
Welcome!

The webinar will begin shortly...

While you wait, here are some fast facts about HR outsourcing:

3:00

minutes

until the webinar starts

Companies that outsource HR to a professional employer organization (PEO) are **50% less likely** to go out of business.



"Professional Employer Organizations: Keeping Turnover Low & Survival High" McBassi & Company, 2014

The webinar will begin shortly...

While you wait, here are some fast facts about HR outsourcing:

2:00

minutes

until the webinar starts

Companies that use a professional employer organization (PEO) are **28% more satisfied** with their available selection of employee benefits.



"PEOs: Taking Outsourcing a Step Beyond Pays off for Small & Mid-Sized Companies" Aberdeen Group, 2011

The webinar will begin shortly...

While you wait, here are some fast facts about HR outsourcing:

1:00

minute

until the webinar starts

G&A Partners has an average Net Promoter Score (NPS) that is **35x higher** than that of the HR outsourcing industry.



"NPS Benchmarks for B2B" Inavero, 2014



⊕ The CARES Act & What it Means for Your Business

*Groom Law Group
Seth Perretta & Malcolm Slee, Principals*

Before we begin...

- + We are recording this webinar.** The on-demand recording will be available on our website by the end of the day.
- + If at any time during the presentation you have a question you'd like us to answer, send it to your G&A Partners Client Advocate.**

About G&A Partners

G&A Partners delivers **world-class HR solutions** that help build thriving businesses and make a difference in the lives of the clients and employees we serve.

G&A Partners has a local presence in the following markets:



Agenda

- + An overview of the Act and it affects
- + Practical case studies
- + Differences between layoffs and furloughs
- + Answers to your most frequently asked questions



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Operating Your Business During the COVID-19 Crisis

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Today's Presentation

- Focus is on strategic decisions, not technical requirements
- Overview of new COVID-19 legal requirements and programs
- “Jimmy’s Deli” case study

Families First Coronavirus Response Act

- **Expanded FMLA Leave / Paid Sick Leave**
 - Generally requires employers with fewer than 500 employees to provide up to twelve weeks of unpaid and paid leave under the Family and Medical Leave Act (“FMLA”) for certain employees unable to work to care for a child.
 - Also requires employers with fewer than 500 employees to provide up to 80 hours of emergency paid sick leave related to certain specified coronavirus events.

Families First Coronavirus Response Act

- **Tax Credits for Expanded FMLA Leave / Paid Sick Leave**
 - Employer can claim a refundable tax credit equal to 100 percent of the “qualified family leave wages” that the employer pays during a quarter under the Emergency Family and Medical Leave Expansion Act. (Caps apply.)
 - Employer can claim a refundable tax credit equal to 100 percent of the “qualified sick leave wages” that the employer is required to pay during a quarter under the Emergency Paid Sick Leave Act. (Caps apply.)

CARES Act

- **Paycheck Protection Program Loans**
 - New SBA Section 7(a) loan program for small business concerns and qualifying other business concerns (generally companies with less than 500 employees are eligible).
 - Loan maximum is 2.5 times average monthly “payroll costs,” capped at \$10 million.
 - Some or all of loan may be eligible for forgiveness, but forgivable amount is reduced if employer cuts employee headcount and/or wages.

CARES Act

- **Deferral of Payment of Social Security Taxes (Employer Portion)**
 - May defer employer share Social Security tax deposits due for the period beginning on date of enactment through close of 12/31/2020.
 - Deferred taxes due as follow: 50% by 12/31/2021; 50% by 12/31/2022.

CARES Act

- **Employee Retention Tax Credit**
 - Applies if business has its operations fully or partially suspended under government orders due to COVID-19, OR has a decline of at least 50% in gross receipts compared to the same calendar quarter in the prior year.
 - Provides for 50% refundable tax credit on qualified wages paid (with qualifying wages capped at \$10,000 per quarter, i.e., \$5,000 credit per quarter).
 - (Qualified wages defined differently for employers with less than 100 employees vs. more than 100 employees).

Case Study- Jimmy's Deli

- Jimmy's Deli is a restaurant and take-out sandwich store located in Tuscon, Arizona. It is privately owned by Jimmy Brown. Jimmy has 48 employees. They include salaried managers, hourly assistant managers, cooks, tipped waiters and hourly busboys.
- On March 25, 2020, the Mayor signed an ordinance directing all restaurants to close their dining rooms to customers. Take-out services could continue. Because of the huge disruption to his operations (dine-in revenue represents 80% of his business), Jimmy felt obligated to furlough 38 of his hourly employees.
- Many of his employees have health benefits.
- He uses G&A's PEO – all of his employees are paid by G&A and G&A administers his health and ancillary benefits.

Scenario # 1- Try and “Ride it Out”

- Jimmy has heard about recent federal action providing relief to employers. He thinks his current staff is one of his business’ greatest assets, and anticipates that when the COVID-19 pandemic ends, the labor market will tighten up again. Therefore, he decides to try and utilize the relief programs, and to bring the 38 employees back from furlough and pay them salaries, even though some of them will have no work with the dining room closed indefinitely.

“Ride it Out” - Expanded FMLA Leave / Paid Sick Leave

- Jimmy’s generally would be subject to eFMLA/PSL because it has fewer than 500 employees.
- However, since Jimmy’s has less than 50 employees, it could claim an exemption from the requirements **for an employee** if Jimmy determines:
 - Providing eFMLA/PSL would result in Jimmy’s expenses and financial obligations exceeding available business revenues and causing it to cease operating at a minimal capacity;
 - The absence of employee(s) requesting eFMLA/PSL would entail a substantial risk to the financial health or operational capabilities of Jimmy’s because of their specialized skills, knowledge of the business, or responsibilities; or
 - There are not sufficient workers who are able/available to cover the employee(s) requesting eFMLA/PSL, and those labor or services are needed for Jimmy’s to operate at a minimal capacity.

“Ride it Out” - **Expanded FMLA Leave / Paid Sick Leave**

- Jimmy decides to try and comply with eFMLA/PSL.
- Two issues immediately arise:
 - Kristina, one of the assistant managers who no longer is coming to the restaurant because she has no work to do, tells Jimmy she wants to apply for eFMLA because she has to care for her eight-year old daughter whose school has been shut down.
 - Larry, one of the cooks, tells Jimmy he wants to apply for PSL because he has to care for his 16-year old son, who went to a party last weekend with a classmate who has now been diagnosed with COVID-19. He called his son's doctor and the doctor advised that his son should self-quarantine for two weeks.

“Ride it Out” - Expanded FMLA Leave / Paid Sick Leave

- Kristina is likely not eligible for eFMLA-
 - DOL guidance suggests that if an employee does not have work to perform, she may not use eFMLA/PSL for the hours that she is no longer scheduled to work. This is because she is not prevented from working those hours due to a COVID-19 qualifying reason.
 - Therefore, if Jimmy’s allowed Kristina to take eFMLA leave, it likely would not qualify for the federal tax credit.
 - Note that Jimmy’s is paying Kristina anyway, so she’s no worse off. But if Jimmy’s tries to re-characterize her comp as paid eFMLA, it might have a problem with the IRS.
- Larry appears eligible for PSL-
 - Caring for an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 is a valid basis for obtaining PSL.
 - Jimmy’s should ask Larry to provide documentation of the health care provider’s advice, in case it claims the tax credit and needs to substantiate it for the IRS.

“Ride it Out” - Tax Credits for Expanded FMLA Leave / Paid Sick Leave

- Jimmy’s can claim a refundable tax credit equal to 100% of the “qualified sick leave wages” they pay to Larry.
- Required sick pay is calculated based on Larry’s regular rate of pay or, if higher, the applicable minimum wage rate, but because the leave is needed to care for a child, it is based on 2/3 his regular rate of pay (other types of leave may be based on 100% of pay).
- Because the PSL is needed to care for a child, it is capped at \$200/day (other types of leave may be capped at \$511/day).
- Therefore, the tax credit Jimmy’s can take is also capped at \$200/day.
- If Jimmy’s were to give Larry PSL pay in excess of the amount required by federal law, it won’t get a tax credit for that excess amount.

“Ride it Out” – Paycheck Protection Loan

- Jimmy’s will almost certainly qualify for a paycheck protection loan from SBA.
- SBA guidance is clear that the fact that Jimmy’s employees are paid through G&A has no impact on its ability to get a loan.
- Interest rate would be 0.5% and payments are automatically deferred for six months.
- Jimmy’s maximum loan amount will be based on the average total monthly payments of “payroll costs” during the 1-year period before date the loan is made.
- The loan can be used for payroll costs (including benefits), interest on mortgages, rent on leases, and utility payments.
- If Jimmy’s uses the loan amount only for the items listed above for the 8 weeks after getting the loan, and maintains its workforce and does not cut salaries, it has an excellent chance of having the entire loan forgiven.
- This is even though Jimmy’s briefly furloughed its employees- by bringing them back, it has “cured” the issue under the law.

“Ride it Out” – Paycheck Protection Loan

- If Jimmy’s takes a PPP-
 - The amounts paid as PSL wages to Larry will not be taken into account.
 - Jimmy’s cannot utilize **Deferral of Payment of Social Security Taxes (Employer Portion)** if the PPP loan is forgiven.
 - Jimmy’s cannot utilize **Employee Retention Tax Credit**.

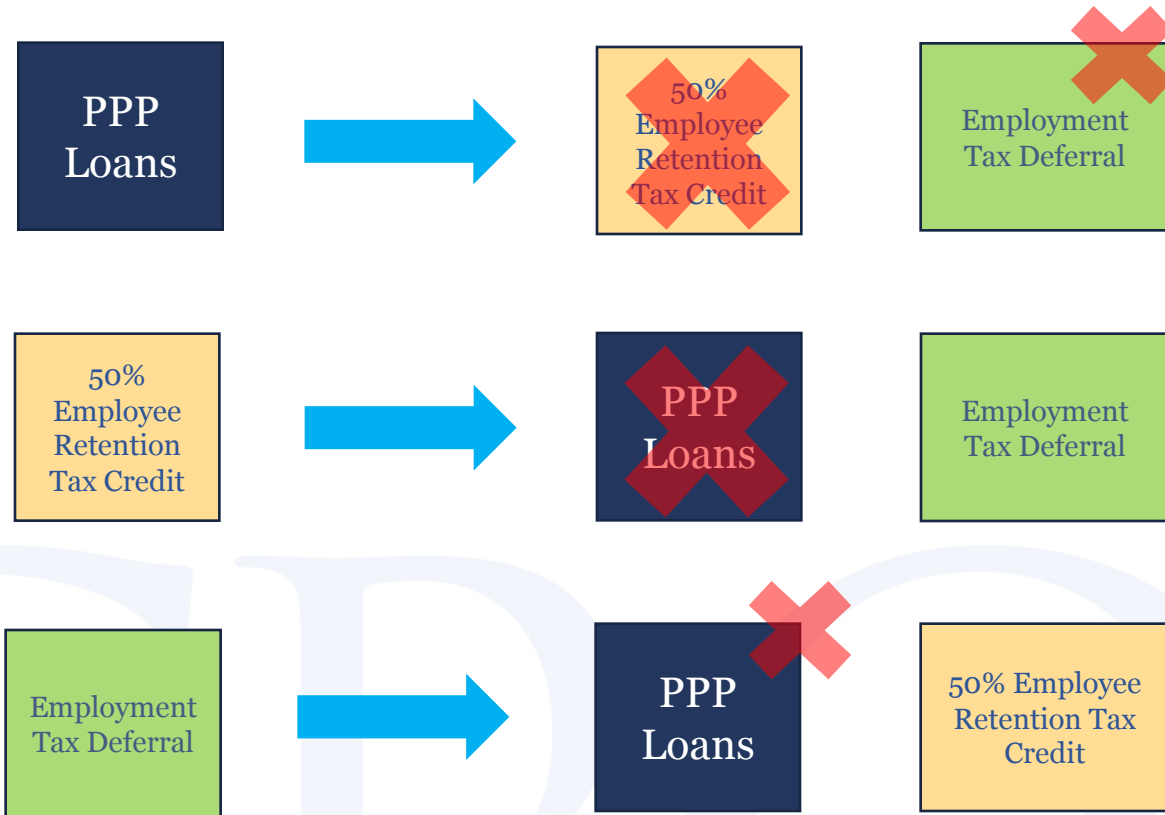
“Ride it Out” - Deferral of Payment of Social Security Taxes (Employer Portion)

- Jimmy’s can defer payment of the employer share of Social Security tax deposits effective immediately, through 12/31/2020.
- 50% due 12/31/2021, 50% due 12/31/2022.
- The fact that wages are paid through G&A should not be a problem.
- However, if Jimmy’s defers payment of the employer share of Social Security tax deposits, it cannot seek forgiveness of a **Paycheck Protection Loan**.

“Ride it Out” -Employee Retention Tax Credit

- Jimmy’s should qualify for this tax credit, as their operations were partially suspended under government orders.
- Because they have less than 100 full-time employees, they should be able to take the maximum credit (50% of qualified wages, capped at \$10,000 per quarter per employee).
 - Employers with more than 100 FTEs can only take the credit for employees not performing services due to COVID-19-related circumstances
- Qualified wages include employer cost of health care.
- PSL wages paid to Larry will not be subject to the credit.
- Jimmy’s relationship with G&A will not impact their ability to get the credit.
- The credit is not available if Jimmy’s obtains a **Paycheck Protection Loan**.

Employer Calculus



“Ride it Out” – Other Considerations

- Jimmy’s employees will not be eligible for UI benefits.
- If Jimmy had over 50 full-time employees, would need to consider whether to maintain coverage under ACA employer mandate rules.

Scenario # 2- Stick with Furlough

- Jimmy is concerned about the uncertainty regarding how long this crisis will continue. In order to be conservative, he decides to stick with his prior decision to furlough the majority of his employees, and operate his take-out. However, he wants to utilize the federal relief to the maximum amount for his business's benefit, and he also wants to try and do right by his employees.

“Furlough” - Expanded FMLA Leave / Paid Sick Leave

- Same analysis- Jimmy’s generally would be subject to eFMLA/PSL because it has fewer than 500 employees. (Furloughed employees are included in employee count.)
- Same rules apply with regard to claiming an exemption, as well.

“Furlough” - **Expanded FMLA Leave / Paid Sick Leave**

- Jimmy decides to try and comply with eFMLA/PSL.
- Two issues immediately arise:
 - Kristina, one of the assistant managers who has been **furloughed**, tells Jimmy she wants to apply for eFMLA because she has to care for her eight-year old daughter whose school has been shut down.
 - Larry, one of the cooks who **hasn't been furloughed**, tells Jimmy he wants to apply for PSL because he has to care for his 16-year old son, who went to a party last weekend with a classmate who has now been diagnosed with COVID-19. He called his son's doctor and the doctor advised that his son should self-quarantine for two weeks.

“Furlough” - Expanded FMLA Leave / Paid Sick Leave

- Kristina is not eligible for eFMLA-
 - DOL guidance suggests that if an employee is furloughed because there is not enough work or business, she is not entitled to then take PSL or eFMLA.
 - Therefore, if Jimmy’s allowed Kristina to take eFMLA leave, it likely would not qualify for the federal tax credit.
 - Kristina may be eligible for UI benefits (like other furloughed employees).
- Larry appears eligible for PSL-
 - Same analysis as before.
 - Jimmy’s should be eligible for the exact same tax credit with regard to his PSL wages.

“Furlough” – Paycheck Protection Loan

- Jimmy’s will almost certainly qualify for a paycheck protection loan from SBA under the same terms previously described.
- However, he is unlikely to qualify for full loan forgiveness because of the significant reduction to the majority of his employees’ wages.
- It may still make sense for him to get a PPP loan given the very favorable interest rate and automatic six-month deferral.
- If the pandemic lightens and he is able to bring employees back to work, it may increase the amounts he is able to get forgiven.
- As discussed before, if Jimmy’s takes a PPP loan:
 - The amounts paid as PSL wages to Larry will not be taken into account for purposes of the loan.
 - Jimmy’s cannot utilize **Deferral of Payment of Social Security Taxes (Employer Portion)** if any portion of the PPP loan is forgiven.
 - Jimmy’s cannot utilize **Employee Retention Tax Credit**.

“Furlough” - Deferral of Payment of Social Security Taxes (Employer Portion)

- Jimmy's can defer payment of the employer share of Social Security tax deposits effective immediately, through 12/31/2020.
- The amount deferred will obviously be less, since he will be paying less employees.
- However, if Jimmy's defers payment of the employer share of Social Security tax deposits, it cannot seek forgiveness of a **Paycheck Protection Loan**.
- Since Jimmy's likely will not qualify for full forgiveness of the loan anyway, perhaps it should consider applying for the PPP loan, forgo applying for forgiveness, and use the deferral of SS taxes for the employees that are still being paid.

“Furlough” - Employee Retention Tax Credit

- Jimmy’s should qualify for this tax credit, as their operations were partially suspended under government orders.
- The amount of the credit will obviously be less (since wages will be less).
- Again, the credit is not available if Jimmy’s obtains a **Paycheck Protection Loan**.
- The primary analysis for Jimmy’s is whether it would be better to take the loan (recognizing that some amount will likely have to be repaid) or whether the tax credit will reduce his costs sufficiently to help him stay in business.

“Furlough” – Other Considerations

- Jimmy’s furloughed employees will quite possibly be eligible for UI benefits:
 - Arizona (like most, if not all states) is providing UI benefits to individuals who’s employer has permanently or temporarily ceased or drastically reduced operations due to COVID-19
 - The CARES Act provides 100% funding by federal government of certain enhanced benefits related to COVID job interruptions (including furlough):
 - 100% funded for first week of UI benefits if no waiting period
 - Up to an additional \$600/week
 - Up to an additional 13 weeks
 - CARES Act also covers 100% of state’s costs regarding “short-time” compensation programs
- **If Jimmy had over 50 full-time employees, would need to consider whether to maintain coverage under ACA employer mandate rules.**

Scenario # 3- Complete Shutdown

- Jimmy is very pessimistic that the COVID-19 crisis will end any time soon. He decides to lay off all his employees and cease the restaurant's operations. He won't entirely dissolve the company yet, in case things do turn around, and wants to utilize whatever federal relief he can.

“Shutdown” - **Expanded FMLA Leave / Paid Sick Leave**

- Once Jimmy’s closes down its worksite, no employee is eligible for eFMLA/PSL.
- If Jimmy’s closed while an employee was on PSL or eFMLA, it must pay for any PSL/eFMLA used before the closure. But as of the date the worksite closes, that employee loses eligibility for PSL or eFMLA.
- Note that this would still be the case even if Jimmy’s had definitive plans to reopen in the future.
- Obviously, Jimmy’s would not be eligible for the related eFMLA/PSL tax credits.

“Shutdown” – Paycheck Protection Loan

- Jimmy’s will almost certainly qualify for a paycheck protection loan from SBA under the same terms previously described.
- However, he is very unlikely to qualify for full loan forgiveness because of the elimination of his workforce.
- The question for Jimmy is likely whether he can afford to take the loan given that he has no source of revenue. However, as noted, the loan can be used to pay interest on mortgages, rent, and utilities. Therefore, if he wants to keep the restaurant property while he waits to see if things turn around, the loan could make sense.
- As discussed before, if Jimmy’s takes a PPP loan, Jimmy’s cannot utilize **Deferral of Payment of Social Security Taxes (Employer Portion)** if any portion of the PPP loan is forgiven, and Jimmy’s cannot utilize the **Employee Retention Tax Credit**. However, these potential benefits are no longer available to him if he’s no longer paying employees. So the loan may be his only real option.

“Shutdown” - Deferral of Payment of Social Security Taxes (Employer Portion)

- No longer applicable.

“Shutdown” - Employee Retention Tax Credit

- No longer applicable.

“Shutdown” – Other Considerations

- Jimmy’s former employees should be eligible for UI benefits.
- Jimmy no longer has benefit obligations.

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Questions



We will now be answering your most frequently asked questions.

If we don't answer your question during this Q&A session, please reach out to your G&A Partners Client Advocate.

Resources

For additional resources, including
our on-demand webinars, visit:
gnapartners.com/resources