

Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

April 3, 2020

If you have questions concerning the content below, please visit this [link](#).

COVID-19 CLIENT RESOURCE CENTER: To access resources for businesses navigating the COVID-19 crisis, we invite you to visit PilieroMazza's "[COVID-19 Client Resource Center](#)." Please contact covid19@pilieromazza.com for immediate assistance.

CLIENT ALERT: DOL Issues Temporary Regulations the Day the FFCRA Became Law, April 2, 2020, [Nichole Atallah](#), [Sarah Nash](#), and [Sara Nasserj](#). [[Read More](#)]

CLIENT ALERT: FFCRA Leave Effective April 1: DOL Issues Additional Guidance, March 31, 2020, [Nichole Atallah](#), [Sarah Nash](#), and [Sara Nasserj](#). [[Read More](#)]

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

CRS Examines COVID-19 Stimulus Assistance to Small Businesses

The Congressional Research Service (CRS) released a report on COVID-19 small business stimulus assistance. The report provides a brief description of SBA's programs and discusses recent legislation to assist small businesses adversely affected by the COVID-19 pandemic. Read the full report [here](#).

Historic COVID-19 Stimulus Package: Billions Set Aside for Small Businesses, March 26, 2020, [David Shafer](#)

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") represents an unprecedented stimulus package as the government attempts to mitigate the economic damage associated with the novel COVID-19 pandemic. *Read our summary of some of the central components of the stimulus package that focus on economic relief for small businesses.* [[Read More](#)]

The full text of the CARES Act is available [here](#). A description of the small business provisions in the stimulus is available on the Senate Committee on Small Business and Entrepreneurship website [here](#), and additional information from the CRS is available [here](#).

VA Streamlines VAAR and Aligns with FAR

The Department of Veterans Affairs (VA) issued a final rule amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the

Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency-specific regulations or policies. The rule is effective April 24, 2020. Read the published version [here](#).

COVID-19 Resources

1. [List of COVID-19 Small Business Relief Programs by State](#)
2. [Coronavirus Acquisition-Related Information and Resources](#)
3. [OMB Issues Guidance on Contract Issues Associated with COVID-19](#)

For additional resources on navigating the COVID-19 crisis visit PilieroMazza's "[COVID-19 Client Resource Center](#)."

GOVERNMENT CONTRACTS LAW

GSA Launches Coronavirus Acquisition-Related Information and Resources Page

GSA launched a page that consolidates government-wide guidance on COVID-19. The page is available [here](#).

COVID-19 and Federal Procurement Contracts

The CRS released a legal sidebar on COVID-19 and federal procurement contracts. COVID-19 disruptions may make it difficult, and potentially impossible, for some federal contractors to perform government procurement contracts as originally contemplated. Because disruptions will likely alter government procurement priorities, which has prompted questions about how the novel COVID-19 pandemic might affect federal acquisitions and government contractor performance, the legal sidebar examines guidance from the Office of Management and Budget as well as legal mechanisms for addressing COVID-19-related performance issues and the use of the Defense Production Act of 1950. Read more [here](#).

Contracting Officers Can Pay You Even If the Contract Is Shut Down!, March 27, 2020, [Cy Alba](#)

We discussed the [emergency loan programs and loan forgiveness opportunities for small businesses](#) in the CARES Act. However, it is critical to understand that there other avenues for relief that do not have to wait for SBA or private lenders to start processing such loans. Specifically, [OMB Memorandum M-20-18](#) gave Contracting Officers ("CO") broad authority and specifically states that all contracting personnel should "feel fully empowered to use acquisition flexibilities." Further, Section 3610 of the Act, entitled "Federal Contractor Authority," specifically states that ***COs have authority to continue paying contractors in order to maintain employment for contractor personnel, even if the contract is subject to a stop work order or other delay.*** Again, this is true even if no work is being performed on the contract. [\[Read More\]](#)

JEDI Update: Pentagon Files Voluntary Motion for Remand to Reconsider Microsoft Award, March 27, 2020, [Lauren Brier](#)

On March 12, 2020, the Department of Defense (DOD) filed a motion for voluntary remand requesting that the Court of Federal Claims (COFC) remand the Joint Enterprise Defense Infrastructure (JEDI) contract case for 120 days. This would allow DOD to reconsider certain aspects

of its decision to award the JEDI contract to Microsoft. *DOD's re-evaluation could signify major flaws in the process.* [\[Read More\]](#)

8(a) Contractors: To Suspend or Not Suspend In Light of COVID-19, March 25, 2020, [Meghan Leemon](#)
If you are an 8(a) contractor, you may have received a notification from your Business Opportunity Specialist regarding a voluntary suspension due to the [March 13, 2020 declaration of a national emergency concerning the COVID-19 outbreak](#). *Covered below are considerations for 8(a) government contractors before they decide to suspend or not to suspend their participation in the 8(a) program.* [\[Read More\]](#)

Stimulus Bill Has \$10.5B for Pentagon

The Hill reported that the stimulus package—the [CARES Act](#), which was passed by Congress and signed by President Trump on March 25, 2020—includes \$10.5 billion to be allocated to the Department of Defense (DOD) to help the DOD fight the coronavirus. The CARES Act also provides \$1 billion for purchases made under the Defense Production Act (DPA), a wartime authority that proponents argue could be used to increase production of coronavirus tests, ventilators, masks and other critical supplies. Read more [here](#).

The National Defense Industrial Association's overview of the DPA and the Defense Priority and Allocation System is available [here](#).

Emergency Acquisition Flexibilities for COVID-19

The Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Senior Procurement Executives increased the micro-purchase and simplified acquisition thresholds solely for the purpose of direct response to the COVID-19 pandemic emergency. COVID-19 was declared an emergency by President Trump on March 13, 2020. Read more [here](#).

Defense Industrial Base Contract Considerations

The DOD released a memorandum that offers guidance on determining which contractors are considered part of the Essential Critical Infrastructure Workforce. Companies aligned with the definition of Essential Critical Infrastructure Workforce are expected to maintain staffing and work schedules necessary to meet contract requirements. Read the full memorandum [here](#).

Creative Contracting Techniques for Maintaining the Financial Health of the Defense Industrial Base

The Air Force released a memorandum that offers guidance to Contracting Officers under a mandate to “take all prudent actions within their authority to minimize potential negative effects of contract disruptions arising from Coronavirus Disease 2019 (COVID-19).” Read the full memo [here](#).

Pentagon Raises Contractor Payments to Keep Cash Flowing

Bloomberg Politics reported that the DOD, in a move to boost cash flow to large and small defense companies during the coronavirus crisis, will temporarily increase the percentages paid to contractors, known as periodic progress payments. Read more [here](#).

Fiscal Year 2021 NDAA Process Begins

The House Armed Services Committee issued a press release reporting that Chairman Adam Smith (D-Wash.) and Ranking Member Mac Thornberry (R-TX) introduced H.R. 6395, the “by request” version of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021. This procedural measure is traditionally the first step in the legislative process for the NDAA. The legislation filed this week does not reflect substantive work by the Armed Services Committee. Rather, provisions contained in the bill reflect legislative proposals submitted by the Department of Defense. When the House Armed Services Committee meets to consider the FY 2021 NDAA, the content of H.R. 6395 will be struck and replaced with subcommittee and full committee proposals. Read more [here](#).

Related Government Contracts Law Presentations by PilieroMazza

WEBINAR: CIO-SP4: A Virtual Town Hall Webinar, April 23, 2020, [Cy Alba](#) and [Reena Bhatia](#). [[Read More](#)]

WEBINAR: PCI Subcontracting Summit 2020: Flowdowns, April 28, 2020, [Cy Alba](#). [[Read More](#)]

LABOR & EMPLOYMENT LAW

The CARES Act and Leave Guide for Employers: Deciding Which Option is Best for You and Your Employees, March 27, 2020, [Nichole D. Atallah](#), [Sarah L. Nash](#) and [Sara Nasser](#)

The CARES Act allows businesses to apply for loans to continue paying employees and maintaining operations, which may be forgiven, expands on provisions of the Families First Coronavirus Act ([FFCRA](#)), and provides for additional flexibilities regarding unemployment insurance, among other aid and relief for employers. The CARES Act is an unprecedented piece of legislation, but many employers are struggling to determine how to make the right choice to save their business and maintain their workforce. *In this blog, we are breaking down options for employers who have affected workforces and identifying resources available to them.* [[Read More](#)]

Employers: A Briefing on Federal Agencies' Responses to COVID-19, March 25, 2020, [Nichole Atallah](#), [Sarah Nash](#) and [Sara Nasser](#)

Federal, state, and local governments are working around the clock to implement various measures in the midst of the COVID-19 crisis. Additionally, a number of federal agencies and departments are also taking action in response to the outbreak. For employers across the nation, it is undeniably an unstable and unclear time, with no concrete signs of when there will be a sense of normalcy again. However, in the meantime, *we compiled a list of some of the agencies with brief descriptions of their issued guidance and/or responses for employers to take note of.* [[Read More](#)]

Temporary Procedures for Personnel Vetting and Appointment of New Employees during Maximum Telework Period due to Coronavirus COVID-19

The Office of Personnel Management (OPM) released a memo that offers guidance on vetting and appointment procedures involving fingerprinting. It also covers procedures involving in-person proof of identity for employment authorization and determining eligibility for issuance of a credential. This guidance is effective until agencies are otherwise notified in writing. Read the full memo [here](#). Related Government Executive reporting on OPM hiring and onboarding policy is available [here](#).

Path to Limit New Paid Sick and Family Leave Obligations If Fewer Than 50 Workers

Bloomberg Government reported that the DOL may have established a path for businesses with fewer than 50 workers to limit new paid sick and family leave obligations to some workers affected by coronavirus. Small businesses can claim an exemption to the Families First Coronavirus Response Act's (Public Law 116-127) requirement that employers offer paid and partially paid leave for coronavirus-related childcare by determining that it would jeopardize the business's viability. Those businesses are still required to provide up to two weeks of sick leave for employees subject to quarantine or experiencing symptoms associated with COVID-19, the disease caused by the coronavirus. Bloomberg Government reported that companies can prove the childcare leave requirements put the business in jeopardy in one of three ways. An employer must conclude (1) that providing the leave would cost more than the company's available revenue, causing the company to "cease operating at a minimal capacity"; (2) that the loss of workers on leave would be a "substantial risk" to the company's finances or operations; or (3) that there are not enough available and qualified workers to replace employees who are out on leave. Guidance issued by the DOL can be found [here](#).

COVID-19 Resources

1. [Poster: Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act](#)
2. [Families First Coronavirus Response Act: Fact Sheet for Employers](#)
3. [Families First Coronavirus Response Act: Questions and Answers](#)
4. [Providing Expanded Family and Medical Leave to Employees Affected by COVID-19 Online Dialogue](#)

For additional resources on navigating the COVID-19 crisis visit PilieroMazza's "[COVID-19 Client Resource Center](#)."

BUSINESS & CORPORATE LAW

COVID-19 and Its Effects on Credit Facilities, March 30, 2020, [Kathryn Hickey](#) and [Melissa Rodriguez](#)
With the spread of COVID-19, businesses all over the world have seen their operations affected and their cash flows and production decreased, putting them at risk of default on their credit obligations. The prediction is that the global economy will enter into recession, which will continue to affect the financial situation of millions of businesses. ***All businesses should consider the available options to remedy any borrowing deficits in light of specific circumstances.*** [\[Read More\]](#)

Banking Regulators' Response to COVID-19

The Congressional Research Service (CRS) released an insight discussing banking regulators' response to COVID-19. Economic conditions deteriorated rapidly over the past few weeks, as the coronavirus outbreak caused many businesses and public institutions to limit or close their operations. Once it became clear that the COVID-19 outbreak would have serious financial ramifications for households and businesses, the federal agencies that regulate banks and credit unions—the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and Consumer

Financial Protection Bureau, and the National Credit Union Administration—responded in two general ways:

- measures to encourage banks to work with customers affected by COVID-19 and
- adjustments to bank regulation related to capital, liquidity, and supervision.

Read the full Insight [here](#).

CYBERSECURITY & DATA PRIVACY

Coronavirus Will Not Delay Pentagon’s Contractor Cybersecurity Program

Government Executive reported that the DOD officially entered into an agreement with a nonprofit corporation that will serve as the accreditation body for the Cybersecurity Maturity Model Certification program and that the coronavirus pandemic would not delay the DOD’s plan to validate contractors’ cybersecurity plans. Read more [here](#).

White House Releases National Strategy for 5G Security

Nextgov reported that the White House released its [National Strategy to Secure 5G of the United States](#) to formally frame how the nation will safeguard fifth-generation wireless infrastructure at home and abroad. The 7-page policy document sets forth the president’s “vision for America to lead the development, deployment, and management of secure and reliable 5G communications infrastructure worldwide, arm-in-arm with [its] closest partners and allies.” Its release marks President Trump’s initial move to meet the requirements laid out in the [Secure 5G and Beyond Act](#). Read more [here](#).

A related CRS report on the national security implications of 5G mobile technologies is available [here](#).

About PilieroMazza

PilieroMazza – a business law firm – serves as a strategic partner to government contractors and commercial businesses from across the United States in numerous industries, including:

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