



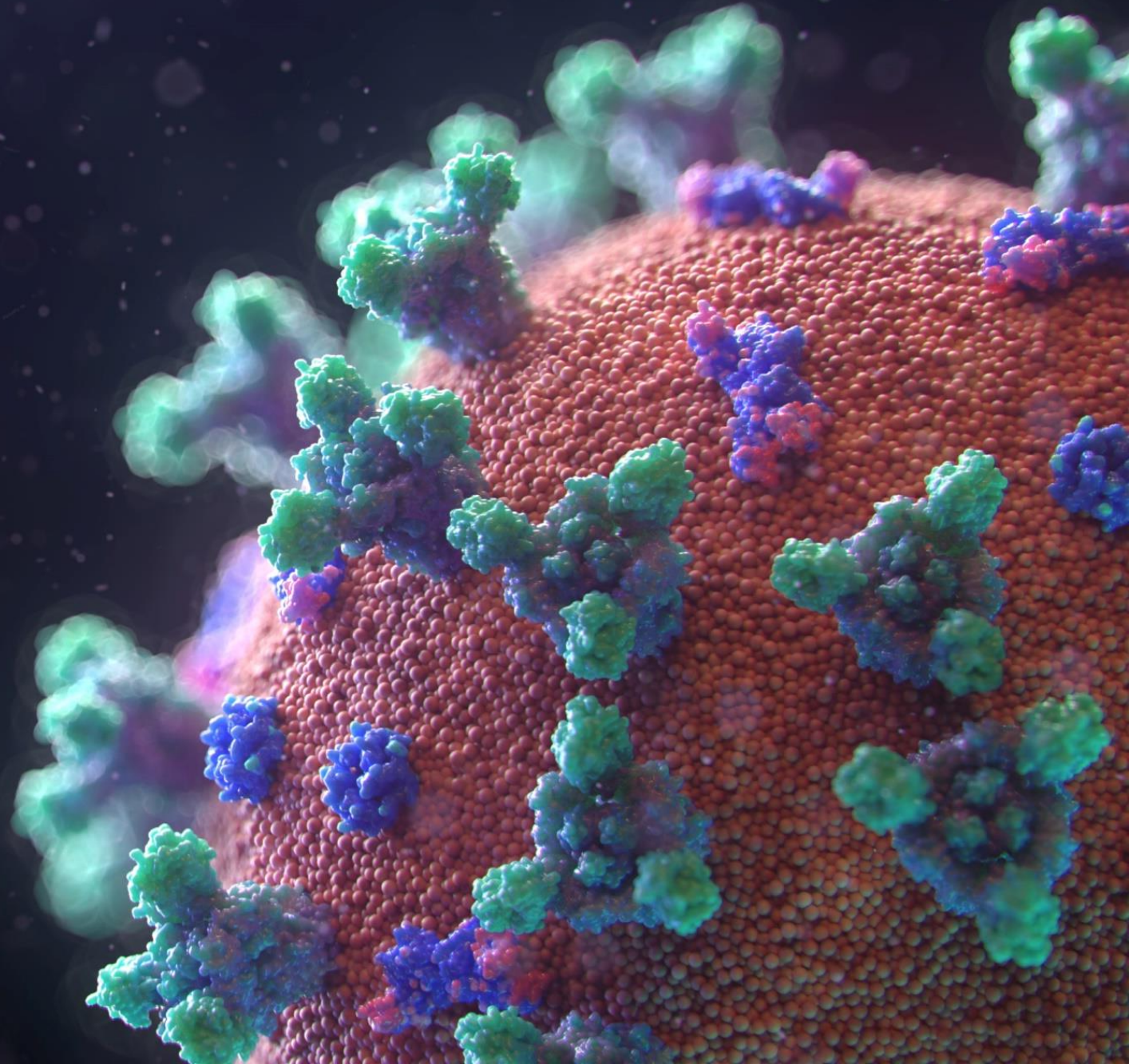
Families First Coronavirus Response Act Debrief

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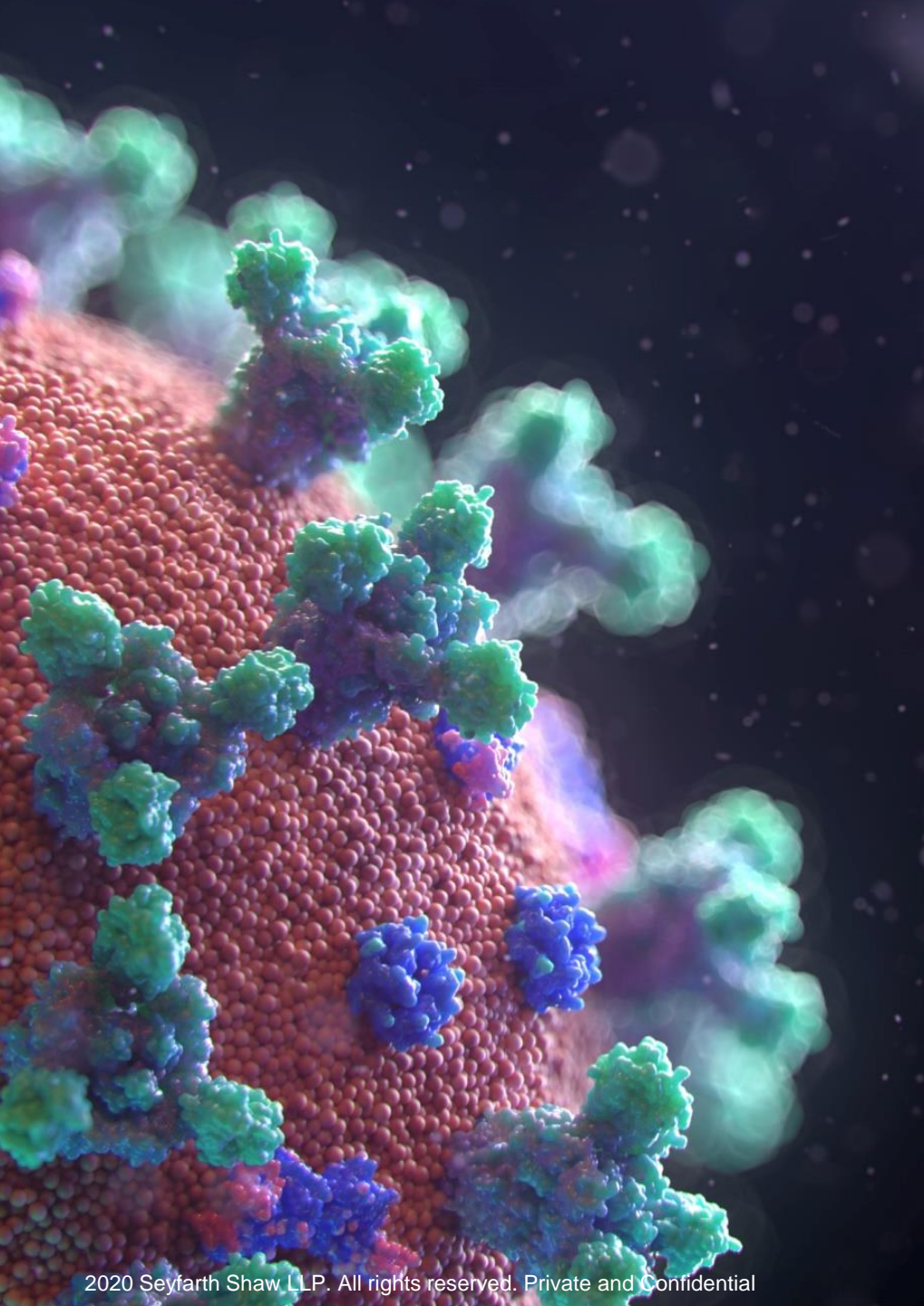


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Agenda

- 01** Families First Coronavirus Response Act Overview
- 02** Health Coverage
- 03** Emergency Paid Sick Time
- 04** Emergency Family and Medical Leave Expansion
- 05** Tax Credit
- 06** Unemployment Compensation

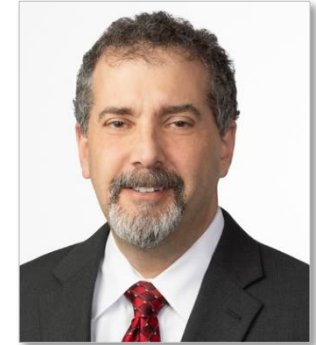
Speakers



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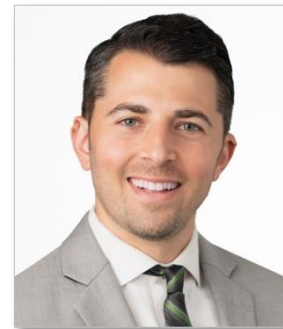
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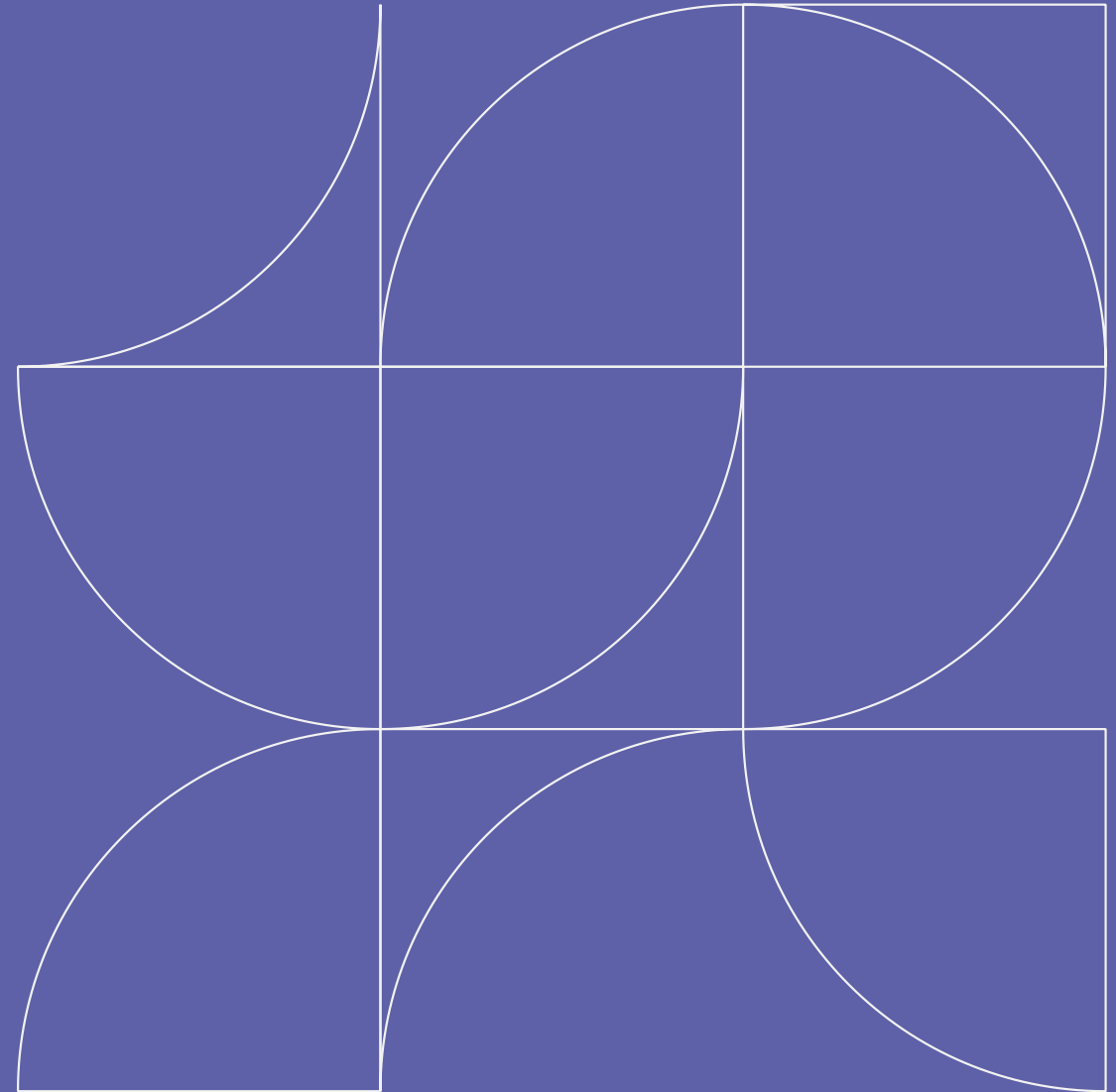


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Families First Coronavirus Response Act Overview





Families First Coronavirus Response Act Overview

- Act was introduced on 3/11/2020
- House passed H.R. 6201 early morning 3/14/2020
 - While multiple versions were circulated prior to consideration, there were no hearings on the bill and there is no appreciable legislative history, such as committee reports, to provide guidance
- House issued “technical corrections” to H.R. 6201 on 3/16/2020
 - Did not impact all sections of the Act
- Senate passed H.R. 6201 on 3/18/2020 without changes
- President signed Act on 3/18/2020



- Act goes into effect in one week, i.e., April 1, 2020 (per DOL FAQs)
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Legislation introduced by Speaker Pelosi during the Senate debate on the economic relief package would have made significant changes to the Act's leave provisions, but they were not adopted.
- DOL accepting comments and suggestions for clarification via online Portal; Deadline March 29
- **Portal Link:** <https://ffcra.ideascale.com/>

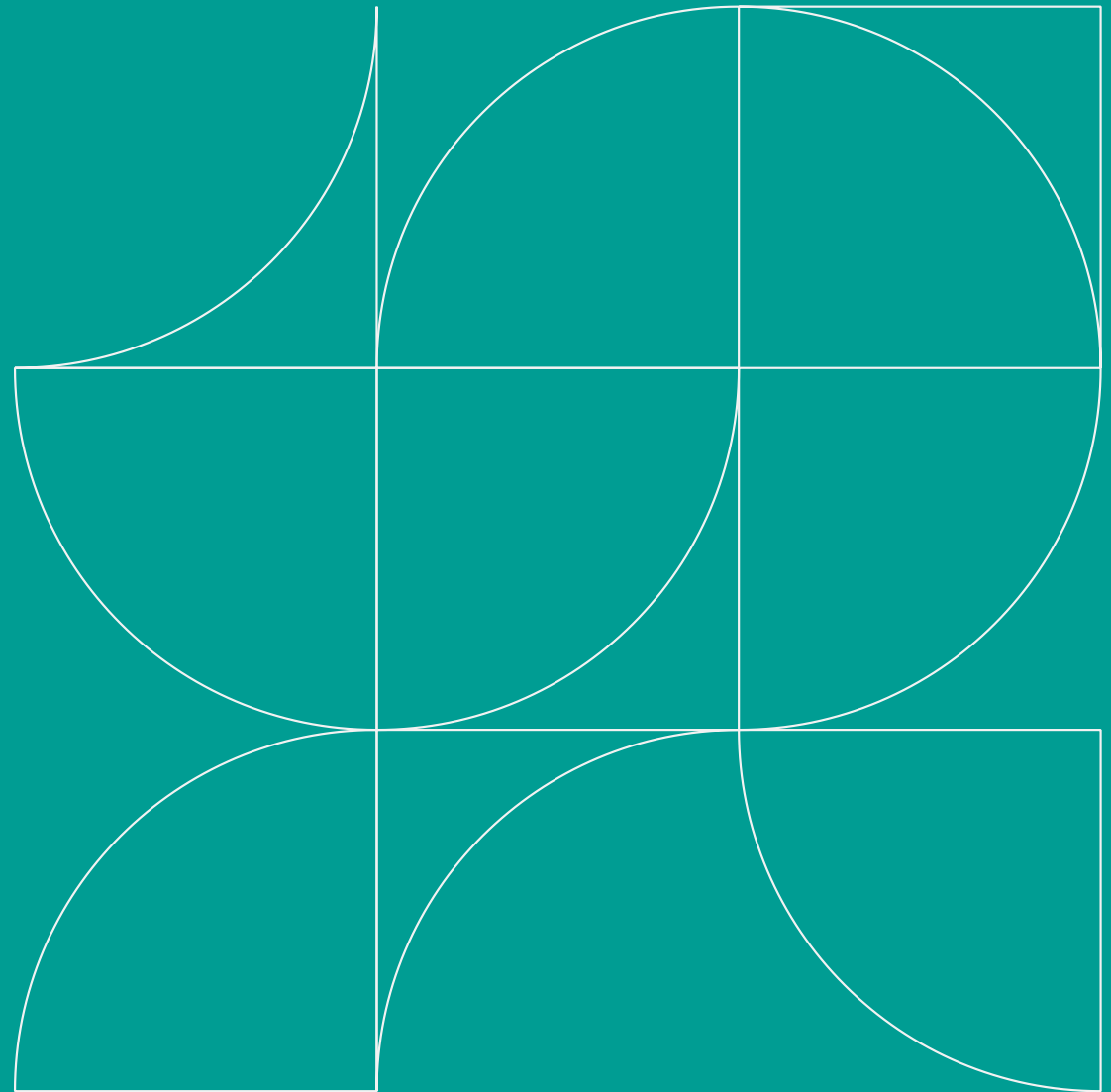


- Act has many provisions related to addressing the COVID-19 crisis
- **Highlights Include:** (a) paid family and medical leave (PFML), (b) paid sick time (PST), (c) tax credits for PFML and PST, (d) unemployment insurance, (e) medical plan components and (f) several immediate public health related matters
- **PFML and PST Mandates:**
 - Sunset on December 31, 2020
 - Only apply to private employers with *fewer than* 500 employees
 - PST available for broader reasons than PFML
 - Tax credits available to offset costs to covered employers



- **PFML:** New mandated PFML requirements are enforced, logically enough, under the enforcement provisions of the federal Family and Medical Leave Act
 - Includes enforcement by DOL and private causes of action
 - Act exempts employers with less than 50 employees from FMLA private causes of action, but not DOL enforcement
- **PST:** The mandated PST provisions are enforced under the Fair Labor Standards Act (which also includes DOL enforcement and private causes of action)
- **Enforcement Grace Period:** DOL issued notice stating that there will be a 30-day non-enforcement period for employers who demonstrate **good faith compliance efforts**
 - “Grace period” does not preclude private causes of action

- Health**
- Retirement**
- Executive Compensation**



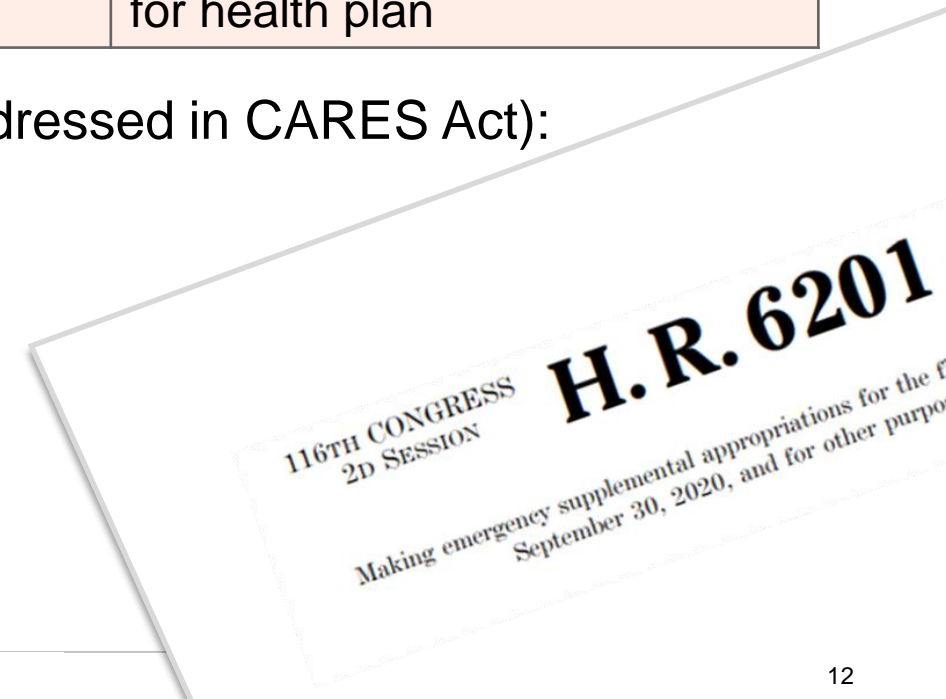
Medical Benefits



Families First Act

| Coverage with No Cost-Sharing | Optional (subject to existing laws) |
|--|---|
| COVID-19 testing | Treatment & costs following diagnosis |
| Evaluation-related office visit | Telehealth for non-COVID-19-related services |
| Evaluation-related telehealth visit | Coverage extension for furloughed workers |
| Evaluation-related urgent care/emergency room fees | Coverage for persons ineligible for health plan |

- Open issues (some addressed in CARES Act):
 - Non-network?
 - ER penalty?
 - HDHP issues
 - IRS guidance with relief

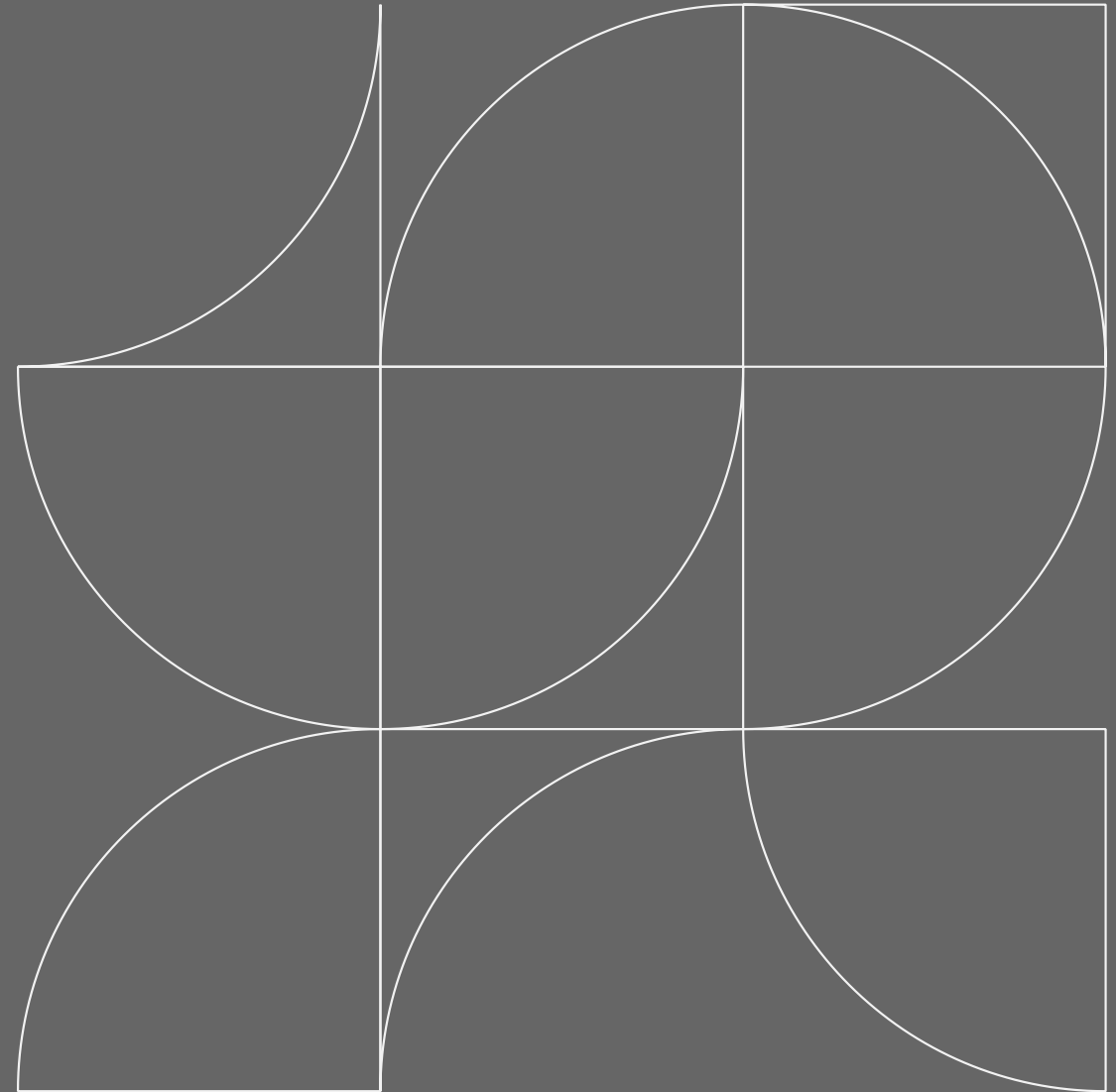


CARES Act – Benefit Implications

Rumored Benefits Provisions in CARES Act

- Welfare
 - Required no-cost coverage for COVID-19 vaccine (when available)
 - HDHPs may provide no-cost telehealth for *any condition* through 2021 without impacting HSA eligibility
 - Feminine hygiene products eligible for reimbursement through health FSA, HSA, HRA, Archer MSA
- Retirement
 - Waiver of required minimum distributions (“RMDs”) and relaxation of rollover window
 - Relaxation of hardship distribution limitations and penalties and loan repayment timeframes
- Executive Compensation
 - Caps exec compensation at 2019 levels for two year period for any companies receiving federal government loan/loan guarantee
 - Covers persons include those earning more than \$425,000 in 2019

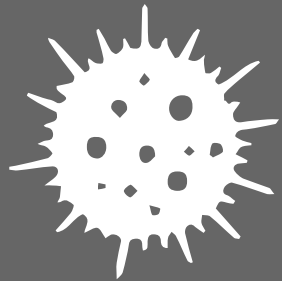
Emergency Paid Sick Time





- **Employer Coverage** – Does *not* apply to employers that employ 500 or more employees
 - Potential regulatory exemption for small employers regarding certain covered reasons for use
- **Employee Eligibility** – Broader than PFML; “Employee” generally means any individual employed by an employer
- No CBA exemption; Special rules under multi-employer bargaining agreements

Paid Sick Time



Qualifying conditions – Employee is unable to work or telework because:

- 1) The employee is subject to a governmental ***quarantine or isolation order*** related to COVID-19
- 2) The employee has been advised by a health care provider to ***self-quarantine*** due to COVID-19 concerns
- 3) The employee is experiencing ***symptoms*** of COVID-19 ***and seeking diagnosis***

Paid Sick Time



- **Qualifying conditions** – Employee is unable to work or telework because (con't):
 - 4) The employee is ***caring for an individual*** subject to a governmental quarantine/isolation order or health care provider recommendation
 - Does ***not*** need to be a family member
 - 5) The employee is caring for an eligible “son or daughter” under age 18 if school or place of care has been closed due to COVID-19 precautions
 - 6) The employee is experiencing any other ***“substantially similar condition”*** specified by HHS Secretary

Paid Sick Time



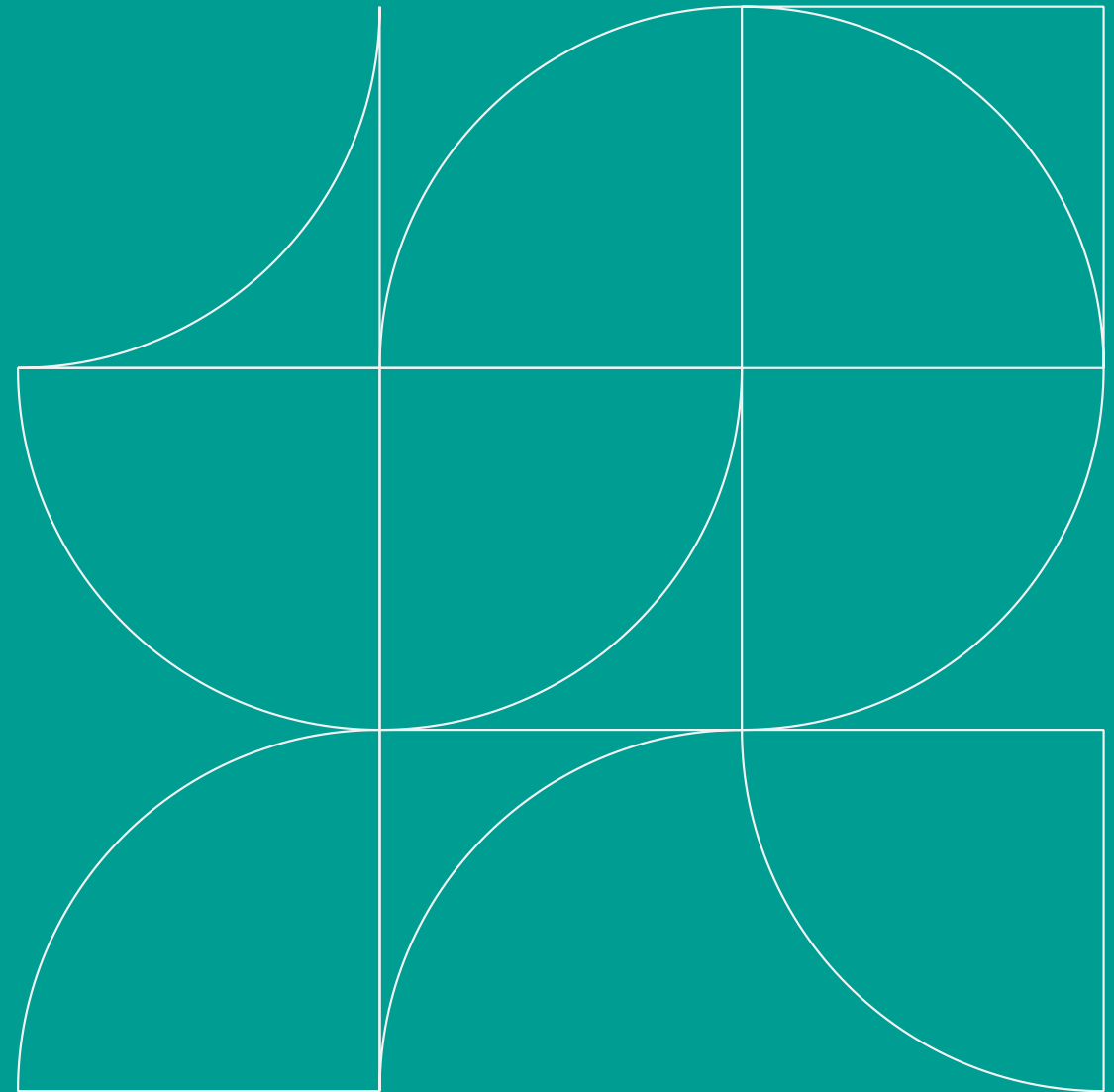
- Full-time → 80 hours of pay
- Part-time → Prorated based on avg. # of hours over two-weeks
- Pay set at highest of:
 - Employee’s “regular rate” (FLSA);
 - Federal minimum wage rate; or
 - State or local minimum wage rate;***unless...***
 - ...absence for is for reasons 4), 5), or 6)
 - then two-thirds
- Capped at \$511 per day and \$5,110 total (or \$200/\$2,000)
 - Depends on reason for use

Paid Sick Time



- Employees immediately eligible to use paid sick time
- Employers cannot require use of company-provided paid time off before an employee uses sick time under the Act
- No year-end carry-over
- No payout on termination or separation
- Employers cannot require employees to find replacements
- Posting obligation – model notice to be released today
- Anti discrimination, discipline and discharge provision, although limited scope

Emergency Family and Medical Leave Expansion



Paid Family and Medical Leave



- **Expands the FMLA:** Adds a new qualifying absence to the FMLA for “public health emergency leave” that is paid
 - Limited scope of what absences are actually covered
- **Employer coverage:** Does *not* apply to employers that employ 500 or more employees
 - Potential regulatory exemption for small employers
- **Employee Eligibility:** An employee who has worked for a covered employer for at least 30 calendar days
 - Standard is *not* regular FMLA criteria



PAID FAMILY AND MEDICAL LEAVE

Consists of Paid and Unpaid Portion

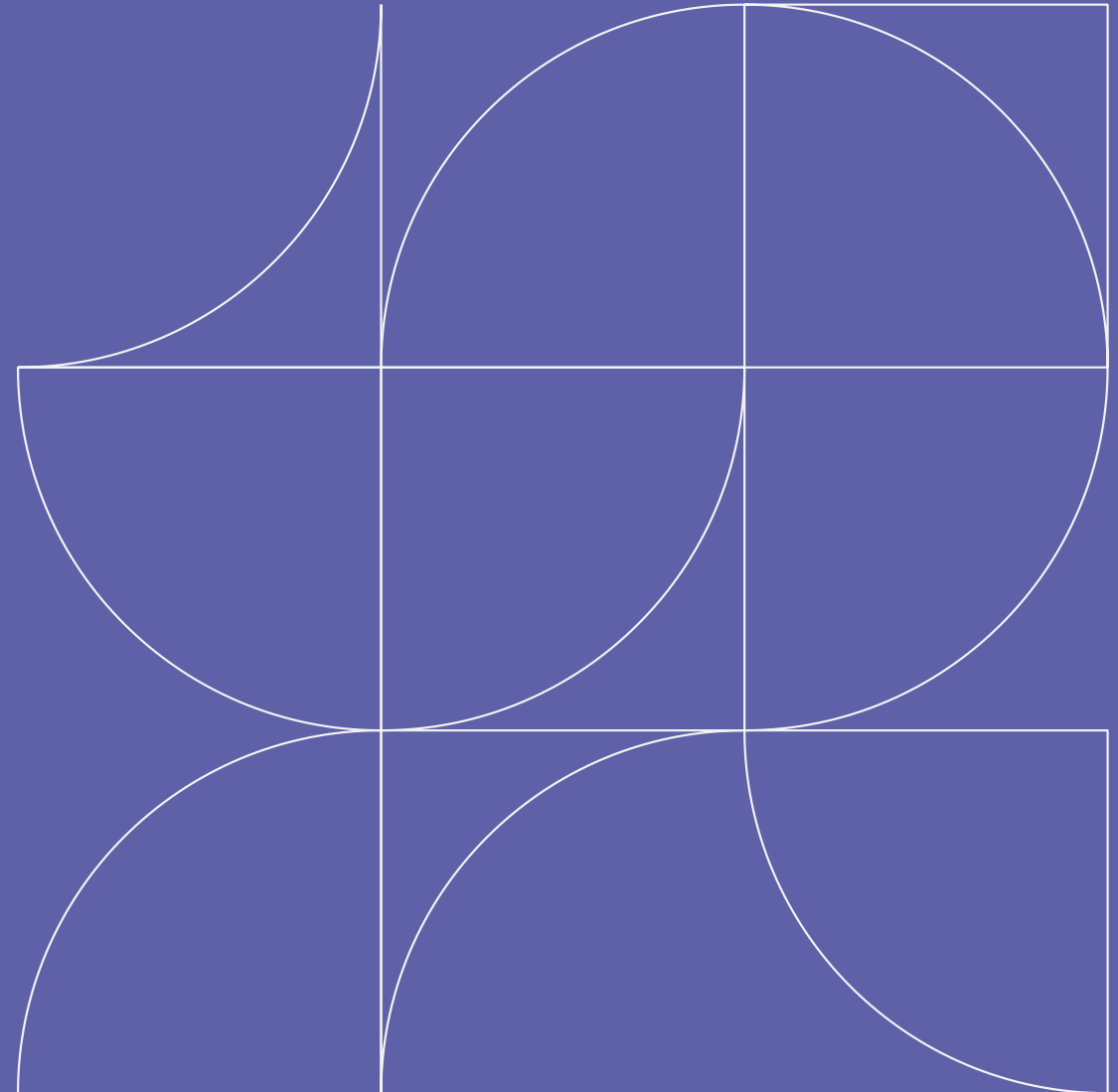
- Employers must provide paid leave **after** 10 days of unpaid leave
- Employee may substitute other leave benefits during initial period; Also can receive PST under the Act during this period
- After 10-day period, employee can receive up to 10 weeks of leave
- Pay = Not less than two-thirds of “regular rate” (FLSA) multiplied by # of hours normally scheduled
- Capped at \$200 per day and \$10,000 total

Paid Family and Medical Leave



- Employee must provide advanced notice of foreseeable leave as soon as practicable
- Reinstatement rights
 - Potential exception for employers with less than 25 employees, due to negative business or operational changes
- No CBA exemption; Special rules under multi-employer bargaining agreements
- Silent on whether intermittent leave is permitted
- Quarterly tax credits to offset employer payments

Tax Credits on Paid Sick Time and Paid Family Medical Leave



Tax Credits



Tax Credits

- The Act provides employers with a refundable tax credit against the employer's share of social security contributions and excise tax on employers subject to the Railroad Retirement Tax Act ("payroll taxes") equal to –
 - 100% of family leave wages and sick leave wages that an employer is required to pay under the Families First Act; plus
 - certain qualified health plan expenses properly allocable to such qualified wages, but only to the extent that such amounts are excluded from the gross income of employees; plus
 - the employer's share of Medicare tax that is properly allocable to such qualified wages

- The allowable credit reduces dollar for dollar the amount of payroll taxes the employer would otherwise have to deposit with the Internal Revenue Service, allowing the employer to instead retain such amount
- Any excess of allowable credit over payroll taxes would be refunded to the employer on an accelerated basis
- Treasury and the Internal Revenue Service announced they would release more detailed guidance this week addressing the manner in which the credit is to be claimed and any excess credit is to be refunded



- The amount of qualified sick leave wages paid to an employee that can be taken into account for tax credit purposes is capped at the following amounts, for an aggregate period of up to 10 days
 - \$511 per day with respect to an employee needing sick leave:
 - to comply with a Federal, state or local quarantine or isolation order;
 - because the employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns; or
 - because the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis
 - \$200 per day in all other cases for which qualified sick leave wages are paid



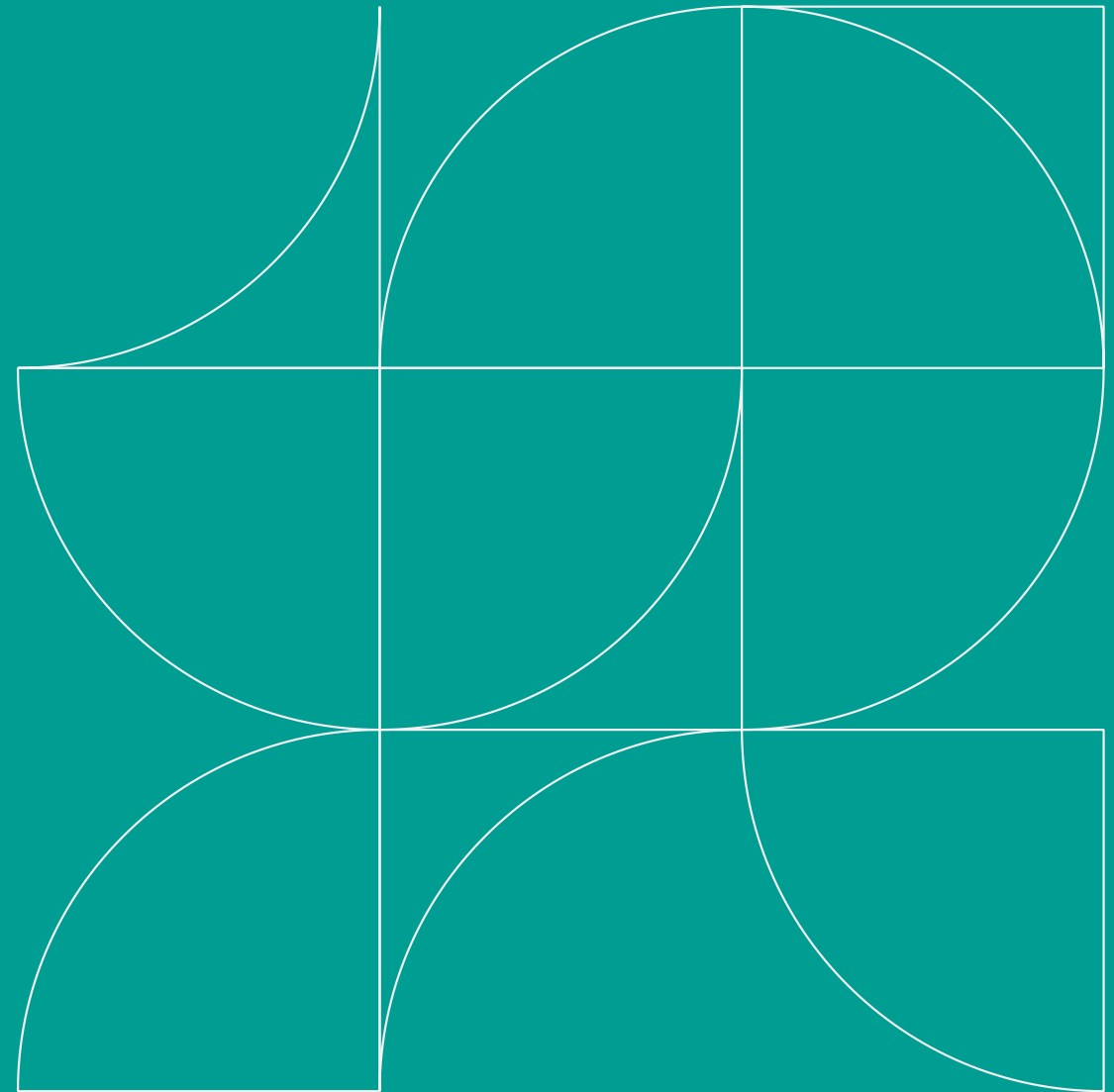
Tax Credits

- The amount of qualified family leave wages that can be taken into account in determining the credit for any employee is capped at \$200 for any day for which the employee is paid qualified family leave wages, and \$10,000 in the aggregate for all calendar quarters
- An employer is not required to pay the employer's portion of social security tax on qualified family leave wages and qualified sick leave wages paid

Tax Credits

- In order to prevent employers from realizing a double tax benefit –
 - the amount of the credit must be included in employers' gross income for purposes of determining their federal income tax liability; and
 - employers must exclude the wages giving rise to the credit in determining the paid family and medical leave tax credit under Internal Revenue Code Section 45S.
- The Act provides for credits against self-employment tax in the case of self-employed individuals impacted by the coronavirus and related emergency measures

Unemployment Compensation



Unemployment Compensation

- Extended benefits for longer period of time than would be available in non-COVID-19 situations
- Easier application process
- Waiting Period waived
- No requirement for employee to search for employment

Questions?

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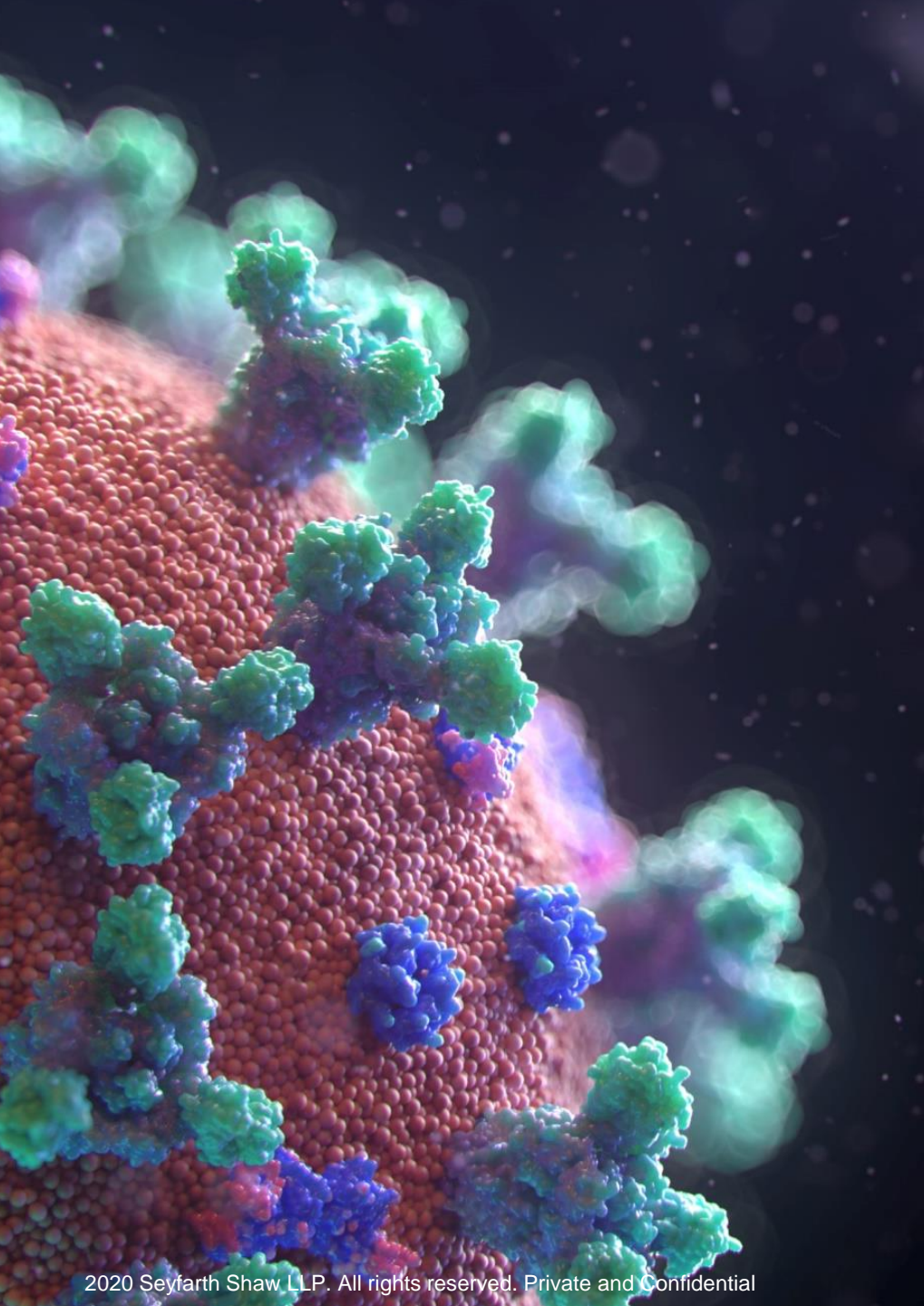
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thank you



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