Q&A from 3/30/2020 Webinar with Pam Howland:

Q: What type of unemployment do you have the employees take when you are closed and only open to emergency care so the employees would be on a standby status for those emergency care patients?
A: Employees can qualify for unemployment due to reduced work hours – they would file as reduced hours or furloughed.

Q: I already told all my employees to file for unemployment due to reduction in hours. Is this considered a layoff?
A: Employees can qualify for unemployment due to reduced work hours – they would file as reduced hours or furloughed.

Q: How do you change an employee furlough status?
A: You can notify your employees that you intend to bring them back at some point in time within the next 16 weeks and that you intend to continue their benefits. Your employee would likely need to report that to the DOL if they are receiving unemployment benefits.

Q: Can a furloughed non-exempt employee work any hours? We will not have patients to maintain a regular schedule. But we will have emergency patients. So if I furlough my employees but need an assistant to come in to help when there is a patient, would furlough be the correct path?
A: Yes, furlough / reduced work hours is the right path. Non-exempt hourly employees would report the hours worked and Unemployment benefits would be adjusted. PSH: Non-exempt employees are only entitled to pay for the hours they actually work, so this arrangement should be fine.

Q: Is there a Standby status? Meaning that the employee files for unemployment on a standby status due to lack of hours / lack of work. they will be eligible for unemployment and work on as “as needed” basis, reporting their hours to DOL each week?
A: Yes, furlough / reduced work hours would be the appropriate unemployment status. Non-exempt hourly employees would report the hours worked and Unemployment benefits would be adjusted.

Q: If they are furloughed and if someone comes in for a couple of hours to answer messages and check mail, do we pay them for a week? If an employee shows up for a few hours to answer phones do you have to pay them for the entire week?
A: If the employee is EXEMPT from overtime (generally a salaried employee who meets a Department of Labor exemption – typically the “white collar exemptions” that apply to managers) and they work any hours during the work week, they are entitled to be paid for the entire week. If the employee is HOURLY, NON-EXEMPT, they are paid only for the hours worked, and these hours would be reported and reduce unemployment benefits for that week.

Q: Does the furlough have to be documented? Or is it assumed that it happened when the office was closed for elective procedures? What kind of documentation do you recommend for furlough? Is there a form you recommend?
A: Yes, I would recommend you document the furlough. I would recommend you create a memo to the file detailing why you are putting employees on furlough, the date of furlough, and the analysis that led to the furlough. Your employees should also receive a letter from you in writing that includes:

- A statement indicating that they are still at-will employees.
- A statement with a planned return date. (but language indicating you cannot guarantee this)
- A statement instructing them not to perform work while on furlough.
- The name of who to contact if they have questions.
- An explanation of how their benefits will be handled. (some employers explain that the employee will still be entitled to pay their share of the benefits and explain how that will work).

Q: If you have closed your doors as of the 26th and informed everyone that we are closed but I will honor unused vacation time to pay during this time off, does that qualify as employed as of the 1st? What about rehire, do they then qualify?
A: If you have notified employees that the business is closed as of March 26, 2020, but that you will allow them to use accrued vacation, then the date of termination would still be March 26, 2020.

Q: Are furloughed employees entitled to the same benefits as lay-offs?
A: No, if your employees are furloughed, then they are technically still entitled to benefits because they remain employed by your entity. If employees are laid-off, then they are no longer employed and are not entitled to benefits. If you have questions about how the benefits will work while they are furlough, call your benefit administrator.

Q: If we furlough staff do we need to pay out accrued PTO like would for a lay off?
A: Yes.

Q: We put all employees on unemployment due to reduced hours. Do we put them back on payroll? We have already furloughed staff – can we bring them back on and pay them (like the average # of hours that they have been working) only they are really at home doing NO actual work?
A: If you determine with your accountant and banker that using an SBA 7A loan is in the best interest of your practice, and bringing your employees back on to the payroll is required to meet the payroll needed for loan forgiveness, then yes, you would bring them back on to payroll.

Q: If we cover payroll and it’s not forgiven, we are basically taking out a loan to pay employees for not working. It this recommended?
A: We recommend working with your accountant and banker to determine if taking advantage of SBA loans is the right action for your practice.

Q: We had employees that didn’t want to work prior to the stay at home order. What is the best way to document that? Should I have them sign something?
A: I can’t really answer that without more details. I’m unclear if they were still getting paid, were on some type of unpaid leave, or were using accrued time off. If you have since furloughed them or laid them off, I’m not sure it matters. If you are still open for operations as of April 1, 2020, and they are
refusing to come in, I would consider furlough or a lay-off to clarify you have removed them from the workplace.

Q: With the US President’s extended “stay at home” order through April and ISDA’s apparent endorsement of the ADA guidelines to provide emergent and urgent care only, should all Idaho hygienists be at least furloughed if not laid-off until after 30 April?
A: The CDC, CMS, ADA and ISDA all recommend performing only emergency and urgent care, postponing all elective routine dental care. This supports Governor Little’s stay at home order which is in effect until midnight April 15, or it is otherwise extended, amended or rescinded. ISDA is recommending emergency / urgent care only until the Stay at Home order is rescinded. At this time, Governor Little has not changed the stay at home order for Idaho. The President’s guidance on April 30 is for continued Social Distancing as opposed to a national Stay at Home order.

Q: On the DOL website it states health care provider exclusions from FFCRA: Does this include dentists? Who is a “health care provider” who may be excluded by the employer from paid sick leave and /or expanded family and medical leave?
For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, 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 performs laboratory or medical testing, pharmacy, or any similar institution, employer or entity.
A: The ADA is attempting to exclude dentists from the FFCRA act, but I have not seen a definitive rule or other guidance indicating they were successful. The Department of Labor has not yet issued its regulations – it is possible we could see a clarification when the regulations are issued.

Q: What if employee sickness started before April 1 2020, is it retroactive?
A: The FFCRA act goes into effect on April 1 and is not retroactive.

Q: Does paying an employee for an illness only apply to the Corona Virus?
A: The FFCRA is specific to the Corona Virus

Q: Are there details showing what is required for an employee to “prove” they have been ordered for isolation in order to qualify for the 80 hours of sick leave?
A: The only information I’ve seen on this is the Department of Labor guidance that states as follows:
Who is a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave?
The term “health care provider,” as used to determine individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied on as a qualifying reason for paid sick leave, means a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA. I’m assuming this will be broadly interpreted.

Q: If an employee gets COVID 19 won’t my whole team be required to self-isolate due to contact with that person? Will I have to shut down and pay the whole team sick leave?
A: It depends. If your employees were exposed to the employee who was later diagnosed with COVID-19, then yes, everyone exposed would likely be required to self-isolate (I would consult CDC and OSHA guidelines for more information on this and ensure these guidelines are compiled with). If everyone in
your office was required to self-isolate due to COVID-19 then yes, you would have to pay them sick leave under the FFCRA.

**Q: If an employee is asked to stay home due to a possible exposure, do they still qualify under CARES?**

**A:** If you are asking if an employee who is asked to stay home due to a possible exposure could impact your ability to obtain loan forgiveness under CARES, I am not seeing any indication at this point that this would be the case.

If you are asking if the employee would be entitled to paid leave under the FFCRA, then the answer would be yes, as of April 1, 2020, if they have been advised by a healthcare provider to self-quarantine and if you are still open for business and have not laid off the employee.

**Q:** How do I implement the tax credit in payroll (offset of wages to payroll taxes due)?

**A:** You will need to check with your payroll service on the proper implementation. Check the Department of Treasury website, as well for more information on the tax credits.

**Q:** What other things are covered in SBA loans – Rent, fixed expenses?

**A:** For the SBA 7A loan, check with your bank or accountant for detail on the type and amount of the expenses that will qualify for loan forgiveness.

**Q:** For the CARES act does the compensation include the doctors as well as the employees?

**A:** It appears that it covers doctor’s compensation up to the first $100,000 (pro-rated for the impacted period), but again, check with your bank / accountant for details.

**Q:** On March 20 we furloughed All employees but terminated one. Since we let the one employee go, does that disqualify us to be able have loan forgiveness later on?

**A:** We are still looking for guidance on the CARES Act, since it was implemented last week. Check with your banker for additional information. The legal commentators are still trying to understand exactly how the loan forgiveness calculations will be made.

**Q:** Can you pay the employees that are kept on a higher wage for working during COVID time, then decrease it back once we are back to normal?

**A:** Yes. I would document this so carefully employees understand it is a temporary pay raise.

**Q:** Where do we find the letter on the DOL website to send to employees?

**A:** This is posted on the ISDA Website: theisda.org in the COVID 19 Resources