GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

GCT360 WEBINAR:
New COVID Era Laws that Impact Your Business and How to Best Use Them to Your Advantage




Laura A. Balson **Beverly A. Berneman** **Nancy Franks-Straus** **M. Elysia Baker Analo**

February 18, 2021
Webinar: 3:30 pm - 4:30 pm CT | Networking: 4:30 pm - 5:30 pm CT

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

EMPLOYMENT LAW CHANGES YOU NEED TO KNOW IN 2021

FEBRUARY 18, 2021

PRESENTED BY
LAURA BALSON AND M. ELYSIA BAKER ANALO

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

Can Employers Require Vaccines for Employees?

- Equal Employment Opportunity Commission (EEOC) suggests that the only reasons an employer cannot mandate is if an employee has a sincerely held religious belief or a disability that would prohibit vaccination
- On February 1, 2021 a group of employers sent a letter to the EEOC it to "quickly issue guidance clarifying the extent to which employers may offer employees incentives to vaccinate
- Some companies, such as Instacart (who will pay workers $25 to get the vaccine) and Trader Joe's (who will give employees two hours of pay per dose) have announced incentive programs
- Under pre-pandemic wellness program guidance, employers generally can offer no more than "*de minimis* incentives" to encourage employees to participate

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Are ADA Accommodations Applicable to Employees Who Refuse to Return to Work in Person?

- EEOC says business will not be required to *automatically* allow remote work as a reasonable accommodation
- However, employers may find it more challenging to argue that remote work is an undue burden in all lines of work
- If an employee with a mental illness or disorder that has been exacerbated by the pandemic is seeking remote work as a reasonable accommodation, employers should engage in the same process as any accommodation request
- To avoid lawsuits, employers should still engage in the interactive process to determine if working remotely is a viable accommodation

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

Newest Covid-19 Relief Bill's Impact on Employers

- FFCRA leave expired on December 31, 2020
- The Consolidated Appropriations Act of 2021 extended to March 31, 2021 for employer reimbursement from IRS, but is now voluntary
- Employers should be cautious about exercising discretion on a discriminatory basis
- Current proposed additional relief bill would reinstate the mandatory paid leave through September 30, 2021 and would extend it to employers with more than 500 employees or less than 50 employees and for federal employees

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Proposed Illinois Law on Non-Compete Agreements

- Illinois Freedom to Work Act, enacted in 2016, prohibits non-compete agreements with low-wage workers
- H.B. 789, proposed by Rep. Kelly Burke, would amend the Act to limit non-competes for all employees
- In order to have a valid non-compete, the employee's earnings would have to exceed $75,000 per year, with increases in the earnings rate to $80,000 per year in January 2027, $85,000 in January 2032, and $90,000 per year in January 2037
- If passed, it would become effective on June 1, 2021
- Agreements signed prior to the effective date are likely to be exempt

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA

YOUR SUCCESS. OUR FOCUS.

NEW SMALL BUSINESS BANKRUPTCY LAW CAN HELP A STRUGGLING BUSINESS

FEBRUARY 18, 2021

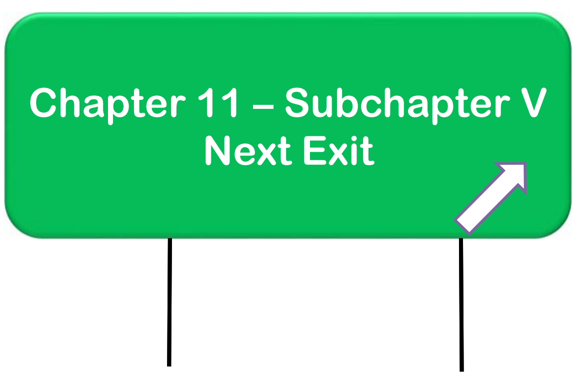
PRESENTED BY

BEVERLY BERNEMAN

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA

YOUR SUCCESS. OUR FOCUS.



70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Small Business Reorganization – Ch. 11 – Subchapter V

- ❑ Who is it for?
  - ✓ Businesses
  - ✓ Individuals whose debts exceed Chapter 13 limits and 50% of the debt is from a business operation
- ❑ Considerations
  - ✓ Ongoing sources of revenue
  - ✓ Willingness to revise business operations
  - ✓ Debts are at a certain level

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V

How it works
- ❑ Debtor continues to operate the business
- ❑ Debtor can:
  - ✓ Obtain financing
  - ✓ Sell property
  - ✓ Assume or reject executory contracts
- ❑ Debtor proposes a plan of reorganization

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V – Sample Case – Restaurant Co.

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V – Restaurant Co.

- Carry out and 35% capacity dine in from time to time
- Assets consist of equipment and perishable inventory worth about $75,000
- Owes SBA $150,000 – Secured by all assets
- Owes vendors $500,000
- Behind in rent
- Income is down 50% from last year
- Expenses somewhat reduced – reduction in work force

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

Chapter 11 – Subchapter V – Restaurant Co.

Step 1:
- Look at financials and prepare petition
- Begin discussing components of a plan
- Look at income and expenses

Step 2:
- File petition
- Meet with case trustee
- Attend creditors meeting

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V – Restaurant Co.

Step 3:
- Formulate consensual plan and send out to creditors
  - Plan separates creditors into classes
  - Unsecured creditors get at least what they would have gotten in a Chapter 7 liquidation
  - Debtor commits disposable income for duration of plan
  - Undersecured lien of SBA is bifurcated
  - If consent is obtained, proceed directly to confirmation process
- Assume lease with arrangement to pay past due rent

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V – Restaurant Co.

Step 4:

- If consent is not obtained, amend consensual plan to a non-consensual plan
  - Revise plan to accommodate increase in administrative costs for a non-consensual plan
  - Give unsecured creditors at least what they would have gotten in a Chapter 7 liquidation
- Send out plan for approval by creditors
- As long as plan is fair and equitable and no objections are filed, plan is confirmed

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V

Differences from Regular Chapter 11

- Do not need to do extra paper work
- Only debtor can file a plan
- No creditors committee
- Can strip certain liens on real property
- Plan has to be filed within 90 days of the filing of the case
- The Absolute Priority Rule does not apply
- If the plan is non-consensual, then the case trustee makes the distributions and discharge is entered after payment in full

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Chapter 11 – Subchapter V – Reorganized Restaurant Co.

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

PPP RENEWAL AND TAX LAW PROVISIONS IMPACTING BUSINESSES IN 2021

FEBRUARY 18, 2021

PRESENTED BY

NANCY FRANKS-STRAUS

Payroll Protection Program (PPP) Renewal Under the Consolidated Appropriation Act:

- Reopens the application period for initial borrowers (1st Draw loans) who qualify but have not obtained a loan
- Implements a new 2nd Draw loan program for businesses that obtained a 1st Draw PPP loan but need additional funding
- Permits additional 1st Draw funding for businesses whose original 1st Draw loan amount is less than what they could have received due to subsequent changes in PPP rules
- Clarifies deductibility of expenses paid for with PPP loan proceeds
- Expands items included in payroll and forgivable expenses

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

New 1st Draw PPP Loans

- May qualify even if business utilized the Employee Retention Tax Credit. Prior to CAA, businesses utilizing the Employee Retention Tax Credit were prohibited from receiving a PPP loan
- Expanded to cover 501(c)(6) organizations, local news media organizations, cooperative housing organizations
- Maximum amount is lesser of $10 million or 2.5 times average payroll

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

2nd Draw PPP Loans

- Focus – small businesses needing assistance - "loan request is necessary to support ongoing operations"
- Must have at least a 25% reduction in gross receipts in at least one quarter in 2020 when compared to the same quarter in 2019 or on an annual basis
- Must have used or will use full amount if 1st Draw PPP loan prior to disbursement of 2nd Draw PPP loan
- May not have more than 300 employees
- Maximum loan is lesser of 2.5 months of average monthly payroll costs or $2 million
- NAICS code 72 (hospitality, restaurants, bars, caterers) – up to 500 employees and 3.5 times average monthly payroll

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Key Revisions to PPP under CAA

- Payroll costs now include employer payments for group life, disability, vision and dental insurance (applies for calculating loan amount and forgiveness)
- Businesses can deduct expenses paid with forgiven loan proceeds
- Businesses that receive PPP loans qualify for the Employee Retention Credit for wages not paid with forgiven PPP funds
- Economic Injury Disaster Loans (EIDL) advance of up to $10,000 will not reduce PPP forgiveness
- Borrowers can amend original loan applications (1st Draw) to request increased amount due to changes in PPP loan rules (changes in payroll costs, partnership rules)

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

Key Revisions under CAA – Continued

- Expanded forgivable expenses:
  - Additional operating expenses
  - Uninsured costs for property damage
  - Worker protection expenses
  - Supplier costs
- Allows for distribution of PPP funds to small business bankruptcy debtors, subject to SBA approval (not yet forthcoming)
- Covered period is any time between 8 to 24 weeks, rather than either 8 or 24 weeks
- Publicly traded companies are prohibited from receiving a loan
- Simplified Loan Forgiveness for loans under $150,000

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

CAA Revisions to PPP Rules

- Revisions Apply to All PPP loans EXCEPT those already forgiven
- Retroactive - provisions take effect as if they were in the CARES act passed in March of 2020
- Guidance expected to be forthcoming for 2nd Draw PPP loans
- ***Recommendation*** – postpone applying for forgiveness for 1st and 2nd Draw PPP loans

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

PPP – Overview of What Stayed the Same

- 60% of loan proceeds must be used for payroll, 40% for other approved expenses (mortgage, rent, utilities)
- Reduction in work force (FTE) and safe harbors
- Reduction in wage base and safe harbors
- Certifications and economic necessity requirements
- Salary cap per employee remains at $100,000 (annualized)
- Business must have been in operation on February 15, 2020

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Other Tax Considerations

- Employee Retention Credit expanded for first two quarters of 2021
- IRC Section 139 Disaster Relief – Because the pandemic was declared a federal disaster, employers can pay and/or reimburse employees and independent contractors for "reasonable and necessary" personal family living or funeral expenses incurred as a result of COVID-19. Deductible by employer, tax free to recipient.
- ***Caution*** - trust fund recovery penalties
- ***Caution*** - some states may not conform to federal income tax treatment of PPP expenses (i.e. no deduction for expenses paid by PPP loans)

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Takeaways

- Businesses may be eligible to apply for initial or additional 1st Draw PPP funds based upon expanded payroll definition and other modifications to the PPP rules
- Focus of 2nd Draw PPP loans is on small businesses with economic need
- Business owners must be aware of trust fund recovery penalties, Section 139 rules, and state conformity to PPP tax rules
- Extensive changes under CAA to tax laws impacting businesses and individuals

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW

GOLAN | CHRISTIE | TAGLIA
YOUR SUCCESS. OUR FOCUS.

Thank you for joining us. We will now be happy to answer any questions. Please raise your hand or submit questions via the chat feature.

We would invite you to stay on the call to join us for a virtual networking cocktail hour.

70 WEST MADISON STREET SUITE 1500 • CHICAGO, ILLINOIS 60602 • 312.263.2300 • WWW.GCT.LAW