

Tuesday, February 9, 2021 | 8:00 AM – 10:00 AM

Davis|Kuelthau's
Breakfast Briefing Webinar:
Vaccination Policy Considerations
and Other Trending Employer
Challenges for 2021

Presented by:

Anthony J. Steffek, Laurie E. Meyer, Abby (Busler)
Tilkens, Robert W. Burns, James M. Kalny, Bruce
B. Deadman, and Mark G. Kmiecik

Discussion Topics

- Topic #1: COVID-19 & Vaccinations
Presented by: Anthony J. Steffek, Laurie E. Meyer, and Abby (Busler) Tilkens
- Topic #2: Department of Labor: FFCRA and Unemployment Compensation Then and Now
Presented by: Robert W. Burns and James M. Kalny
- Topic #3: OSHA Developments
Presented by: Bruce B. Deadman
- Topic #4: Employee Retention Credit
Presented by: Mark G. Kmiecik
- Topic #5: Mask Mandates
Presented by: James M. Kalny
- Topic #6: NLRB 2021 Outlook
Presented by: Robert W. Burns
- Q&A Session – Bruce B. Deadman & Team

Presenter | **Anthony (Tony) J. Steffek**



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Shareholder | Labor & Employment Team

As a member of Davis|Kuelthau's labor and employment team, Tony proactively and reactively assists employers, both big and small, in wading through the various HR-related issues that arise in today's employment world. Proactively, Tony helps with issues such as **hiring/firing, noncompetition agreements** and other **restrictive covenants, disability** and **ADA issues, FMLA** and other leave matters, **employee handbook review** and revision, sensitive personnel matters and investigations, **OSHA compliance, wage and hour issues**, and labor negotiations. He also provides public entities and schools, both primary/secondary and post-secondary, with advice and counsel on issues specific to those clients.

Presenter | Laurie E. Meyer



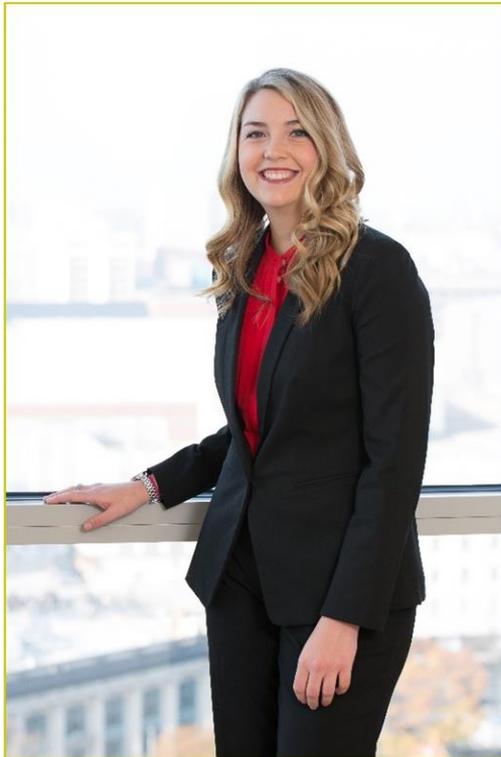
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As a member of Davis|Kuelthau's Labor and Employment practice group, Laurie combines her experience in human resources management with over 20 years of employment law practice to provide creative, strategic counsel and defense to employers of every size on a full range of employment issues. This depth of experience allows her to provide legal assistance to employers in ways that minimize risk and avoid litigation and support long-term business goals.

Laurie takes a practical approach to solving employment problems for her clients and achieving their goals in a cost-effective way.

Presenter | Abby (Busler) Tilkens



Associate | Labor & Employment Team

Abby is a member of the firm's Labor & Employment team and the School and Higher Education practice group. Her practice primarily focuses on counseling education clients in school law and labor and employment issues. Abby worked as a law clerk for the Department of Public Instruction, where she conducted extensive legal research on educational law issues and assisted the legal department in representing the state superintendent in cases regarding open enrollment, expulsion appeals, the school choice program, and the food and nutrition programs.

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COVID-19 & Vaccinations

Presented by:

Anthony J. Steffek, Laurie E. Meyer, and
Abby (Busler) Tilkens

COVID-19 Vaccinations and Employment: EEOC Latest Guidance

- On December 16, 2020, the EEOC updated its Q&A to include guidance on COVID-19 vaccinations.
- The Vaccine guidance addresses the following:
 - Americans with Disabilities Act (ADA);
 - Title VII of the Civil Rights Act;
 - Title II of the Genetic Information Nondiscrimination Act (GINA).
- EEOC has indirectly confirmed that a mandatory vaccination policy (subject to disability and religious exemptions), as we sit today, is lawful.

Are Employer-Mandated Vaccinations Lawful?

- The Wisconsin legislature passed legislation which would have banned employers from mandating vaccinations as a condition of employment or even inquiring about employees' vaccination status.
- This bill was vetoed by Gov. Evers last Friday.

Vaccinations and the ADA

- Per the EEOC:
 - The vaccination itself is not a medical examination.
 - Employers asking for proof of receipt of COVID-19 vaccine does not constitute a disability-related inquiry.
 - However, pre-screening vaccination questions (asked of everyone) may implicate ADA's provisions regarding disability-related inquiries.
 - Employer's questions could be invasive and violate ADA.

COVID-19 is a “Direct Threat”

- Per EEOC, ADA allows employers to have as qualification standard “a requirement that an individual shall not pose a direct threat to the health and safety of individuals in the workplace.”
- Direct Threat Test:
 - Duration of risk;
 - Nature and severity of potential harm;
 - Likelihood that potential harm will occur;
 - Imminence of potential harm.
- Based on CDC findings, EEOC has determined that COVID-19 meets direct threat definition.
- So: if unvaccinated employee may expose others (customers, fellow employees, or general public) to virus at workplace, direct threat test is satisfied.

Required Exemptions for Mandatory Vaccine Policies

- EEOC says certain exemptions must be provided:
 - Accommodations for employees with disabilities that prohibit them from getting vaccinated.
 - Sincerely-held religious beliefs must be accommodated.
 - No exceptions for secular or medical beliefs about vaccines.

Disability Exemptions from Vaccine Requirement under ADA

- What if employee requests exemption due to **disability**?
 - Request **documentation** from the employee's medical provider to confirm nature of specific disability and need for accommodation.
 - Engage in **Interactive Process**: Work with employee to find reasonable accommodation absent undue hardship.
 - Accommodations may include telework, change of work location, transfer to a different position (even at different pay rate).

Religious Exemptions from Vaccine Requirement under Title VII

- Per EEOC, exemption must be granted to employees who have **sincerely held religious practice, belief, or observance**.
- Employers should ordinarily assume a religious request is based on a sincerely held belief.
 - Employer may request additional supporting information if employer has objective basis for questioning the sincerity of a particular belief, practice or observance.

Vaccinations: Reasonable Accommodation and Undue Hardship

- ADA and Title VII Issues:
 - Undue hardship:
 - More than a *de minimis* cost or burden on the employer.
- **Where no reasonable accommodation possible, it is lawful to exclude employee from the workplace.**

HIPAA, Record-Keeping and Confidentiality Issues for Vaccines

- HIPAA only applies to “covered entities”.
 - Health plans—including self-funded company plans;
 - Health care clearinghouses;
 - Health care providers.
- Most of you will not be covered entities. You do not become a covered entity by:
 - Requiring employees to be vaccinated;
 - Noting vaccination status in a personnel file; or
 - Having an on-site vaccination clinic.

HIPAA, Record-Keeping and Confidentiality Issues for Vaccines

- However, even if you are not a “covered entity” subject to HIPAA, you should still treat and store information confidentially.
- How can HR find out if an employee has been vaccinated?
 - Ask the employee or get an authorization.

Vaccination Policies: Practical issues

- If mandated, employers should pay for vaccines.
- Incentivizing rather than mandating vaccination?
 - Additional PTO;
 - Gift Cards;
 - Bonus;
 - Paid leave for hours needed to get vaccine.
- Unionized workforces.
- What is employer liability for vaccine policies?
- Waivers?

Presenter | **Robert (Bob) W. Burns**



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Shareholder | Labor & Employment Team

Bob assists clients with a wide variety of issues which arise in the workplace. He represents employers in **labor negotiations, discrimination defense, disability and ADA issues, wrongful discharge or employment contract disputes, non-compete issues** and other sensitive personnel transactions. He also provides advice on a wide variety of school law issues.

Bob works with businesses and governmental entities as general or special counsel. He represents employers of all sizes, including those with union and non-union workforces.

Presenter | James M. Kalny



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Shareholder & Chair | Labor & Employment Team

Jim serves as Chair of the firm's Labor & Employment Team offering over 40 years of experience assisting clients in collective bargaining issues and employment law matters. Jim's background as an HR director gives him unique, practical insight in personnel issues from **drafting policies to conducting investigations to reorganization studies and strategies**. He has considerable experience successfully representing public and private sector employers in employment discrimination and wage matters.

Department of Labor: FFCRA and Unemployment Compensation Then and Now

Presented by:

Robert W. Burns and James M. Kalny

2020 Family First Coronavirus Recovery Act (FFCRA)

- FFCRA became effective April 1, 2020 and had two components.
- Emergency Paid Sick Leave Act (EPSL).
 - 80 hours leave (full time)- part time average hours worked in 2 week period.
 - If unable to work or telework because:
 - subject to a Federal, State, or local quarantine or isolation order related to COVID;
 - advised by a health care provider to self-quarantine due to COVID concerns;
 - experiencing symptoms of COVID-19 and seeking a medical diagnosis;

2020 Family First Coronavirus Recovery Act (FFCRA) (cont'd)

- caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2);
- caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19;
- experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

FFCRA - Emergency Family and Medical Leave Expansion Act (EFMLA)

- The second component of FFCRA was the EFMLA-
 - amendments to the FMLA
- Qualifying Need--employee is 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.
- First 10 days may be unpaid or could substitute paid leaves to provide compensation.
- Remaining leave paid as provided in EFMLA.

FFCRA - EFMLA (cont'd)

- EFMLA Payment amount
 - not less than two-thirds of an employee's regular rate of pay.
 - for the number of hours the employee would otherwise be normally be scheduled to work.
 - Not more than \$200 per day and \$10,000 in the aggregate.
- EFMLA provides for 12 total weeks of leave.

FFCRA - EFMLA (cont'd)

- EPSL and EFMLA are eligible for dollar for dollar tax credits for qualified private sector employers granting qualified, properly documented leave.
- Both the EPSL and EFMLA expired on Dec. 31 2020.

Effect of COVID-19 Stimulus Bill

- Consolidated Appropriations Act, 2021 (Stimulus Bill) became law on December 27, 2020 and was retroactive to April 1, 2020.
- Extends the tax credits for employers who choose to continue to allow employees to continue to take existing EPSL and extended FMLA leave through March 31, 2021.
- The Stimulus bill does not required the employer to provide the remaining EPSL or EFMLA but provides an incentive.

Effect of COVID-19 Stimulus Bill (cont'd)

- Private Sector employers that continue to allow the use of unused EPSL or EFMLA before March 31, 2021 are eligible for the tax credits under the same terms they were under FFCRA.

FFCRA Credits under the Stimulus Bill

- Takeaways:
- There is no new EFMLA or EPSL entitlements in the Stimulus Bill.
 - The remaining unused of the original 2 week EPSL provided in 2020 under FFCRA.
 - The remaining/unused of the original 12 weeks EFMLA provided in 2020 under FFCRA.
- After December 31, 2020 there is no longer a mandate to provide EPSL or EFMLA as provided under FFCRA.

FFCRA Credits under the Stimulus Bill (cont'd)

- If you cannot take the tax credits, the incentive for continuation of some COVID relief leave would be to encourage employees who should quarantine or isolate to do so rather than come to work to avoid burning their own leave.

FFCRA Credits under the Stimulus Bill (cont'd)

- Some public sector employers have undertaken a variety of approaches to provide their own leave:
 - Allow use of remaining unused FFCRA leaves;
 - Broaden access to the employer's existing sick leave to include quarantine scenarios;
 - Creation of additional paid leave days for COVID purposes.

FFCRA Credits under the Stimulus Bill (cont'd)

- If creating new leave, employers may want to make clear that:
 - It expires by a certain date (unless extended);
 - Has no carryover or termination payout value;
 - Will be superseded by any newly enacted federal or state leave.

Unemployment Compensation

- Federal Pandemic Unemployment Compensation (FPUC) established under the Coronavirus Aid, Relief, and Economic Security (CARES) Act effective March 27, 2020.
- Under FPUC, eligible employees, collecting regular unemployment compensation, received an extra \$600 in federal benefits each week through July 26, 2020.
- CARES Act also established:
 - the Pandemic Emergency Unemployment Compensation (PEUC) program, which extends unemployment benefits for an extra 24 weeks; and

Unemployment Compensation (cont'd)

- the Pandemic Unemployment Assistance (PUA) program, which expands unemployment insurance eligibility to self-employed workers, freelancers, independent contractors, and part-time workers impacted by the coronavirus.
- In August 2020, FPUC was extended to allow unemployed individuals to receive an additional \$300 per week between Jan. 2, 2021, and March 14, 2021.

CARES, FPUC and State UC

- Under the CARES act, states that waive their usual one-week "waiting period" for benefits will be fully reimbursed by the federal government for benefits paid that week, plus any associated administrative expenses.
- Federal law also allows states to amend their laws to provide unemployment insurance benefits in several COVID-19-related situations. for example, states may pay benefits when:
 - An employer temporarily closes due to COVID-19, preventing employees from going to work.

CARES, FPUC and State UC (cont'd)

- A person is quarantined and anticipates going back to work after the quarantine is over.
- A person stops work due to a risk of COVID-19 exposure or infection, to care for a family member, or to homeschool their children.
- Under federal law, an employee doesn't have to quit to receive benefits due to COVID-19.

Pandemic Emergency Unemployment Compensation (PEUC)

- PEUC is a temporary program that provides up to 24 additional weeks of payments to individuals who have exhausted their regular Unemployment Insurance (UI) benefits.
 - Came out of the Continued Assistance for Unemployed Workers Act of 2020- signed December 27, 2020.
 - Can be applied retroactively to April 4 of 2020.
 - No applications after March 13, 2021.
 - Last week payable April 3, 2021.

Pandemic Emergency Unemployment Compensation (PEUC) (cont'd)

- Application after regular UC runs-
 - The employee must reapply.
 - There may be a gap.

Wisconsin Unemployment and COVID-19

- Wisconsin UC
 - May apply to layoffs or reductions of work.
 - individuals who are unemployed through no fault of their own
 - individuals may be eligible for unemployment benefits if they meet the monetary criteria and the weekly eligibility criteria (less than 32 hours or \$500 per week) even if their employer has not told them they are laid off

Wisconsin Unemployment and COVID-19 (cont'd)

- May be paid even if employee is being paid by employer with PPP moneys.
 - Subject to set off
- Quarantine
 - Self-imposed- no
 - Mandatory- maybe

Employer Issues

- If applicable you may want to contact your tax lawyer or CPA:
 - Unemployment taxes may be deferred up to 60%- on a sliding scale.
 - If an employer pays no wages in a quarter- no Unemployment taxes.
 - If a contributing employer's employees were laid off due to the public health emergency declared by Executive Order 72 and filed initial unemployment claims for weeks after May 16, 2020, the employer may qualify for relief.

Employer Issues (cont'd)

- The CARES Act provides federal funds to states to reduce by half the liability of reimbursable employers for their claims through December 26, 2020. Under 2019 Act 185, the state will reimburse the remaining half from the Department of Workforce Development's interest and penalties account for benefit charges for initial claims related to the public health emergency declared by Executive Order 72.
- FPUC, PUA and PEUC- you can't make this stuff up.

Presenter | **Bruce B. Deadman**



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Senior Attorney | Labor & Employment Team

Bruce's practice is focused on labor, employment, and compensation-related issues. Most of his time is spent helping clients work through the morass of employment laws and regulations. He represents employers in a number of areas including, **discrimination defense, disability and ADA issues, wrongful discharge, employment contract disputes, wage and hour problems, non-compete issues** and the investigation and resolution of **sensitive personnel matters**.

OSHA Developments

Presented by:
Bruce B. Deadman, Esq.

OSHA Penalties Adjusted for Inflation

Effective 1/15/21

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$13,653 per violation
Failure to Abate	\$13,653 per day beyond the abatement date
Willful or Repeated	\$136,532 per violation

OSHA 300A Form Filing

- Annual Accident and Injury Report
- All employers with 250 + employees and those with 25-249 employees in specific industries (pretty much everyone) has to file **ELECTRONICALLY** by March 2, and post in workplace from February 1 to April 1.

Is COVID-19 an OSHA “Recordable”?

- YES, if
- (1) is confirmed COVID-19, as defined by Centers for Disease Control and Prevention (“CDC”);
- (2) is work-related, defined as “resulting from events or exposures occurring in the work environment;” and
- (3) involves one or more of the general recording criteria, which include death, days away from work, medical treatment beyond first aid, or loss of consciousness.

New Developments

- OSHA had been relying on the “General Duty Clause” and existing regulations
 - Collected nearly \$4million in fines and penalties
- But, on January 21, Biden issued an Executive Order telling OSHA to
 - Within 2 weeks, issue revised guidance to employers on workplace safety during the COVID-19 pandemic;
 - Consider whether emergency temporary standards on COVID-19, including whether requiring mask-wearing in the workplace, are necessary and if so, issue those standards by March 15, 2021;
- Review OSHA’s enforcement efforts related to COVID-19 and identify any changes that could be made to better protect workers and ensure equity in enforcement;
- Launch a national program to focus OSHA enforcement efforts related to COVID-19 on violations that put the largest number of workers at serious risk or violate anti-retaliation principles; and
- Coordinate with the DOL’s Office of Public Affairs and Office of Public Engagement to provide a multilingual outreach campaign regarding workers’ rights.

New Developments

- Review OSHA's enforcement efforts related to COVID-19 and identify any changes that could be made to better protect workers and ensure equity in enforcement;
- Launch a national program to focus OSHA enforcement efforts related to COVID-19 on violations that put the largest number of workers at serious risk or violate anti-retaliation principles; and
- Coordinate with the DOL's Office of Public Affairs and Office of Public Engagement to provide a multilingual outreach campaign regarding workers' rights.

January 29, 2021 Guidance

- Provides additional detail on 15 key measures for limiting the spread of Covid-19 starting with separating and sending home infected or potentially infected people from the workplace, implementing physical distancing, installing barriers where physical distancing cannot be maintained, and suppressing the spread by using face coverings. It also provides guidance on use of personal protective equipment (PPE), when necessary, improving ventilation, providing supplies for good hygiene, and routine cleaning and disinfection.
- Not a Standard or regulation- BUT.....

January 29, 2021 Guidance

- Unlike previous guidance, which was couched in language offering suggestions for employers, this new guidance speaks in terms of “employers should...” and “employers are responsible for...” these 15 items.
- Item #14 calls for employers to provide free COVID vaccinations and to educate employees about why they should be vaccinated, vaccination sites, etc.
- Given the current “confusion” regarding who is eligible and in what order, availability or lack thereof of vaccine, this puts employers in a tough spot.
 - Most employers have NO access to vaccine
 - Focus on education and incentives

Presenter | **Mark G. Kmiecik**



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Shareholder | Corporate Team

Mark advises clients on international, federal, state, and local tax matters, as well as represents clients in the areas of estate planning, probate and trust administration, business succession planning, marital property, and tax planning. He works with individuals, couples, business owners and other professionals to accomplish their objectives while minimizing tax burdens and reducing financial risk. His practice includes planning for unique assets, international considerations, and beneficiaries with special needs. He has reviewed, and interpreted a substantial amount of legal documents and contracts, including marital/non-marital trusts, GRATs, GRUTs, QPRTs, IDGTs, wills, deeds, mortgages, leases, and other agreements.

Employee Retention Credit

Presented by:
Mark G. Kmiecik

CONSOLIDATED APPROPRIATIONS ACT, 2021

- The Consolidated Appropriations Act, 2021, was signed into law on December 27, 2020.
- Among the many changes and updates to the prior relief legislation for COVID-19, this law clarifies and expands the employee retention credit (“ERC”) that was created by the CARES Act.

Time Period ERC is Available

CARES ACT	Consolidated Appropriations Act, 2021
Qualified wages paid after March 12, 2020, and before January 1, 2021.	Qualified wages paid after March 12, 2020, and before July 1, 2021 (now available in the first two quarters of 2021).

Eligibility Requirements

CARES ACT	Consolidated Appropriations Act, 2021
Businesses with operations that were either fully or partially suspended by a COVID-19 governmental order and only during the period the order is in force; or	Beginning January 1, 2021, the credit will be available to businesses with operations that are either fully or partially suspended by a COVID-19 governmental order and only during the period the order is in force; or
Gross receipts were less than 50% of gross receipts for the same quarter in 2019 until such quarter as gross receipts are 80% of same quarter in 2019.	Gross receipts are less than 80% of gross receipts for the same quarter in 2019.
Businesses that were not in existence in 2019 could use a comparison to 2020 for purposes of the credit.	Businesses that were not in existence in 2019 may use a comparison to 2020 for purposes of the credit.

Percentage of Wages

CARES ACT	Consolidated Appropriations Act, 2021
The credit was 50% of the qualified wages paid to an employee, plus the cost to continue providing health benefits to the employee.	Beginning January 1, 2021, the credit is 70% of qualified wages, plus the cost to continue providing health benefits to the employee.

Maximum Credit Amount

CARES ACT	Consolidated Appropriations Act, 2021
Annual cap of \$5,000 per employee (\$10,000 in qualified wages x 50%).	<p>Beginning January 1, 2021, the cap is increased to \$7,000 per employee for each of the first two quarters of 2021 (\$10,000 in qualified wages x 70%) for a possible \$14,000 credit per employee.</p> <p>The 2021 credit is available even if the employer received the \$5,000 maximum credit for wages paid to such employee in 2020.</p>

Employer Size; Working Employee

CARES ACT	Consolidated Appropriations Act, 2021
<p>A company with more than 100 employees could not take the credit for wages paid to an employee performing services for the employer (either teleworking, or working at the workplace, even though at reduced capacity due to reduction in business).</p>	<p>Beginning January 1, 2021, the threshold increases to 500.</p>
<p>A company with 100 or fewer employees was eligible for the credit, even if the employee was working.</p>	<p>An employer with 500 or fewer employees will be eligible for the credit, even if employees are working.</p> <p>When calculating the 500-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are aggregated.</p>

Paycheck Protection Program

CARES ACT	Consolidated Appropriations Act, 2021
<p>REPEALED – A company that received a Paycheck Protection Program (PPP) loan was ineligible to claim the employee retention credit.</p>	<p>A company that received or receives a PPP loan is no longer prohibited from claiming the employee retention tax credit.</p> <p>The credit, however, may not be claimed for wages paid with the proceeds of a PPP loan that have been forgiven.</p>
<p>This disallowance rule extended to all affiliated companies that shared common ownership, so that if one company received a PPP loan, any other company with more than 50% common ownership was ineligible to claim the credit.</p>	<p>Companies related to a PPP borrower that did not claim the credit because of the affiliation rules should be able to claim the credit retroactively, if they are otherwise eligible for the credit.</p>
<p>This change is retroactive to the effective date under the original law for wages paid after March 12, 2020.</p>	<p>A company that received a PPP loan in 2020 and paid qualified wages in excess of the amount of the forgiven PPP loan used to pay wages, and is otherwise eligible to claim the credit, can claim the credit retroactively. The IRS is expected to issue guidance on how to claim the credit retroactively.</p>

Advance Payments

CARES ACT	Consolidated Appropriations Act, 2021
<p>In 2020, there was no provision to receive the credit before qualified wages were paid.</p>	<p>The IRS is expected to draft guidance to allow an advance payment of the credit for companies with 500 or fewer employees, based on 70% of average quarterly payroll for the same quarter in 2019.</p>
	<p>If the amount of the actual credit determined at the end of the quarter is less than the amount of the advance payment, the company will need to repay the excess.</p>

Hazard Pay Limitations

CARES ACT	Consolidated Appropriations Act, 2021
No credit for pay rate increases.	Under the new law, the credit is allowed for hazardous duty pay increases.

Disallowance of ERC for Governmental Entities

CARES ACT	Consolidated Appropriations Act, 2021
<p>The employee retention credit was not available to any federal, state, or local governments, or any agency or instrumentality thereof.</p>	<p>Effective January 1, 2021, the following entities are eligible for the credit:</p> <ul style="list-style-type: none">• Public colleges or universities• Organizations whose principal purpose is providing medical or hospital care• Certain Federal instrumentalities, such as federal credit unions

Definition of Gross Receipts for Tax Exempt Entities

CARES ACT	Consolidated Appropriations Act, 2021
No definition of gross receipts as applicable to tax exempt entities was included.	The new law defines gross receipts for tax exempt entities by reference to Section 6033 of the Internal Revenue Code.
	Gross receipts include the following: contributions, gifts, grants, dues or assessments, sales or receipts from unrelated business activities, sale of assets, and investment income (e.g., interest, dividends, rents, and royalties).
	Gross receipts are not reduced for any associated costs or expenses.

Mask Mandates

Presented by:
James M. Kalny

The State Mask Mandate

- Before February 4, 2021 the Governor had issued Executive Order 72 declaring a public health emergency. That order expired on May 11, 2020
- On July 30, 2020 the Governor issued Executive Order 82 reinstating the emergency order without a set expiration date- based on that EO, a mask mandate order was issued.
- On February 4 the Assembly concurred in SJR 3, repealing the Governor's prior emergency order and mask mandate.
- About an hour later, the Governor issues another EO 1 declaring an emergency and issuing a mask mandate.

The Mask Mandate

- Like its predecessor the new mask mandate applies to
 - all enclosed spaces open to the public including outdoor restaurants, outdoor bars public transit, and others.
 - all indoors areas, other than a private residence is covered
 - It expires on March 31, 2021
- Republicans believe the new order is illegal
- The Wisconsin Supreme Court addressed a similar issue regarding the emergency order of the Director of the Department Health but has not decided the extent of the Governor's power to extend public health emergency orders
- The question of a Governor's ability to call multiple public health emergencies for the same pandemic is pending before the Wisconsin Supreme Court. It is uncertain when a decision will be delivered and what action the Legislature will take regarding the Governor's new public health emergency.

Municipal Mandates

- 15 Cities (including Green Bay and De Pere) and one county have mask mandates in place
- Those ordinances are based in another section of the state law as well as home rule and have not been considered by any court
- Wisconsin is one of 40 states that has a mask mandate currently in force.

NLRB 2021 OUTLOOK

Presented by:
Robert W. Burns

NLRB 2021 Outlook

- Private employers anticipate eventual shift in National Labor Relations Board (NLRB) decisions consistent with past political transitions.
- Currently three Republican appointees, one Democrat appointee (recently appointed as Chair by President Biden), and one vacancy.
- The term of one of the Republican seats expires on August 27, 2021; thus appointees of President Biden to fill the two vacancies will shift the Board to a 3-2 Democrat majority.
- President Biden has also fired the NLRB general counsel who had been appointed by President Trump in 2017.

Questions / Comments ?

- At this point in the program, we would like to open the floor up to any questions or comments.
 - Please submit them via the Q&A feature.



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