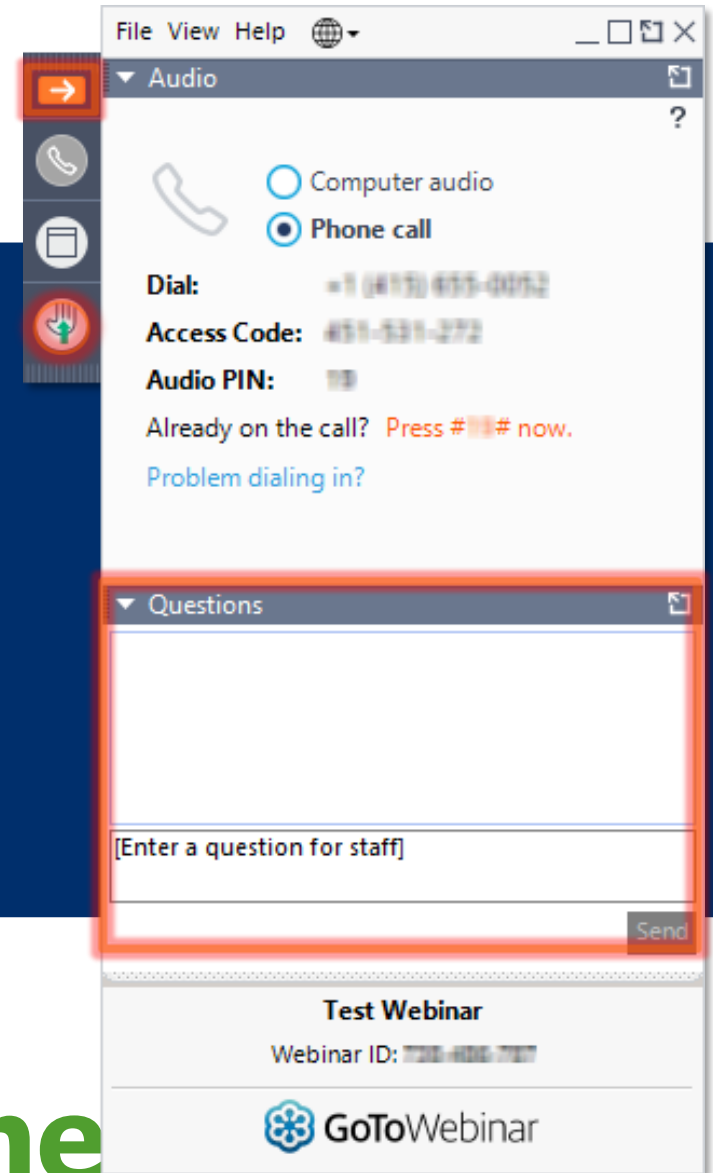
Wednesday,
January 20, 2021
12:00 p.m. EST

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



Audio Instructions

- Grab Tab
- Handouts
- Questions



Attendee Control Panel

Objectives

Labor & Employment:

- Discuss the status of FFCRA and employee leave issues
- Review new guidance from the EEOC on COVID-19 vaccinations
- Review new guidance from DOL on independent contractors
- Evaluate wage and hour issues for 2021

Employee Benefits & Executive Compensation:

- Discuss recent COVID-19 relief for flexible spending accounts
- Review new partial termination guidance for retirement plans impacted by COVID-19 layoffs and furloughs
- Discuss the status of Coronavirus-related distributions and loans
- Cover new proposed EEOC wellness rules



Mark J. Chumley

Partner
Labor & Employment

mchumley@kmklaw.com
513.579.6563



Lisa Wintersheimer Michel

Partner
Employee Benefits & Executive Compensation

lmichel@kmklaw.com
513.579.6462



Meet the Speakers

Labor & Employment



Topics

- The status of FFCRA and employee leave issues;
- New guidance from the EEOC on COVID-19 vaccinations;
- New guidance from DOL on independent contractors;
- Wage and hour issues for 2021.

Leave Issues

Families First Coronavirus Response Act (FFCRA)

Covers:

- Private employers with fewer than 500 employees
 - Small businesses with fewer than 50 employees may qualify for exemption
 - Leaves from April 1, 2020 – December 31, 2020

Leave Issues

Families First Coronavirus Response Act (FFCRA)

Provides:

- Two weeks (up to 80 hours) of paid sick:
 - Employee is quarantined and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick leave at two-thirds pay:
 - care for an individual subject to quarantine, or
 - care for a child (under 18 years of age) whose school or child care provider is closed
- Up to an additional 10 weeks two-thirds pay:
 - care for a child whose school or child care provider is closed

Leave Issues

- Families First Coronavirus Response Act (FFCRA) expired 12/31/2020
 - Employers may elect to extend coverage until 3/31/2021;
 - Tax credit is available.
- Additional Leave Issues:
 - Retaliation
 - FMLA/ADA

EEOC Guidance on COVID-19 Vaccinations

- EEOC Guidance issued 12/16/2020 –
 - Covers Mandatory Vaccination Policies as well as other issues.
- Key Points:
 - Employers may have mandatory vaccination policies.
 - Employees objections based on science or politics are not valid excuses.
 - Employers must make reasonable accommodations for employees who are unable to get the vaccination due to a disability or a sincerely held religious belief or practice.
 - If an employer makes an individualized determination that such an employee poses a direct threat to health and safety in the workplace that cannot be mitigated or resolved with a reasonable accommodation, the employer may exclude the employee from coming into the workplace.

EEOC Guidance on COVID-19 Vaccinations

- Key Points (cont.):
 - The fact that an employee is excluded from the workplace does not mean that the employer may automatically terminate the employee's employment.
 - Employer must consider whether the employee could continue working with an accommodation, such as working remotely.
 - Employers do not need to provide accommodations that cause an undue hardship.
 - In the context of an ADA accommodation, this is something that causes significant expense or problems for the employer.
 - In the context of a religious accommodation, this is something that causes more than a de minimus cost or burden to the employer.
 - The obligation to accommodate disabilities is greater than the obligation to accommodate religious belief.

EEOC Guidance on COVID-19 Vaccinations

Is a mandatory vaccination policy right for your workplace?

Points to consider:

1. What will you do about employees who refuse to comply?
2. Are you at risk if you do not mandate vaccinations?
3. What will you do about government mandates?
4. Are there additional considerations for unionized workforces?
5. Are you prepared for the administrative strain

Independent Contractors

- Economic Realities Test:
 - The extent to which the services rendered are an integral part of the principal's business.
 - The permanency of the relationship.
 - The amount of the alleged contractor's investment in facilities and equipment.
 - The nature and degree of control by the principal.
 - The alleged contractor's opportunities for profit and loss.
 - The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
 - The degree of independent business organization and operation.

Independent Contractors

- New DOL Rule issued January 7, 2021 – effective date March 8, 2021
- New Test:
 - **2 Core Factors:**
 - The nature and degree of control over the work
 - The worker's opportunity for profit or loss based on initiative and/or investment
 - **3 Additional Factors:**
 - The amount of skill required for the work
 - The degree of permanence of the working relationship between the worker and the potential employer
 - Whether the work is part of an integrated unit of production

Independent Contractors

- The “ABC” Test
 - Presumes that a worker is an employee, and requires a business to satisfy each of three conditions to demonstrate that a worker is an independent contractor.
 - **A** - that the worker is free from the control and direction of the hirer in connection with the performance of the work (both under the contract and in fact);
 - **B** - that the worker performs work that is outside the usual course of the hiring entity’s business, and
 - **C** - that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Independent Contractors

- Takeaways:
 - Evaluate current use of independent contractors;
 - Look for red flags;
 - Monitor final rule status and re-evaluate if necessary.

Wage and Hour Issues

- COVID-19 Issues
- Red Flags

Employee Benefits & Executive Compensation



Consolidated Appropriations Act

- Coronavirus stimulus package
- Signed December 27, 2020
- Includes retirement and health plan changes

Flexible Spending Accounts

- Prospective election changes allowed without meeting the normal Section 125 change rules – Optional change
- Grace periods for years ending in 2021 or 2022 may be extended for 12 months – Optional change
- Retroactive changes and cashout of unused amounts still not permitted!

Health FSA

- Health FSA permitted to allow employees who stopped participation in 2020 or 2021 to continue to receive reimbursements through the end of the plan year
- Optional change

Dependent Care FSA

- Dependent care FSAs may extend the maximum age from 12 to 13 for eligible dependents who aged out of eligibility during the last plan year with a regular enrollment period ending on or before January 1, 2020
- May allow employees with unused balances for that plan year to apply this rule to claims for reimbursement of the unused balance in the following plan year
- Optional changes

No Surprises Act

- Certain non-emergency services provided at a network facility cannot be balance billed without meeting notice and consent requirements
- External review processes available for surprise billing

Price Transparency

- Limit service provider contracts that prohibit disclosure of cost information
- Increase disclosure requirements for mental health parity compliance and prescription drug spending

Partial Termination

- No partial termination if, as of March 31, 2021, the number of active participants is at least 80% of the number covered on March 13, 2020
- If safe harbor met, retirement plans not required to fully vest affected participants

CRD Distributions and Loans

- Money purchase pension plans qualify for CRD distributions and loans under the CARES Act
- CRD distributions and loans were not extended and deadlines have passed

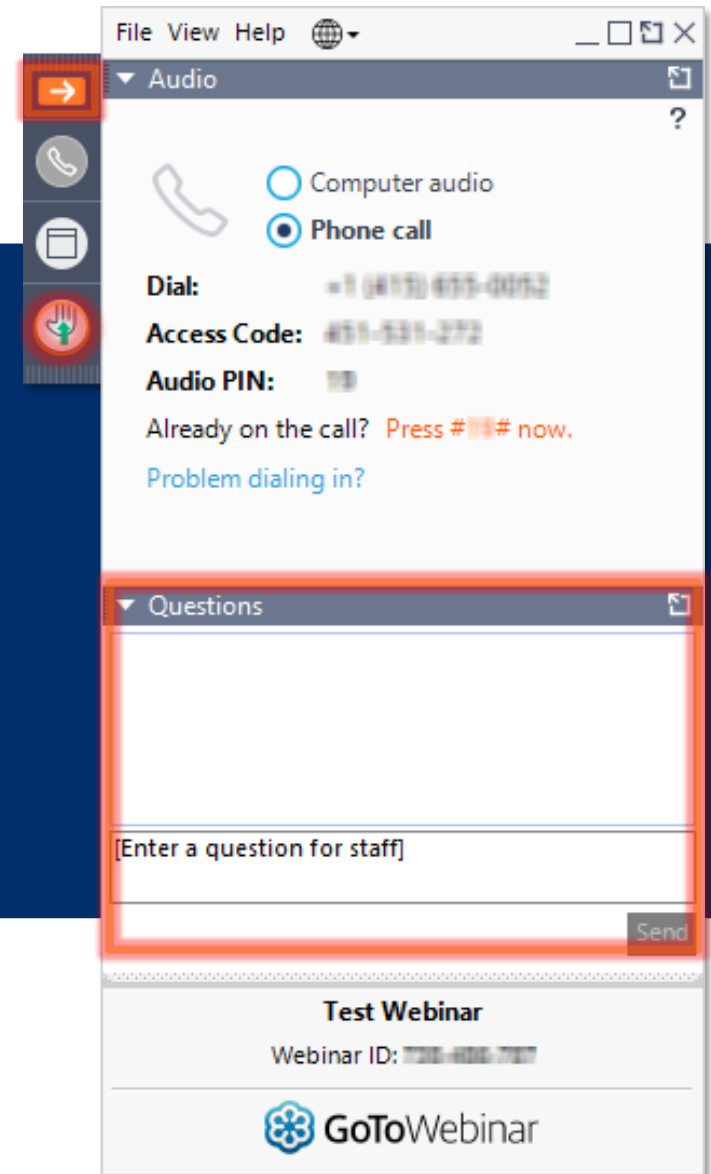
Qualified Disaster Distributions

- Permitted up to \$100,000 and not subject to 10% early withdrawal tax
- May be repaid within 3 years
- Limit on loans increased for qualified individuals for disasters between January 1, 2020 and ending 60 days after the Act's enactment
- Does not include areas that are only disasters due to COVID-19

New EEOC Wellness Regulations

- New rules proposed January 7, 2021
- Employers may only offer "de minimis incentives," such as a water bottle or a small gift card
- Prior threshold of 30% of cost of self-only insurance premium determined too high by court in 2017
- There is a 60 day comment period before the rule is final

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



Questions?



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
grobinson@kmklaw.com
T: 513.579.6584



Labor & Employment



Kelly E. MacDonald

KMK Law Associate

513.579.6409

kmacdonald@kmklaw.com

John F. Meisenhelder

KMK Law Partner

513.579.6914

jmeisenhelder@kmklaw.com

Lisa Wintersheimer Michel

KMK Law Partner

513.579.6462

lmichel@kmklaw.com

Antoinette L. Schindel

KMK Law Partner

513.579.6473

aschindel@kmklaw.com



Employee Benefits & Executive Compensation



Mark J. Chumley

Partner
Labor & Employment

mchumley@kmklaw.com
513.579.6563



Lisa Wintersheimer Michel

Partner
Employee Benefits & Executive Compensation

lmichel@kmklaw.com
513.579.6462



Contact Us

- Visit 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.

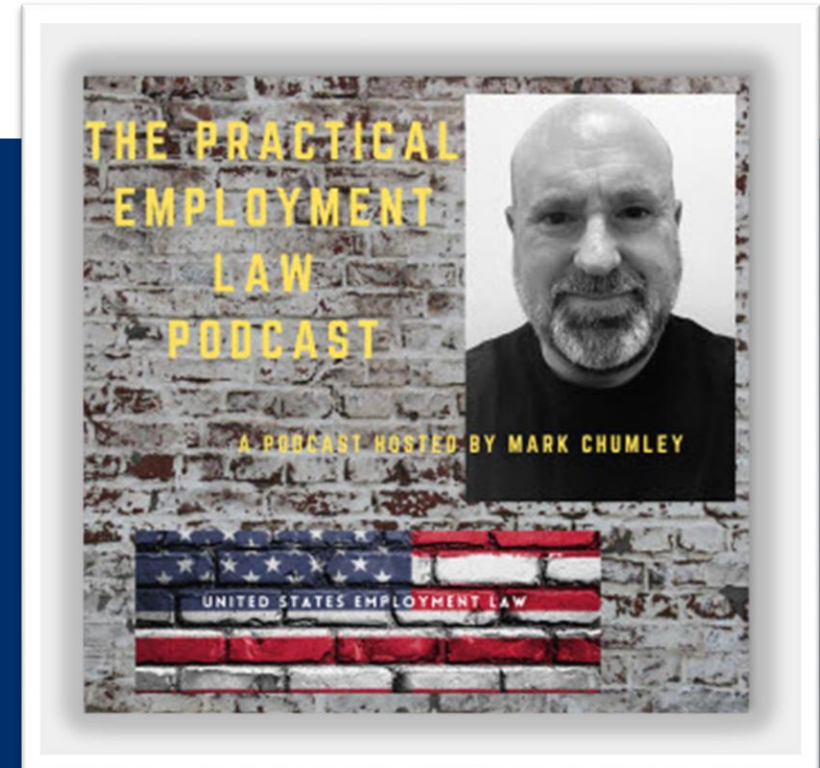


[READ MORE](#)



Additional Resources

- Follow our Management Rights Blog.
- Follow The Practical Employment Law Podcast if you are interested in learning about the employment law challenges facing businesses today.



More

Additional Resources



LIVE Webinar:

Continuing to Navigate COVID-Era Regulations For Employers

Wednesday,
January 20, 2021
12:00 p.m. EST