

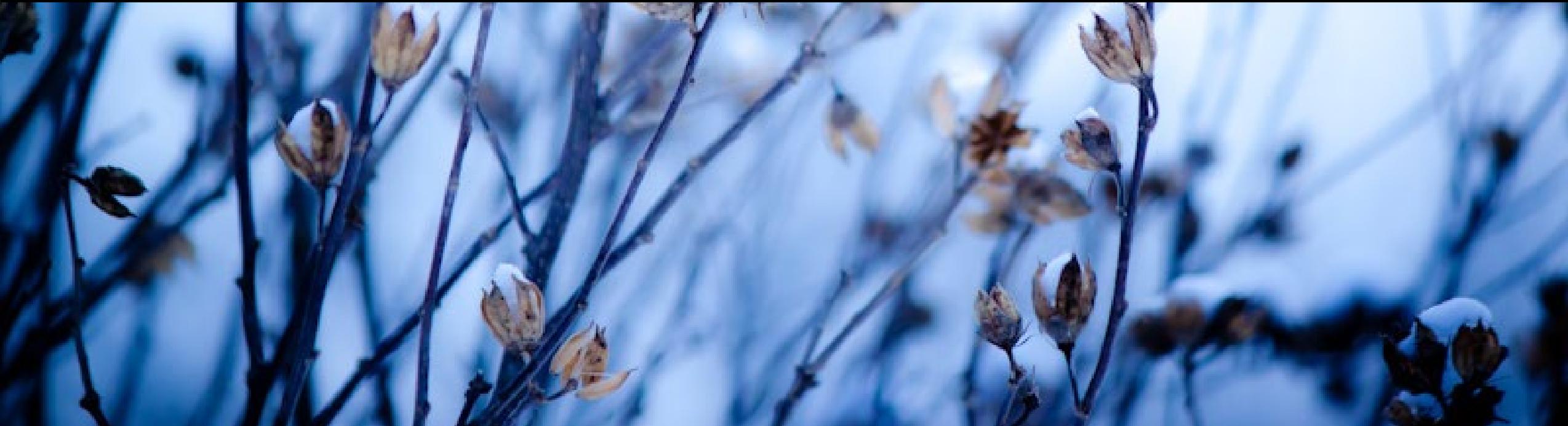
# Rödl & Partner

## ACHIEVE TOGETHER

COVID-19 TAX RESPONSE  
ATLANTA, GA – MARCH 25, 2020

Rödl National Tax

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David E. Gevertz, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC



# AGENDA

1	Families First Coronavirus Response Act
2	Notice 2020-18
3	Small Business Loan Assistance
4	Other Considerations
5	Potential Legislation
6	Contacts

# CORONAVIRUS IN THE U.S.

## Overview

- Over 44,000 cases in the U.S.
- Many states and localities under stay at home orders including California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, New Mexico, New York, Oregon, Washington, West Virginia, and Wisconsin.
- 1 in 3 Americans under these orders
- **On March 6, 2020, \$8.3 billion bill to fight the coronavirus outbreak signed**
  - \$3.1 billion to develop and purchase vaccines and medical supplies; \$100 million for community health centers and clinics
  - \$2.2 billion for the Centers for Disease Control and Prevention (CDC): state and local preparedness, response efforts, and global disease detection and response
  - \$826 million to support basic research and development of vaccines, therapeutics, and diagnostics; \$61 million for review and development
  - \$1.2 billion for global health programs, humanitarian and health assistance, state department operations, and economic support

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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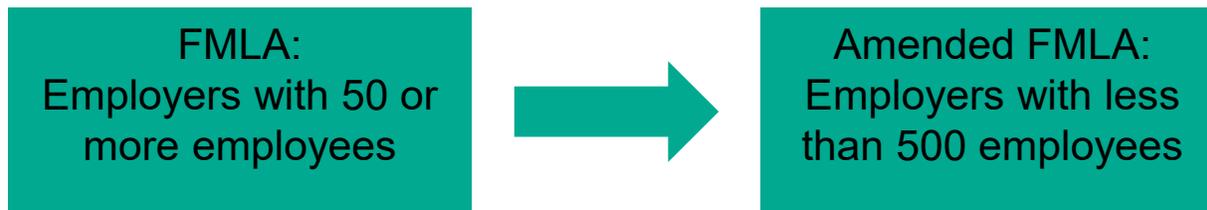
## Overview

- Families First Coronavirus Response Act (H.R. 6201) signed into law on March 18, 2020
- Provides affected individuals with ***paid*** sick and family leave (FMLA is unpaid)
- Creates tax credits for affected employers
- Expands food and nutrition services
- Allows for emergency state unemployment insurance grants
- Increases Medicaid funding to states
- Health provisions
- Budgetary effects
- Effective April 1, 2020 per DOL
- Sunsets on December 31, 2020

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Modifications to the Family and Medical Leave Act

- The Family and Medical Leave Act of 1993 (the "FMLA") is amended to create a new category of benefits for a qualifying need related to a public health emergency
- A qualified need means generally "unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."
- Employer threshold "fewer than 500 employees"
- Potential exclusions for certain health care providers and emergency responders and businesses with fewer than 50 employees
- Applies to "covered employers"
  - A person engaged in commerce or in any industry or activity affecting commerce with fewer than 500 employees



# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## KEY QUESTION: HOW IS THE 500 EMPLOYEES DETERMINED?

- No clear guidance on when to begin counting
- Part-time and full-time employees counted
- Foreign employees likely not counted
- Subsidiaries and related entities

## KEY QUESTION: HOW IS THE SMALL EMPLOYERS EXEMPTION DETERMINED?

- Demonstrate that compliance will jeopardize the viability of the business as a going concern
- What does that mean?

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## **Emergency Family and Medical Leave**

- Provide 12 weeks of job-protected leave to employees to care for a child whose school or place of care is closed
- Does not increase leave
- The first 10 days can be unpaid, although a worker could choose to use other accrued leave
- Employer may not require the employee to substitute paid leave
- Employers are required to pay employees two-thirds of their wages
  - Not to exceed \$200 per day and \$10,000 in total

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Emergency Sick Leave

- Private sector employers with fewer than 500 workers and government entities have to provide to employees up to 80 hours (or the equivalent for part-time employees) of paid sick time because the individual is unable to work due to specific needs of the employee related to COVID-19 including:
  1. Is subject to a federal, state, or local quarantine or isolation order relating to COVID-19
  2. Has been advised by a health care provider to self-quarantine due to concerns relating to COVID-19
  3. Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- Sick leave is paid at 100% of the regular rate but limited to \$511 per day and \$5,110 in total
- Sick leave is in addition to any regularly-provided annual sick leave

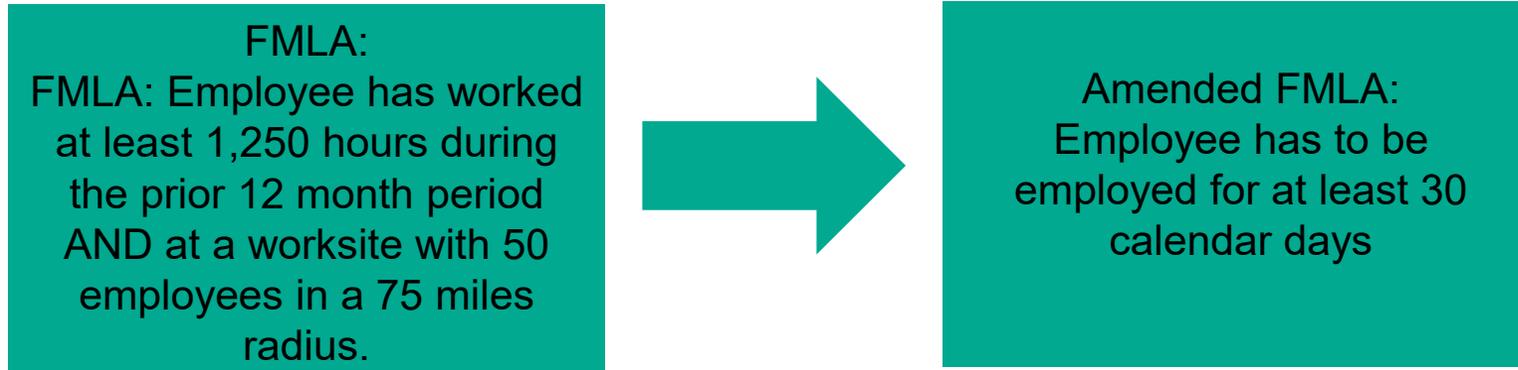
# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## Emergency Sick Leave

4. Is caring for an individual who is subject to an order described in the first category above or has been advised by a health care provider as described in the second category above
  5. Is caring for a son or daughter of such employee if the school or place of care of the child is closed or the child's care provider is unavailable due to COVID-19 precautions, or
  6. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor
- For the above reasons, sick leave is paid at 2/3 of the regular rate but limited to \$200 per day and \$2,000 in total

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

## KEY QUESTION: HAS THE DEFINITION OF ELIGIBLE EMPLOYEE CHANGED?



## KEY QUESTION: ARE THERE NOTICE OR ENFORCEMENT REQUIREMENTS?

- 30-day good faith implementation period
- DOL enforcement only

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## **Tax Credits**

- Must be a “covered employer” to get credit
- 100% credit / reimbursement of the qualified sick leave wages
- Generally available for wages of up to either \$511 or \$200
- Costs to maintain health insurance coverage for the eligible employee during the leave period are included
- Eligible employers can retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid
- Taxes available for retention include federal income taxes and the employee and employer share of Social Security and Medicare taxes
- Expedited refund of taxes can be requested if wages are more than the taxes withheld

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

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## **Tax Credits – Example**

### *Example 1*

- Employer pays \$5,000 in sick leave and withholds \$8,000 in payroll taxes
- Employer must deposit \$3,000 on its next regular deposit date

### *Example 2*

- Employer pays \$10,000 in sick leave and withholds \$8,000 in payroll taxes
- Employer can use the entire \$8,000 as a credit and apply for an accelerated refund of the remaining \$2,000

# SMALL BUSINESS LOAN ASSISTANCE

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## **Economic Injury Disaster Loan program (EIDL)**

- Small Business Administration (“SBA”) is the lender but it is a direct federal loan
- Funds are intended to cover normal operating expenses
- 3.75% interest rates for small businesses
  - Small business is **very** subjective
- Long term repayment period – in some cases up to 30 years
- More information can be found here:

**<https://www.sba.gov/disaster-assistance/coronavirus-covid-19#section-header-1>**

# NOTICE 2020-18

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## **Postponement of federal tax deadlines and payments**

- On March 20, 2020, Notice 2020-18 was issued, postponing certain federal tax deadlines and payments
- Payment or income tax return due April 15, 2020 is an “Affected Taxpayer”
- Includes an individual, trust, estate, partnership, association, company or corporation
- Due date is automatically postponed to July 15, 2020
- Affected Taxpayers do not have to file Forms 4868 or 7004
- No limitation on the amount of the payment that may be postponed
- Relief is available solely with respect to Federal income tax payments
- No extension is provided for any other type of Federal tax or filing of any Federal information return
- IRS has released FAQs available here: [\*\*https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers\*\*](https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers)
- What about states?

# OTHER CONSIDERATIONS

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- Local Labor Departments may have new rules relating to COVID-19-induced layoffs and slowdowns
- Georgia example
  - Georgia DOL adopted emergency rule requiring Georgia employers to file partial claims online on behalf of their employees for any week during which an employee works less than full-time due to a partial or total company shutdown
- State and local shelter in place orders restricting movement of affected employees and businesses
- Benefit plan (in)flexibility will be governed by plan terms, which can often be amended
- WARN Act “Unforeseen Business Circumstances” and less drastic alternatives
- Wage and hour considerations for reductions in pay for both exempt and non-exempt employees
- Compliance with OSHA safe workplace obligations

# POTENTIAL LEGISLATION – “CARE ACT”

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## **Proposed Legislation**

- Industry specific assistance
- Restoring net operating loss carrybacks
- Correcting error on depreciation of qualified improvement property
- Increased limitation on business interest expense
- Rebates for individuals
- Much more....

# CONTACTS



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