



Guide to access funding and other key considerations impacting the business of non-hospital health care providers/employers operating small businesses

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As COVID-19 continues to have a drastic impact on the normal day-to-day business operations of businesses throughout the nation, health care providers who are also small business owners have been left with the financial fallout and regulatory changes impacting the provision of health care services. With lasting uncertainty surrounding issues arising from the COVID-19 pandemic and the ability of small businesses to survive the pandemic, non-hospital health care service providers who are also small business owners must deal with issues such as:

- Applying for small business loans available due to the COVID-19 pandemic
- Deciding between whether to furlough or lay off employees
- Understanding new paid sick leave obligations and the expansion of the Family Medical Leave Act
- Understanding the changes in the provisions of health care services and health plan diagnostic coverage in response to the COVID-19 pandemic
- Considering whether or not certain financial distress relief, such as filing for bankruptcy, is the best option available in the case of overwhelming debt repayment obligations

This guide will provide you information related to key considerations and questions that may be affecting both your provision of health care services as a health care service provider and your ability to continue to provide day-to-day operations as a small business owner. For a list of NP alerts that may provide you with information, please refer to the list at the end of this guide.

I am a non-hospital health care, service provider and small business owner in need of immediate financial assistance to help with employee benefits and employee payroll. What types of financial assistance are available to me?

The purpose of the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), among other things, is to provide emergency assistance to small businesses in response to the financial impact on businesses affected by the COVID-19 pandemic. Below is a high-level checklist of the

types of loans and grants available and considerations that should be taken by small businesses when determining if and what types of financial assistance such businesses should apply for when in need of emergency financial assistance.

Small Business Association (SBA) Loan Program assistance: Key takeaways and considerations

- SBA loans are available for small businesses with less than 500 employees.
- The SBA Loan Program allows qualifying small businesses to apply for small business loans up to the lesser of \$10,000,000 or 2.5 times the average monthly payroll.
- SBA express loans are available in an amount of up to \$1,000,000 until December 31, 2020. After such date, the maximum amount available for an express SBA loan will revert back to \$350,000.
- Funds may be used only for payroll, including vacation, parental, family, medical or sick leave, insurance premiums and retirement benefits, mortgage payments (other than principal), rent, utilities, and any other interest on previously incurred debt.
- Until June 30, 2020, no collateral or personal guarantees are required for loan borrowings.

Loan forgiveness

- Subject to certain deductions due to a reduction in a number of employees and/or employee compensation, indebtedness may be forgiven, up to the principal amount of a loan, equal to the amounts paid during an eight-week period for payroll, utilities, rent, and mortgage obligations (other than principal).

Economic Injury Disaster Loan (EIDL) emergency grants

- For small businesses eligible under the SBA Loan Program, such businesses are also eligible for a grant in an amount up to \$10,000, to be advanced prior to the distribution of the full loan amount.

For more detailed information regarding the financial assistance described above, please refer to Nixon Peabody's recent alert: "[Stimulus provides relief for businesses during coronavirus crisis.](#)"

I am a dentist, and due to COVID-19, I am no longer performing non-emergency dental services to patients. I am considering whether or not to furlough or lay off my administrative staff and dental hygienists. Are there any major differences between the two and what I should consider?

All across the country, small businesses are faced with options regarding cutting back staff employment for both full-time and part-time employees. Specifically, small businesses providing health care services, such as dentistry, physical therapists, and other medical practices are faced with providing limited services. Some health providers have also switched to providing telehealth services.

Deciding between whether to furlough or lay off employees: Key takeaways and considerations

The difference between furloughing and laying off employees is that an employee furlough places employees on temporary non-duty status for lack of work or funds and other considerations, while a layoff is recorded by an employer as a termination of employment.

- Furloughed employees can expect to retain certain benefits, such as retaining life insurance and health insurance during the furlough period instead of being considered terminated.
- Employers should also consider issues that may arise concerning compliance with employer-sponsored retirement plans in the event of a layoff or employee furlough.

For more detailed information regarding the types of employment-related issues that employers should consider when deciding whether to furlough or lay off employees, please refer to Nixon Peabody's recent alert: "[Coronavirus furloughs vs. layoffs: What's the difference? And what does that difference mean for employer-sponsored retirement plans?](#)"

Am I required to provide employees with paid leave? To the extent that I am required, are there any significant changes to an employer's provision of paid leave due to COVID-19?

The CARES Act amends and expands the applicability of the Family Medical and Leave Act (**FMLA**) and the Emergency Paid Leave Act to incorporate emergency provisions due to COVID-19.

Changes to the paid leave law: Key takeaways and considerations

- Changes to the FMLA and the Emergency Paid Sick Leave Act are to be effective from April 1, 2020, through and including December 31, 2020.
- FMLA and provisions of the Emergency Paid Sick Leave Act apply to private employers who employ fewer than 500 employees.
- Usual FMLA employee eligibility provisions do not apply.
- Tax credits may also be available for employers required to provide paid leave through the Emergency Paid Sick Leave Act and child care leave through the FMLA amendments.
- Employers who fail to comply with the Emergency Paid Sick Leave Act may be subject to certain penalties as if such employers failed to pay minimum wage.
- Employers who fail to comply with FMLA requirements will be subject to penalties as set forth under FMLA.

For more detailed information regarding changes to relevant portions of the paid leave law, please refer to Nixon Peabody's recent alert: "[Families First Coronavirus Response Act: What employers need to know about the COVID-19 paid leave law.](#)"

In addition, for more information regarding tax credits and other considerations for employers providing paid leave, please refer to Nixon Peabody's recent alert: "[Tax-free disaster relief payment plans for employees: What employers need to know.](#)"

Are there any other specific provisions specifically applicable to non-hospital health care providers or the provision of health care services that small business owners in the industry should be aware of?

The CARES Act also provides for certain special considerations for different types of health care providers that may be relevant depending on your current provision of health care services. The following is a non-exhaustive list of key takeaways and information to consider:

- Effective immediately, telehealth and/or remote care services may be provided to

individuals with high-deductible health plans (HDHP) prior to satisfaction of statutory minimum HDHP deductibles.

- The CARES Act provides for accelerated coverage under health plans for preventative care and vaccines created to combat COVID-19.
- The CARES Act amends and sets out the requirements for types of COVID-19 diagnostic testing.

For more information regarding the CARES Act with specific considerations for health care providers and information regarding employee benefits, please refer to Nixon Peabody's recent alert: "[CARES Act includes several employee benefits-related provisions.](#)"

My health care practice is currently in financial distress, and I may want to consider restructuring my current indebtedness by filing for bankruptcy. Are there any special provisions relating to bankruptcy filings for small businesses?

The CARES Act provides certain financial restructuring assistance for small businesses facing financial distress. It has modified the Small Business Reorganization Act (SBRA) by expanding the restructuring options available for small businesses and increasing the permitted maximum indebtedness for such relief to \$7,500,000 through March 27, 2021. The SBRA helps small businesses by streamlining and allowing such businesses to maintain some control over the debt restructuring process.

Loan restructuring: Key takeaways and considerations under the SBRA:

- Previously only businesses with up to \$2,700,000 in debt could benefit from SBRA expedited debt restructuring provisions, but the CARES Act has increased this maximum indebtedness from \$2,700,000 to \$7,500,000.
- SBRA can be a valuable tool available to small businesses in need of debt restructuring but not those able to handle the costs and long proceedings associated with a Chapter 11 bankruptcy filing.
- Among other benefits, the SBRA:
 - Allows small businesses the opportunity to propose a plan of restructuring within 90 days of such small businesses' bankruptcy filing.
 - Allows small business owners to retain ownership of their business after emerging from bankruptcy by allowing such businesses to pay creditors over a longer period of time.

For more information regarding the availability of filing for bankruptcy under the SBRA, please refer to Nixon Peabody's recent alert: "[CARES Act expands restructuring options for small businesses.](#)"

Below please find additional Nixon Peabody alerts that you may find helpful as we continue to deal with changes and expansions in certain employer-employee related laws/regulations as COVID-19 continues to impact small business and health care providers throughout the nation.

- "[CARES Act offers assistance and funding for health care providers during the COVID-19 pandemic.](#)" *March 31, 2020.* The CARES Act provides a range of support and relief opportunities for health care providers and additional investments in the public health

system.

- [“Managing risks that come with federal funds,” March 27, 2020.](#) This alert examines the issues that recipients of federal funds confront and suggests best practices for mitigating risk.
- [“Tax-free disaster relief payment plans for employees: What employers need to know,” March 25, 2020.](#) With the spread of COVID-19, employers and employees are seeking solutions to the recent financial difficulties that have resulted from the pandemic. Section 139 disaster relief payment plans are a viable solution during these uncertain times.

For more information on the content of this alert, please contact our [Coronavirus Response team](#), your Nixon Peabody attorney, or:

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