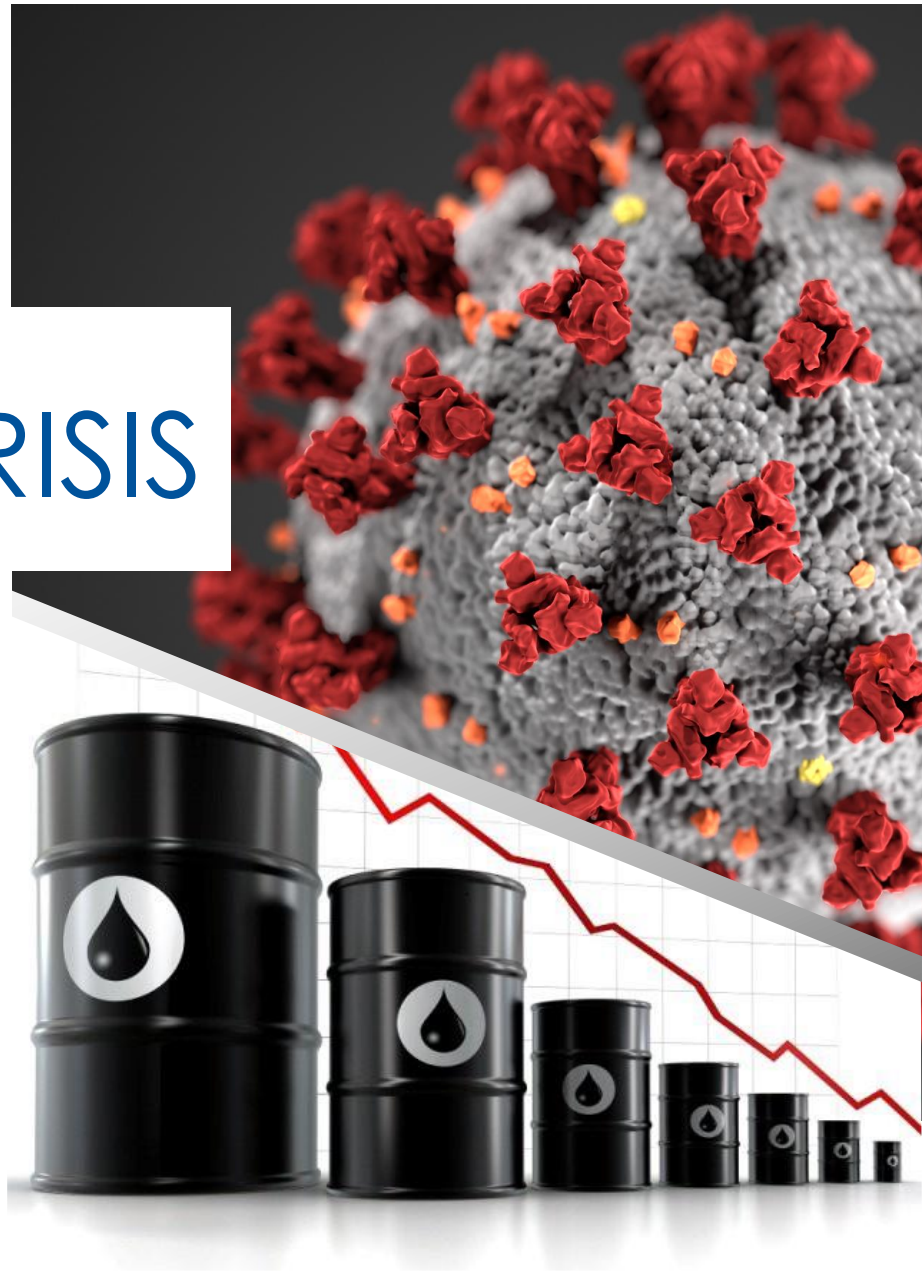
MANAGING THROUGH A CRISIS



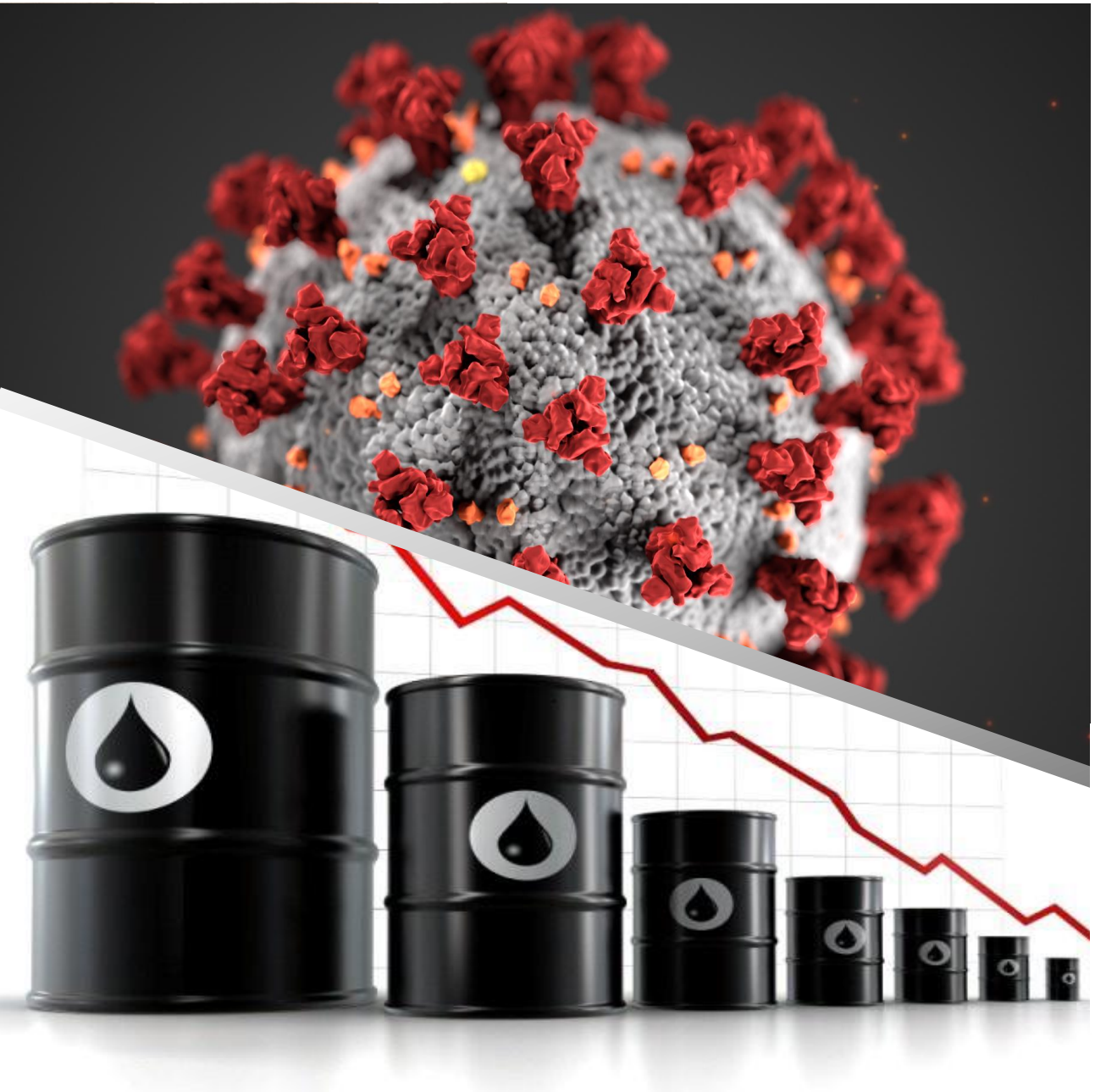
April 2, 2020

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Disclaimer

This presentation is intended to convey general information and may not take into account all the circumstances relevant to a particular employer's situation. Employers should consult employment counsel for legal advice on questions related to employment and the employer-employee relationship.

The information in this presentation was current as of April 1, 2020.

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Talent IQ LLC
Think. Create. Lead.

Phases of a Crisis

HR Response Options in 3 key areas:

- Talent
- Leadership
- Organization

			HR Deliverables		
		Key Issues	**Talent**	**Leadership**	**Organization**
	1	Assess Situation	Work Anywhere w/Technology	Model Core Values	Cut Costs
	First Aid	React Quickly	Attend to emotional demands & fears	Make Bold Decisions	Reassure Customers
	Triage	Stop The Bleeding		Communicate X 3	Adapt Strategy for Market
	2	Offer emotional support	Pay attention to employee experience	Install confidence	Diagnose basic organization
	Ambulance/	Diagnose Sympton	Focus on causes not symptons	Build: Credibiiity-	Move from event to patterns
Phases of	**Transition**	Source Experts		Honesty-Transparency	
Crisis	**3**	Access Experts	Redefine competencies	Offer Integrated Solutions	Remove superfluous work
	Hospital/	Improve Processes	Establish confidence in future	Share authority-	Seek new solutions in strategy
	Systems	Provide Solutions		Identify emerging leaders	Adapt organization to strategy
	4	Embed New Identity	Acquire required competencies	Create new leadership brand	Imbed new/right identity
	Home/	Adapt New Insights	Manage, believe, become,	Invest in new leaders for-	Focus on culture
	New Normal	Develop New Routines	& belong for sentiment	the new normal	Adapt new insight on tasks planning

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Coverage for COVID-19 Testing

- All group health plans must provide coverage for testing and other services related to the COVID-19 with:
  - No cost sharing
  - No prior authorization
  - No other medical management requirements
- Plans pay the negotiated price (if there is one) or the cash price, as listed on the provider's website
- The tests and services include:
  - In vitro COVID-19 diagnostic tests that are cleared or authorized by the FDA
  - Items and services furnished to an individual during health care provider office visits (including telehealth), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in above
  - Diagnostic products that might not be FDA-approved and 100% coverage for a vaccine, if it becomes available
- Federal law would not override state insurance mandates that require more
- Applies to all group health plans including self-funded plans, "skinny plans," grandfathered plans, and RBP arrangements

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Cost of Testing and Treatment

- The test itself is relatively cheap, however other medical expenses incurred related to the coronavirus can be costly
- On average, the costs for the COVID-19 test vary between $50-$200 dependent upon where the test is conducted (i.e., doctor's office v. emergency room) and type of insurance
  - FDA-approved tests conducted in public health facilities are free to patients
  - BCBSTX: "Testing and treatment for COVID-19 is a fast, developing situation with very limited information as of now. For the tests themselves, Medicare will be between approximately $36 and $51 depending on the type of test and we expect HCSC to reimburse roughly in that range. Our most recent estimates for the cost of the screening - unless in a facility setting - is $275-$300 though there are some indications it could be lower. If the screening is done at a facility, the cost is likely too variable to predict."
  - UHC indicated that a person who contracts COVID-19 could cost on average about $3,555
  - Lack of standard procedures surrounding testing may result in a wide range of actions taken by hospitals including how they bill for the COVID-19 test and whether ancillary procedures/tests are added
- CMS has developed two HCPCS codes specifically to bill for non-CDC laboratory tests used to diagnose COVID-19 in patients and to assist in tracking cases
  - Should eventually help standardize the test price
- Government is looking for new sources for the test (or alternatives) which would change things
- Treatment generally subject to cost-sharing
- Possible government subsidies

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New Leave Law

- For all employers with less than 500 employees, the FFCRA:
  1. Provides up to 12 weeks of leave under **FMLA** for eligible employees who have been employed for at least 30 days and unable to work (or telework) due to a need to care for a son or daughter under 18 years of age when their school or place of care has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19.
     - First 2 weeks unpaid, then 2/3 pay, maximum capped at $200/day and $10,000 in the aggregate
     - During this period of unpaid leave, an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, but an employer may not require it
  2. Creates a federal **paid sick leave** law providing for employer-paid leave of up to 80 hours to employees for COVID-19 issues. *Also applies to all public agency employers.*
     - 100% of pay where the employee is unable to work (or telework) because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. Maximum payment is capped at $511/day and $5,110 in the aggregate.
     - 2/3 of pay where the employee is unable to work (or telework) because of (1) a need to care for an individual subject to quarantine, (2) to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or (3) the employee is experiencing substantially similar conditions as specified by HHS. Maximum payment is capped at $200/day and $2,000 in the aggregate.
     - Must be provided in addition to the sick leave the applicable employer already provides
- Employers entitled to tax credit plus additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period
- Effective on April 1, 2020 and expires December 31, 2020

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500-Employee Threshold

- In counting 500 employees, the legal entity which employs the employee is the employer under FMLA. Applying this principle, a corporation is a single employer rather than its separate establishments or divisions. Where one corporation has an ownership interest in another corporation, it is a separate employer unless it meets the:
  - "joint employment" test (where two or more businesses exercise some control over the work or working conditions of the employee); or
  - "integrated employer" test (factors include: (i) common management; (ii) interrelation between operations; (iii) centralized control of labor relations; and (iv) degree of common ownership/financial control).
- Employees who must be counted include:
  - Any employee who works in the United States, or any territory or possession of the United States,
  - Any employee whose name appears on payroll records, whether or not any compensation is received for the workweek,
  - Any employee on paid or unpaid leave (including FMLA leave, leaves of absences, disciplinary suspension, etc.), as long as there is a reasonable expectation the employee will return to active employment,
  - Part-time, temporary, seasonal, and full-time employees
- Exemption if under 50 employees and compliance might jeopardize the viability of the business

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Health Plan Continuation

1. **SPD.** Do benefits cut off upon a reduction in hours (e.g., furlough) or just termination of employment (e.g., layoff)? Is there a 3-month extension for lay-offs? Is there a conversion option? Look back rules?
2. **FMLA/FFCRA Sick Leave.**
   - Is there a serious health condition of the employee or family member?
     - What if the employee has trouble with medical certification?
   - Does the group have less than 500 employees and the employee qualifies under the new leave law?
3. **Carrier-wide extension.** Has the carrier issued an extension to all its clients (e.g., through June 30, 2020)?
   - Special enrollment being offered by UHC not consistent with Code Sec. 125
4. **Client-specific exception.** If (3) is "no," has the employer gotten a formal exception from the carrier to offer an extension (or has an amendment to the SPD been approved by the stop loss carrier)?
5. **COBRA.** The employer can subsidize COBRA premiums if it so chooses.
   - Can result in adverse taxation if favors highly compensated
   - End of a subsidy not Special Enrollment event for group coverage, but may allow for Exchange enrollment

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Privacy and COVID-19

- HIPAA Privacy restrictions generally do not apply
  - Apply to "covered entities" such as employer-sponsored group health plans and medical providers and not employment practices
  - HHS issued a reminder to all employers about the protections included in HIPAA
- During a pandemic health crisis, the ADA
  - Permits employers to require an employee who is out sick to provide a doctor's note, submit to a medical exam, or remain symptom-free for a specified amount of time before returning to work
  - Generally does not permit disclosure except to health authorities
- Other general privacy or applicable state privacy rules?

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Tax-favored Accounts

HSA Eligibility

- Reimbursement for testing and treatment of medical expenses associated with COVID-19 by a QHDHP before satisfaction of the deductible will not jeopardize HSA eligibility
- For plan years beginning before December 31, 2021, QHDHPs can cover telehealth services before the deductible is met

HSAs, Health FSAs, HRAs

- Over-the-counter medicines can again be reimbursed
- Feminine hygiene products can be reimbursed

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Paycheck Protection Program

Employers with fewer than 500 employees will be eligible for guaranteed loans to cover payroll costs, and will be eligible for forgiveness of those loans. The amount eligible for forgiveness will be reduced to the extent that an employer reduces their workforce between 2/15/2020 and 6/30/2020, under the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, approved by the Senate on March 25, 2020, and passed by the House March 27.

Program	Paycheck Protection Program
Eligibility	Employers with fewer than 500 employees
Loan Guarantees	• Guarantees loans taken under the Small Business Act between 2/15/2020 and 6/30/2020 to cover "payroll costs." • In addition to wages paid to employees, payroll costs include items such as payments for vacation, parental, family, medical, or sick leave, and payments required for the provisions of group health care benefits, including insurance premiums and payment of any retirement benefits. • Lenders are required to defer payments for at least 6 months, and not more than 1 year.

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Paycheck Protection Program (cont'd.)

Loan Forgiveness	• Loans taken during the period described above will be eligible for forgiveness. • In order to be eligible for forgiveness, the loans must have been used to pay payroll costs, interest on any covered mortgage obligation, covered rent obligations, or covered utility payments. • The amount eligible for loan forgiveness will be reduced by multiplying the amount described above by the quotient determined by dividing the Employer's average number of monthly full-time employees from 2/15/2020 to 6/30/2020 divided by either average number of monthly full-time employees from 2/15/2019 to 6/30/2019 or average number of monthly full-time employees from 1/1/2020 to 2/29/2020. Example: • Employer has an average of 100 employees per month between 2/15/2019 and 6/30/2019. • Employer lays off a group of employees between 2/15/2020 and 6/30/2020 bringing the average number of employees per month for the period down to 75. • 75 divided by 100 = 75%, which means the employer is eligible to have 75% of their loan forgiven. • The amount eligible for forgiveness also reduces when the salary or wage paid to an employee is reduced by more than 25% during the 8-week period (compared to the most recent quarter during which the employee was employed prior to the covered period). • There is no reduction in the amount of loan forgiveness if the employer re-hires all employees laid off due to COVID-19 or increases employees' previously reduced wages by no later than June 30, 2020.

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Employee Retention Credit

Program	Employee Retention Credit for Employers Subject to Closure Due to COVID-19
Eligibility	• Employers whose (1) operations were fully or partially suspended due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee. • Employers who take out a small business interruption loan are not able to take advantage of this credit.
Benefit	• The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. • The credit is based on qualified wages paid to the employee
Qualified Wages	• For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. • For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order

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Delay of Payment of Employer Payroll Taxes

CARES Act Section 2302

- This provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
  - Employers generally are responsible for paying a 6.2% Social Security tax on employee wages.

- The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

- This provision is not available to employers that have a loan forgiven under the Paycheck Protection Program of the CARES Act.

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Cash Compensation Issues

Base Salary Considerations

- Freezing salaries and planned merit increases
  - In the airline industry, 45% of executives (CEO and NEOs) have been subject to base salary cuts.
  - In the hotel, resort, and cruise line industries, 15% of executives (CEO and NEOs) have been subject to base salary cuts.
- Temporary wage furloughs or wage reductions
  - Ensure salaries are not reduced to less than the minimum weekly salary rate of $684 for 2020.
  - Ensure hourly wages are not reduced to less than the federal, state or local minimum wage.
- May consider opportunity to shift jobs or employment to lower cost geographies.
  - Certain states still offer tax credits for job creation if application is made in advance.

Short-term Incentive Impacts

- Consider whether to adjust incentive metrics based on the expected financial decline to continue to motivate the desired behavior, which may have changed since metrics were set.
  - Desired behavior or target metrics may have significantly changed since the metrics were likely set just 30-60 days ago.
- Shift more into discretionary, individual or department goals.
- Partial payment of accrued short-term incentives.
- Consider cash-retention awards that vest quarterly.

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Industry Response

The table below displays a particular industry's response to the economic crisis with regards to executive salary reductions.

Industry Response Breakdown					
Industry	Count	Percent of Total	Average Reduction		
			CEO Salary	ONEO(s) Salary	BoD Comp
Transportation	11	22%	70%	50%	100%
Media & Entertainment	10	20%	90%	38%	100%
Hotels, Restaurants and Leisure	8	16%	90%	46%	60%
Industrials	8	16%	69%	37%	N/A
Retailing	8	16%	73%	60%	78%
Energy	5	10%	39%	61%	100%
Consumer Discretionary	1	2%	20%	20%	N/A

- The average salary reduction for CEOs is 64%, with hotels, restaurants, leisure, media, and entertainment being the highest at 90%.
- The average salary reduction for other named executive officers (ONEOs) is 44%, with retail, transportation, and energy being the highest.
- The average salary reduction for members of the Board of Directors (BOD Comp) is 77%, with transportation, media and entertainment, and energy being the highest at 100%.

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Equity Award Impacts

- Depressed share prices could stress equity pool allocations; consider other cash-based grants for 2020 if share availability is an issue.
- Stock option alternatives:
  - Private companies: consider resetting stock option exercise price to current stock price.
  - Public companies: depending on shareholder base, shareholder advisor pressure and how deep stock option grants are underwater, consider cancelling outstanding options to decrease elevated accounting expenses and reissue new grants.
- For companies still determining 2020 equity grants:
  - If the company has a sustainable share pool, consider granting stock options, as they provide good "bang for the buck" in a down market.
  - Consider delaying or staggering equity grants to assess where the market is headed.
  - Consider relative performance measures as long-term performance measures are almost impossible to forecast now.
  - Consider retention awards versus performance awards.

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Next Steps

- Review terms of the group health plan to understand how treatment for COVID-19 will be addressed
  - If self-funded, consider whether to "opt in" and provide enhanced benefits for COVID-19
- Communicate any changes to employees
- Review existing disability and leave policies and consider how they may be utilized in the event an employee (or the employee's family member) is diagnosed with COVID-19
  - Watch for state and federal guidance in this area should benefits be expanded
- If considering RIFs due to COVID-19's effect on the business, review plan terms, COBRA requirements, and maintain good records and tracking for 2020 1094-C/1095-C reporting
- Watch federal legislative activity for other developments and responsibilities that arise out of the COVID-19 pandemic
- Consult with employment counsel on specific questions regarding the employment relationship and employee terminations (includes layoffs) and leaves (includes furloughs)

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Next Steps

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- Review & implement contingency plans for extended shelter in place
  - For essential operations look at additional policies/procedures to keep people safe (temperature checks, plexiglass dividers, etc.)
- Communicate, Communicate, Communicate—have a regular rhythm on communicating with your employees
- Look at adapting your current organizational structure to the new normal
- Train your leaders on what they can and can't say in relation to future operations
  - Make sure they don't make promises your company can't keep
- For multi-site/multi-state operators, keep in tune with local requirements
  - They will differ state by state, county by county
- Confirm plans for addressing salaries, bonuses, benefits

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