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Amy J. Adolay Partner Krieg DeVault	X		No relevant financial relationships with any commercial interests	N/A	N/A	None
Robert A. Greising Partner Krieg DeVault	X		No relevant financial relationships with any commercial interests	N/A	N/A	None
Corben A. Lee Associate Krieg DeVault	X		No relevant financial relationships with any commercial interests	N/A	N/A	None
Jessica Davis CME Coordinator Indiana State Medical Association		X	No relevant financial relationships with any commercial interests	N/A	N/A	None
Janette Helm Director of Education & Professional Development Indiana State Medical Association		X	No relevant financial relationships with any commercial interests	N/A	N/A	None
Cheryl Stearley CME Accreditation & Recognition Administrator Indiana State Medical Association		X	No relevant financial relationships with any commercial interests	N/A	N/A	None



# **COVID-19 Latest: Update on FFCRA & CARES Act for Healthcare Businesses**

Presented by:

**Amy J. Adolay, Robert A. Greising & Corben A. Lee**

April 17, 2020

# About Our Speakers

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**Amy J. Adolay**

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Amy J. Adolay focuses her practice on employment law counseling and litigation and school law. Ms. Adolay serves as the Chair of the firm's Labor and Employment Practice Group. She counsels employers on complex human resources issues that arise on a daily basis in the workplace and defends employers before administrative agencies and in state and federal courts. Ms. Adolay handles a wide variety of types of claims, including discrimination, harassment, retaliation, family and medical leave, disabilities, unemployment compensation, wage and hour, and restrictive covenants. Ms. Adolay also routinely reviews, revises, and drafts employment related documents such as employee handbooks, employment policies and procedures, employment agreements, severance and retention agreements, and non-compete and non-solicitation agreements.

Ms. Adolay's extensive employment law experience has included representing employers in collective actions and litigating complex claims relating to discrimination, restrictive covenants, and various other employment and contract disputes.

## Paid Sick Leave under Families First Coronavirus Response Act

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- Emergency Family and Medical Leave Expansion Act (EFMLEA)
- Emergency Paid Sick Leave Act (EPSLA)
  - Which employers are covered by FFCRA?
  - What are the qualifying reasons for taking FFCRA leave?
  - How much leave do these laws provide?
  - How much do I have to pay my employees who take these leaves?

## **Paid Sick Leave under Families First Coronavirus Response Act**

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- Small Business Exemption
- Health Care Provider Exemption
- Emergency Responder Exemption
- Tax Credits

## Other Employment Law Considerations due to COVID-19

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Obligations under OSHA

Following CDC Guidance

Obligations under FMLA/ADA

Furloughs/Layoffs/WARN Act

Return to Work Considerations

Questions:

- Can my employee refuse to come to work due to fears of contracting COVID-19?
- Can my employee get workers' compensation if they contract COVID-19?

# About Our Speakers

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## **Robert A. Greising**

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Robert A. Greising devotes his practice primarily to general corporate, corporate finance, business, healthcare technology, and education areas. Mr. Greising is one of the Firm's leads on the COVID-19 response, with a focus on the impact of the Coronavirus pandemic on small and mid-sized businesses.

Mr. Greising has served as lead counsel in many merger and acquisition transactions and in the sale of numerous publicly and privately-held businesses across a broad spectrum of industries. He is actively involved in the firm's efforts to serve family-owned and closely-held businesses as well as entrepreneurial and development stage companies. In addition, he has been the lead on joint ventures and strategic alliances in the healthcare and community mental health sectors, as well as for the financial services industry, the education sector, technology and software, and energy fields and on outsourcing projects and public/private partnerships involving governmental services and information technology.

## COVID-19 Latest for Healthcare Businesses: Overview

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- Some General Key Steps
- Stimulus Bill Financing Tools
- Focus on Paycheck Protection Program

## COVID-19 – Latest for Healthcare Businesses: General Key Steps

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- Force Majeure
- MAC and MAE Considerations
- Financing Considerations
- Fiduciary Duties and Decision Making
- Cybersecurity
- Insurance Coverages

## COVID-19 – Latest for Healthcare Businesses: Stimulus Loan Programs

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- Paycheck Protection Program - \$349B
- Economic Injury Disaster Loan - \$10B
- Main Street Business Loan Program - \$600B
  
- BEWARE: Authorized funds for PPP and EIDL are fully committed
- Be Patient: Main Street Facilities still being finalized

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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### Overview:

- Focus on small businesses.
- Coordinates with other stimulus loan programs: EIDL and Main Street program

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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- Maximum amount: lesser of 2.5 average payroll over past 12 months or \$10M
  - Some new guidance allows inclusion of self-employment income for non-W-2 owners: S corp and LLCs
  - US Based employees
  - Up to \$100K of cash compensation for each employee
- General terms:
  - 1% interest per annum
  - 6 month deferral
  - 2 year maturity
- Waiver of normal SBA requirements for guaranties, collateral and “credit elsewhere” limit

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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- First Come / First Served
  - \$349B – out of \$\$; Congress at a stalemate regarding a replenishment
- Employee Count and Affiliation Rules
  - Generally 500 employee cap
    - FT and PT
    - Not Independent Contractors
  - Affiliation: broader control concepts

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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- Permitted Uses:
  - 8 weeks after disbursement
  - Payroll Costs: salaries, wages, benefit costs and state/local employment taxes; includes new hires as well as prior employees – at least 75% of proceeds
  - Rent, Utilities and Interest on Mortgages [all must be in place by 2/15/20] – not more than 25% of proceeds
  - Interest on debt incurred before 2/15/20 [but not forgivable]
  - Refinance EIDL debt incurred between 1/31/20 and 4/2/20

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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- Forgiveness
  - Principal and interest
  - Maximum of amounts spent on payroll costs and permitted rent, utilities and interest on mortgage in 8 weeks after origination
  - At least 75% for payroll costs > can be more
  - Not more than 25% for non-payroll costs

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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- Reduction in forgivable amount tied to reduction in headcount and wage base
  - Ratio with numerator of current headcount and denominator of historic headcount
    - Current: average FTE over the 8-week period
    - Historic base: average FTE over either 2/15/19 to 6/30/19 or 1/1/20 to 2/29/20, at borrower's option
    - Rehires before 6/30 of those laid off early in the year are ignored for reduction calculation
  - Dollar for dollar reduction for wage base more than 25% of prior base

## COVID-19 – Latest for Healthcare Businesses: Paycheck Protection Program

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- Key Timeframes
  - 8 weeks to incur forgivable costs
  - 6 months deferral before first payment
  - 2 years maturity for PPP loan

# About Our Speakers

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Corben Lee is a member of the firm's Business, Acquisitions & Securities and Employee Benefits and Executive Compensation Practice Groups. His practice focuses on assisting privately and publicly held companies on merger and acquisition transactions, securities matter, and corporate governance issues.

Prior to joining Krieg DeVault, Mr. Lee served as an associate attorney at an Indiana law firm concentrating in numerous aspects of business and corporate law. Mr. Lee currently serves on the Executive Committee of the Business Law Section of the Indianapolis Bar Association.

# CARES Act: Overview of EIDL Loans

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- *Purpose: Cover Losses from Disaster*
  - *COVID-19 has been declared a disaster*
- *Eligible Borrower: Business Concerns with Under 500 Employees (with some industries allowed more)*
- *Benefit: Low Rate Loans but NOT Loan Forgiveness*
- *Available Funds: \$10 billion*
- *Program Term: December 31, 2020*

# CARES Act: EIDL Loans > How Do I Get One?

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- *Apply with SBA, Not SBA Lender*
- *Application Source: [www.disasterloan.sba.gov](http://www.disasterloan.sba.gov)*
- *SBA currently not accepting applications*

# CARES Act: EIDL Loans Terms

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- *Maximum Amount: \$2M*
- *Interest: 3.75% per annum for businesses*
- *Term: up to 30 years (based on ability to repay)*
- *Collateral: Yes (if loan is greater than \$25,000)*
- *Personal Guaranty: Yes, but waived for loans under \$200,000*
- *“Credit Elsewhere” Requirement: Waived*

# CARES Act: EIDL Emergency Grants

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- *\$10,000 Emergency Grant*
  - *Limited to \$1,000 per employee up to \$10,000*
- *Check box on EIDL loan application*
- *Receive grant within “days”*

# Questions?

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## **Krieg DeVault LLP COVID-19 Resource Center**

<https://www.kriegdevault.com/info/covid--resource-center>

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**Thank you for participating!**

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