

# Welcome

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- Mute your audio unless you are presenting.

The presentation will begin shortly.



# COVID-19 Update for Massachusetts Employers

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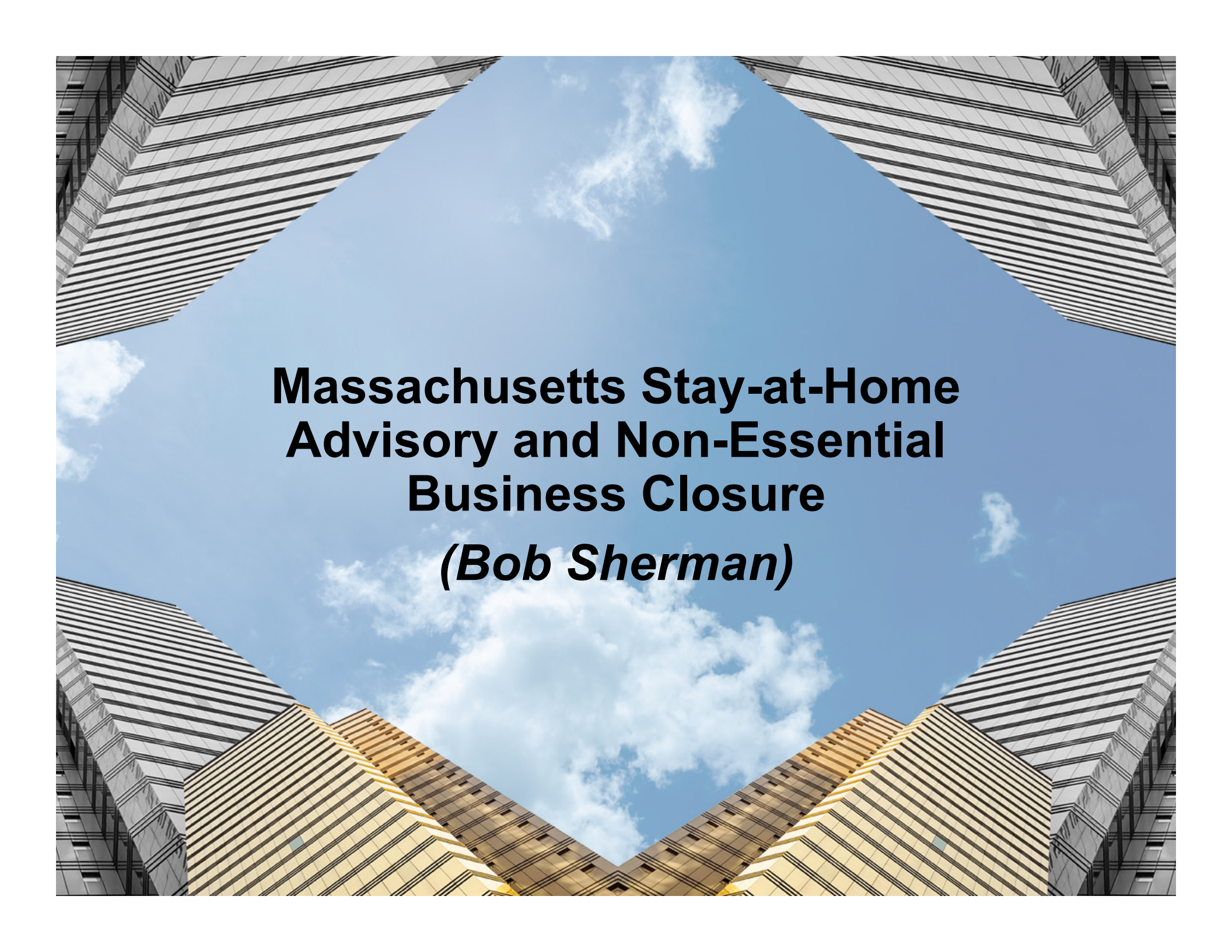
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# Agenda

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- Massachusetts Stay-at-Home Advisory and Non-Essential Business Closure
- Families First Coronavirus Response Act
- CARES Act
- Changes to Massachusetts Unemployment Law and Workshare Program
- Salary Reductions, Furloughs and Layoffs





**Massachusetts Stay-at-Home  
Advisory and Non-Essential  
Business Closure  
*(Bob Sherman)***

# Massachusetts' Response to COVID-19 Pandemic

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- On March 23, 2020, Massachusetts Governor Charlie Baker issued an emergency Order requiring all businesses and organizations that do not provide “COVID-19 Essential Services” to close their physical workplaces and facilities to workers, customers and the public;
- On March 31, 2020, Governor extended the order to May 4, 2020;
- On April 28, 2020, Governor extended the order until May 18, 2020;
- The Department of Public Health (DPH) Stay-at-Home Advisory remains in effect, and gatherings of more than 10 people also remain prohibited until May 18, 2020.

# Massachusetts' Response to COVID-19 Pandemic (continued)

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- **April 28, 2020 announcement:** Governor also appointed a 17-member advisory board consisting of business executives, public health officials and municipal leaders to guide his administration with strategies for reopening the economy amid the COVID-19 pandemic
- Panel will be overseen by Lieutenant Governor Karyn Polito and Mike Kennealy, Governor's top economic development aid
- Group will seek input from a variety of constituencies in the next three weeks to develop a report by May 18 that will include state Department of Public Health-approved workplace safety standards, industry protocols, and enforcement mechanisms
- Governor indicated reopening will be “phased”

# Categories of Essential Services Under Emergency Order

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- Healthcare/Public Health/Human Services
- Law Enforcement, Public Safety, First Responders
- Food and Agriculture
- Energy (which includes the electricity industry, petroleum workers, natural and propane gas workers, steam workers)
- Water and Wastewater
- Transportation and Logistics
- Public Workers

# Categories of Essential Services Under Emergency Order (continued)

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- Communications and Information Technology
- Other Community-Based Essential Functions and Government Operations
- Critical Manufacturing
- Hazardous Materials
- Financial Services
- Chemical
- Defense Industrial Base
- Commercial Facilities
- Residential and Shelter
- Hygiene
- Construction



# Industry Specific Challenges

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- Recreational marijuana shops remain non-essential
- Construction
- Retail

# Other Notable Executive & Legislative Developments

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- Governor Baker ordered schools to stay closed through end of school year and daycares closed through June 29, 2020
- Massachusetts Supreme Judicial Court (“SJC”) announced state courthouses would remain closed to the public until June 1 except for emergency matters
- Virtual Notarization Act signed into law, effective immediately, allowing Massachusetts notaries, using videoconferencing technology, to notarize documents remotely during the COVID-19 state of emergency
- Ban on all evictions and foreclosures
- Limited liability for healthcare workers
- Budget shortfall



**Families First Coronavirus  
Response Act**  
*(Amanda Carney)*

# Families First Coronavirus Response Act (FFCRA) Leave Overview

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- Emergency Paid Sick Leave Act (EPSLA)
- Emergency Family and Medical Leave Expansion Act (EFMLEA)
- Covered employers are private employers with fewer than 500 employees and public agencies with 1 or more employee
- Employers and self-employed individuals may obtain a payroll tax credit advance for payment of mandated paid leave under FFCRA
- Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability

# Emergency Paid Sick Leave

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- Applies immediately to employees without eligibility requirements such as length of service or hours worked.
- Provides full-time employees up to 80 hours (2 weeks) of paid leave. Employees that are part-time and those that do not have a normal schedule are entitled to leave based on their schedule.
- Leave can be taken if an employee is subject to a quarantine or isolation order by government or healthcare provider; experiencing symptoms and seeking a diagnosis; caring for individual subject to quarantine or isolation; caring for child whose school is closed/care provider unavailable; or experiencing “other substantially-similar condition” defined by the Secretary of Health and Human Services.
- Only available when there is work available but the employee is unable to work for a COVID-19 related reason.



# Emergency Family and Medical Leave Expansion Act

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- Employees who are employed by the employer for at least 30 days are eligible for up to 12 weeks of leave (first 2 weeks are unpaid).
- Allows employee to take paid FMLA leave only when they are unable to work or telework because they need to care for a child under 18, or over 18 with a disability, due to a public health emergency, and the child's school or place of care has been closed, or the child care provider is unavailable, and that leave exceeds 10 days.
- Employees who have already exhausted their 12 weeks of FMLA leave (in the employer's 12-month FMLA period) may not take additional expanded family and medical leave.

# Calculation of Pay

- Employees taking PSL because of their own quarantine/isolation/symptoms
  - Paid regular rate or applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over 2-week period)
- Employees taking PSL because they are caring for another individual subject to isolation/quarantine
  - Paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over 2- week period)
- Employees taking PSL or EFMLEA to take care of a child whose school is closed or care is unavailable
  - Paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 2-week period).
- Employer-provided PTO/paid leave

# When Leave Under FFCRA is Unavailable

- Employees sent home without pay for lack of work before April 1, 2020
- Employees whose worksites are closed, either for lack of business or pursuant to a government directive, and who do not work after April 1, 2020
- Employees furloughed for lack of work after April 1, 2020
- Employees whose worksites are closed and who do not work but are told that the worksite will reopen at some time in the future
- Employees who request and receive FFCRA leave prior to a worksite closure are not entitled to FFCRA leave past the period they would otherwise have stopped working
- If an employee's scheduled hours are reduced, the employee may not use paid sick leave or expanded family and medical leave to cover the hours
- Employees that are receiving workers' compensation or temporary disability benefits because they are unable to work, may not take paid sick leave or expanded family and medical leave

# FFCRA Leave and Teleworking

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- If an employer permits teleworking and an employee is unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then the employee is entitled to take paid sick leave.
- If the employee is unable to telework because schools are closed or child care is unavailable due to COVID-19 related reasons, then the employee is entitled to take expanded family and medical leave.
- Intermittent expanded family and medical leave, and paid sick leave may be taken while teleworking with the employer's permission. Employees reporting to the workplace are prohibited from taking intermittent leave for reasons other than childcare.

# Compliance Steps

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- Properly count employees to see if FFCRA applies
  - Post and distribute required notices
  - Create documents and policies for implementing FFCRA
  - Train HR and payroll employees on the EPSLA's and EFMLEA's eligibility and compensation requirements
  - Ensure managers understand that they may not retaliate or discriminate against employees who take leave
  - Inform employees of the leave notice and documentation requirements
  - Document oral leave requests, and maintain all other required records (including those required in order to obtain payroll tax credits)
  - Evaluate the feasibility of allowing employees to telework
  - Evaluate whether to claim the small business exemption





**CARES Act**  
*(Amanda Carney)*

# CARES Act

## Key Employment Provisions

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- Changes to the FFCRA
  - Provided technical corrections and clarification of the caps for payment of leave
  - Allows for payroll tax credit advance for payment of FFCRA leave
- Incentives to retain employees
  - Employee Retention Credit (ERC)
  - Paycheck Protection Program (PPP)
  - Emergency Economic Injury Disaster Loans
  - Funding for Short-Time Compensation Programs (WorkShare)
- Expanded unemployment insurance program
  - Broadens eligibility by providing up to 39 weeks of UI benefits
  - Expands eligibility to those that are not typically eligible
  - Extended benefits for those who have exhausted regular UI
  - Increased benefits with an additional \$600





**Changes to Massachusetts  
Unemployment Law and  
WorkShare Program**  
*(Jack Gearan)*

# Changes to MA Unemployment Insurance Benefit Requirements

- All requirements to attend seminars at the MassHire career center have been suspended.
- “Worksearch” requirements will be interpreted to appropriately permit claimants affected by COVID-19 to collect benefits. Online work searches should continue.
- Deadlines missed by employers and claimants due to the effects of COVID-19 may be excused.
- All appeal hearings will be held by telephone only.
- The one-week waiting period for UI benefits has been waived.
- Workers who are temporarily unemployed due to lack of work because of COVID-19 will be eligible for unemployment benefits. They will be considered “unemployed” due to lack of work regardless of whether they are quarantined, laid off, furloughed, or if their workplace is fully or partially shut down temporarily.

# Changes to MA Unemployment Insurance Benefit Requirements (continued)

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- Emergency regulations that allow individuals to collect UI benefits if they are temporarily unemployed because of lack of work, or their workplace is shutdown as a result of COVID-19 – deemed by the DUA to be on “standby.”
- Standby status automatically granted for first four (4) weeks.
- Employers may request to extend the period of the covered shutdown to eight (8) weeks, and workers will remain eligible for longer period under same conditions.
- Individuals who experience a reduction in hours as opposed to a layoff may still be eligible for partial UI benefits.
- Reduction of at least one third of hours/wages in order to receive a benefit.



# Unemployment Changes Under The CARES Act

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1. Increases unemployment benefits by an additional \$600/week through July 31;
2. Increases the number of weeks one can receive by 13 additional weeks for unemployment;
3. Expands UI to workers formerly ineligible, such as IC's and gig economy workers;
4. Authorizes expanding state workshare programs.

# State and Federal Unemployment Changes

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- **\$600/week Federal Pandemic Unemployment Compensation (“FPUC”)**
- ***Who is Eligible?*** Unemployed individuals receiving any UI benefit, including UC, Extended Benefits (EB), and the temporary benefits discussed below.
- ***Benefit Amount and Duration:*** \$600/week; federally financed; authorized in each state after signing an agreement to administer the program (beginning the week after March 24, 2020) through July 31, 2020.

# State and Federal Unemployment Changes (continued)

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- Additional 13 weeks of benefits for UI exhaustees: Pandemic Emergency Unemployment Compensation (“PEUC”)
- **Who is eligible?** Unemployed individuals who exhaust regular and state federal UI benefits (and are able, available, and actively seeking work, subject to COVID-19 related flexibilities), through the end of December 2020.
- **Benefit amount?** The PEUC benefits are augmented weekly by the \$600 FPUC through July 2020.

# State and Federal Unemployment Changes (continued)

- **Expanded UI Eligibility: Pandemic Unemployment Assistance (“PUA”)**
- **Who is Eligible?** Unemployed individuals who (1) are ineligible for any other state or federal UI benefit; (2) meet conditions related to being unemployed, partially unemployed, or unable to work due to COVID-19; and (3) are not able to telework and not receiving any paid leave.
- ***Eligibility now includes unemployed individuals who were self-employed, independent contractors, or gig economy workers.***
- ***Benefit Amount and Duration:*** PUA provides up to 39 weeks of federally financed UI benefits to unemployed workers. PUA is payable for weeks of unemployment beginning on or after January 27, 2020, and ending on or before December 31, 2020 (and may be paid retroactively)

# State and Federal Unemployment Changes (continued)

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- In states that have Short-Term Compensation (STC, also known as work-sharing) programs, workers whose hours are reduced (in lieu of layoffs) under these formal work-sharing plans may be compensated with STC, which is a regular UC benefit that has been prorated for the partial work reduction
- CARES Act temporarily pays 100% of benefits if employers have a formal STC agreement with a state when employee hours are reduced



# State and Federal Unemployment Changes (continued)

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- MA WorkShare and Federal Cost Sharing of Short-Term Compensation (“STC”)
- ***Who is eligible?*** Workers with reduced hours if employer has STC agreement with state.
- ***Benefit Amount:*** Prorated UC benefit based on percentage of usual work hours.
- ***Interaction with Other Programs:*** STC-based benefits, like all UC benefits, are augmented weekly by the \$600 FPUC through July 2020.

# Massachusetts WorkShare Program

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- Program allows employers to retain employees on a reduced schedule, thereby reducing employer's burden to pay wages.
- Employees receive pay for reduced hours worked and collect UI to make up some of lost wages
- WorkShare program is conducted in coordination with the DUA and is available to any company, non-profit organization, or government agency in Massachusetts.

# Massachusetts WorkShare Program (continued)

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- Employee Participation in WorkShare:
  - It is a voluntary program and a worker can decline participation.
  - Eligible employees must be full or permanent part-time.
  - Seasonal and temporary workers are not eligible.
  - For unionized employees, the union must agree to the WorkShare program.
  - Salaried workers can be included with reduction to hours and pay.
  - Employee must be eligible to receive UI benefits.

# Massachusetts WorkShare Program (continued)

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- WorkShare Plan Criteria:
  - WorkShare plans must be submitted for approval to the DUA.
  - WorkShare plans are valid for 52 weeks and can be modified or changed at any time.
  - Workers can only be on one plan, but employers may have more than one plan for different groups of workers.
  - Each plan must have at least two workers.
  - All workers on the same plan must share the same percentage reduction in their work hours.
  - Reductions in work hours may range from 10% to 60%.

# Massachusetts WorkShare Program (continued)

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- Massachusetts employers can apply for WorkShare online by logging into their UI Online Employer Account at [www.mass.gov/dua](http://www.mass.gov/dua).
- <https://www.mass.gov/doc/developing-your-workshare-plan-a-guide-for-employers-information-sheet/download>





**Salary Reductions, Furloughs  
and Layoffs**  
*(Kelly Pesce)*

# Layoff & Furlough Checklist

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- Layoff: Termination of the employment relationship, either temporarily or permanently
- Furlough: Reduction in hours/pay, usually for a fixed period of time.
- Areas to consider
  - Create a plan;
  - Select which employees to layoff or furlough;
  - Union employee considerations;
  - Exempt employee considerations;
  - Determine when pay and benefits will end;
  - Severance and General Releases;
  - Notice Requirements;
  - Consider whether to waive non-compete provisions;
  - Comply with State pay requirements;
  - Arrange for return of property and terminate employee access

# The Worker Adjustment and Retraining Notification Act of 1988

- Massachusetts does not have its own mini-WARN Act
- Federal WARN Act Overview
  - Which Employers are Covered?
    - Employers with 100 or more employees who have worked for more than 6 months in a 12-month period and work more than 20 hours per week; or
    - Employers with 100 or more full-time employees
  - What must the Notice to Employees Include?
    - Whether planned action is temporary or permanent;
    - Expected date when layoff will commence;
    - Indication as to whether bumping rights exist; and
    - Contact information
  - Exceptions

# Paycheck Protection Program (CARES Act)

- The Paycheck Protection Program (“PPP”) is providing small businesses with the resources they need to maintain their payroll, hire back employees who may have been laid off, and cover applicable overhead.
- Program Highlights
  - All small businesses are eligible
  - No need to make loan payments for the first six months
  - No collateral or personal guarantees required
  - No fees
  - Covers expenses for eight weeks
  - Loan can be forgiven if at least 75% is used to fund payroll costs
- “Payroll Costs” Overview





Thank you!

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