

**Morgan Lewis**

# **EMPLOYEE BENEFITS IN THE AUTOMOTIVE AND MOBILITY CONTEXT**

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# Morgan Lewis Automotive Hour Webinar Series

Series of automotive industry focused webinars led by members of the Morgan Lewis global automotive team. The 10-part 2020 program is designed to provide a comprehensive overview on a variety of topics related to clients in the automotive industry. Upcoming sessions:

**JUNE 11 | *Now. Normal. Next* | Bankruptcy and Debt Restructuring in the Automotive Industry**

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**NOVEMBER 11** | Environmental Developments and Challenges in the Automotive Space

**DECEMBER 9** | Capitalizing on Emerging Technology in the Automotive and Mobility Space

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**SECTION 01**

# **INTRODUCTIONS**



# Today's Presenters



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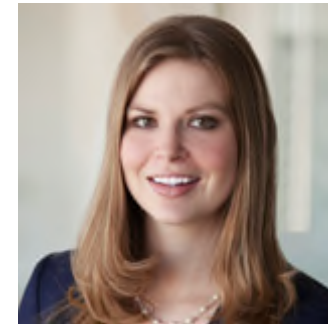


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**SECTION 02**

# **OVERVIEW**



## Overview

### Benefits and tax considerations for:

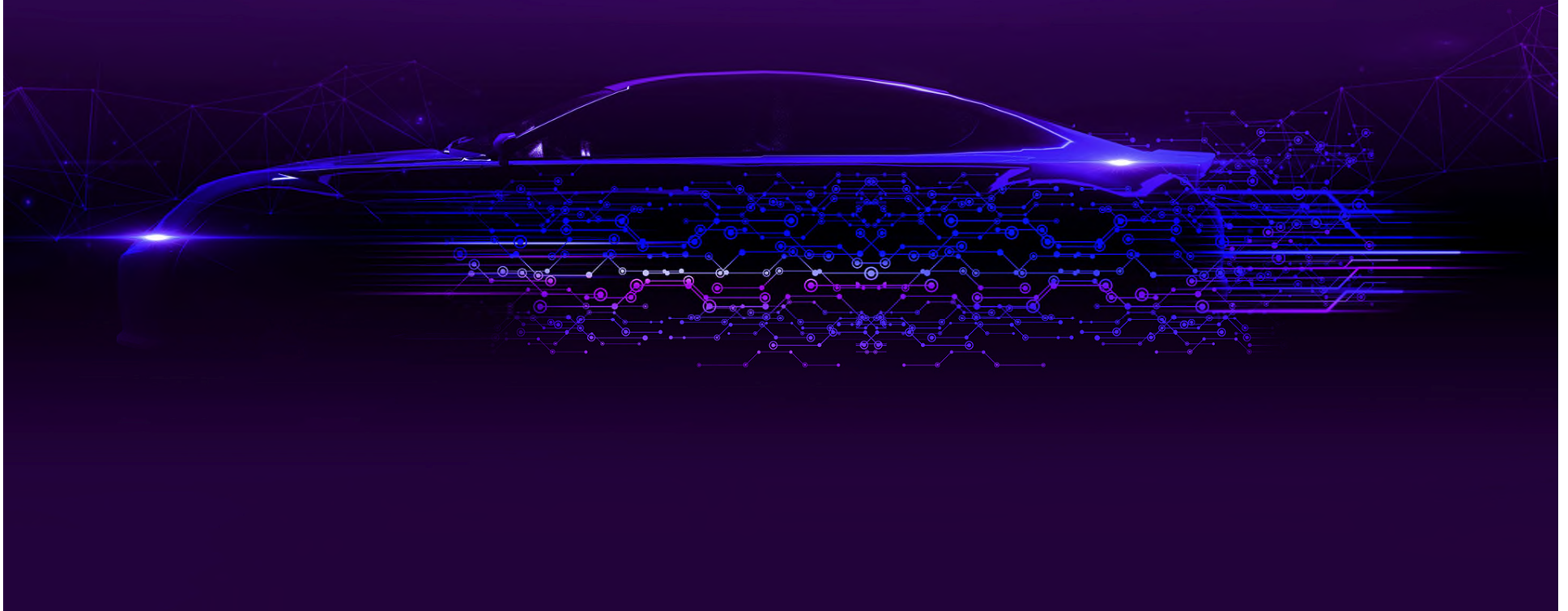
- Furloughed workers
- Remote workers
- Returning on-site workers



Issues spanning retirement plans, welfare plans, tax situs, fringe benefits, and testing/treatment

**SECTION 03**

# **FURLOUGHS**





# Retirement Plans: Right to Distribution?

- CARES Act distributions
  - Up to \$100,000
  - From eligible retirement plans
  - To qualified individuals
  - Special rollover rules
- Hardship withdrawals
  - Expenses and losses caused by federally declared disaster
  - Cover medical expenses
  - Prevent foreclosure or eviction
  - Funeral expenses
- Caution for treating temporary furlough as retirement – must be bona fide termination

## Retirement Plans: Repayment of Plan Loans?

- Suspensions pre-CARES Act
  - Available for unpaid leave of absence for up to 1 year
  - But cannot extend loan term beyond 5 (10 for home purchase loans) year max term
- Optional CARES Act relief
  - Repayments due before December 31, 2020 may be delayed by 1 year
    - Must adjust subsequent loan payments to reflect the delay and interest accrued during delay
    - May extend loan term beyond 5 (10 for home purchase loans) year max term

## Welfare Plans

### Payment of premiums for continued benefits, if any

- Can be tax-free
- Consider state wage payment laws if planning to require repayment of amounts upon return

### COBRA rights

- Entitled to COBRA if experience a loss of coverage due to furlough
- Recent DOL deadline relief allows election beyond usual 60-day period
- Can require payment of premiums back to loss of coverage date before providing coverage

## Welfare Plans continued

### Change in status

- If furloughed employees lose eligibility for plans or changes cost sharing, then can change elections
  - Mere change in pay or hours, in itself, not sufficient – must be coupled with change in eligibility
  - Example: if you are full-time, you are eligible for different benefits or have to pay lower premiums than if you are part-time
- Recent IRS section 125/cafeteria plan relief
  - Optional
  - Expands opportunity to change elections mid-year prospectively
  - But no ability to get refund of prior contributions

**SECTION 04**

# **REMOTE WORK**



## Tax "Situs"

Employees working in different state than usual work state may yield additional tax reporting obligations

- Employer may be obligated to withhold and remit income taxes to multiple states for one employee
- States have different rules about when income taxes must be withheld

May impact deductions for other business expenses

- Example: Change of "tax home" for travel reimbursements

## Business Expenses

- Some states' labor laws (e.g. CA, IL, MA, MT, NH) require employers to reimburse for reasonable and necessary expenses, and may also have obligations under FLSA
  - See *Remote Working in a Time of Pandemic* at <https://www.morganlewis.com/events/remote-working-in-a-time-of-pandemic> for more info
- But even if not required, may want to reimburse employees
  - Under Tax Cut and Jobs Act, employees generally cannot write off expenses
- Expenses must have a business connection
- Substantiation requirements apply if want to provide/reimburse tax-free

## Examples of Business Expenses

Costs of  
utilities

Printing at  
home

Other home  
office  
expenses



# Qualified Disaster Relief Payments

- Code section 139, aka Stafford Act
  - Allows reimbursements or payments for “reasonable and necessary personal, family, living or funeral expenses” due to an eligible disaster
  - Tax-free to employees, deductible to employer
- Little guidance, so use caution
- No substantiation requirements
  - Likely to be IRS attention later, however, so consider setting up a policy
- No double-dipping
  - Example: Childcare expenses

## Employee Assistance Program (EAP) for Mental Health

- But caution if more than referral – must comply with group health plan requirements
  - ERISA
  - COBRA
  - But may be an “excepted benefit” for HIPAA and ACA purposes

**SECTION 05**

# **RETURN TO WORK**



## Childcare Issues

- Dependent Care Assistance Programs (DCAPs)
  - Mid-year changes may be allowed if had a change in status or cost/coverage change
    - Examples: due to school or daycare closures, switching to in-home nanny
  - Recent IRS section 125/cafeteria plan relief
    - Optional
    - Expands opportunity to change elections mid-year prospectively
      - But no ability to get refund of prior contributions
- Consider Qualified Disaster Relief Payments
  - For expenses not reimbursed by DCAP

## Transportation Issues

- Less likely to have mass transit available – consider Qualified Disaster Relief Payments
- Transit and parking benefit programs
  - Can't use for ride hailing unless pooled (e.g., uberPool and Lyft shared rides)
  - Can't use for bikeshare programs, but consider other bicycle commuter tax benefit programs
    - Deduction available for employers (Tax Cut and Jobs Act) but not pre-tax to employees

## Temperature Checks

Not subject to HIPAA unless covered entity (e.g., health plan) involved

May be state privacy laws to consider

General ADA and privacy considerations – treat as sensitive, personal information

## Onsite Testing

- Must provide free testing in group health plan, but only for plan participants
  - If offered through plan, will not affect HSA-eligibility
- For non-health plan participants, can be an excepted benefit if offered through EAP per IRS guidance
- May be done at onsite clinics, but use caution, as may have other health plan implications
  - Potential multiple employer welfare arrangement (MEWA) issues

# Treatment

## At onsite clinics

- Practical limitations, but triaging likely to fall under emergency exception from group health plan designation

## Via telehealth

- If covered, will not affect HSA-eligibility



**QUESTIONS?**



# THANK YOU

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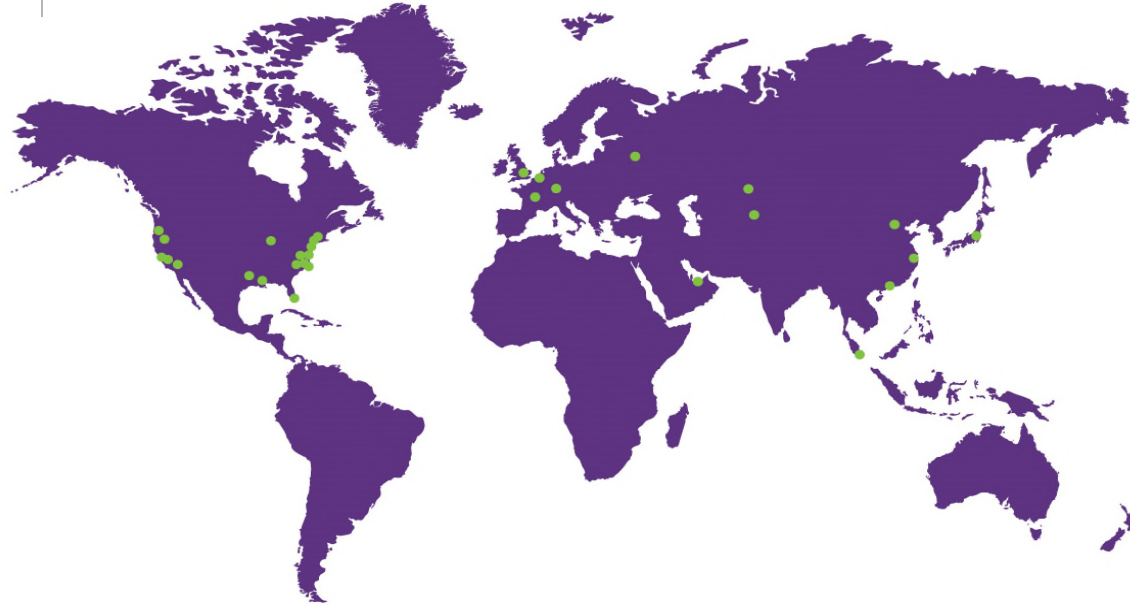
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