

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

CORONA VIRUS (COVID-19) Week 2

HINMAN, HOWARD AND KATTELL, LLP

DAWN J. LANOUE, ESQ.
HINMAN, HOWARD & KATTELL, LLP
80 EXCHANGE STREET | BINGHAMTON, NY 13901
DLANOUE@HHK.COM | (607) 231- 6917

ATTORNEY ADVERTISING



DISCLAIMER

- This presentation is not intended to be legal advice. It is for information only.
- This may be considered attorney advertising. You should not rely on it as legal advice.
- Please contact an attorney to discuss your specific situation.



HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

ESSENTIAL BUSINESS

- **ESD Guidance**
<https://esd.ny.gov/guidance-executive-order-2026>
- **Not Eligible**
bars, restaurants, gyms, movie theaters, casinos, auditoriums, concerts, conferences, worship services, sporting events, and physical fitness centers
- **Request an Exemption?**
<https://esd.ny.gov/content/request-designation-essential-business-purposes-executive-order-2026>



PRACTICAL REALITY

- **Two Million Requests**
“**ONLY** businesses who have determined that they are **NOT** essential under the guidance should complete this form. Businesses that have determined that they are essential should **NOT** complete this form.”



HH&K
Himman, Howard & Kattell, LLP
4376932333

NEW YORK QUARANTINE LEAVE

- Effective Now
- **ONLY** available for an order of quarantine from a public health official for self or minor child
- Applies to everyone—even essential businesses, healthcare and emergency responders
- Applies to all employers
- No reimbursement from the government



HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

WHAT DO EMPLOYEES GET?

- 100 or more employees—employer provided 14 days of paid sick leave
- 11-99 employees—employer provided 5 days of paid sick leave; then PFL/disability for 9 days
- 10 or fewer employees AND net income greater than 1 million—5 days of paid sick leave, then PFL/disability for 9 days

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

NY QUARANTINE LEAVE

- NO sick leave for persons who violate travel bans unless the travel was for work
- Waive Disability waiting period
- No retaliation for taking sick leave
- It is a supplement to any federal law
- Disability and PFL caps:
\$840.70 PFL and \$2,043.92 Disability

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

NY QUARANTINE LAW-OTHER PROTECTIONS

- **Job protection:** You must reinstate the employee to the same or a comparable position, upon returning from leave.
- **No discrimination:** You cannot discriminate or retaliate against an employee for requesting or taking Paid Family Leave.
- **Continued health insurance:** You must continue to provide health insurance on the same terms as if the employee had continued to work while they are on Quarantine Leave. If employees regularly contribute to the cost of their health insurance, they must continue to pay their portion of the cost while on leave.

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS



NY QUARANTINE LAW

What if I have more questions?

Guidance
<https://paidfamilyleave.ny.gov/covid-19-paid-leave-guidance-employers>



HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

FEDERAL RESPONSE – FAMILIES FIRST ACT

- Effective April 1, 2020
- All provisions sunset on December 31, 2020
- FMLA Amendments
- Emergency Paid Sick Leave
- Employer receives tax credits equal to 100% of amounts paid
- Self employed also qualify for tax credits



HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

FEDERAL PAID SICK LEAVE

Employee is unable to work because:

- the employee is quarantined (pursuant to Federal, State, or local government order **or advice of a health care provider**);
- The employee is experiencing COVID-19 symptoms and seeking a medical diagnosis
- Care for an individual subject to quarantine(2/3 pay)
- Care because of school closure (2/3 pay)



HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

FEDERAL PAID SICK LEAVE-BENEFIT

- For own illness: 80 hours of leave paid at regular rate
 - Cap of \$511 per day or \$5,110 over 2 weeks
- For care of an individual or school closure, 80 hours of leave paid at 2/3 regular rate
 - Cap of \$200 per day or \$2,000 over 2 weeks

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

FEDERAL PAID SICK LEAVE—OTHER ISSUES

- Must be in addition to current leave
- Can't require an employee to get coverage for their absence
- No retaliation
- DOL Guidance:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

HH&K
Hinman, Howard & Kattell,
ATTORNEYS

FMLA Amendment

- Employer with fewer than 500 employees, including employers with fewer than 50 employees
- Employed at least 30 days with that employer
- Public Official or Healthcare Provider orders a quarantine because of the following:
 - Care for family member
 - Care for son or daughter under 18 because school or daycare closed

HH&K
Hinman, Howard & Kattell,
ATTORNEYS

WHAT IS IT?

- 10 days unpaid leave. Employee must be allowed, but not required to substitute any paid leave
- After 10 days, 2/3 pay up to 10 weeks. Capped at \$200 per day or \$10,000 total
- FMLA requires maintenance of healthcare while employee is out on same terms as while employed

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Intermittent leave while telecommuting?

- **Yes, if your employer allows it** and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act
- You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.
- The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Intermittent Leave While Working at a Worksite?

- For reasons other than caring for a child because of school closure, NO. “Unless you are teleworking, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.”
- BUT, if for school closure, YES—employer and employee may agree on a schedule.

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

Worksite Closed before April 1?

No. If, prior to the FFCRA’s effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits.

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

BUT

- includes an employee who was laid off by an employer not earlier than March 1, 2020, who had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff, and was rehired by the employer.

-Cares Act Sec. 3605

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Closures After April 1

- Benefits only due until date of the closure of the worksite
- No benefits for people on temporary furloughs because of lack of work or state ordered closure

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

What About Employees Who Have Already Taken FMLA?

- Entitled to the Paid Sick Leave regardless (80 hours)
- STILL LIMITED TO 12 weeks total for FMLA, including time already used for another reason

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Small Business Exception? (Q 58-59)

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Other questions?

- Employer must maintain medical insurance on same terms as while employed
- May allow an employee to take company provided PTO to supplement, but not required to allow it, cannot force employee to use it and no tax credit for it
- FAQ has some guidance on documentation, more coming

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

OTHER RULES FOR BOTH LAWS

- Only applies to leaves taken on or after April 1, 2020
- Only applies to employers with fewer than 500 employees
- Can require your employees to follow your reasonable notice procedures

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

OTHER ISSUES

- Determining whether I have 500 or more employees:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> (Question 2)
- Paid sick leave and first two weeks of expanded FMLA leave run concurrently
- Leave is NOT retroactive

HH&K
Himman, Howard & Kattell,
ATTORNEYS

Who Is Excluded?

- Healthcare Providers
- Emergency Responders
- Employers with fewer than 50 employees **IF** payment would jeopardize the business as a going concern



HH&K
Himman, Howard & Kattell,
ATTORNEYS

NOTICE REQUIREMENT

- There is a poster
- I have more Questions about the poster:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

HOW DO THE TAX CREDITS WORK?

- Under guidance that will be released this week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.
- The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less.

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

I HAVE MORE QUESTIONS

- DOL Guidance:
<https://www.dol.gov/agencies/whd/pandemic/ffcr-a-employee-paid-leave>
 - IRS Guidance:
<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>
- Fact sheets, etc:
<https://www.dol.gov/agencies/whd/pandemic>

HH&K
Himman, Howard & Kattell,
ATTORNEYS

WHAT ABOUT EVERYONE ELSE

- People at home because of the executive order
- People who have been at home prior to April 1 because of school closures
- People at home because they have a fear of catching it
- Businesses forced to close

HH&K
Himman, Howard & Kattell,
ATTORNEYS

JOB PROTECTION?

- Remember the Americans with Disabilities Act—a request to not come in or work from home from a person with a risk factor is a request for accommodation
 - Sending someone home may qualify them for job protection
- This doesn't apply to child care or generalized fear

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

UNEMPLOYMENT

- New York has waived the 7 day waiting requirement for unemployment
- <https://www.ny.gov/services/get-unemployment-assistance>

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

What About Partial Work?

- No benefits for any day worked, even if it's just 1 hour
- No benefits in any week where 4 or more days are worked, even if it's just 4 hours
- I have more questions:
<https://www.labor.ny.gov/ui/claimantinfo/beforeyouapplyfaq.shtm#7>

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

NY FAQ-Unemployment

- **Q: What if I work part-time?**

A: If you work less than four days in a week and earn \$504 or less, you may receive partial benefits. Each day or part of a day of work causes your weekly benefit rate to drop by one-quarter. For example, if your weekly benefit rate is \$200 and you work three days and earn less than \$504, you may receive \$50 in benefits. If you work two days, you may receive \$100 in benefits. If you work one day, you may receive \$150 in benefits.

- If you receive partial benefits, it extends the length of time you may collect benefits. If you earn over \$504 in any week, no matter how many days you worked, you cannot receive benefits for that week.

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

FAQ-Unemployment Partial Work

- **Q: Can I file a claim if I lost my full-time work, but still work part-time?**

A: Yes, if you work less than four days in a week and earn \$504 or less, you may receive partial benefits. When you file your UI claim:

- You will be asked to enter the date of your last day worked. Enter the last day you physically reported to work, regardless of whether this was your part-time or full-time work.
- You will also be asked to enter information about your last or most recent employer. The last or most recent employer is where you most recently reported to work, regardless of whether this was your part-time or full-time employer. If it was your part-time employer, and you will continue to work part-time, enter "lack of work" as the reason for separation.

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

What About Shared Work?

<https://www.labor.ny.gov/ui/employerinfo/shared-work-program.shtm>

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

WHAT ABOUT TEMPORARY LAYOFF (FURLOUGH)

- Employees are eligible for unemployment
- You may be able to carry benefits—ask your benefit providers
 - You must get in writing how any cost sharing will be handled

HH&K
Hinman, Howard & Kattell,
ATTORNEYS

WHAT ABOUT PAID TIME OFF?

- Follow your written policy
- Can require employees to take PTO
- Can pay out PTO without affecting unemployment (but severance, additional pay, etc. does affect unemployment)

HH&K
Hinman, Howard & Kattell,
ATTORNEYS

WARN ACT

- <https://labor.ny.gov/formsdocs/factsheets/PDFs/p483.pdf> (FACT SHEET)
- <https://labor.ny.gov/workforcenypartners/warn/warnportal.shtm> (contact information and forms)
- [https://labor.ny.gov/workforcenypartners/warn/pdfs/Text of New York State WARN Rule 7-10.pdf](https://labor.ny.gov/workforcenypartners/warn/pdfs/Text%20of%20New%20York%20State%20WARN%20Rule%207-10.pdf) (REGULATIONS)

HH&K
Himman, Howard & Kattell,
ATTORNEYS

WARN ACT

- employs fifty (50) or more employees (see §921-1.1(e)(7), below) within New York State, excluding part-time employees, or fifty (50) or more employees including part-time employees within the state that work in aggregate at least 2,000 hours per week.

HH&K
Himman, Howard & Kattell,
ATTORNEYS

WARN ACT—WHAT QUALIFIES

- An employment termination, other than a discharge for cause, voluntary departure, or retirement;
- (ii) A mass layoff, as defined in §921-1.1(i), that exceeds six months in duration; or
- (iii) A reduction in hours of work of more than fifty percent (50%) during each month of any consecutive six-month period:
 - (A) For either: (1) At least twenty-five (25) employees constituting at least 33% of the employees at the site (excluding part-time employees); or (2) At least two hundred fifty (250) employees (excluding part-time employees) regardless of whether they comprise thirty-three percent (33%) of the employees at the site (excluding part-time employees).

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

WARN ACT NOTICE REQUIRED

- Normally—90 days BUT
- §921-6.3 Unforeseeable business circumstances.

To qualify for this exception, the employer shall establish that the plant closing, mass layoff, relocation or covered reduction in work hours was caused by business circumstances that were not reasonably foreseeable when the 90-day notice would have been required. (a) A business circumstance that is not reasonably foreseeable may be established by the occurrence of some sudden, dramatic and unexpected action or condition outside the employer's control. Examples include a principal client's sudden and unexpected termination of a major contract with the employer, a strike at a major supplier of the employer, an unanticipated and dramatic major economic downturn or a government-ordered closing of an employment site that occurs without prior notice. (b) The employer shall exercise commercially reasonable business judgment in determining whether a business circumstance is reasonably foreseeable.

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

REMEMBER . . .

- If you have a Union, you may need to bargain about some of these things
- The CBA may have provisions related to disasters or layoffs



HH&K
Hinman, Howard & Kattell,
ATTORNEYS

CARES ACT—Briefly

<https://www.congress.gov/bill/116th-congress/house-bill/748/text>



Remember: The Devil Is In the Details

Paycheck Protection Act

- “Small” business loans to meet payroll, mortgage/rent, utilities, business debt expense
 - Some loan forgiveness
 - Max 4% interest rate

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

Disaster Emergency Loans

Includes federal grant provision for:

- (A) providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
- (B) maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- (C) meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains;
- (D) making rent or mortgage payments; and
- (E) repaying obligations that cannot be met due to revenue losses.

HH&K
Hinman, Howard & Kattell, LLP
ATTORNEYS

UNEMPLOYMENT

- Additional \$600 per week for unemployment
- Benefit begins to be paid 1 week after the state enters into an agreement with the federal government
- Benefit is paid through July 31, 2020

HH&K
Hinman, Howard & Kattell,
ATTORNEYS

UNEMPLOYMENT

- Special Provisions for unemployment for non-profits and governmental agencies

HH&K
Hinman, Howard & Kattell,
ATTORNEYS

Pandemic Unemployment Assistance Program

- Not otherwise eligible for unemployment (i.e. contractor, self-employed, exhausted benefits)
- Meets one of the 11 criteria (all related to Covid-19)
- Excludes: does not include—
 - (i) an individual who has the ability to telework with pay; or
 - (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets one of the 11 criteria.
- January 27, 2020

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Checks! i.e Recovery Rebates

- Advance payment of 2020 income tax refund
- Amounts
 - \$1,200 per person (\$2,400 couple) and \$500 qualifying child
- Income Limits
 - (1) \$150,000 in the case of a joint return,
 - (2) \$112,500 in the case of a head of household, and
 - (3) \$75,000 in the case of a taxpayer not described in paragraph (1) or (2).

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Retirement Plan Changes

- Optional temporary increase in the amounts available for loans from defined contribution plans to the lesser of \$100,000 or 100% of account balance
- Extension of the due date for required 2020 contributions to defined benefit plans to 2021
- Special Early Distributions from Retirement Plans Without Penalty for Specified Reasons
- 2020 Required Minimum Distributions from Retirement Plans and IRAs waived

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Other Provisions for Individuals

- Employers can Provide up to \$5,250 Towards Student Loans Tax-Free
- Special Rules for Charitable Contributions
- Credit Report Protections
- Forebearance of federally backed loans
- Certain over the counter and menstrual supplies can be paid out of HSAs
- Deferment of existing student loans through September 2020

HH&K
Himman, Howard & Kattell, LLP
ATTORNEYS

Employee Retention Credit and Other Tax Provisions

- a credit against applicable employment taxes for each calendar quarter an amount equal to 50 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.
- Exceptions apply

HH&K
Himman, Howard & Kattell,
ATTORNEYS

INCOME TAX FILING DEADLINE EXTENDED

- July 15 for both NY and Federal

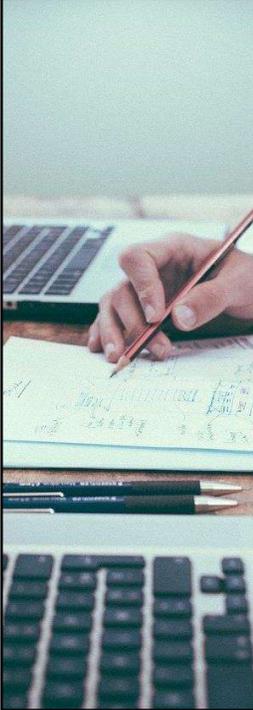
FAQ:

<https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers>

- Other IRS Initiatives

<https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>

HH&K
Himman, Howard & Kattell,
ATTORNEYS



OTHER CONSIDERATIONS FOR BUSINESSES

- Be Aware of Scams
<https://ag.ny.gov/coronavirus>
- Consider what insurance you may have that could help—business interruption insurance
- Consider what insurance you may need—telecommuting you may want cyber-liability insurance

HH&K
Hinman, Howard & Kattell
ATTORNEYS

CONTRACT ISSUES

- Force Majeure
- Impossibility of Performance
- Frustration of Purpose

HH&K
Hinman, Howard & Kattell
ATTORNEYS



**GOVERNMENT'S NEXT
RESPONSE?**

QUESTIONS



HH&K
Himman, Howard & Kattell, LLP
4770932135