



**BULLETIN #23/2020**  
**March 20, 2020**

**CORONAVIRUS UPDATE #9**

**GOV. BAKER AFFIRMS NO SHELTER IN PLACE ORDER AT THIS TIME**

**EMPLOYMENT LAW COMPLIANCE REMINDERS**

**DONATE YOUR N95 RESPIRATOR MASKS LOCALLY**

**TAX FILING DELAYED TO JULY 15; NO DELAY FOR SALES TAX  
PAYMENTS**

**SBA DISASTER LOAN APPLICATION**

*[This bulletin supplements our previous Bulletins #11, and #16 through #22 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]*

**No Shelter in Place Order - For Now**

Massachusetts Governor Charlie Baker announced this afternoon that he will not be issuing a shelter in place order, at this time. With states like California, Nevada, Pennsylvania, and, most recently, New York either imposing such orders or expanding an existing order, there are many rumors and much discussion that Massachusetts will be following suit presently or in the near future.

In those aforementioned jurisdictions, the order has included designating various industries as "essential businesses" to include gas stations and auto-supply, repair, and maintenance facilities, but not retail auto sales activities. As we stressed in Bulletin #20, we urged dealers to plan for the worst case scenario of a total shutdown. In Bulletin #21, we included a copy of a letter we sent to Governor Baker regarding declaring dealerships to be essential businesses if there is to be a shutdown order. At this point in time, regardless of an order being issued, you should have a plan finalized and implemented to ensure the survivability of your business now and its viability once we clear this extraordinary health and economic crisis.

We will continue to communicate any actions from the Baker-Polito Administration on this matter as they may occur.

**DHS Guidance Includes Auto Repair as Essential Critical Infrastructure**



In regards to the matter of what is an "essential business" in the eyes of the government during the Coronavirus crisis, NADA has been active lobbying key federal agencies to address dealership operations in a more favorable light versus other retail and service industries.

In response to a joint [NADA/Alliance letter](#) sent to President Donald Trump stressing the need to consider auto dealerships essential businesses, the U.S. Department of Homeland Security issued guidance yesterday that includes automotive repair and maintenance facilities on the list of the nation's essential critical infrastructure workforce.

In the cover memo, DHS and the Cybersecurity and Infrastructure Security Agency (CISA) stress, "As state and local communities consider COVID-19-related restrictions, CISA is offering this list to assist prioritizing activities related to continuity of operations and incident response, including the appropriate movement of critical infrastructure workers within and between jurisdictions."

In the body of the guidance, DHS and CISA go on to say: "This guidance and accompanying list are intended to support State, Local, and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response."

The inclusion of automotive maintenance repair facilities can be found on page 8 of the [attached guidance](#).

### **Donate N95 Respirator Masks, Other Pertinent Items to Local Health Care Facilities**

The federal and state governments along with health care facilities and professionals have openly discussed the shortage of needed N95 respirator masks and nitrile disposable gloves. These items are used in many vehicle repair facilities, including at dealerships, across the Commonwealth. If you have excess N95 respirator masks and nitrile gloves you are willing to donate to your local hospital, please get in touch with that facility and arrange the donation. In speaking with the Baker-Polito Administration on this matter, it would prefer that such donations be made locally so that the ongoing shortage can be addressed optimally in those locations.

### **Employment Law Reminders**

As we advised earlier this week, during the economic disruption caused by the Coronavirus and as you construct your workforce plans for employees to remain at work in some capacity (full- or part-time) or laid off, please maintain proper compliance of federal and Massachusetts employment laws. The plaintiffs' bar will be waiting to pounce



on any alleged transgression by an employer (as if you need another headache to worry about with everything else that is going on). We need to avoid another *Sleepy's*-like situation in which employers face lawsuits for alleged violations as this health crisis unfolds over the next several months. Commit to full compliance in 2020.

Our employment law partner Fisher Phillips provides the following Q&A as a compliance reminder of several topics as you deal with employee layoffs, changed work schedules, and adjusted pay plans.

***What is the difference between a layoff and a furlough?***

There is no legal authority in Massachusetts defining either term. However, "layoff" is typically used to denote a final employment action and the end of employment relationship. A "furlough" is most often associated with either a reduction in hours worked or a leave of absence.

***Do I need to pay out all wages and accrued vacation time if I layoff my employees?***

Yes. Because the employment relationship has ended, you will need to pay all unpaid wages and accrued vacation at the time you announce the layoff. It does not matter whether you intend for the employee to return after the pandemic is over. The Attorney General has issued an FAQ directly on this subject FAQs link [here](#).

***Do I need to pay out all wages and accrued vacation time if I furlough my employees?***

Fisher Phillips asked for clarification on this point from the Attorney General, and her office responded as follows: "If the employer and employee wish to continue the employment relationship in order to, for example, maintain health insurance, disability insurance, retirement and other benefits, FLD will not consider it to be a discharge from employment for purposes of the Wage Act. Therefore, earned and accrued vacation pay need not be paid out upon the date of furlough. If, however, the employee wishes to separate from employment, all earned wages must be fully paid on the next regular payday."

In light of *Sleepy's*, dealers are advised that they follow administrative guidance at their own peril, but this is a positive development.

***What happens to an employee's health insurance if they are laid off?***

You should first check with your benefits provider to see what your plan documents say. Most often, a laid off employee cannot be carried on an employer-sponsored health insurance plan. If that is the case with your plan, you would need to provide the departing employees with a COBRA continuation notice, and the employee would be responsible for paying 102% of the premium cost if she or he wants to continue coverage.



### ***What happens to an employee's health insurance if they are furloughed?***

You should first check with your benefits provider to see what your plan documents say. Your plan may permit you to continue carrying employees on furlough, but you will need to confirm this. Some plans permit it if employees work a certain number of hours, others do not. Assuming it is permitted, you will also need to communicate how it will be paid for. If your employees typically pay some portion of the premium via payroll deduction, you will need to inform them of their share and how to pay it. You may want to consider covering the employer portion for a month or longer, or perhaps asking employees to agree to pay you back if you cover it. Whatever you choose, it should be clearly communicated to your employees in writing and signed by them.

### ***Can a laid off or furloughed employee collect unemployment and, if so, will it affect my unemployment rating?***

Laid off or furloughed employees are likely entitled to unemployment, provided they are otherwise eligible. This is a determination made by the Department of Unemployment Assistance, but the rules and regulations have largely been relaxed due to the ongoing COVID-19 pandemic. As to the unemployment rating and whether you will be charged more should your employees utilize unemployment, at the moment that answer is "yes". Other states, including New Hampshire, have waived this requirement due to the emergency, but as of today Massachusetts has not.

### **Federal, State Tax Deadline Postponed to July 15; No Delay on Sales Tax Payments**

The April 15 deadline for filing tax returns will now be postponed until July 15, according to U.S. Treasury Secretary Steven Mnuchin.

"At President Trump's direction, we are moving Tax Day from April 15 to July 15. All taxpayers and businesses will have this additional time to file and make payments without interest or penalties," Mnuchin said in a Twitter tweet this morning.

The Commonwealth of Massachusetts has stated that they will follow the federal government and update their filing date as well to July 15.

Additionally, the Massachusetts Department of Revenue issued an emergency regulation (830 CMR 62C.16.2) yesterday addressing the payment of sales and use taxes owed by vendors. This emergency regulation amendment adds a new section (7) which suspends return filing and payment remittance obligations for certain vendors during the COVID-19 State of Emergency declared by Governor Baker. Specifically, the sales and use tax filing and payment schedule for vendors, whose cumulative sales and use tax liability in the 12-month period ending February 29, 2020, is less than \$150,000, shall be as follows: Returns and payments due during the period beginning March 20, 2020, and ending May 31, 2020, inclusive, shall be suspended. All such returns and payments shall be due on June 20, 2020. **This suspension does not apply to marijuana retailers as defined in**



M.G.L. c. 94G, § 1, marketplace facilitators, or **vendors selling motor vehicles**. Such vendors shall continue to file returns and make payments in accordance with the rules set forth in 830 CMR 62C.16.2(3)-(6).

Link to the DOR document: <https://www.mass.gov/regulations/830-CMR-62c162-sales-and-use-tax-returns-and-payments>

### **SBA Disaster Loan: Prepare for the Application**

*[The following article is provided by Rick Parmelee, CPA, from our MSADA associate member, Blum Shapiro.]*

The Small Business Administration (SBA) Disaster Loan Program has emerged as a key economic tool for businesses to survive the current Coronavirus crisis. Over the last few days we have begun investigating the lending criteria, business size, and type of business that such a loan program might help. This knowledge would help determine which clients may be eligible for the program, have a sense of what funds might be available, and determine if it makes sense to apply. While we have not been able to obtain answers to many of these questions, we are working with clients to help complete this application. We would like to share what we have learned from that process.

Businesses applying for the SBA Disaster Loan as a result of the current Coronavirus crisis will be applying for the SBA's Economic Injury Disaster Loan (EIDL) program.

EIDL is available to victims of disasters that caused no physical damage to property - unlike, for example, damages sustained due to a hurricane or tornado. EIDLs are meant to provide businesses with working capital and cannot exceed \$2,000,000 by law. The actual amount that will be loaned to a business is ultimately determined by SBA's determination of what the business's actual economic injury was combined with the business's financial need. In addition, the SBA takes into consideration the assistance available through business interruption policies and non-government sources, such as the business owner's personal savings or credit that maybe available from banks.

Borrowers must have a credit history that is acceptable to SBA and demonstrate an ability to repay any borrowings. For loans in excess of \$25,000, the SBA expects the business to pledge any available collateral. The SBA states that it will not deny a loan for lack of collateral; however, we expect that what they are ultimately willing to lend will be helped by sufficient collateral.

*If multiple businesses are owned, careful consideration should be given to which business makes this loan application. A business that has historically generated losses and that has no collateral may have difficulty obtaining or maximizing the financing available. Businesses should consult with their advisors on an appropriate strategy.*



As one might expect, the SBA requires a significant amount of information in the loan application process. Having this information available will expedite the process. The intention of the listing below is to help businesses gather the information necessary in order to expedite the loan application process. This listing is not all inclusive.

- Legal name, address, federal Employer Identification number (EIN), business phone number;
- The date the entity was established and the years under current management;
- The names and contact information of the individuals whom SBA can contact for a Loss Verification Inspection and additional information necessary to process the application;
- Name, address, social security number, date of birth, title, phone number, email address, and business ownership percentage for each owner of the business;
- If any owner of the business applying also owns a more than 50% interest in another business, you must be prepared to provide the name, address, EIN and your ownership % of each of those businesses;
- If the business applying for the SBA Disaster Loan has a greater than 50% ownership interest in another business entity you must be prepared to provide information about that entity;
- Personal Financial Statements must be completed for each owner of the business; the following is needed to complete the Personal Financial Statement:
  - A listing of investments owned (# of shares, description, share price);
  - A listing of real estate owned, related mortgage, monthly payment (name, address and account number of the mortgage holder is required);
  - The value of cash, receivables, personal property;
  - The amount of payables and other debts;
  - The amount of liabilities that you are contingently liable for (i.e. what is the dollar value of loans that you guarantee).

*Please note that you must provide an "as of" value date of your assets. Previously we discussed that the amounts SBA will loan take into consideration other resources that you have available. Please give careful consideration to which date you are using in assembling the value of your assets, as the value of your retirement accounts and brokerage accounts at January 31, 2020 will most likely differ significantly from the value at March 20, 2020.*

- A schedule of liabilities must be completed for the business, i.e. outstanding loans
- SBA will request a transcript of the tax returns for the business applying, each of the businesses that you own more than 50% of and a transcript of each owner's individual tax returns
  - This requires signatures of the appropriate taxpayers and the signed form can be uploaded to the SBA site

SBA is encouraging businesses to apply for a disaster loan on their website <https://disasterloan.sba.gov/ela/>.

**MSADA - YOUR DEALER ANSWER PLACE**



If you have any questions regarding this bulletin, please contact Robert O'Koniewski, Esq., MSADA Executive Vice President, by e-mail at [rokoniewski@msada.org](mailto:rokoniewski@msada.org), or Peter Brennan, Esq., MSADA staff attorney, by e-mail at [pbrennan@msada.org](mailto:pbrennan@msada.org), or either by phone at (617) 451-1051.