
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...

2:00

minutes

until the webinar starts

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

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...

1:00

minute

until the webinar starts

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

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



+ Tips for Reopening and Remaining Funded

Brian Nugent, Akerman LLP

Before we begin...

- + We are recording this webinar.** The on-demand recording will be available on our website by the end of the week.
- + If at any time during the presentation you have a question you'd like us to answer, send it to us using the "Questions" tab in the GoToWebinar menu bar.**

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

- + Things to consider before bringing employees back to work
- + Best practices for reopening your business
- + Consequences of layoffs or furloughs after receiving funding
- + What to know before seeking forgiveness



Brian Nugent, Esquire
Akerman LLP

Poll Questions

Questions Employers Need to Answer

- + **When** – When can employees return to work?
- + **What** – What are the rules when employees return?
- + **Who** – Who can be at work and at what times?
- + **Where** – Where can employees be at work? Are certain public areas off limits?
- + **How** – How do employees ingress and egress?
How do employees interact with each other once in the workplace?

What are the Rules of Engagement?

- + Most states have issued a state-wide and local orders or local exceptions
 - + Two types of state-wide orders:
 - + Exceptions contained in the “Return to Work” order
 - + Florida Order (“Re-Open” Provisions of Executive Order N/A to Dade, Broward, and Palm Beach Counties); See Executive Order No. 20-11.
 - + Exceptions available to local counties or municipalities by application or other process
 - + Texas(https://gov.texas.gov/uploads/files/press/EO-GA-8_expanded_reopening_of_services_COVID-19.pdf) (Austin Exception)
 - + Colorado Order (CO Public Health Order 20-28; Executive Order D 2020-044)
 - + Be sure to consult state and local orders on “Rules of Engagement”
-

Process and Procedure for Returning to Work – Sources of Information

- + Center for Disease Control (CDC): <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- + OSHA: Federal and State: <https://www.osha.gov/Publications/OSHA3990.pdf>
- + EEOC: <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>
- + State Guidance – Examples:
 - + Texas: <https://gov.texas.gov/coronavirus>
 - + Florida: <https://www.flgov.com/wp-content/uploads/covid19/Taskforce%20Report.pdf>

Employer Specific Issues

State or local orders – issues to consider

- + Size of the “employer”
 - + Colorado example
 - + Certain Rules Apply to Employers with “50 or More Employees”
 - + Other Rules Apply to Employers with “25 or More Employees”
 - + Type of business
 - + “Essential” v. “Non-Essential”
 - + Location of the business: Multi-tenant office high rise v. single tenant, stand-alone building
 - + Type of workers: Examples include “Essential Workers,” and “Vulnerable Workers”
 - + Teleworking ability: Apply to each type of business and unique circumstances
-

Considerations for Altering Operations in Light of COVID-19

- + Altering employee schedules to reduce the number of individuals physically in the workplace at one time, while still allowing the business to operate and complying with any applicable social distancing orders;
- + Policies related to employees coming and going from work during their breaks, including whether an employee will be required to stay at the workplace for his or her entire shift to minimize the introduction of contamination to the workplace; and
- + Reconfiguring worksites to meet social distancing guidelines as well as reviewing how to adjust employee schedules to reduce the number of individuals physically in the workplace at one time

Childcare and Extended FMLA

- Q. How does the eFMLA apply as to summer camps and other day care facilities relied on by parents under normal circumstances during the summer?**
- A.** Leave under the eFMLA is available to employees who are unable to work or telework because of a need to care for a son or daughter whose “place of care” is closed or a child care provider is unavailable due to a COVID-19 related reason at any time between April 1, 2020 and December 31, 2020. A “place of care” as any physical location in which care is provided for a child, including summer camps, summer enrichment programs, and respite care programs.
-

Childcare and Extended FMLA

+ Example:

- + An employee planned to send their child to a summer camp for six weeks, but the camp decided cancelled the summer session due to concerns over COVID-19. Assuming the employee had not previously exhausted their FMLA, eFMLA is available to the parent for the time the child was to attend summer camp.

Workers in the Workplace Issues

Q. What communications should an employer consider before “re-opening” a worksite?

- + Schedule modifications
- + PPE requirements
- + Social distancing requirements
- + Any state or local guidelines applicable to the worksite
- + Physical worksite modifications
- + Required screening (e.g., temperature checks)

Workers in the Workplace Issues

- Q. Does the type of business affect such advice? (Retail, Salons, Restaurants, Offices)**
- A. Yes. Many state and local orders have specific guidelines and requirements for different types of businesses. Communications to employees should be clear about the guidelines and requirements imposed on particular industries to ensure compliance.
- Q. Should employers consider providing employees a consent or disclaimer stating that they understand the risks of returning to the workplace?**
- A. Yes. Any acknowledgement or consent should comply with all state and local laws, as well as explain or incorporate any new policies, as well as provide for specific consent or acknowledgment to any testing, such as temperature checks.

Temperature Screening

- Q. When can an employer take employees' temperatures before entering the workplace?**
- A. EEOC guidance permits employers to subject employees to temperature checks before arriving at work, but only where all employees are tested, and only as long as COVID-19 remains widespread in the community, as assessed by the CDC or state or local health authorities.
- Q. Should employers take temperatures of employees?**
- A. Each employer will need to make this decision based on its own needs. Not all persons with COVID-19 exhibit a fever. However, temperature checking can help an employer meet its general duty under OSHA to provide a workplace free from recognized hazards likely to cause death or serious physical harm.

Temperature Screening

- Q. Should employers keep records of employee temperatures, and if so, how should it maintain them?**
- A. Employers should consider whether it is necessary to retain records related to employees' temperatures, or whether those records need to be tied to particular employees. Often, it is not necessary to retain information for employees who "passed" the temperate check. If the employer does retain records, all records must comply with all ADA requirements and should be kept separately for each employee in a location separate and apart from their personnel file, and treated as a confidential medical record.
- Q. Who should administer employee temperature checks?**
- A. Where an employer has decided to conduct temperature checks at the workplace, employer should either retain a medical professional to administer the temperature checks or should select employee who has been trained on ADA requirements and employee privacy. The employer should also ensure the employee follows protection measures applicable to individuals at very high risk.
-

Temperature Screening

- Q. Can taking an employee's temperature be a “next step measure” of symptoms monitoring?**
- A. EEOC guidance permits an employer to send an employee home if the employee displays any symptom associated with COVID-19, including a cough, sore throat, or chills. We would recommend against taking the employee's temperature, and instead sending the employee home.
- Q. What are the liability risks to employers when taking employee temperatures?**
- A. Depending on the type of test, there are data privacy concerns. Where employers maintain records of temperatures, the employer may open itself to liability under state or local biometric laws. Additionally, employers in certain jurisdictions may be required to compensate non-exempt employees for the time they are waiting to be screened.
-

Testing for COVID-19

- Q. Can an employer require employees be tested for COVID-19 before returning to work?**
- A. Yes. The EEOC permits an employer to administer COVID-19 tests to employees on the ground that an individual with COVID-19 poses a direct threat to the health and safety of others at the workplace. Employers should ensure all employees in the same positions are tested, and that the tests are accurate and reliable, under guidance issued by the FDA and CDC.
- Q. How should an employer test for COVID-19?**
- A. If an employer requires COVID-19 testing, the employer must administer the tests to employees or pay for the testing.
- Q. Can an employer condition a job offer on successfully completing a COVID-19 test?**
- A. Yes. An employer may withdraw a job offer if the employee tests positive for COVID-19 and cannot safely enter the workplace.
-

Vulnerable and At-Risk Employees

- Q. Can an employer require a higher risk worker or member of a “vulnerable group” to return to work?**
- A. Federal and state guidelines strongly discourage this practice. Employers should endeavor to make all reasonable accommodations to allow members of a vulnerable group to work remotely. And be aware of State Orders that may prohibit an Employer from compelling a Vulnerable Person from Returning to Work.
- Q. Can an employer prohibit an employee from returning to work if a member of their household has tested positive for COVID-19?**
- A. Where an employee has had exposure to a person who has tested positive for COVID-19, an employer may treat that employee as if employee has a confirmed case of COVID-19 and can require the employee to stay home until 14 days after the date of last exposure to a person who is being treated for COVID-19.

Personal Protective Equipment (PPE) Requirements, Recommendations and Policies

+ OSHA PPE requirements

- + Employer must determine the level of risk that employees will need to be within six feet of known cases of COVID-19

+ What about employees who want to bring their own PPE?

- + Must be careful with how this is addressed
- + OSHA anti-retaliation provisions
- + OSHA allows employers to reimburse employees for PPE
- + OSHA permits employees to volunteer to use their own PPE as long as employer ensures it is adequate
- + Be aware of state specific guidance (i.e. Delaware requires employers to provide their employees with face coverings)

Occupational Risk Pyramid
for COVID-19



OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Personal Protective Equipment (PPE) Requirements, Recommendations and Policies

- + **Q. Are masks always required, even where an employer can maintain six (6) feet of distance between employees?**
- + It depends; it is a state by state analysis as determined by local order and industry
 - + Some states do not require masks where six (6) feet of distance between individuals can be maintained
 - + Many other states require facemasks for all, or some, industries regardless of the distance maintained: Colorado (all employees of critical business or who come into contact with the public), Arizona (barbers and cosmetologists), Illinois (essential businesses and manufacturers), New Jersey (all employees of restaurants, manufacturing, warehousing)
 - + If distance can be maintained from the public and other employees, documentation is critical

Personal Protective Equipment (PPE) Requirements, Recommendations and Policies

- ➕ **Q. What happens if PPE is not available for companies to buy?**
- ➕ A good faith effort is what will be required
 - ➕ Consider other approved types of PPE, as listed by the FDA and CDC; Implement additional administrative and engineering controls; Many states permit cloth face coverings to be worn as an alternative; Document the company's efforts to obtain PPE

PPP Loans

PPP Loans

- + PPP Areas of Discussion Today
 - + Quick Review of Permissible Loan Amounts
 - + Relationship between PPP Loan and Ability to Defer Federal Payroll Taxes
 - + Loan Forgiveness Issues

Review - PPP Loan Amount

- + How is a PPP Loan Amount Calculated?
 - + Avg. Monthly “Payroll Costs” X 2.5
 - + “Payroll Costs”
 - + Salary, wages, commission or similar compensation
 - + Payments for vacation, parental, family, medical or *sick leave*
 - + Allowance for dismissal or separation
 - + Payments for the provision of group health care benefits, including insurance premiums
 - + Payments for retirement benefits
 - + State or local payroll taxes (i.e., unemployment, disability)

Review - Time Period to Calculate Payroll Costs for Loan Amount

- + In general, borrowers can calculate their aggregate payroll costs using data from:
 - + the previous 12 months; or
 - + from calendar year 2019
 - + An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020
 - + For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019

Review – Permitted Uses

- + Payroll Costs (from previous Slide)
- + Continuation of Group Health Care benefits
- + Other Business Expenses
 - + Rent or Lease Costs
 - + Utility Charges
 - + Interest on Mortgage Obligations
 - + Interest on other debt obligations assumed prior to Feb. 2020

PPP Loan – Tax Deferral

- + CARES Act includes ability to defer Employer FICA Taxes
 - + Deferred through the end of 2020
 - + Must repay ½ at the end of 2021; ½ at the end of 2022
- + Can an employer receive a PPP Loan and defer Employer FICA Taxes?
 - + YES – However, only until the PPP Loan is forgiven

PPP Loans – Forgiveness Issues

- + Discussion topics
 - + What amounts are forgivable
 - + Are there exclusions or limitations on how much of a PPP loan can be forgiven?
 - + If so, how are they calculated?
 - + Can I “repair” any possible reductions in loan forgiveness amounts?
 - + If so, How and When?
 - + When do I start the process for forgiveness?
 - + What documents will I need to submit?

Review: What Amounts are Forgivable?

- + “Payroll Costs” +
- + “Other Business Expenses”
- + Made in the 8 weeks after funding of the loan (the covered period)
- + Subject to “75/25%” rule
 - + No more than 25% of expenditures on “Other Business Expenses” (or non-payroll costs)
- + Reductions in FTEs and/or salaries or wages
- + Other potential reductions

Limitations on Forgiveness

+ Reduction in Employee Count (FTE)

+ Calculated by a formula, as follows:

- + The numerator of which is the **average number of FTE employees** per month employed by the borrower during the Covered Period
- + The denominator of which is, at the election of the borrower, either:
 - + The average number of FTE employees per month employed by the borrower during the period beginning Feb. 15, 2019, and ending June 30, 2019; or
 - + The average number of FTE employees per month employed by the borrower during the period beginning Jan. 1, 2020, and ending Feb. 29, 2020
 - + (period elected referred to as the Prior Period)

Limitations on Forgiveness

Reduction in salary or wages

1. Identify all covered employees with > 100K in compensation
 - + Remember – compensation in excess of 100K is NOT part of loan amount
 - + The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
 - + employer contributions to defined-benefit or defined-contribution retirement plans;
 - + payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
 - + payment of state and local taxes assessed on compensation of employees.

Limitations on Forgiveness

2. Identify reductions in salary or wages of covered employees paid < 100K
 - a) Identify all employees, who did not receive wages or salary at an *annualized rate* of pay of more than \$100,000 (each, a covered employee) during any single pay period in 2019;
 - b) Compare each covered employee's compensation during the Covered Period to his/her compensation during the *first quarter of 2020*

Limitations on Forgiveness

- + For covered employees whose salaries or wages were reduced during the covered period by more than 25%:
 - + Multiply the first quarter wages or salary by .75, and subtract the product from the Covered Period wages or salary
 - + Add together all “reduction amounts” calculated for each covered employee – and subtract from the forgiveness amount.
-

Limitations on Forgiveness

+ Examples:

1. FTE Reduction

- + Main Street Landscaping secures a PPP Loan of \$500,000
- + The company had an average of 40 FTEs during the covered period (8 weeks)
 - + The Company had 50 FTEs during prior period
 - + Divide $40/50 = 80\%$
- + Multiply $\$500,000 \times 80\% = \$400,000$ as the Max Loan Forgiveness

2. Salary Reduction

- + All employees are paid the same average salary during covered period
- + One employee with salary of \$50,000 laid off and not hired back
- + The loan forgiveness must be reduced by an additional \$50,000
- + Loan forgiveness amount = \$350,000

Limitations on Forgiveness

- + **Question:** What if a reduction on Payroll Costs is due to a lay off an employee? Can the borrower “cure” this?
- + **Answer:** Yes, under the “Re-hire Exception”. There are two conditions that must occur by June 30, 2020:
 1. Re-hire employees laid off or terminated in the period from February 15, 2020 to April 26, 2020
 2. Restore up 75% of employees salaries that were reduced in the period from February 15, 2020 to April 26, 2020

Limitations on Forgiveness

- + **Question:** What if the employee refuses the offer to re-hire?
- + **Answer:** The borrow can still count this as “cured” wages IF the Employer: (i) makes a “good faith” offer to re-hire (same wages and hours and general terms of employment); and (ii) in writing; and (iii) documentation of the rejection [from the employer would be acceptable if the employee does not or will not reject in writing]
- + This would increase the loan forgiveness amount in the example to \$400,000

Limitations on Forgiveness (Documentation Required)

- + Verification of the # of FTEs on the payroll and pay rates for the Covered Period and the prior periods included in the formulas for determining any reduction in loan forgiveness
 - + Payroll tax filings reported to the Internal Revenue Service;
 - + State income, payroll and unemployment insurance filings
- + Verification of payments on mortgage obligations, rent payments and utility payments
- + A **CERTIFICATION** from a representative of the business that:
 - + The documentation presented is true and correct
 - + The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation or make utility payments

Limitations on Forgiveness (Documentation Required)

- + Businesses should maintain detailed records and maintain organized system for document storage.
- + Consider maintaining PPP loan proceeds in a separate bank account, with only costs eligible for loan forgiveness paid out of that account.
- + Good recordkeeping will be critical in maximizing the amount of loan forgiveness.

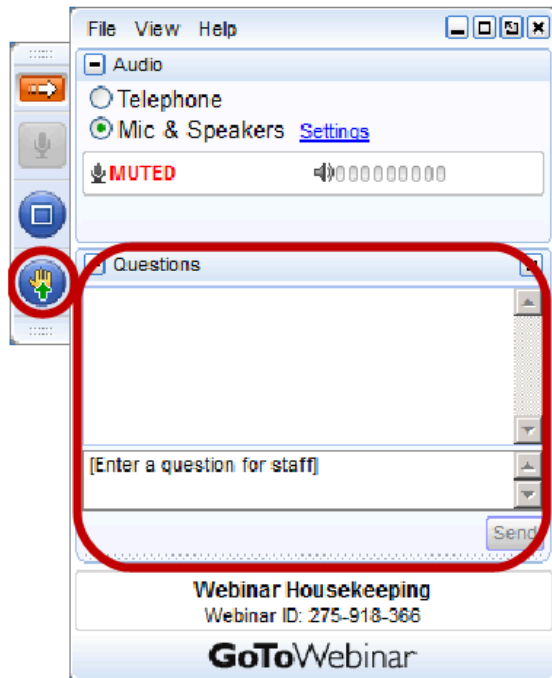
ISSUES THAT NEED FURTHER CLARIFICATION

1. Many small businesses will be closed at the time their loan is funded due to stay at home orders that have not been lifted or for other reasons. Will the covered period be modified or extended?
2. Does a cost have to be incurred and paid during the Covered Period, or are costs that were incurred prior to and paid during the covered period or incurred during and paid after the covered period eligible for forgiveness?
3. What is “Rent”?
 - Does it include items such as common area maintenance (CAM) charges, insurance and taxes that are often defined as “additional rent” in a lease agreement included?
 - Are lease agreements limited to leases of real property?
 - What about rent payments to related parties eligible?

ISSUES THAT NEED FURTHER CLARIFICATION

4. How is “full-time equivalent employees” defined? Additionally, how will furloughed employees, employees on paid leave, employees on reduced schedules, or employees who have voluntarily terminated be treated?
5. It may be necessary for businesses to lay off employees after April 26, 2020, and it may not be possible for businesses to rehire employees or increase wages by June 30, 2020.
 - Will the time periods that determine whether a business has eliminated a reduction in employees or wages be adjusted?
6. Will there be further guidance on the application and approval process for loan forgiveness?

Questions



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Questions



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Resources

For additional information,
guidance and support visit:
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