

COVID-19 TOWNHALL

Top 15 Questions and the “So What”

PRESENTED BY

SARAH BORDERS AND ALICIA J HAFF, JD

APRIL 9, 2020





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Sarah Borders has spent the last 15 years in the employee benefits industry, has numerous designations and serves on NAHU's Employer Working Group Subcommittee and is an active board member of the Austin Association of Health Underwriters. She recently stepped down as Vice President of Benefits Compliance at one of the nation's largest brokerage firms to start her own compliance consulting practice.



Her consulting firm, Benefits Compliance Solutions, partners with employers to identify unknown risks and avoid hundreds of thousands of dollars in fines and lawsuits from failure to comply with their health plan obligations.



Alicia J Haff, JD has oversight of ACA & HR Compliance for the ETC Companies. Alicia graduated from the University of Texas School of Law in Austin in 1996 and spent 13 years litigating employer, insurance, and commercial disputes. Alicia has continued her practice from 2010 focusing on defense of Regulatory audits from agencies such as Wage and Hour, EBSA, TWC, and ICE. Alicia is a General Lines Insurance Agent as well as Certified Healthcare Reform Specialist. This knowledge in the insurance industry paired with her legal eye towards compliance give the ETC Companies an ever better solution to serve over 2000 clients and growing.

Shannon & Mike Meroney serve as trusted advisors to clients, helping them influence legislation, regulations, and perceptions through: 1) direct legislative and regulatory advocacy; 2) grassroots activation and coordination; 3) coalition building; 4) message development and written communications tools; and 5) news media relations management. Their expertise and network relationships help clients (brokers) achieve their business objectives by shaping decision making in Texas and Washington DC. Brokers are always fighting for the best interest of their employer groups, and the Meroney's help brokers do what is needed for each of the employers.



About the Speakers

The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.

Finally, this presentation is current as of April 9, 2020, and the information contained herein is subject to change.

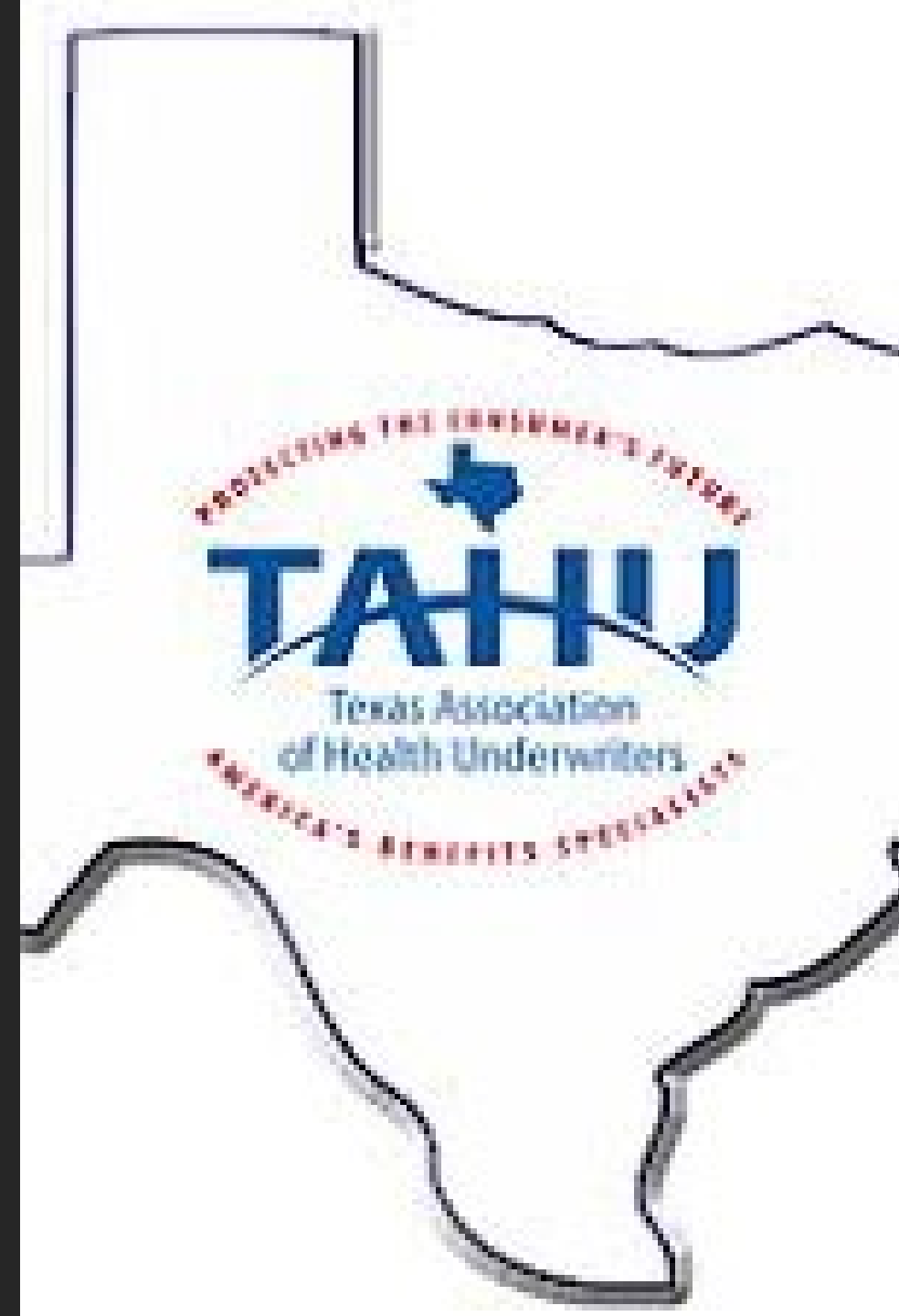
Disclaimer

COVID-19 Town Hall

State of the State Update:

How Texas is Guiding Industry and Helping Small Business

Presented by:
Shannon Meroney, J.D. & Mike Meroney



Who's in Charge in Texas?

Statewide Officials:

Governor
Greg Abbott

Insurance Commissioner
Kent Sullivan



Key Executive Orders from Governor Abbott - Ins & Biz Related

- 3/10/20 - Governor Abbott, TDI Ask Health Insurance Providers To Waive Costs Associated with Coronavirus
- 3/14/20 - Directed the Texas Medical Board (TMB) and the Texas Board of Nursing (TBN) to fast-track the temporary licensing of out-of-state physicians, physician assistants, certain retired physicians, nurses, and other license types to assist in Texas' response
- 3/17/20 - Waives Certain Regulations For Telemedicine Care In Texas to allow telemedicine visits for patients with state-regulated plans to be paid the same as in-office visits
- 3/17/20 - Requests Emergency Designation For Small Business Disaster Loans From U.S. Small Business Administration - long-term, low-interest loans to qualifying businesses
- 3/18/20 - Waives Regulations To Allow Delivery Of Alcohol From Restaurants And To Support Hospitality Industry; allows restaurants to deliver alcoholic beverages with food purchases to patrons, including beer, wine, and mixed drinks

Executive Orders Con't

- 3/21/20 - Executive Order Increasing Hospital Capacity, Announces Supply Chain Strike Force For pandemic Response to expand hospital bed capacity as the state responds
- 3/21/20 - Takes Action to Expand Nursing Workforce waived several regulations to help meet Texas' growing need for nurses
- 3/20/20 - Waives Regulations To Support Pharmacy Operations and Allows Telephonic Consultations - will allow pharmacists to conduct telephonic consultations, and remove regulatory barriers so that pharmacies can operate at full strength
- 3/20/20 - Allows Event Permit Refunds For Businesses Affected by Cancellations; will allow for refunds of application fees paid to obtain a temporary event permit for events cancelled
- 3/20/20 - Announces Approval Of Emergency Designation For Small Business Disaster Loans From U.S. Small Business Administration
- 3/25/20 - Sends letter requesting permission for SNAP recipients to use benefits at restaurants

Executive Orders Con't

- 3/24/20 - Authorizes restaurants to sell bulk retail from distributors to public
- 3/26/20 - Requests 1135 Medicaid Waiver to allow flexibility in Medicaid admin during
- 3/26/20 - Requests faces to interest-free federal loans to pay unemployment claims and the release of funds from Texas account of the federal Unemployment Trust Fund
- 3/25/20 - Waives mileage restrictions on facilities and main hospitals; excludes elective procedures from hospital schedules
- 3/30/20 - Waives medical cost sharing for public safety employees with COVID-19
- 3/29/20 - Announces HHSC request of section 1135 waiver to support health care workforce in Medicaid
- 3/28/20 - Waives licensing regulations for pharmacists, technicians, APRNs
- 4/5/20 - Waives regulations to expand the health care workforce to assist with pandemic
- 4/7/20 - Executes Emergency Rule to allow off-site outpaitn ESRD to serve dialysis patients

Key Bulletins and Waivers from Commissioner Sullivan/TDI

Consumer information: questions about copays, refills, or your care options

Your care options: info re virtual visits, nurse lines, and more health care options

Mental health services: what options are available

Travel insurance: Will travel insurance cover you if your plans change because of COVID-19?

Industry and business FAQ: responses to some of the most common questions from the insurance industry and businesses

Business interruption insurance: Coverage for losses due to epidemics and pandemics vary

Agents and adjusters: Frequently asked questions about licensing issues

Workers' compensation: Division of Workers' Compensation has posted resources for employers, employees, and health-care providers

Key Bulletins Con't

Guidance to insurance industry:

3/10/20 - 95% of the state-regulated market in Texas were waiving consumer costs for medically-necessary testing of COVID-19; many also offered telemedicine at no cost to consumers

3/11/20 - Encourages waiver of cost sharing & coverage of treatment for COVID-19 patients, 90-day Rx approval, relaxation of preauth by insurers
insurers waiving cost-sharing

3/17/20 - Relaxes regulations on telemedicine including billing for state regulated plans

3/23/20 - Relaxes claims handling deadlines, prompt pay, and premium payments

3/24/20 - Relaxes regs on agents licenses, testing, training, emergency and temp licenses

3/25/20 - Expedites life and health filings with new deadlines, submission without check, affidavit or fingerprints

Key Bulletins Con't

Guidance to insurance industry:

3/27/20 - Suspends DWCR requirements for SIBs, DD, MMI, IR recertifications and RMEs and medical billing deadlines

3/27/20 - Allows e-signature for title industry

3/27/20 - TDI reminds providers the Disaster Declaration tolls prompt pay claims deadlines

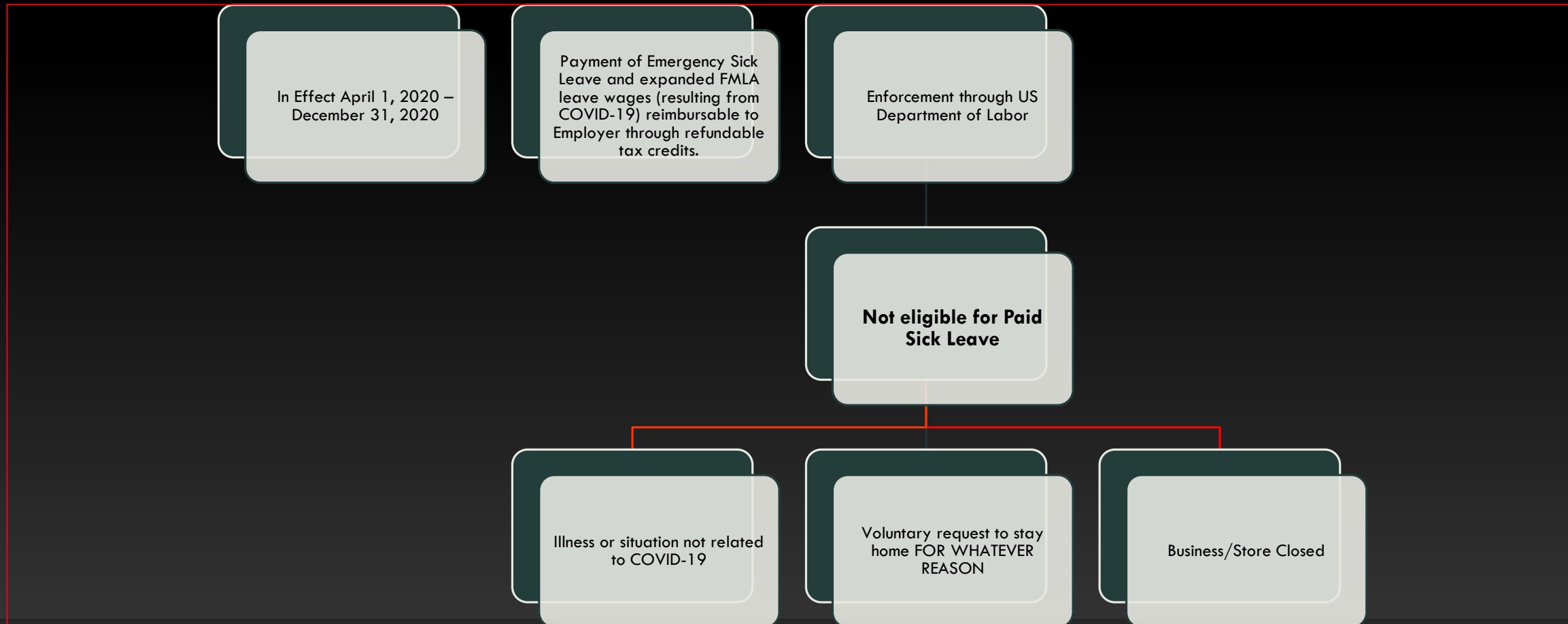
3/30/20 - TDI expedites review of COVID-19 filings

3/3/20 - Alternative health plan coverage for COVID-19 testing

4/1/20 - TDI emergency rule makes it easier to get refills, medications by home delivery

4/1/20 - Coverage for COVID-19 testing and network adequacy

(Q1) FFCRA Paid Leave – the Basics



(Q1) Who is Subject to FFCRA?

All Employers
with <500
Employees

- Integrated Employer Rules (FMLA)
- Includes Non-Profits and Churches/Religious Organizations

Those with <50
employees MAY
be exempt if

- results in small bus expenses/financial obligations exceeding available revenues and cause small business to cease operations;
- Absence of EEs requesting leave would entail substantial risks b/c of EE specialized skills...
- Not sufficient workers able/qualified to perform and Small Business cannot operate at a minimal capacity.

Common Questions as of 4.9.2020

- (Q2) Can an Employer require Employee to provide Diagnosis of COVID-19?
- (Q3) Can an Employer require Employee to provide proof of self-quarantine order?
- (Q4) How can Employer prevent EEs from abusing FFCRA leave?
- (Q5) How does Intermittent Leave work under FFCRA?

Can Employees Stay on Health Plan?

- ❖ Employees on FMLA, including FFCRA Paid Sick or Family leave, **MUST** be kept on the health plan
- ❖ Maintain health plan benefits that were in place prior to the leave
- ❖ Maintain the same employee contribution in place prior to the leave (Cannot charge them 100% of their premiums)

(Q6) What information Needed for Tax Credits?

- Prior to Leave taken – written statement (if possible) from Employee containing:
 - Name;
 - Date of leave requested;
 - COVID-19 qualified reason for request;
 - Certification that unable to work (including telework) because of COVID-19 qualified reason;
 - If Govt quarantine, Identify the government entity requiring the quarantine;
 - If Health related, provide name of health care provider;
 - If to care of another, name of person and issuer of quarantine AND relationship to Employee;
 - School/Daycare closure: name/age of child, school identity and representation that no one else (suitable) can care for child; and
 - IF child is 14+yrs, statement explaining special circumstances needing leave (daytime only).

(Q7) What does the employer do with this information?

- Submit with Quarterly filing (more details to come):
 - Documentation re how Employer calculated amount of leave owed and wages paid
 - Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages.
 - Completed 7200 Forms, advance of Employer Credits Due to COVID-19 if Employer Tax Deposits aren't sufficient to reduce the credit.
- Document Retention: 4 years regardless if leave was granted or denied

Disclaimer: WE ARE NOT TAX ADVISORS so how and what is submitted should be Discussed with your CPA/tax advisor.



Source: Internal Revenue Service, COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs, available at: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Disclaimer on PPP and EIDL Loans

Remember its two programs

WE ARE NOT CPAs, TAX ADVISORS OR LENDING INSTITUTIONS.

***THE FOLLOWING INFORMATION REGARDING SBA LOANS and
SBA BACKED LOANS WAS GATHERED THROUGH SBA SITE ON
APRIL 6, 2020.***

Source: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp#section-header-1>

Paycheck Protection Program Overview

Designed to provide direct incentives for small businesses (<500 EEs) to keep workers on payroll.

Loans will be forgiven as long as loan proceeds are used to cover payroll costs, most mortgage interest, rent and utility costs over the 8 week period after the loan is made AND Employee and compensation levels are maintained.

- At least 75% of forgiven amount must have been used for Payroll.
- Forgiveness reduced if full-time headcount declines or if salaries/wages decrease.
- Loan Payments deferred for 6 months.
- No collateral or personal guarantees are required.

PPP Program available through June 30, 2020.

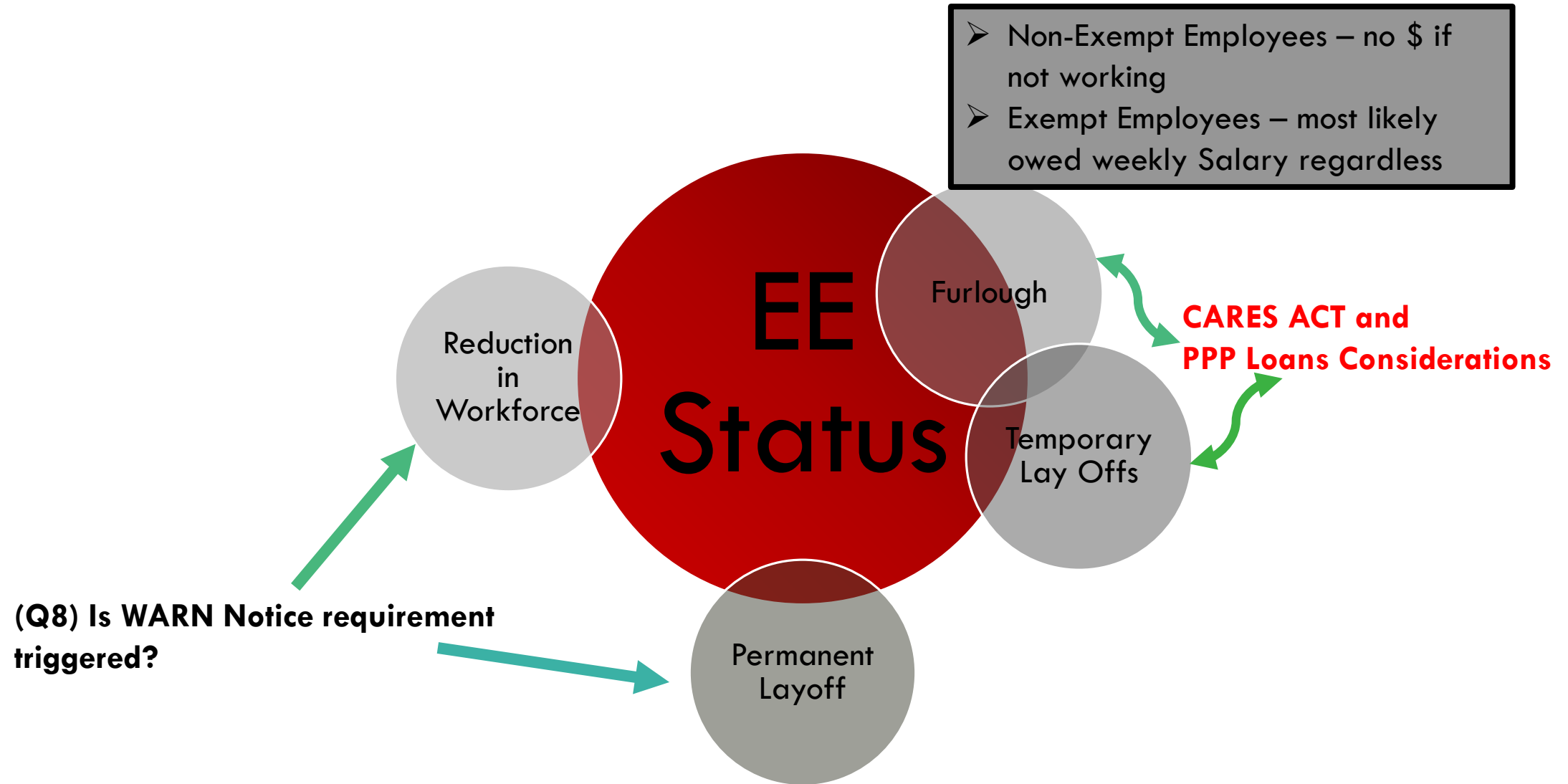
Applications may be made through existing SBA 7(a) lender or SBA approved lender.

- Neither government nor lenders will charge small businesses any fees.



LEGALITY VS. REALITY

HOW VARIOUS LAWS
APPLY IN OUR CURRENT
ENVIRONMENT





(Q9) How are Exempt Employees affected?

- Minimum Salary \$684 a wk (\$35,568 per year) effective 1.1.2020
- General Rule: Entitled to weekly salary in which employee performs work without regard to the number of days or hours worked. Source:
https://www.dol.gov/whd/opinion/FLSA/2009/2009_01_16_18_FLSA.htm
- Pay Reduction must be on a prospective basis and communicated to EE ahead of time.
- Barring FFCRA issues (or company policies to the contrary), could require Exempt EEs to use PTO but if out of PTO, owe the salary.
- **Failure to comply = OT owed for 2 years retroactively b/c exempt status is lost.**

(Q10) Wage and Hour other Considerations

- ❖ Volunteer work for non-profit businesses

- ❖ Teleworking

- ❖ May be a reasonable accommodation
- ❖ Cannot require EEs to cover additional costs incurred by working from home if doing so reduces EE earnings below minimum wage.
- ❖ Must pay Non-Exempt for all hours worked and pay Exempt Full Salary for the Week.

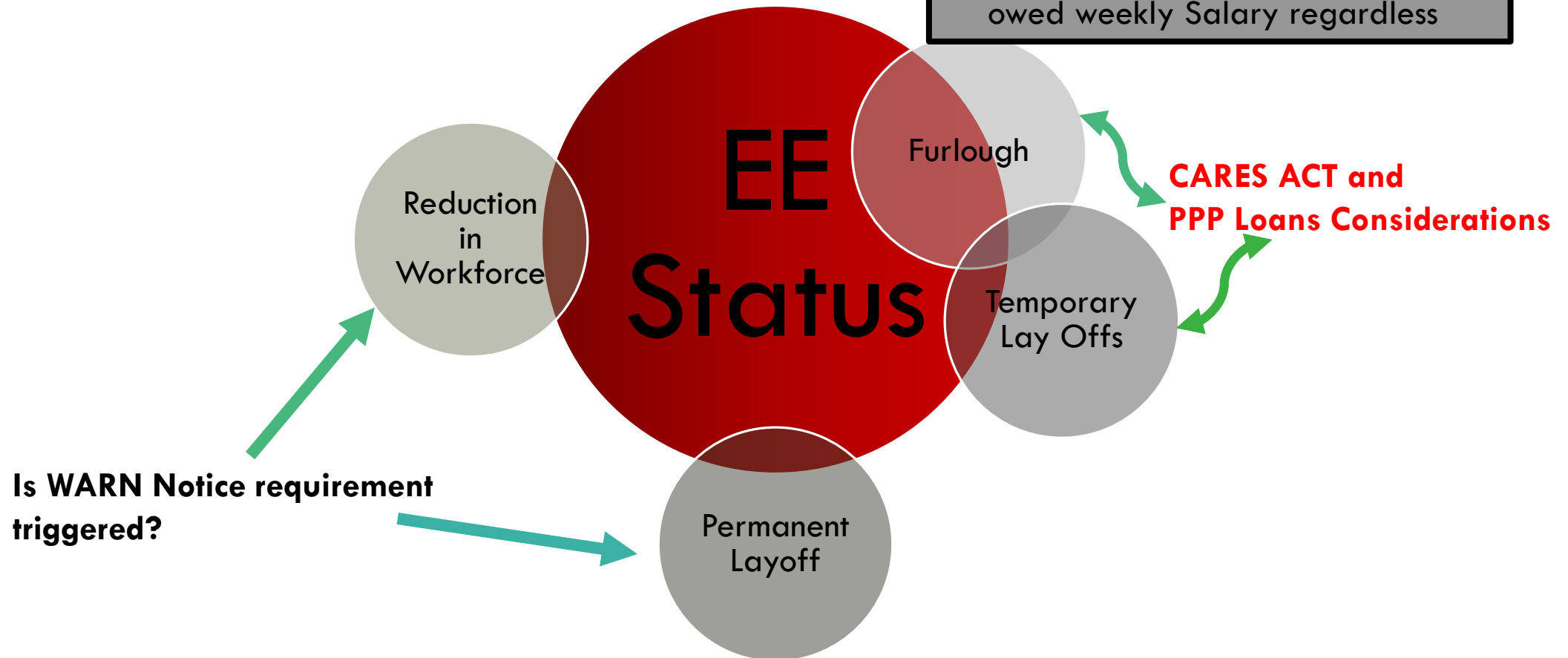
Source: US DOL COVID-19 and the FLSA Questions and Answers;

<https://www.dol.gov/agencies/whd/flsa/pandemic>

- ❖ Moving to 24 hour shifts

[(Q11)Benefit Considerations]

- Non-Exempt Employees – no \$ if not working
- Exempt Employees – most likely owed weekly Salary regardless



(Q1 2) Employer Obligations and Options Various Scenarios

- ❖ Employee is Diagnosed with COVID-19
- ❖ Employee advises had contact with person Diagnosed with COVID-19
- ❖ Employees are considered Essential Workers and sent to work in Hot Zone
- ❖ Employee refuses to follow Employer Mandated Clean Work Station Policies



(Q13) Can we keep employees on the health plan?

Not working FT hours (i.e., 30+ hrs/wk on average)

Laid off?

On FMLA (including emergency paid leave)?

What benefits does our plan have to cover?

Do we need to update our plan document? Provide an SMM?



(Q14) EE Premium Payment Options

**Pay in advance if
leave is foreseen (not
applicable generally
with COVID-19)**

**Periodic payments
via personal check or
payroll deductions if
on paid leave (30
day grace period)**

**Catch-up upon return
from absence (not
preferable)**

(Q15) When do we offer COBRA?

- ❖ Loss of eligibility
- ❖ Due to a reduction in hours or termination of employment
- ❖ Exhaustion of FMLA
- ❖ Remember Texas State Continuation applies to fully-insured plans



Employer Mandate/ACA Reporting

**Applicable
Large
Employers
(50 or
more FTEs
during
2019)**

Reinstatement of coverage: Returns over 13 weeks, new employee. Returns within 13 weeks, reinstate coverage.

Must offer cov'g to at least 95% of FT employees

Cov'g must stay “affordable” for FT employees, even while on leave of absence



Employer Mandate



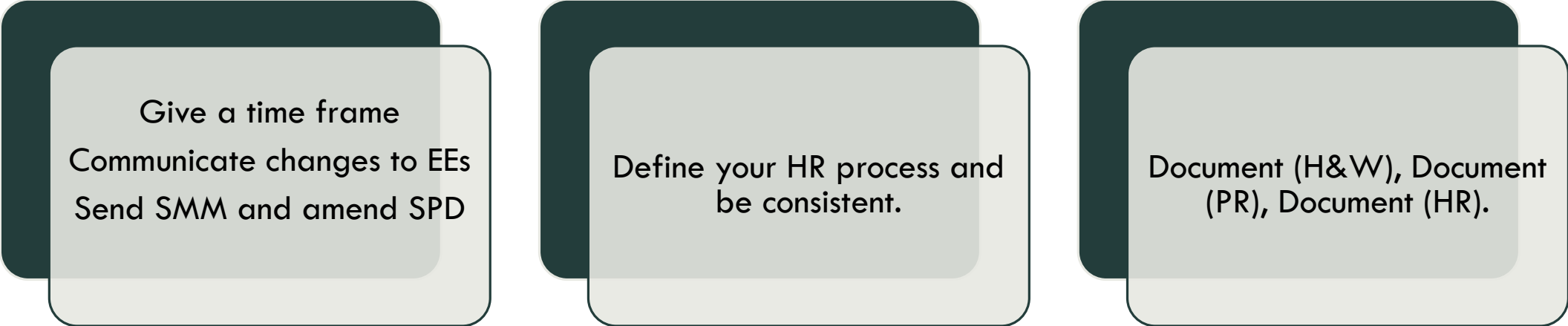
Monthly measurement - if EE drops below 30 hours, coverage could be terminated and COBRA offered



EE previously measured FT after a look-back measurement period, then must remain eligible through the entire stability period.

***If employment is terminated, offer COBRA.**

Short and Long Term Strategies



Give a time frame
Communicate changes to EEs
Send SMM and amend SPD

Define your HR process and
be consistent.

Document (H&W), Document
(PR), Document (HR).

Useful Resources

US DOL WARN Fact Sheet: [https://www.doleta.gov/programs/factsht/WARN Fact Sheet updated 03.06.2019.pdf](https://www.doleta.gov/programs/factsht/WARN_Fact_Sheet_updated_03.06.2019.pdf)

Texas WARN Notices: <https://www.twc.texas.gov/businesses/worker-adjustment-and-retraining-notification-warn-notice>

US DOL Furlough Fact Sheet #70: <https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs>

Internal Revenue Service, *COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs*, available at: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

Department of Labor Wage and Hour Division, *29 C.F.R. Part 826, Paid Leave under the Families First Coronavirus Response Act*, available at: <https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA.pdf>

EEOC: <https://www.eeoc.gov/coronavirus/> &
[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada rehabilitaion act coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)



Questions of the Speakers

Meroney Public Affairs:

Shannon Meroney (512) 731-6615
(mobile)

Shannon@MeroneyPublicAffairs.com

Mike Meroney (512) 589-2531
(mobile)

Mike@MeroneyPublicAffairs.com

<http://meroneypublicaffairs.com/>

The ETC Companies

Alicia Haff (210) 325-2641 (mobile)

Alicia@etctracking.com

<http://theetccompanies.com>

Benefits Compliance Solutions

Sarah Borders (512) 571-2464 (mobile)

sarah@benefitscompliancesolutions.com