

# COVID-19: HOW TO HELP YOUR PRACTICE SURVIVE



Mike Pallesen, JD  
Jill Jensen, JD  
Henry Wiedrich, JD

CLINE WILLIAMS

1

**DISCLAIMER**

- Webinar not legal advice.
- Informational purposes only
- Always consult with legal counsel

2

## OVERVIEW

The CARES Act - Paycheck Protection Program (“PPP”)

1135 Waivers

Families First Coronavirus Response Act

Your questions

3

## THE CARES ACT – PAYCHECK PROTECTION PROGRAM (“PPP”)

4

## PAYCHECK PROTECTION PROGRAM ("PPP") OVERVIEW: WHAT IS IT AND WHO IS ELIGIBLE?

- SBA loan; forgivable up to 100% of the loan (subject to conditions)
- Covered loan period: Feb 15-June 30, 2020
- Less than 500 employees, or sole-proprietors, self-employed individuals or independent contractors
- In business on Feb 15, 2020
- Start dates: small businesses and sole proprietors began applying on April 3; independent contractors, self-employed begin applying on April 10

CLINE WILLIAMS

5

## HOW MUCH CAN I GET?

- ☐ 2.5x average monthly payroll costs during 1-year period before date of loan, or \$10 million
  - ☐ \$100k salary max
- ☐ For new businesses, the measurement period is Jan 1-Feb 29, 2020



This Photo by Unknown Author is licensed under CC BY-SA-NC

6

## WHAT ARE THE LOAN TERMS?

- 2-year maturity
- .50 percent fixed interest rate
- All payments deferred for 6 months (interest accrues)
- No collateral or personal guarantee required

CLINE WILLIAMS

7

## HOW IS THE LOAN FORGIVEN?

- Eligible for forgiveness for an 8-week period after origination date in amount equal to the sum of the following costs:
  - Payroll costs (capped at \$100k on annual basis for each employee)
  - Interest on mortgage
  - Rent
  - Utilities
- Guidance says not more than 25% of forgiven loan may be used for non-payroll purposes
- Amount forgiven cannot exceed amount borrowed
- Loan proceeds cannot be used for payments, distributions or loans to "Associates" (officers, directors, equity owners of 20% or more, or key employees), except for ordinary compensation for services rendered at a fair and reasonable rate

CLINE WILLIAMS

8

## HOW IS THE LOAN FORGIVEN?

- Forgiveness proportionally reduced if average number of employees is reduced during the covered period, compared to same period in 2019
- Amount forgiven reduced by amount of reduction in total employee salary or wages during covered period that is in excess of 25% of total salary/wages
- Must have documentation
- Borrowers that rehire laid off workers by June 30 won't be penalized for smaller workforce at beginning of period
- Forgiven loan won't count toward gross income for tax purposes

CLINE WILLIAMS

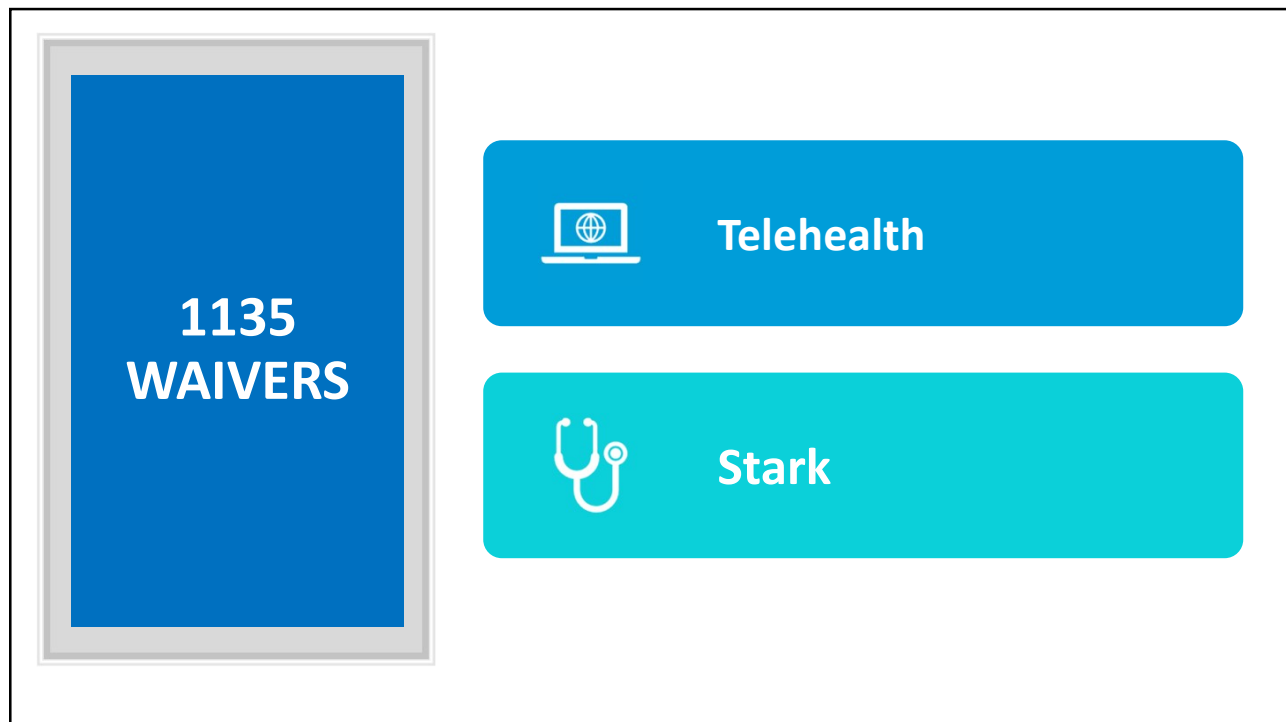
9

## BORROWER REQUIREMENTS

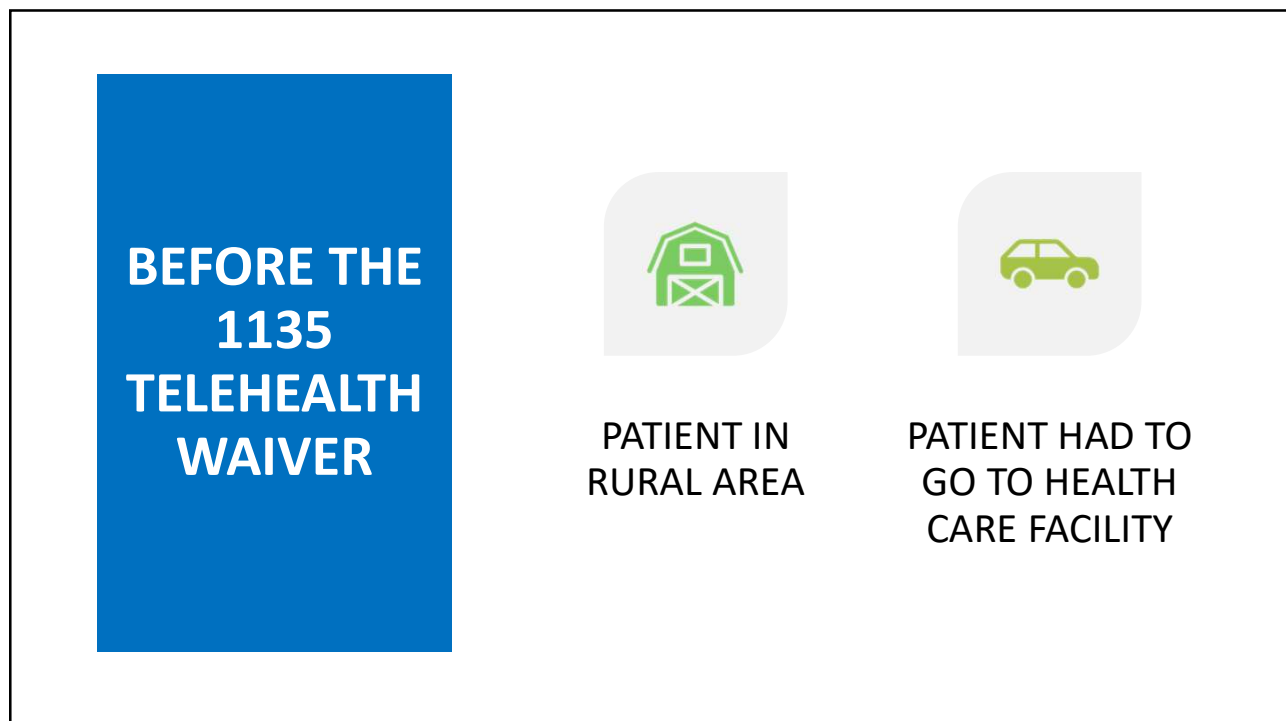
- Good faith certification that loan is necessary due to COVID-19 impact and will be applied to maintain payroll and make required payments
- Borrower isn't receiving assistance and duplicative funds for same uses from another SBA program

CLINE WILLIAMS

10



11



12



## COVID-19 TELEHEALTH 1135 WAIVER

- Services at home
- Includes SNF/NF visits
- Not limited to rural
- Office, hospital, other visits
- Effective March 6, 2020

13

## TELEHEALTH 1135 WAIVER

- Can reduce/waive copays/deductibles for telehealth
- Use telehealth for
  - E&M -- evaluation and management visits
  - Mental health counseling
  - Preventive health screenings
- Same reimbursement as regular visit
- Key requirement: “Real Time” A/V Communications

CLINE WILLIAMS

14

## REAL TIME, NON-PUBLIC FACING

- Apple FaceTime
- Facebook Messenger video chat
- Google Hangouts video
- Zoom
- Skype

CLINE WILLIAMS

15



### HIPAA . . . SCH-MIPPA

- Real-time audio/visual chat services
  - Facetime
  - Skype
  - Zoom
- No Business Associate Agreement required

16



## OTHERS – HIPAA COMPLIANT

- Skype for Business / Microsoft Teams
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Cisco Webex Meetings / Webex Teams
- Amazon Chime
- GoToMeeting
- Spruce Health Care Messenger
- Google G Suite Hangouts Meet

CLINE WILLIAMS

17

## NOT JUST FOR DOCS



18

## PRACTICAL ISSUES

- Temporary
- For the COVID-19 Public Health Emergency
- How adept will your patients be with the technology?
  - Depends on the patient
  - Do they have help at home?
- Don't forget "virtual check-ins" or E-visits

CLINE WILLIAMS

19

## COVID-19 TELEHEALTH RESOURCES

- <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheethttps://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>
- <https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>
- <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>
- <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/TelehealthSrvcsfctsht.pdf>
- <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>

CLINE WILLIAMS

20



This Photo by Unknown Author is licensed under CC BY-SA-NC

- March 1, 2020
- Issued March 30<sup>th</sup>

## STARK 1135 WAIVERS

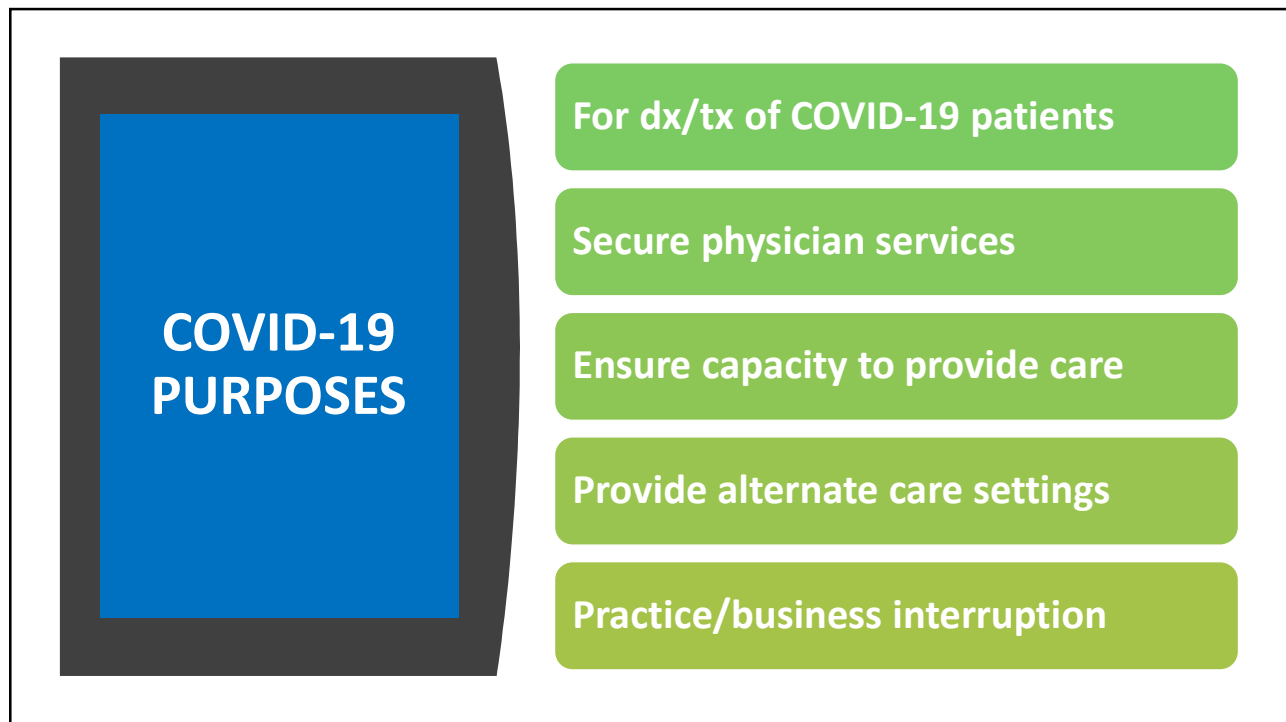
21

## STARK LAW WAIVERS

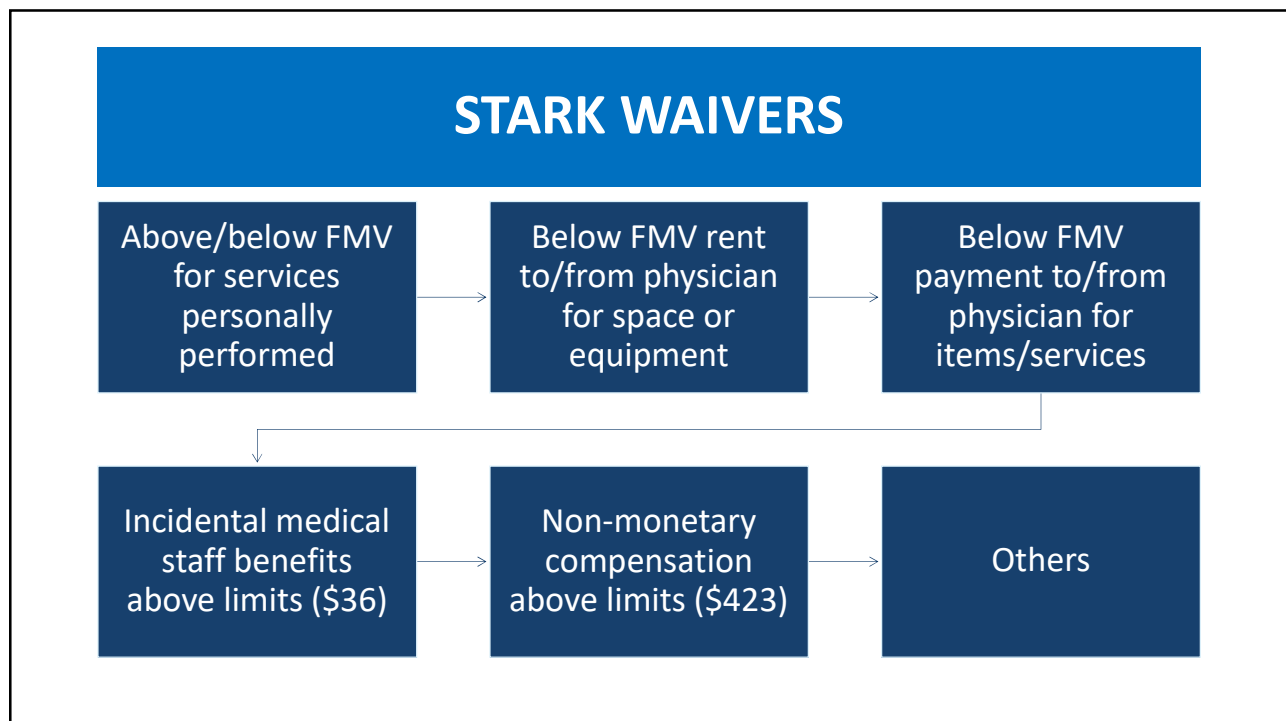
- For COVID-19 Purpose
- Temporary (March 1 through duration of COVID-19 emergency)
- Direct financial relationships
- Must meet all conditions of waiver
- Create/Maintain/Make available records for HHS Secretary

CLINE WILLIAMS


22



23



24



**EXAMPLES**

- Above FMV “combat pay”
- Hospital patient surge space rentals
- Shared space/supplies/PPE
- Low/no cost supplies
- Rent-free space

This Photo by Unknown Author is licensed under CC BY

25



**EXAMPLES**

- Free Telehealth Equipment
- Free staff training on COVID-19 intake, CC
- Meals on campus, childcare, isolation expenses
- Groceries, transportation, childcare

This Photo by Unknown Author is licensed under CC BY

26



## MORE EXAMPLES

- Loans to offset lost income
- Physician loans to hospitals
- Providing DHS at patient home
- No signed writing
  - All other requirements of exception met

CLINE WILLIAMS

27

## REMEMBER:

- Temporary waivers
- Know what the exit will be when emergency over
- Document and retain reasons for relying on waiver
  - How does this relate to the COVID-19 emergency?
  - Why was this waiver chosen?
  - What need will waiver address?
  - Meet waiver terms

CLINE WILLIAMS

28

## STARK COVID-19 WAIVER RESOURCES

- <https://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf>
- <https://www.clinewilliams.com/news/upcoming-presentations.html>

CLINE WILLIAMS

29



30

## HEALTH CARE PROVIDERS MAY BE EXCLUDED FROM LEAVE UNDER THE FFCRA

- Before going into detail on the FFCRA requirements, of particular interest to this audience is the health care provider exemption.
- 29 C.F.R. 826.30(c) states: “An Employer whose Employee is a health care provider or an emergency responder may exclude such Employee from the EPSLA’s Paid Sick Leave requirements and/or the EFMLEA’s Expanded Family and Medical Leave requirements.”

CLINE WILLIAMS

31

## HEALTH CARE PROVIDER IS BROADLY DEFINED

29 C.F.R. 826.30(c)(1)(i):

“... a health care provider is **anyone** employed at any doctor’s office, hospital, health care center, clinic, post- secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions....”

CLINE WILLIAMS

32

## SUMMARY OF THE FFCRA

- Applies from April 1, 2020 to December 31, 2020.
- Covers private employers with 500 or less employees and public employees.
- Leave consists of the Emergency Paid Sick Leave Act (up to 80 hours) and Emergency Family and Medical Leave Expansion Act (up to 12 weeks).
- No employee eligibility requirements for Emergency Paid Sick Leave ("EPSL"). Employee must have been employed for at least 30 days prior to request to receive the Emergency Family and Medical Leave ("EFML").

CLINE WILLIAMS

33

## SUMMARY OF THE FFCRA

- Two separate provisions, but the DOL combines them when summarizing the required leave.

### ► PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

CLINE WILLIAMS

34

## SUMMARY OF THE FFCRA

### ► QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li> <li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li> <li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li> <li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li> </ol> | <ol style="list-style-type: none"> <li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li> <li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li> </ol> |
|--|--|

CLINE WILLIAMS

35

## WHAT DOES IT MEAN TO FURLOUGH AN EMPLOYEE?

- A furloughed employee remains an active employee of the organization, but he/she is not scheduled to work any hours and is not paid during the furlough period.
- The employee may be able to retain benefits (talk to your provider and review eligibility rules).
- Because there is no separation of employment, there is no requirement to pay out accrued, unused balances of paid leave.
- When the furlough period ends, the employee begins work again and there is no onboarding process.
- Employee will be eligible for unemployment benefits.

CLINE WILLIAMS

36



## ARE FURLOUGHED EMPLOYEES ENTITLED TO FFCRA LEAVE?

- No. Furloughed employees are not entitled to FFCRA leave because they are not taking leave from scheduled work. The employer must need or request the employee's work in order for the employee to be eligible to take leave from that work.

CLINE WILLIAMS

37

## ARE FURLOUGHED EMPLOYEES ENTITLED TO FFCRA LEAVE?

26. **If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?**

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>.

27. **If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?**

No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave. However, you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive. You should contact your State workforce agency or State unemployment insurance office for specific questions about your eligibility. For additional information, please refer to <https://www.careeronestop.org/LocalHelp/service-locator.aspx>. If your employer reopens and you resume work, you would then be eligible for paid sick leave or expanded family and medical leave as warranted.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

CLINE WILLIAMS

38

## WHAT ABOUT FOR REDUCED HOURS?

- No. FFCRA leave cannot be used for hours the employee is no longer scheduled to work.

**28. If my employer reduces my scheduled work hours, can I use paid sick leave or expanded family and medical leave for the hours that I am no longer scheduled to work?**

No. If your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.

You may, however, take paid sick leave or expanded family and medical leave if a COVID-19 qualifying reason prevents you from working your full schedule. If you do, the amount of leave to which you are entitled is computed based on your work schedule before it was reduced (see [Question 5](#)).

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

CLINE WILLIAMS

39

## UNEMPLOYMENT INSURANCE BENEFITS

- Nebraska state maximum benefit: \$400 week.
- Until July 31, 2020, eligible individuals will receive additional \$600/week.
- There will be no charges made to employer's accounts for furloughs/layoffs related to COVID-19.

CLINE WILLIAMS

40

## UNEMPLOYMENT INSURANCE BENEFITS

- Currently, any eligible individual making less than \$54,080 will likely earn more on unemployment than their regular wages.
- Example:
  - Employee earning \$40,000 year, which is \$769/week
  - Approximate state benefit = \$384/week
  - Federal benefit = \$600/week
  - Total benefit = \$984/week

CLINE WILLIAMS

41

## YOUR QUESTIONS

CLINE WILLIAMS

42

## FOR ASSISTANCE

- Michael Pallesen (mpallesen@clinewilliams.com)
- Jill Jensen (jjensen@clinewilliams.com)
- Henry Wiedrich (hwiedrich@clinewilliams.com)

402-474-6900 or 402-397-1700

CLINE WILLIAMS