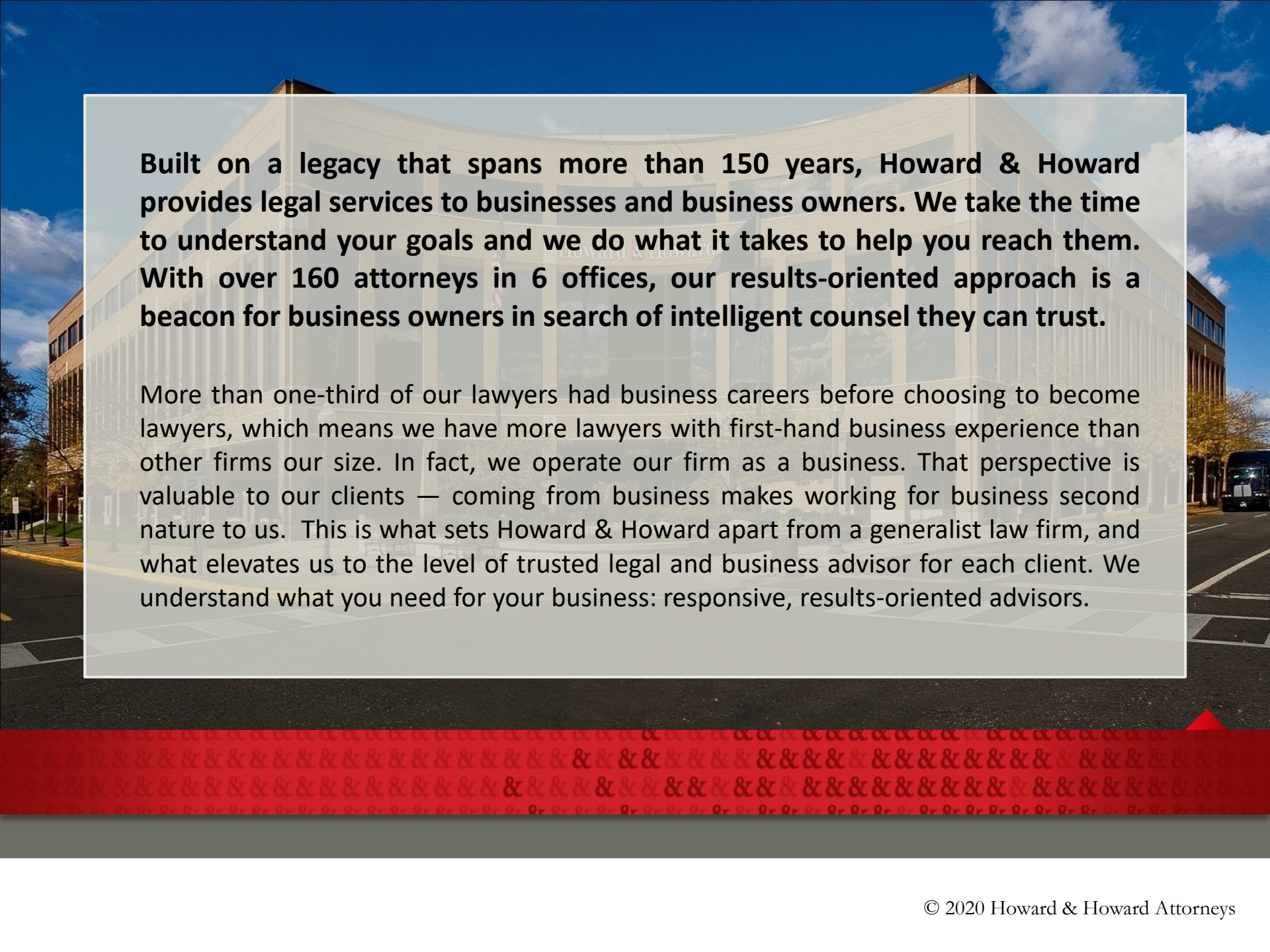


# Howard & Howard

law for business®

FLINT & GENESEE COUNTY CHAMBER OF  
COMMERCE

**Navigating Labor, Employment and Tax Issues Under  
the New Families First Coronavirus Response Act  
and Other Grants/Loans Supporting COVID-19 Relief**

A photograph of a large, modern, multi-story office building with a curved facade and many windows. The building is set against a clear blue sky with some light clouds. In the foreground, there is a street with a crosswalk and a bus. The entire image is overlaid with a semi-transparent white box containing text.

**Built on a legacy that spans more than 150 years, Howard & Howard provides legal services to businesses and business owners. We take the time to understand your goals and we do what it takes to help you reach them. With over 160 attorneys in 6 offices, our results-oriented approach is a beacon for business owners in search of intelligent counsel they can trust.**

More than one-third of our lawyers had business careers before choosing to become lawyers, which means we have more lawyers with first-hand business experience than other firms our size. In fact, we operate our firm as a business. That perspective is valuable to our clients — coming from business makes working for business second nature to us. This is what sets Howard & Howard apart from a generalist law firm, and what elevates us to the level of trusted legal and business advisor for each client. We understand what you need for your business: responsive, results-oriented advisors.

# Who We Are

- Howard & Howard is a business-centric law firm providing sophisticated legal services to an array of clients throughout the nation, including Fortune 500 companies, privately-held and publicly-traded companies, public sector clients, and related entities. For more than 150 years, Howard & Howard has conducted sophisticated transactions successfully for our business clients across various industries.
- Our attorneys cover virtually every major area of practice including business and corporate law, mergers and acquisitions, corporate governance, municipal law, bankruptcy and creditors' rights, data privacy and cybersecurity, employee benefits, environmental, financial services, franchising, healthcare, hospitality, insurance coverage, intellectual property, labor and employment, ERISA, business litigation, products liability, real estate, securities, and tax.
- Howard & Howard's fee structure offers competitive Midwest rates with national and international service experience. Regardless of the size of your deal – or the complexity of the issues – we deliver high-quality, on-time work at a more competitive rate than most law firms providing comparable legal services.
- Our philosophy – to provide high-quality, timely legal service at a reasonable price – is the reality of how we practice law and advise our clients. This philosophy and action is what distinguishes Howard & Howard from our competitors.

# Accolades

3



# Families First Coronavirus Response Act (“FFCRA”)

5

- Emergency Family and Medical Leave Expansion Act
- Emergency Paid Sick Leave Act
- Effective April 1, 2020



# EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

# Covered Employers

7

- All employers with 500 or fewer employees; and all public agencies are covered by this Act.
- Significant expansion from typical FMLA leave which provides coverage is limited to employers with 50 or more employees for each of 20 or more calendar workweeks in the current or preceding calendar year. Expanded employer coverage is limited to leaves for qualifying need related to a public emergency and does not extend to other FMLA qualifying leaves.
- Secretary of Labor has regulatory authority to exempt employers with fewer than 50 employees from the Act's provisions.

# Eligible Employees

8

- Employed for at least 30 calendar days by the employer.
- Employee is unable to work or telework for “qualifying need.”
- Typical FMLA leave limited to employees employed for at least 12 months and 1250 hours in last 12 months.
- Expanded employee coverage does not extend to other FMLA qualifying leaves.
- The Secretary of Labor can exempt health care providers and emergency responders from the definition of eligible employees.



# Qualifying Need for Emergency Leave

9

- Care for employee's son or daughter under the age of 18 if the child's school or place of care is closed, or the child's care provider is unavailable, due to "a public health emergency," defined as "an emergency with respect to COVID-19 declared by a Federal, State, or local authority."
- Does not add any other type of leave.

# Unpaid & Paid Leave

10

- First 10 days is unpaid. Employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.
  - Emergency Paid Leave Act?
- After the first 10 days, pay employee two-thirds regular rate for the number of hours the employee would otherwise be normally scheduled.
- If an employee has a varying schedule and the employer is unable to determine the number of hours the employee would have worked, pay the average number of hours the employee was scheduled per day over the past 6-months (including any leave hours) or, if the employee did not work, the average hours per day the employee reasonably expected to be scheduled to work.
- Paid leave **capped** at \$200/day and/or \$10,000 in total.

# Restoration Rights & Exception

11

- Employees are entitled to the FMLA reinstatement unless employer has fewer than 25 employees and:
  - 1) The employee's position no longer exists due to economic conditions or other changes in operating conditions caused by the public health emergency;
  - 2) The employer made a reasonable effort to reinstate the employee to an equivalent position; *and*
  - 3) The employer makes a reasonable effort to contact the displaced employee about an equivalent position if such position becomes available for 1 year.

# Employee Notice Requirements

12

- Where the need for leave under this Act is foreseeable, the employee must provide as much notice as practicable.
- The Act does not reference an employer's right to request certification or documentation of an employee's need for leave.

# Federal Tax Credits for Employers

13

- Employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter.
- The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter. Only those employers who are required to offer Emergency FMLA may receive these credits.

# Health Care Providers and First Responders

14

- An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the Emergency Family Medical Expansion Act.



# PAID EMERGENCY SICK LEAVE ACT

# Employers Covered

16

- All private employers with fewer than 500 employees.
- All public employers, regardless of size.

# Employee Eligibility

17

- All employees of covered—regardless of how long they have been employed—unless:
  - 1) The employee is able to “telework,” or
  - 2) The employee is a health care provider/emergency responder and the employer elects to exclude the employee from paid sick leave eligibility.
- The Secretary of Labor may issue regulations excluding:
  - Certain health care providers and emergency responders.
  - Small businesses with fewer than 50 employees.

# Reasons for Paid Sick Time

18

- 1) Subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- 2) Advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- 3) Experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- 4) Caring for an individual subject to an order as described in 1. or has been advised as described in 2.
- 5) Caring for employee's son or daughter if the child's school or place of care is closed or the child's care provider is unavailable due to COVID-19 precautions.
- 6) Substantially similar condition specified by the Secretary of Health and Human Services.

# Amount of Paid Sick Time

19

- Full-time employees: up to 80 hours of paid sick time.
- Part-time employees: average number of hours worked over a 2-week period. If a part-time employee has a varying schedule and the employer is unable to determine the number of hours the employee would have worked, pay the average number of hours the employee was scheduled per day over the past 6-months (including any leave hours) or, if the employee did not work, the average hours per day the employee reasonably expected to be scheduled to work.
- Once the need for emergency leave ends, the paid sick time ends at the beginning of the employee's next scheduled work shift.
- An employee is not entitled to financial or other reimbursement for paid sick time that has not been used by such employee upon the employee's termination, resignation, retirement or other separation from employment.

# Calculating Paid Sick Time

20

- An employee's rate of compensation is greater of:
  - 1) Employee's regular rate of pay.
  - 2) Applicable minimum wage.
  
- An employer is required to pay **two-thirds (2/3)** of the employee's eligible rate of compensation if the type of **leave taken is for use described in 4, 5, or 6** above.



# Limits on Paid Sick Time

21

- Paid sick time is capped at:
  - 1) \$511 per day and/or a total of \$5,110 for use described in 1, 2, or 3 above.
  - 2) \$200 per day and/or a maximum of \$2,000 in total for use described in 4, 5, 6 above.

# Prohibited Limitations and Carry Over

22

- Cannot require employees to use paid time off before using paid sick time the Act.
- Paid sick time under the Act does not carryover from one year to the next.

# Notice Requirements

23

- Employee:
  - *After* the first workday that an employee receives paid sick time, an employer may require the employee to follow reasonable notice procedures.
- Employer:
  - Employers are required to post a notice, in conspicuous places in the workplace (where notices are typically placed) that describe the requirements of this Act.

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

### ► PAID LEAVE ENTITLEMENTS

**Generally, employers covered under the Act must provide employees:**

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅔ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ► ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

### ► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol> | <ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol> |
|---|---|

### ► ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



WH1422 REV 03/20

Attorneys PLLC

# Federal Assistance for Employers

25

- Employers are entitled to a refundable tax credit equal to 100% of the qualified paid sick time wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act.
- The qualified paid sick time wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee.

# Civil Liability

26

- Employers who violate this Act are considered to have failed to pay minimum wages in violation of 29 U.S.C. § 206 and are subject to the penalties described in 29 U.S.C. §§ 216–217.
- An employer who *willfully* violates this Act via discrimination or retaliation is considered to be in violation of 29 U.S.C. § 215(a)(3) and 29 U.S.C. §§ 216–217.



# UNEMPLOYMENT

# Michigan Governor Executive Orders

28

- Executive Order No. 2020-10 (COVID-19)
  - Unemployed because self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised, displaying the symptoms of COVID-19, having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19, the need to care for someone with a confirmed diagnosis of COVID-19, or a family care responsibility as a result of a government directive.
  - Effective immediately, and continuing until April 14, 2020 at 11:59 pm, an employer or employing unit must not be charged for unemployment benefits if their employees become unemployed because of an executive order requiring them to close or limit operations.

# EMPLOYEES AND THE WORKPLACE

# Employees Exposed to COVID-19

30

- Symptomatic: CDC guidelines and EEOC guidance support sending the employee home.
- Asymptomatic: Investigate.

# Risk Assessment Tool - Flowchart

31

- Based on CDC Guidelines
- Employer-employee investigative flow chart
- Outlines actions employer may take for employees with and without Covid-19 symptoms
- Contact a Howard & Howard Covid-19 Employment Task Force Attorney to personalize the Risk Assessment Tool for your situation
  - Daniel Villaire, 248.723.0529
  - [dvillaire@howardandhoward.com](mailto:dvillaire@howardandhoward.com)

# Employee Confirmed COVID-19 +

32

- Ask Employee:
  - Date of positive COVID-19 test result.
  - Names of all co-workers/customers with whom the employee had “close contact.”
  - Identify areas in the workspace where employee was physically present in previous 14-day period.
- Secure affected workspaces and restrict traffic in those areas.
  - Clean consistent with CDC guidelines.
  - If shared office building or area, consider informing building management.
- Do not disclose identity or medical/health information of employee.
- Communication to all employees?

# TAX IMPLICATIONS

# Tax Credits-Families First Coronavirus Response Act (“FFCRA”)

Signed into law: March 18, 2020, Effective April 1, 2020

34

- The Act Provides
  - Tax credit to employers that are required to provide Emergency Family and Medical Leave or Emergency Paid Sick Leave to employees.
  - Tax credit to employer for coverage of employee health insurance
- Division G: Tax Credits for Paid Sick and Paid Family and Medical Leave
  - Paid FMLA Expansion
    - The Act requires employers to provide up to 12 weeks of paid leave, capped at the lesser of (a) \$200 per day per employee or (b) 2/3 of the employee’s normal daily wages.
    - The Act provides a refundable tax credit to be applied against the employer’s share of social security payroll taxes up to the amounts the employer is required to pay, capped at \$10,000 per employee.



# Tax Credits-Families First Coronavirus Response Act (“FFCRA”)

Signed into law: March 18, 2020, Effective April 1, 2020

35

- Division C: Emergency Paid Sick Leave
  - The Act requires employers to provide up to 80 hours of paid sick leave, capped at the lesser of:
    - a) \$511 per day per employee or
    - b) the employee’s normal daily wages if taken for a reason described in 1,2, or 3.
  - The Act requires employers to provide up to 80 hours of paid sick leave capped at the lesser of:
    - a) \$200 per day per employee or
    - b) 2/3 of the employee’s normal daily wages.
  - The Act provides a refundable tax credit to be applied against the employer’s share of social security payroll taxes up to the amounts the employer is required to pay;
    - Capped at 80 hours or \$5,110/employee.

# How Do Tax Credits Help Me With Cash Flow Issues Now?

36

- To facilitate quick access to cash, the IRS has released guidance allowing taxpayers required to provide paid leave to retain payroll withholding taxes to cover the cost of providing the paid leave.
- Taxpayers may retain all payroll withholdings for all employees, including the employer and employee's share of Social Security and Medicare taxes and the employee's income tax withholdings.
- Taxpayers can use Q1 withholdings to fund paid leave.
- If amounts previously withheld are not sufficient to fund paid leave, IRS will provide a "quick" claim form allowing taxpayers to claim a refund in advance of payroll tax filing due dates.

# IRS Guidance/Examples

37

- Examples:
  - If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
  - If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.
- Process to receive accelerated credit/refunds – waiting on IRS guidance.

# Other Tax Benefits (so far)

38

- Postpone Filing and Payment of Income Taxes
  - Federal tax filing deadline has been postponed from April 15 to July 15.
  - Taxpayers may defer filing and payment of any amount of tax owed on April 15 (previous guidance capped amounts that could be deferred), including payments on self-employment income due on April 15, 2020.
  - This includes payments of 2019 income tax and quarterly estimated payments for 2020 income tax.
  - Applies only to payments otherwise due on April 15, 2020.
  - Due date for Q2 estimated tax payments owed on June 15, 2020 remains; be prepared for tax payments due in two consecutive months.
- Quick Refunds
  - The IRS has committed to providing refunds within 21 days. If you are expecting a refund, you should file your tax return to claim your refund. If you have already filed, you can use the “Where’s My Refund?” to check its status: <https://www.irs.gov/refunds>

# Other Covid-19 Relief and Support

39

## ■ State Taxes

- The most up to date guidance regarding state tax due dates (including income as well as sales and use tax) can be found here:
- <https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/coronavirusstate-filing-relief.pdf>
- Whitmer to speak today at 11am; may have update regarding Michigan tax due date.
- Possible that an increase in remote work may lead to a shift in withholding tax liabilities.
  - For example, employees that normally work within the city limits of Flint pay income taxes on wages earned while working in Flint. If those workers are working remotely from a location outside the city of Flint, they will not owe taxes on days worked outside the city.

# Coronavirus Stimulus Package

40

- The Senate voted late Tuesday evening to pass the proposed stimulus package. At present, it has not passed the House of Representatives and the full text has not been released.
- The proposed stimulus package is expected to contain a multitude of spending provisions, including relief for impacted businesses as well as a one-time payment to all Americans within the income limitations including potential (albeit anticipated to be modified) of:
  - \$600/week additional unemployment (in Michigan, currently \$362/week)
  - 13 additional weeks (for a possible 39 weeks of available unemployment)
- The proposed stimulus package is also rumored to contain a provision allowing businesses to postpone payment of 2020 payroll taxes to 2021 and 2022.

# State and Federal Covid-19 Relief and Support

41

- Resource Link: [www.michiganbusiness.org/covid19](http://www.michiganbusiness.org/covid19)
- The Michigan Small Business Relief Program will provide up to \$20 million in support for small businesses negatively impacted by COVID-19:
  - \$10 million in small business grants to help cover working capital.
  - \$10 million in small business loans to support businesses facing drastic reductions in cash flow and the continued support of their workforce; available in amounts from \$50k to \$200k at .25% interest rate.
  - Funds for the program are expected to be available no later than April 1, 2020; likely funded directly from MSF and not through partnering bank or financial institution.
  - Companies with 50 employees or fewer can qualify for grants, while loans are targeted at companies with 100 employees or fewer that can't get credit elsewhere.
  - In both cases, businesses must show income loss and an inability to access credit elsewhere. Inability to apply on the SBA website due to technical difficulties does not constitute "inability to access credit elsewhere."

# State and Federal Covid-19 Relief and Support

42

- SBA Economic Injury Disaster Loan Application
  - As part of its disaster assistance program, the SBA is providing low-interest working capital loans of up to \$2 million to small businesses and nonprofits affected by the coronavirus.
  - These loans carry an interest rate of 3.75% for small businesses and 2.75% for nonprofits. Loan repayment terms vary by applicant, up to a maximum of 30 years.
  - Select “economic injury” / covers accounts payable, debts, payroll and other bills the coronavirus has affected your ability to pay.
  - Supporting documentation should include the business’s most recent tax returns, a personal financial statement and a schedule of liabilities that lists all your current debts.



# Additional Information

43

- Coronavirus business alerts can be found here:  
<https://howardandhoward.com/news/>
- Contact Us:



Megan J. Parpart  
[mparpart@howardandhoward.com](mailto:mparpart@howardandhoward.com)  
248.723.0417



Daniel Villaire  
[dvillaire@howardandhoward.com](mailto:dvillaire@howardandhoward.com)  
248.723.0529



Regina Goyette Staudacher  
[gstaudacher@howardandhoward.com](mailto:gstaudacher@howardandhoward.com)  
248.723.0311

# Office Locations

44

## ANN ARBOR, MI

115 West Huron Street  
Suite 700  
Ann Arbor, MI 48104-1318  
Phone: (734) 222-1483



## LOS ANGELES, CA

Century Plaza Towers  
2049 Century Park East  
Suite 330  
Los Angeles, CA 90067-3105  
Phone: (424) 303-7700



## CHICAGO, IL

200 South Michigan Avenue  
Suite 1100  
Chicago, IL 60604-2461  
Phone: (312) 372-4000



## PEORIA, IL

One Technology Plaza  
211 Fulton Street  
Suite 600  
Peoria, IL 61602-1350  
Phone: (309) 672-1483



## LAS VEGAS, NV

Wells Fargo Tower  
3800 Howard Hughes Parkway  
Suite 1000  
Las Vegas, NV 89169-5980  
Phone: (702) 257-1483



## ROYAL OAK, MI

*Headquarters*  
450 West Fourth Street  
Royal Oak, MI 48067-2557  
Phone: (248) 645-1483



# Creativity. Results. Practicality. Solutions.

These words define not only successful businesses, but also the law firm that represents them. Howard & Howard is the law firm businesses use because our vision of success is not lavishly decorated offices. The attorneys at Howard & Howard use a different measure *Your Success.*

---