



WBEC ORV January Forum Luncheon

2021
Legal Updates

Tuesday,
January 26, 2021

12:00 p.m. EST

Topics of Discussion

- Potential New Tax Legislation
- Updates on Paycheck Protection Program (PPP)
- Labor & Employment Amid Ongoing COVID-19 Pandemic



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Business Taxation

Tax Changes under a Biden Administration

- A Speculative Look Ahead

- Capital Gains and Ordinary Income Tax
 - Possible increase
- 199A Pass-Through Deduction
 - Possible, but unlikely, repeal
- C Corp Tax Rate
 - Possible increase from 21% to 28%
- 1031 Like-Kind Exchanges
 - Possible repeal

Tax Changes under a Biden Administration

- A Speculative Look Ahead

- Opportunity Zones
 - Possible rule changes
- Estate, Gift, GST Exemption
 - Possible reduction
 - Currently at \$11,700,000
 - New ranges in discussion between \$3.5MM and \$6MM
 - Plan now for this potential change
 - Possibly retroactive
 - Wealth advisors may use formula clauses



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PPP Loan Update

PPP At-a-Glance

- Second Draw PPP Loan
 - Fund payroll costs (including benefits)
 - Pay mortgage interest, rent, or utilities
 - Pay worker protection costs due to COVID-19
 - Supplier costs and expenses for operations

PPP At-a-Glance

- Full Forgiveness Terms
 - Second Draw PPP made to eligible borrowers
 - Employee and compensation levels are maintained as required for the First Draw PPP Loan
 - Loan proceeds are spent on payroll costs and other eligible expenses
 - At least 60% of proceeds spent on payroll

PPP At-a-Glance

Targeted Eligibility

- Previously received a First Draw PPP loan and used full amount for authorized uses
- Has no more than 300 employees
- Can demonstrate at least a 25% reduction in gross receipts (comparable quarters 2019 and 2020)



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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 leave:
 - 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 at 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



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