

## The New Normal: Resuming Jewelry Operations after COVID-19

Presenters: Laura Rubenstein and Greg Currey

Laura Rubenstein:

Wonderful. All right. Thank you all for having us. My name is Laura Rubenstein. There are three folks who are hosting this webinar, probably the three who you see are live. Jimmy as one, who's the facilitator. Myself, Laura Rubenstein, and also Greg Currey. Greg and I want to thank Jimmy and Amanda Coleman Phelps, for inviting us to speak to your group today. The information we're giving is current, as of today. And as I mentioned to Jimmy at the outset, we are happy to make our slides available to all of you and also answer individual questions. We have very chuck-full information today and I think it's probably best that we sort of jump into it. If you have questions, ask them on the chat. We probably will answer them, if we don't answer them and you're able to hang on, we'll try to answer as many questions at the end, and then we can also follow up with in an email. We are scheduled to talk to you today for one hour.

Laura Rubenstein:

This webinar is all about COVID-19, it's all about getting ready to open, understanding the current climate, federally, and state to a certain extent. And then, the caveat we want to mention, is that all of these laws and all of these guidelines will vary by what state requirements are, what federal requirements are by locality. So what is current in for example, we're in Maryland, so we have to follow a federal law. We have to follow state guidelines. We also have to follow, in this case, we were in Baltimore city. So we also then have to follow whatever our landlord in our building tells us we need to do. We will review some OSHA and CDC, state safety guidelines. If you haven't noticed already, I heard there was someone, one of the participants mentioned that she's opening today.

Laura Rubenstein:

So OSHA and CDC has come out with their own guidelines. We also will cover the PPP. I'm sure that rolls off of everyone's tongues, the Paycheck Protection Program, and also the EIDL, the Economic Injury Disaster Loan program, there's actually some new legislation on the PPP that was proposed today. About five minutes before I logged on, I saw something. And then I'm going to cover the Families First Coronavirus Response Act, which is a federal law expanding paid leave that you're required to give to your employees. And then of course, communication is really important. How you communicate openings, how you communicate what safety measures you're going to be taking, not only to employees but the customers, will be key and will allow you to have a successful opening. I do want to say, there really aren't any points for going first.

Laura Rubenstein:

They're all only points for getting it right. You want to make sure that even though you can be open, that you are opening in a way that is safe, that is secure, and that gives your employees the confidence to want to come back into work. And certainly just as importantly, it gives your customers the confidence to walk into your store. My name is Laura Rubenstein and here's a little bit about my background, but I would say in the last three months, ever since the Coronavirus has gained momentum here in our country, Greg and I have pretty much been doing nothing except understanding the laws, reading the regs, giving trainings, helping clients. We talk to clients about furloughs, layoffs, unemployment, how to message, how to bring back. What does teleworking mean? How do we help our clients with forgiveness

on the PPP? So let me share Greg's background. And while I share that, I'm just going to make sure that we can get everybody logged in, who's waiting to be logged in.

Laura Rubenstein:

We have Deborah, Christian, Chase. We have the Cathy, we have Liz, Nicole. Let's see, Stella

Jimmy:

You git Stella on?

Laura Rubenstein:

Stella should be on.

Jimmy:

Okay. Good.

Laura Rubenstein:

Okay. All right. That's what happens when you're the moderator and in charge of the technology at the same time. Okay. Let me just say one more thing, as a lawyer there always has to be a disclaimer. What we're sharing with you is current as of today, it's for informational purposes, it's not legal advice. We're not creating an attorney, client relationship merely by giving you this information. These are our opinions. Even though we think they're right, but there are opinions. And if you wish to reach out and get some more information from us, we're happy to work with you on a case by case basis. Greg, take it away.

Greg Currey:

All right. So before we get all the way into the details, surely I want to give a high level overview of where are things now? Because as we move through the process, every two weeks, it feels like there are sea changes in terms of where things stand. In most States, if not all States at this point, non-essential businesses are starting to reopen with different restrictions in place. So depending on where you are, maybe, you're allowed to offer curbside pickup or in other places, retail operations are allowed based on either the floor plan or 50% or 25% of what your fire marshal capacity is. And so you want to really make sure you're following whatever your state or local government, whichever has more restrictive rules in place, what they're saying in terms of what you're allowed to do. Schools have pretty much been closed everywhere.

Greg Currey:

Daycares for the most part have been limited to essential workers. But as of right now, those are starting to reopen as more and more businesses are reopening with different restrictions in place. Again, if you've got employees with kids in school or in daycare, you're going to want to, also as part of reopening, you're going to want to track where schools and daycares are because that's going to affect your employee's ability to get to work. We've had legislation passed, creating paid leave for employees, different forms of business relief. Obviously we're going to discuss those. There've been modifications of state unemployment benefits to provide additional benefits to workers that have been laid off due to COVID-19.

Greg Currey:

And in addition, in many States, part of the relief that's been given to employers is that layoffs due to COVID-19 are not going to affect your experience rating. If you're in a state that increases what you have to pay towards unemployment based on how many people you lay off. Fortunately, if you're laying off as a result of COVID-19, most States have made the wise decision not to penalize you for that. And the last piece is obviously the legislation where we had a stimulus. Hopefully for those on the call, people are still working, got the stimulus, and now they're spending that stimulus money in your stores. So before we move forward, I think we have a poll.

Laura Rubenstein:

Let's do it, here we go. I'm going to launch a poll. So if you can, if you have access to your computer, the question is, does your business require temperature checks and some multiple choice answer. Yes, for employees only, yes, for employees and customers or no. So feel free to vote. Now we have, let's see, 16 people who are participating. It looks like all 16 have, 17 folks, 18, 20, 19. Okay. So I'm going to end the polling. I'm going to share the results now. I think everyone can see that. It looks like the majority 13 out of 20 who responded aren't doing anything with temperature checks. Five of you are doing them for employees only. Two of you on the call are doing them for employees and customers. So I think we have a follow up question for that, don't we Greg? Should we get that one now?

Greg Currey:

Yes. What is considered a fever?

Laura Rubenstein:

All right. Let me bring up that second poll. All right, here we go. What is considered a fever? So for those of you who are checking temperatures, is it 98.7, One degree above the typical healthy body temperature, 99.5. Is it 100 or is it 100.4? Even if you're not taking temperatures, feel free to participate in this poll, because we welcome everyone's shared knowledge. Okay. It looks like so far, 15 people, 16 people, it's like, hurry up, the clock is running out. Just pick one, just pick one. Okay. 18 people. I'm going to stop it there. 18 people have responded. It looks like most of you say, 99.5 is what a fever is, if you're taking a temperature. Second answer was 100.4, followed by 100. So I'm going to stop sharing these results and let Greg keep it going. I'm going to move the slide.

Greg Currey:

The first thing we wanted to get into, is handling employee concerns, because messaging to your employees, how you will safely reopen is key to getting your employees back onboard and enthusiastic, providing your customers the customer service they expect. Polls and news reports show that many employees are fearful of returning to work, even if state local governments permit them to reopen, obviously as things change and as we're moving forward on the curve, polling has shown that some of the general public's concerns about reopening are starting to ease. A majority is still concerned about reporting to work.

Greg Currey:

So any reopening plan should have a [inaudible 00:10:41], really communicate to your employees, their concerns are taken seriously, and that all procedures recommended by or required at least by the state and local government where you're located are being followed, whether that's following CDC and OSHA cleaning recommendations, recommended procedures on the use of personal protective equipment,

which we call PPE not to be confused with PPP, employee monitoring for symptoms to ensure that individuals who may pose a risk to others in the office are not entering the workplace.

Greg Currey:

This is where we get into the temperature checks, because depending on where your business is located, temperature checks from employees reporting to work may be required. And other places that somebody recommended, some places they're saying, if you want to do it, is purely voluntary. For temperature checks, one of the issues though, obviously is, well, what constitutes a fever where you would need to send somebody home? The answer for those of you that participate in the poll is, it depends on the state. If the state has adopted the CDC guidelines, the temperature that constitutes a fever is 100.4. In West Virginia, for example, they've decided that it's a hundred. Delaware has said 99.5. So it's all over the place in terms of what is going to be considered a fever, such that you would need to send your employees home, if you're measuring the temperature and they hit that number.

Greg Currey:

The interesting thing is, if you talk to medical professionals, any established, standardized number is flawed, because individual temperature is vary somewhat. Belt and suspenders approach that I've seen adopted by some employers, is that, if you have advanced notice of reopening, you have employees start to check the temperatures daily for a week leading up to reopening, to determine what their baseline temperature is. And then after that, if you consider a fever to be anything more than one degree above that standard base line. At a mediation, right before all started, and the mediator said, well, I had no idea I had a fever because I took my temperature and it's 98.6, but I normally run low at 97.5. And so if you've got someone at that sort of standard body temperature where they're usually at 97.5, waiting until they get a hundred to 100.4, they may be on death store. It's important to know-

Laura Rubenstein:

It's interesting... I'll just jump in for a second, Greg. It's so interesting because you and I have given a lot of webinars already. And the other day, my dentist reopened and before I was allowed to go in, they took my temperature and they said, okay, you're fine. I said, by the way, what was that? And they said it's 97 point something. So, to your point, it's so true. I never even known what my regular body temperature was, and it's not even 98.6. I think it's a very fair point, if you are doing body temperature checks on folks, you want to know what the baseline is. I think that's important. Greg, you're going to keep going? Okay.

Greg Currey:

Sorry. I answer your question in the chat. All right. Some of your employee communications, you're going to want to communicate to your employees how you're opening and what your plan is. And you're also going to want to make sure that it's a two way street, so that employees with medical issues, employee with safety concerns, or employees who prefer to collect unemployment, you're addressing their specific concerns each in time. For employees with medical issues. You want to be clear that you're following the Americans with Disabilities Act, you're taking those concerns seriously. And then you've got procedures in place to either fully mitigate their health risks or minimize them in a way that they're able to report to work.

Greg Currey:

If it's somebody who's medical issues are so serious, then you want to have that interactive dialogue to determine whether or not that's an employee who should be given either a paid leave under the FFCRA or as required by state law, or whether you want to consider putting them on some sort of unpaid leave of absence. Employees with safety concerns. I mean, communication is key. You want to talk to them and say, look, we're doing everything we can. We're following the guidelines that we're required to put in place and that we're doing what we can make sure that you're staying safe. For the employees who prefer to collect unemployment, for them you want to have that communication, so that you know, this is somebody that I may not work long term with my business.

Greg Currey:

And if that's the reason they don't want to report back to work, they may make themselves ineligible for unemployment depending on your state. And so if you've got employees who are saying, you know what? I'm going to come up, not in a safety concern, but at the end of the day, I'm getting almost as much as I'd be making working, by staying home. So I'd rather just stay home with the kids and watch TV all day, rather than come back to work where there may be some minor risk of contracting COVID-19. And so, how you have your communication back to them that, if you refuse an offer of work, you may lose those unemployment benefits. And so make sure that they're making an educated decision about what they're doing when they're choosing to stay home. We can move on to the next one.

Greg Currey:

So one of the key issues related to opening safely and reopening safely is making sure that you're meeting whatever the personal protective equipment requirements are. Prior to reopening, you're going to want to ensure that your business is compliant with OSHA and CDC recommendations, as well as any additional regulations that have been adopted by your state or local government. In many States, employers are responsible for bearing the costs of providing PPE to employees, but even if you're not responsible for the cost, you should consider providing masks or other face coverings to employees to ensure for their sake and for the sake of coworkers and customers that they have access to face coverings that at least meet a minimum quality standard. In the event that you will not be providing face coverings yourself, the CDC does have an explanatory guide that can be provided to employees, instructing them as to simple ways to make their own protective face coverings.

Greg Currey:

Again, you want to pay particular concern to what must be provided, who's responsible for covering, and then what are you going to do if there's a shortage. Make sure that you've got spare masks, hand sanitizer, cleaning products available, so that if you reopen, you're not going to have to close one day, all of a sudden, because you don't have enough paper towels or you don't have enough cleaning solution. A lot of people have been hoarding these things. It can be hard to go on Amazon to get different products from other suppliers. And so you want to make sure that when you have your reopening plan in place or that you're taking the steps to reopen, you want to make sure that you have enough of the cleaning equipment and cleaning supplies necessary to reopen safely.

Greg Currey:

If you're not sure about a cleaning product and whether it's safe, whether it's sufficient to kill COVID-19, the EPA actually has a list on their website of many, many, many common cleaning products that whether or not they kill COVID-19 and how long they have to be on the surface to make sure that you're actually effectively sanitizing. Part of the reason why we're focused so focused on the employed PPE and

the face mask is, the most recent guidance is that, surface to human spread is not that common, more often than not the spread is person to person. And so obviously you want to be disinfecting surfaces. You want to be making sure that that is being done properly, but the most effective way to prevent the spread is social distancing, monitoring symptomatic individuals and preventing them from entering your store or workplace, and then making sure that individuals are wearing masks to prevent unknowing spread of the disease.

Laura Rubenstein:

All right, so I have the next couple of slides and then back to Greg. We're playing ping pong today. Communicating with customers. So first I'm going to talk about communicating with customers. And then we're going to ping back and forth, not just between Greg and me, but also about communicating with customers and handling customers and also handling employees. So we are employment lawyers, we represent companies. So we're constantly looking at this from the employer's perspective and the employee's perspective, but obviously you're a business and you invite members of the public into your store to make money.

Laura Rubenstein:

So I think first and foremost, you can never over-communicate, your communication with the general public, with your customers, with potential customers should be very clear and regular. You also want to look at it as a marketing component, because the more you're explaining to customers what safety measures you're taking to reopen your store and relaunch, the more comfortable they'll feel coming in and buying from you. So over communication is not a problem. I don't think over-communication exists in the COVID-19 world, because it also shows you're being transparent.

Laura Rubenstein:

So some things you want to consider, I'm sure all of you have a website, so whatever you're doing, when you reopen, or even prior to reopening, you want it mentioned, Hey, we'll be open on such and such a date. Here's what we have for our reopening program, right? Here's what we require of our customers, and here's what we're requiring of our employees, because you, again, want to make sure people are comfortable walking in the door. So in addition to putting that online, you may even want to post it on your front door about what you expect before anyone sets foot inside your store. Will you require them to wear a mask? Do you to make sure they're socially distancing, not only from your employees, but also from fellow customers? Will you have, as Greg mentioned, some sort of restriction on capacity?

Laura Rubenstein:

So sometimes governors and mayors are saying, okay, no more than 25% capacity, no more than 50% capacity, figure out what that is, and that by the way, should include your employees in that count. You want to make sure that customers are not entering if they are symptomatic. So again, remind them, don't come in. Some of you, it looked like two of you who answered the poll are even taking temperatures of customers. Sometimes in order to minimize this, you want to think about, do we have appointment only? Do we have a shop alone policy? I don't know statistically when buying an expensive piece of jewelry, usually I would think a couple goes in together or someone goes in with a parent or do you go in with a child?

Laura Rubenstein:

Do you go in with your whole family? Make sure that whatever the buying commonality is, right. What does that typically look like? Will you permit it? Will you permit little kids to run around, I'm sure you hate the whole fingerprint thing, right? You have stock in Windex because all the little kids are touching the showcases. Will you allow children? What if they take their mask off? Make sure you have plenty of hand sanitizer signs on the bathroom. I mentioned, I went to the dentist the other day and my dentist just reopened and they took my temperature, but the other thing was the hygienist would not use the electric toothbrush to clean my teeth, because she was concerned about the particles going into the air. Well, then I went to use the bathroom before I was leaving, and I realized the only option to dry my hands was a Dyson air dryer.

Laura Rubenstein:

If she wasn't using the electric toothbrush, because she was concerned about the particles floating in the air, I was surprised that they were allowing the air dryer in the bathroom. In fact, I didn't use it, because I didn't want to be accused of circulating the particles or making any viruses airborne. So I just left it and said, by the way, you may want to put paper towels in there, which is something that you all want to consider in your bathrooms. Do you have a touchless hand soap dispenser? Do you have touchless flushing? Do you have touchless sink that turns on. The other thing you want to think about is if you own your building or if you have a landlord, what air filtration systems are available to cut down on having these potential airborne viruses, moving around? Lots of things to think about. It needs to be right for you. It needs to be right for your store. You have to follow the law.

Laura Rubenstein:

Whatever you're thinking, you want to check with medical professionals also to make sure that what you're implementing is legal and is safe. I'm going to spend just a moment on this slide, because many of your employees have Facebook, right? And so when state and federal governors were saying, don't gather, right. Or no gatherings more than 10. And then people were having large gatherings at the beach or big barbecues for Memorial day weekend. And here they are posting photos on social media and you think, Oh my gosh, we're about to reopen, and my employee was at a party with 50 people, right? And here's pictures of them hugging and drinking from the same beer bottle.

Laura Rubenstein:

Now I don't want that employee coming into my workplace, because I'm afraid that they are potentially infected and now they're going to get everybody else sick. So it's very challenging to have the same rules in the workplace, apply to employees at home. Because one person who posts on Facebook all of their personal business, they're the ones who are going to get caught. It's the other ones who don't post and are still engaging in that somewhat risky behavior, but it's a COVID-19, who aren't going to get caught. So just be aware of what you would expect your employees to do at home versus how you would expect your employees to do at work. Because we have plenty of other stuff to cover, so I'm going to move on and let Greg talk about some employer liability, FAQs.

Greg Currey:

So one of the questions we've been getting a lot as [inaudible 00:25:40] re-open, relate to, what's my liability, if I reopen and it turns out that I wasn't ready? Am I liable to an employee or a customer if they contract COVID-19 in the store? By and large, in most states was that, if you are following whatever the applicable guidance is, you're generally going to be protected, because for the most part, for employees contracting a communicable disease while at work, again, this is subject to state law, but I'm just giving

the general overview. The idea is that a communicable disease that's readily spreading throughout the population is not considered a compensable injury under workers' compensation, because it's not considered an occupational disease, meaning that it is not unique to a particular job or occupation. Think of it. it's not something like black lung where miners are the only ones getting it, and therefore that's considered an occupational disease.

Greg Currey:

COVID-19 is disseminating throughout the population, someone probably would have a hard time even pinning it to your store anyway. However, given the increase in contact tracing, which is part of all the states reopening plans, you may have somebody that says, I was exposed here at this particular location, and now I'm going to sue them because they exposed me to COVID-19, by and large, if you were following in the applicable guidelines, they're not going to have a claim in court, because you have exercised the applicable standard of care. Where you're going to get into trouble is if you are cutting corners, you're not following CDC guidelines, and they're going to say, Oh, I went into this store, I went into this restaurant and the employees weren't wearing masks, they didn't have face shields, they didn't have protective barriers in place or they weren't enforcing social distancing.

Greg Currey:

And now that I've got it because of that. And so you may see lawsuits from individuals, if they have a family member who is injured or seriously affected by COVID-19, if they can trace it back to your location, they're going to say, it's because of this, people are litigious and so you may see lawsuits. And that's why it's so important to follow CDC guidelines and OSHA guidelines. Similarly gotten the question a lot. Well, okay, the employee comes to work and they contract it at work. I followed all the guidelines, but they gave it to a spouse or a family member. Again, generally speaking, the rule is, these extended touches, there's generally not considered to be a duty of care to extended family members.

Greg Currey:

And so what you want to do, what precautions am I required to take? Follow the CDC guidelines, follow OSHA, do whatever your state or local government is recommending or requiring, and more often than not, you're going to be able to safely reopened, there's different legislation that's been pending or requested or introduced to provide liability shield for employers that are following guidelines. Obviously, as those things come out, we'll post more. But there have already been efforts in the legislatures to provide some measure of peace of mind to business owners that open and are following the relief.

Laura Rubenstein:

By the way, Greg. Your last bullet point here, is probably the most popular question that we've been asked. Employees who are fearful of returning to work. There's been much written about this and I guarantee everyone listening on this call, will face this about an employee who was afraid to come into work. What do you say to them about that?

Greg Currey:

Well, I think there's a broad spectrum of reasons why an employee may be afraid to come to work. And so I think the first piece of that is having that open dialogue with the individual and saying, why are you afraid to return to work? Do you have an elderly family member that you're in frequent contact with? Do you have existing underlying medical conditions? Is just simply you're generally an



anxious person and you're afraid to contract it. And so again, it's part of having that communication, because the people that are afraid, any symptomatic employee who doesn't want to come back to work, if they come back and then they get it, those are the people that you're going to see the lawsuits from. And so you want to have that open communication. You want to figure out, look, is this somebody who's crucial to my operations?

Greg Currey:

Is this somebody that I can say, okay, look, we're going to put you on a leave of absence, we're going to continue to allow you to stay home? But for the most part, if individuals are just sort of afraid to come back to work, at some point as a business, you have to make a decision in terms of, is this somebody that I want to keep on the payroll? Am I going to have a spot for this person when they finally feel safe or is this the time to cut ties? Keeping in mind that if an employee, depending on the state, if somebody refuses to return to work due to sort of generalize fears that are unfounded and are not tied to some specific reason for concern, they may be ineligible for unemployment.

Greg Currey:

And that's something that you need to talk to them about, because you may need to tell them, look, I understand your concerns. I understand the risk, but please understand that if you make this decision, the state unemployment division may not agree with you and you may be leaving your family without a paycheck and so you have to make that educated decision. Communicate what you're doing to keep them safe, but at the end of the day, everyone has to make their own decision as to what level of comfort they have from a safety standpoint.

Laura Rubenstein:

I want to add two things if it's okay, Greg. In your response, which was 100% right. You said, if an individual comes to the employer and says, I don't feel comfortable coming into work, but what if a number of employees who ban together as a group and they say, your workplace policies make us all feel unsafe, right? I know I'm asking you the question, but I'll answer the question. I know you would have this answer, which is, now we're into protected concerted activity under the National Labor Relations Act. And so that is, if more than one employee or if two or more employees are banning together to protest conditions that they think are unsafe in order to make the workplace better for themselves and for all other employees, that is they're protected right.

Laura Rubenstein:

So if you then in return fire them, they can claim retaliation for coming forward under the protection of the National Labor Relations Act. And you don't have to be a unionized workforce in order for the NLRA to apply, so be aware of that. The second thing I wanted to add is, if an employee and I just had this this morning, I'm not making this up. I just had this this morning. Employer is reopening June 1, and they sent the notice around to their employees and employee wrote back and said, I am afraid to come into work. And so I already coached the employer what to do, the woman had this significant as Greg said, anxiety. So the employee went to her therapist and got a medical note, and the therapist asked that the employee be allowed to continue to telework for two more months, because she was diagnosed as having anxiety.

Laura Rubenstein:

So now, we're into the whole ADA, which is you're going to get to on the next slide, but I'll preface this by saying that, we need to now, as the employer provide a reasonable accommodation and what is that? So it will depend. And it'll depend on what safety measures the company has put in place, how the employee can feel protected and safe, and is teleworking an option? And if it's not, if we can provide a reasonable accommodation, by the way, the employer determines what that is, not the employee. So even though in my situation, the therapist in writing recommended the two additional months of teleworking, that's not reasonable in this particular case. I'll just switch the slide, Greg, for you to take it back.

Greg Currey:

That's perfect. That perfectly tees up the next piece, which is COVID-19 and the ADA. Obviously the Americans with Disabilities Act is going to come into play when we're talking about a pandemic. And it's from two standpoints. First, the ADA regulates what kind of medical examinations you're allowed to require of your employees prior to coming into work. And generally speaking, if an employee doesn't have a disability, absent a pandemic, you're very restricted as to when you can require medical examinations. And again, temperature checks are a perfect example. It could be a medical examination. However, to help employers, the EOC has issued guidance as to what steps an employer can take to protect its workforce from COVID-19.

Greg Currey:

When you're in a pandemic situation, you were permitted in a greatly way in asking employees questions about, whether or not they're symptomatic, whether or not they are associating with anyone who's symptomatic, whether they've had heightened temperature or a call from previous days, you can also prevent employees who are showing symptoms from working. If an employee shows up and you do the temperature check, and for example, if you're in Delaware and they're 99.6, you're allowed to send them home, even if they come back and say, no, no, no, no, I feel fine. I feel great, the thermometer must be broken or whatever.

Greg Currey:

Again, because the EOC recognizes that with ADA, ultimately the issue is a direct threat. And so a pandemic is immediately determined to be a direct threat to the health and safety of your workforce, both to the employee and their co-workers. And so individuals showing symptoms of having COVID-19, you can send them home or prevent them from returning to the workforce. That being said, you still must retain confidentiality of the identity of any employee diagnosed with COVID-19. So for example, if an employee comes to work, they've been working for several days and then one day, all of a sudden, they come back and reach out to HR and say, I started having a cough last night, I went and got a test and I tested positive for COVID-19.

Greg Currey:

In all likelihood, they were asymptomatic for a period of days leading up to that positive test. And so you're going to want them from all the employees who may have come in contact with that person, that they came in contact with a person who has since tested positive for COVID-19, and that they themselves need to get tested and consult a medical provider as to whether or not they need to self-quarantine. You may also as a practical matter, depending on the nature of your business and the state regulations in place, you may need to shut down for a day to do a heightened level of cleaning of all

operations. But again, when you're making those communications, you're not supposed to tell the other employees, who tested positive.

Greg Currey:

Obviously we've answered the first question already in terms of the FAQs, that's, yes. Second question is, may I require a doctor's note confirming that employee has not been diagnosed with COVID-19 prior to returning to work? A lot of businesses that are reopening are considering having all employees take a test prior to showing up that first day, to determine if they're positive. You are allowed to do that. That being said, particularly as more and more States have enough testing capabilities now for asymptomatic individuals to be tested, from a practical standpoint, it's not all that useful, because on day one, they may be negative and then come to work for two days and they're positive and you're not testing them.

Greg Currey:

So you're really getting limited information from that test. Similarly, what information can I provide to co-workers who may have been exposed to an employee with COVID-19 or symptoms? You're going to want to provide generalized information that they may have come in contact with someone, but again, you're not permitted to identify the individual who tested positive, people may know, but the end of the day, you need still need to respect privacy and medical information. Moving on, emergency funding. So we've got a poll question for this one, I think.

Laura Rubenstein:

Okay. Here we go. Has the business received any emergency government or other funding? Yes, to PPP. EIDL and other grants. Yes, to both or no. So we have answers coming in now, just to make sure everyone is still awake. We have 11 people, 12 people responding so far, 13 people responding. I'm going to give it five, four, three, two, and I'm going to end it. 18 People have responded, and 13 out of 18 on the call have received PPP loans. And then some have also received the EIDL or other local grants. There's your results right there. And Greg, keep it going.

Greg Currey:

All right, I'm going to try to move through these very quickly. I mean, we can do an entire webinar just on PPP, but there's a lot of important stuff about the Families First Coronavirus Response Act, that Laura is going to get into. I want to make sure she's got plenty of time for that. So obviously after the epidemic hit, many, many businesses were forced by government order to shut down for safety measures, curtailed operations, limited obviously in the retail space. I'm assuming almost everyone on this call was forced to shut down their business for at least some period of time due to COVID-19.

Greg Currey:

And so the different funding options that came out, the first one were the economic injury disaster loans, then the CARES Act was implemented which put in place the paycheck protection program, other state and local governments, particularly for small businesses have available government grants and loans, obviously, depending on where you are, you want to pay attention to what's available. If you haven't gotten a PPP loan or an EIDL, you still want to pay attention to the CARES Act, because it provided other employee retention tax credits for employers, about to \$5,000 per employee for payroll taxes.

Greg Currey:

So if you did not get a PPP loan, still make sure you're talking to your accountant, because there are other parts of the CARES Act that provide relief to businesses, besides just PPP. Obviously PPP has sucked a lot of the oxygen out of the room, in terms of discussing other government grants and benefits. But PPP has been the elephant in the room, but there are a lot of other options. So, just quickly, if you've got PPP, assuming you're not at the end of your forgiveness period, you want to make sure you're making the most of it. Right? A lot of people saw this as, well, it's free money, so I'm just going to give it away to my employees and then their business wasn't allowed to reopen within the eight week forgiveness period or when they reopened business didn't return at the level that they were hoping.

Greg Currey:

And now I've talked to a lot of employers that were hoping that, well, can I stop paying employees who aren't working? I talked to one employer that unfortunately wanted to claw back payments that they made to employees that weren't working, which I quickly told them, don't do that. But you want to make sure that you're making the most of the PPP. Big picture, what can it be used for? Rent, and that's been expanded now to include equipment leases, not just rent for real property. Mortgage payments, you can use it for the interest on mortgage payments, you can not use it for anything that's counting towards principle. And you also cannot use it to prepay mortgages, in months after the forgiveness period that may become due later, if you're trying to get forgiveness.

Greg Currey:

Payroll costs up to a prorated annual salary of \$100,000 per employee, which comes to just under \$16,000 per employee for the eight week forgiveness period. You can also use it for utilities. For forgiveness, as of right now, where we sit today, 75% of the forgivable expenses have to be for payroll costs, that includes things like, obviously it's wages, but it's also severance payments count, bonuses count, contributions to 401(k) and contributions towards health insurance premiums. So you want to make sure that when you're using their PPP, that you're only using it for those fonts, and that's where a lot of the other state grants or the EIDL come in, where if you have other needs for example, staying current on paying vendors, stuff like that, you're going to need to look to other sources of economic relief.

Greg Currey:

For forgiveness, again, 75% has to be used on payroll costs. There are also requirements that you maintain headcount and also don't reduce employee salaries by more than 25%. If you reduce an individual employees compensation by more than 25%, you're going to have a dollar for dollar reduction. If you have a head count reduction, it's going to be based on the percentage of employees that are still employed during the forgiveness period versus the measuring period. There are other details about that, that I just don't have time to go into. But one of the questions that we do get a lot is, what if an employee either refuses to return to work, because they prefer to collect unemployment? What if we terminated an employee for cause during the forgiveness period? Or what if an employee resigns during the forgiveness period?

Greg Currey:

For all of those circumstances, those employees will not count against you, in terms of the full time equivalent. Again, you want to maximize effectiveness in handling PPP funds. You want to keep them in a separate account and you want to make sure that you've got enough money, that when you come out that you don't spend it all, forgiven, but then not have any money coming in. And so, for a lot of

employers, 1% loan with a two year repayment period. And so obviously, you need to look for your business based on what you project your income to be, do you want to maximize forgiveness or do you want to hold some back to make sure that you've got money to meet operating costs as you move forward? If you've got more questions about that, shoot an email, et cetera, and I'm happy to answer on a neutral basis.

Laura Rubenstein:

Great. Greg, left me with 10 minutes. So, I'm going to cover the Families First Coronavirus Relief Act in about 10 minutes. Greg, somebody had a Q&A question. If you could look into that, please.

Greg Currey:

Yep, I'll start.

Laura Rubenstein:

Appreciate that. Okay. Now, what is the FFCRA, Families First Coronavirus Relief Act. It is a federal law that went into effect April 1. It expires December 31st, 2020, this year. Okay. It is only for relief for COVID-19 reasons. It applies to companies that have fewer than 500 employees, which I assume applies to everyone on this call. If you, as Greg mentioned, laid off some of your folks or temporary furlough them, or at least had them work from home, while they were getting paid PPP funds, this law may not have been on your radar, but it should come back on your radar now that you are reopening. Yes, this is true. It requires companies to pay, two additional weeks of sick leave, if the employee is experiencing their own symptoms of COVID-19 or if they're quarantining or in isolation or caring for someone who also has symptoms or has the diagnosis for two weeks.

Laura Rubenstein:

And also cover a pays two weeks if the employee is caring for their children who are caring for their children, because schools are closed or daycare is unavailable. In addition to the two weeks of paid sick leave, there is an additional 10 weeks that you must pay your employees for leave, because they have to stay home and care for their school age children, because schools are closed or daycares are closed. It's a lot of money to front. And by the way, if you're already getting PPP money and an employee comes to you and says, "Wait a second, I have COVID or I need to take time off to care for my children." Really, if you're getting PPP money, you can't also use this benefit.

Laura Rubenstein:

It has to be one or the other. So make sure you're documenting that very, very carefully. Obviously you want to maximize your PPP money, but you also need to be honest about when you're giving which benefit to your employees. You, as I mentioned, have to pay this, you have to pay this upfront, but you do get a tax credit. You are entitled to a tax credit against the tax imposed by the IRS for each calendar quarter, in an amount equal to 100% of the wages you paid to the employee during each calendar quarter. So technically you do get repaid for it, but not right away, but through your tax credits. Now, if you are a company that has under 50 employees, and this would be a hardship for you, in other words, you would not be able to even operate at minimal capacity, if you had to pay your employees for this mandatory sick leave or this mandatory 10 additional weeks to care for children, then you do not have to comply.

Laura Rubenstein:

But it's a pretty high standard in order to be able to demonstrate that you can't even operate at minimal capacity. This law does not apply to employees who have been furloughed or who have been laid off at any time. So even though this law went into effect April 1, and maybe you had furloughed employees, this law would not apply to them. In other words, if they're home, you're not paying them, you don't have PPP money, you do not have to pay benefits under the FFCRA. Working on my slides here. Okay. What are the benefits? As I mentioned you have to pay up to two weeks for 80 hours of paid leave for these reasons, and then up to an additional 10 weeks of pay.

Laura Rubenstein:

So what do you need your employees to do? You need to document this very carefully and the documentation needs to come from your employee. Of course, the employee can call or can verbally say, or can even email and say, "Hey, look, I need to quarantine or look on caring for my spouse because she has COVID or I need to care for my kids." Great. You should grant it. But then what you need from your employee, is you need for them to send an email, to send the text that you can then print out, because you'll need to have that as verification for your tax credits. So let's say the school closed. Okay. What's the name of the school? When did it close? What's the name of your children? How old are they? Is no one else available to care for the employee's children? That employee should be documenting that to you.

Laura Rubenstein:

And tell them, you're not engaging in fraud, if you're feeding them information that you then need to get the tax credit. So again, don't be concerned about asking them to just provide you the information. You don't need to get a note from the school. You don't need to get a doctor's note. You just need a written verification from the employee that they are taking time off for any of these reasons. Okay. Caveats. Now the regular FMLA applies to companies that have 50 or more employees and eligible employees have to work for a full year and 1,250 hours, in order to be eligible for the regular FMLA. And the irregular FMLA is unpaid leave.

Laura Rubenstein:

So let's say you are a large employer, and an employee gave birth to a new baby on January 1, and she took 12 weeks of leave to be at home to care for her baby. And then she's ready to come back to work and boom, Coronavirus hits. And she says, okay, now guess what? Daycare's closed. All my plants have gone out the window. I need to take off 12 weeks, the two weeks of sick plus the 10 weeks of expanded leave. I want to be paid now to take time off. Unfortunately, no, it's not available. She would have exhausted FMLA leave prior to this expansion going into effect. Unfortunately, it's not available. Second question, we've answered, ad nauseum. I can't call this on this call. What do you do if your employees are afraid of returning to work? The next question has come up... Let me check the time. Two minutes.

Laura Rubenstein:

The next question has come up for Greg. I know you know who this client is. Employee had been checking her Southwest Airlines feed and said, "Look at these flights to Florida, I'm going to Florida, because it's going to cost me \$25 round trip. And Hey employer, can I take my vacation?? The employer looked very much up on the FFCRA and said, Holy smokes, the law right now in our state says, if you go to Florida, then you come back into the state, then you need to quarantine for two weeks. And that's a required order under the FFCRA. So what does that mean? The employee can use her one week of paid

vacation, but then he has two more weeks off in order to stay at home and quarantine. So the employer called Greg, really? How do we do that?

Laura Rubenstein:

And in this case, we went back and forth and teleworking was not available, the job required the employee to be present, I don't know what they ultimately did, but I know that, the company was weighing, okay, do we deny the vacation? Do we grant the vacation? Because the next two weeks really, we get the tax credit for. So it's really not coming out of our pocket, ultimately. And then the other side of it was okay, well then if we don't let her go to Florida and she says, I'm just going to take a staycation at home and she's not telling the truth. And then she comes back and she's potentially risking infection of co-workers. Everyone was in a quandary.

Laura Rubenstein:

Last slide here. And thanks for hanging on with us, because I think we're right... One more minute to go. What if you don't comply with the FFCRA? Guess what? Like any other law, you are subject to getting sued. There have already been lawsuits filed for employers who have not followed FFCRA compliance. Sometimes employees are more knowledgeable about this stuff than the companies. And so, in this particular case, the employee said, Hey, you know what? I need to stay at home and care for my children because school's closed. And that entitles me up to 12 weeks to stay at home. And the company said no way. The FFCRA is for us. We, as the employer, we dictate when you can take it and when you can't, it needs to be convenient for us.

Laura Rubenstein:

Ultimately the employee was fired, filed a lawsuit, claiming retaliation. And what else can they potentially claim? Loss of wages, attorney's fees, double or triple damages, depending upon your location and what the wage and hour laws allow. And there's also under the regs, individual liability for managers and business owners, not just the corporate entity can be sued. So be very, very careful about getting it wrong. And I would strongly suggest that when you reopen, as you reopen, if you've already reopened, I'll just leave you with this, make sure that you are talking to experts, make sure you're talking to employment counsel, make sure you're talking to medical advisors about what is best for you. Make sure you're reading guidelines from the CDC and get it right.

Laura Rubenstein:

I said at the beginning, I don't know that everyone was on at the time. There are no awards, if you go first, there are just awards if you get it right. So get it right. And even though some of you may be able to reopen today or may be able to reopen next week, make sure you have policies in place. Cleaning protocols, rules, extra PPE, as Greg said, make sure people are confident, employees are confident coming into your workplace and customers are confident shopping from you. Thank you so much. Jimmy, any final words?

Jimmy:

Wow. I've learned something. This is a great seminar. I was on a similar one yesterday and I was ready to poke my eyes out with sharpened pencils, but this is really nice. I liked it. We are recording this, the recording will be available at some time and I will blast that out to everyone. Also the PowerPoint will be available. So anyone who wasn't able to log in, there were a couple of people that were not successful in

getting in, but they can watch the tape and look at the PowerPoint. Other than that, thank you guys very much.

Laura Rubenstein:

Great. Thank you everyone. Good luck to you. Reach out with any questions and best of luck for a very successful relaunching.

Jimmy:

If anyone wants to ask any questions on the chat, let's hold it open for a few more minutes. So, we covered them.

Laura Rubenstein:

Greg, there was a question about explaining the cure period for FTEs.

Greg Currey:

For the cure period for four full time employees, there's a grace period where, for PPP forgiveness, if your forgiveness period ended prior to June 30th, if you have everyone reinstated and back to full pay on, or before June 30, you can still qualify for full forgiveness, because you'll be deemed to have cured any deficiencies. And that's something that in terms of the cure period, you're going to want to talk to the bank, whatever bank or lender, you're going to be submitting the forgiveness application to, because by and large, they're the ones that are going to be making the decision. But the way the law is structured, that even if during the forgiveness period, you haven't ramped back up to full employment, if you do so by June 30th, you'll be deemed to satisfy the requirements of maintaining the head count to qualify for full forgiveness.

Laura Rubenstein:

Follow up question from Scott. If you cure, are you still averaging the FTEs over the time period?

Greg Currey:

No. If you cure, the cure would essentially give you the 100% forgiveness rate. So, you'd no longer be averaging over the time period.

Laura Rubenstein:

All right. And, a thank you. Okay, great.

Jimmy:

Guys, thank you so much.

Laura Rubenstein:

All right. Be well, everyone. Thank you.