Minnesota Department of Employment & Economic Development

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Small Business Notes

In this issue:

U.S. Occupational Safety and Health Administration (OSHA) Releases New Guidance for Employers on Recording COVID-19 Cases

On May 19th, 2020, OSHA published its new "Revised Enforcement Guidance for Recording Cases of Coronavirus Disease (COVID-19)." Under OSHA recordkeeping regulations, employers with more than 10 employees are required to keep records of workplace related illnesses and injuries. This new Guidance states that a COVID-19 case is a recordable event under those regulations if:

- The case is a confirmed COVID-19 case under the definition put forward by the Centers for Disease Control. (That definition is that at least one respiratory sample from an affected person tested positive for the virus that causes COVID-19.)
- The case is work related under the definition found in 29 CFR 1904.5. (That definition presumes work relatedness for all illnesses resulting from events or exposure in the workplace unless an exception applies.)
- The case involves one or more of the general reporting criteria of outcomes of the illness. (The rule gives as examples death, loss of consciousness, medical treatment beyond first aid, time away from work.)

Because of the difficulty of determining when an illness is work related in circumstances like the current ones where the disease is widespread, OSHA has given its Compliance Safety and Health Officers discretion in determining when a case of COVID-19 is work related. Factors in favor of such a determination include:

- Several cases develop among workers who work in close proximity and there is no alternative explanation.

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- The disease was contracted after lengthy, close exposure to a co-worker or customer with a confirmed case of COVID-19 and there is no alternative explanation.

- The disease was contracted after frequent, close exposure to the general public in a community with ongoing transmission and there is no alternative explanation.

Factors arguing against a case being work related include:

- The affected employee was the only worker to contract the disease and the employee's job duties did not include frequent contact with the public regardless of the rate of community spread of the disease.

- The affected employee, outside the workplace, closely and frequently associated with someone who has COVIV-19, is not an employee, and exposed the worker to the COVID-19 virus during the period of likely infection.

In addition to recordkeeping being an OSHA requirement, employers should keep in mind that such records may be necessary in situations where an employee files a worker's compensation claim for on-the-job contracting of the COVIV-19 virus.

CDC Updates Webpage On How Coronavirus Spreads

On June 1 the U.S. Center for Disease Control (CDC) updated its "How COVID-19 Spreads" webpage to make clear that the main mode of transmission of the virus is person-to-person exposure to respiratory droplets of an infected person through coughing, sneezing, or talking. The virus spreads more efficiently than the influenza virus but not as efficiently as measles which is considered a highly contagious disease. The update reiterates the best practices for avoiding the disease: social distancing of six feet or more, frequent hand washing for at least twenty seconds, and disinfecting of touched surfaces. The take-away for both individuals and businesses is that the best way of avoiding the virus remains the diligent application of these best practices.

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Federal Financial Institutions Regulators Publish Principles to Guide Making Small Dollar Loans

On May 20th the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency, and the National Credit Union Administration published "Interagency Lending Principles for Offering Responsible Small Dollar Loans." The principles – which apply to banks and credit unions but not to non-bank lenders – recognize "the role that responsibly offered small dollar loans can play in helping customers meet their ongoing needs for credit due to temporary cash flow imbalances, unexpected expenses, or income shortfalls, including periods of economic stress…"

According to the principles, "responsible" small dollar loans should have the following characteristics:

- A high percentage of borrowers who successfully repay the loans according to the original terms. This is, the principles state, a key indicator of affordability, eligibility, and appropriate underwriting.

- Safeguards to minimize adverse customer outcomes like cycles of debt and additional borrowing. Among such safeguards would be timely and reasonable workout strategies.

- Structures and underwriting standards that enhance a borrower's eligibility, such as the adoption of underwriting standards using non-traditional measures of credit worthiness like levels of account activity.

- Loan pricing which is reasonably related to the lender's risks and costs.

- Marketing and disclosures in a clear, conspicuous, and consumer friendly manner.

These principles do not break new ground but are, rather, a packaging together of current legal powers of banks with possible new processes or technology and internal actions by lenders to add small dollar loans to their assets while meeting both short term and longer term consumer needs. The timing of the joint publication is significant as it comes when loss of markets, supply chain disruptions, and changes in consumer behavior have created economic stress and difficulty for small businesses.

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Payroll Protection Program Loans: What Constitutes a "Completed Application"

On May 6, 2020, the federal Consumer Financial Protection Bureau published a Compliance Aid directed to lenders making Payroll Protection Program loans under the CARES Act. Among the issues addressed in that Aid were the timing and completeness of applications submitted for PPP loans. Specifically, the Aid addressed the question of whether a potential borrower's application is deemed "completed" after the lender has received it but before the lender has received from the SBA either a loan number or a statement on the availability of funds—thereby triggering the requirement under RegB that the lender provide notice of action to the borrower within 30 days as required by 12 CFR 1002.9(a)(1).

The Aid answers that an application submitted is not considered complete under RegB until the lender receives a loan number from the SBA or a notice on the availability of funds. The Aid notes that under RegB an application is completed when the lender has received "all the information that the (lender) regularly obtains and considers in evaluating applications for the amount and type of credit received." That information includes "any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the loan or collateral." PPP lenders have delegated authority from the SBA to approve a loan but must have a loan number from the SBA in order for the SBA to guarantee the loan.

The answer concludes that a lender must use "reasonable due diligence" to collect the information needed to complete the application.

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