



# Payroll Tax Relief Programs & Additional Updates

July 23, 2020



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# Disclosure

- For discussion purposes only
- To highlight the complexities, risks, and challenges from recent legislation related to:
  - Paid family and medical leave credits and paid sick leave credits from the Families First Coronavirus Relief Act
  - Employee retention credit from Section 2301 of the CARES Act
  - Deferral of employer’s share of social security taxes and certain self-employment taxes from Section 2302 of the CARES Act
- This is not official guidance and should not be shared, represented, or presented as official guidance from KWC CPAs



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## About the Speakers

### Kimberly Zingale, CPA

Manager, Audit & Accounting Services @KWC Certified Public Accountants

Kim has more than 7 years of experience providing services in the areas of financial statement audits, reviews, and compilations as well as tax planning and preparation for businesses and individuals. Her clients represent a variety of industries including not-for-profits, government contractors, and professional services.

### Steve Travis, CPA

Principal @KWC Certified Public Accountants

Steve has more than 32 years of experience providing tax planning & preparation, audit & assurance, employee benefit audits, and business consulting services. He is accomplished in many industries including professional services, government contractors, non-profits, and real estate. Steve previously served as Managing Principal of the firm for 10 years.



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## Introduction

- Payroll tax relief programs set up to help employers increase cash flow via the CARES Act and FFCRA
- Eligible employers may qualify for one or more of the following programs: payroll tax deferral, paid sick leave credit or paid family leave credit, employee retention credit
- Credits and deferrals are to be reported on the employer's Form 941 starting with Q2 2020, which is due July 31, 2020 (or 10<sup>th</sup> day of following month if all deposits made timely)



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# Introduction

## Can I utilize the programs at the same time?

	Paid leave	PPP loan	Deferral	ERC
Paid leave	–	Yes, with caveats	Yes	Yes
PPP loan	Yes, with caveats	–	Yes	No
Deferral	Yes	Yes	–	Yes
ERC	Yes	No	Yes	–

Note: There are options for self-employed individuals for all these programs except the employee retention credit (ERC).



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# Payroll Tax Deferral



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## Payroll Tax Deferral

### Eligibility

- Defer the deposit and payment of employer's share of social security tax on wages for two years
- Employer social security tax payments otherwise required to be made during the period from March 27, 2020, and ending Dec. 31, 2020
- 50% required to be paid by Dec. 31, 2021 and the remaining 50% by Dec. 31, 2022
- PPP loan recipients also eligible



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## Payroll Tax Deferral

### How to use

- Report on newly revised Form 941
- Deferral applies before you determine the paid leave credit or employee retention credit
- You can't defer tax that has already been paid
- Tip: You can consider prior deposits during the quarter as first being deposited for employment taxes other than the employer share of social security tax



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## Payroll Tax Deferral

### For self-employed

- Self-employed individuals defer the payment of 50 percent of the social security tax on net earnings from self-employment income
  - $15.3\% = 6.2\% + 6.2\% + 2.9\%$
- Same eligible period and payment dates as for employers
- Can reduce estimated tax payments during 2020 for the portion of self-employment tax being deferred



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## Paid Family, Medical, and Sick Leave Credits



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## Paid Family, Medical, Sick Leave

### Eligibility

- Employers with fewer than 500 employees must provide paid sick leave and paid family and medical leave to eligible employees impacted by COVID-19 from April 1, 2020 to December 31, 2020
- Fewer than 500 is measured when the leave is taken
- Small businesses can opt out of providing leave related to caring for others when school and childcare providers are closed



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## Paid Family, Medical, Sick Leave

### Eligibility

- For the family and medical leave credit, eligible employees include those who have been employed for at least 30 days before the leave is requested
- For the paid sick leave credit, any employee is eligible (no length of service requirements)



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## Paid Family, Medical, Sick Leave

### Eligibility

- Caveat for employers with PPP loans: when you receive tax credits for qualified leave wages, you cannot also use those same wages for PPP loan forgiveness purposes



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## Paid Family, Medical, Sick Leave

### What is a qualifying need for leave?

- If an employee is unable to work because:
  - They are subject to a COVID-19 quarantine or isolation order or are advised to self-quarantine.
  - They have COVID-19 symptoms and are seeking a medical diagnosis.
  - They are caring for someone due to the above.
  - They are caring for a child under 18 years of age if the school or place of care has been closed, or if the childcare provider is unavailable due to COVID-19.



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## Paid Family, Medical, Sick Leave

### How does the credit work?

- Employers that pay family, medical, or sick leave will get a separate credit for each payment that will reduce the employer’s 6.2% share of social security tax
- Credit amount depends on the purpose of the leave, as shown in the following tables



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## Paid Family, Medical, Sick Leave

Type of credit	IF unable to work for one of the following reasons:	THEN take this amount of credit:
Paid sick leave credit	<ol style="list-style-type: none"> <li>1. They are subject to a COVID-19 quarantine or isolation order or are advised to self-quarantine</li> <li>2. They have COVID-19 symptoms and are seeking a medical diagnosis</li> </ol>	The credit is at the employee’s regular rate of pay, up to \$511 per day and \$5,110 in total for up to 80 hours. When calculating the eligible wages, the qualified health plan expenses for the employee and the allocable portion of the employer’s Medicare taxes for the employee’s wages are also included.

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## Paid Family, Medical, Sick Leave

Type of credit	IF unable to work for one of the following reasons:	THEN take this amount of credit:
Paid sick leave credit	<ol style="list-style-type: none"> <li>1. They are caring for someone subject to a COVID-19 quarantine or isolation order or are advised to self-quarantine</li> <li>2. They are caring for someone who has COVID-19 symptoms and are seeking a medical diagnosis.</li> <li>3. They are caring for a child under 18 years of age if the school or place of care has been closed, or if the childcare provider is unavailable due to COVID-19</li> </ol>	The credit is for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in total, for up to 80 hours. When calculating the eligible wages, the qualified health plan expenses for the employee and the allocable portion of the employer's Medicare taxes for the employee's wages are also included.

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## Paid Family, Medical, Sick Leave

Type of credit	IF unable to work for one of the following reasons:	THEN take this amount of credit:
Family and medical leave credit	<ol style="list-style-type: none"> <li>1. They are caring for a child under 18 years of age because the school or place of care has been closed due to COVID-19</li> <li>2. They are caring for a child under 18 years of age because the childcare provider is unavailable due to COVID-19</li> </ol>	The credit is for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$10,000 in total. Up to 10 weeks of qualifying leave can be counted toward this credit. The family leave credit can be combined with the sick leave credit, so an employer could be entitled to a credit for pay for up to 12 weeks (2 weeks of sick leave and 10 weeks of family leave). When calculating the eligible wages, the qualified health plan expenses for the employee and the allocable portion of the employer's Medicare taxes for the employee's wages are also included.

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## Paid Family, Medical, Sick Leave

### What else should I know?

- Employer's gross income is increased by any credit allowed against payroll taxes because the qualified wages and health expenses are still deductible for tax purposes
- Paid family, medical, and sick leave is not subject to the 6.2% employer social security tax, but it is subject to the 1.45% employer Medicare tax



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## Paid Family, Medical, Sick Leave

### What else should I know?

- The employer is required to document the following, regardless of whether the request for leave is granted or denied:
  - The name of the employee requesting leave
  - The dates for which leave is requested
  - The reason for leave
  - A statement from the employee that he or she is unable to work because of the reason stated (including telework)



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## Paid Family, Medical, Sick Leave

### What else should I know?

- When the employee is requesting leave to care for a child, the following must also be documented:
  - The name of the child being cared for
  - The name of the school, place of care, or childcare provider that has closed or become unavailable
  - A statement from the employee that no other suitable person is available to care for the child



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## Paid Family, Medical, Sick Leave

### For self-employed

- Self-employed individuals can offset SE tax following similar rules for employees
- Uses “average daily self-employment income” defined as net earnings from self-employment divided by 260
- Credits are claimed on Form 1040
- Can reduce estimated tax payments in 2020 by amount of credits to be taken



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## Paid Family, Medical, Sick Leave

### For self-employed

- If a self-employed individual is also employed by another employer, the individual’s qualified leave equivalents must be reduced by the amount received from the other employer
- See IRS FAQ #64 for more details



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## Paid Family, Medical, Sick Leave

Type of credit	IF unable to work for one of the following reasons:	THEN take this amount of credit:
Paid sick leave credit for self-employed individuals	<ol style="list-style-type: none"> <li>1. They are subject to a COVID-19 quarantine or isolation order or are advised to self-quarantine</li> <li>2. They have COVID-19 symptoms and are seeking a medical diagnosis</li> </ol>	The credit is equal to the number of days the individual cannot work for one of these reasons, multiplied by the lesser of \$511 or 100% of the average daily self-employment income for the taxable year (maximum days is 10)

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## Paid Family, Medical, Sick Leave

Type of credit	IF unable to work for one of the following reasons:	THEN take this amount of credit:
Paid sick leave credit for self-employed individuals	<ol style="list-style-type: none"> <li>1. They are caring for someone subject to a COVID-19 quarantine or isolation order or are advised to self-quarantine</li> <li>2. They are caring for someone who has COVID-19 symptoms and are seeking a medical diagnosis.</li> <li>3. They are caring for a child under 18 years of age if the school or place of care has been closed, or if the childcare provider is unavailable due to COVID-19</li> </ol>	The credit is equal to the number of days the individual cannot work for one of these reasons, multiplied by the lesser of \$200 or 67% of the average daily self-employment income for the taxable year (maximum days is 10)

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## Paid Family, Medical, Sick Leave

Type of credit	IF unable to work for one of the following reasons:	THEN take this amount of credit:
Paid family leave credit for self-employed individuals	<ol style="list-style-type: none"> <li>1. They are caring for a child under 18 years of age because the school or place of care has been closed due to COVID-19</li> <li>2. They are caring for a child under 18 years of age because the childcare provider is unavailable due to COVID-19</li> </ol>	The credit is equal to the number of days the individual cannot work for one of these reasons, multiplied by the lesser of \$200 or 67% of the average daily self-employment income for the taxable year (maximum days is 50)

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## Employee Retention Credit



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## Employee Retention Credit

### Eligibility

- Provides a payroll tax credit for employers experiencing economic hardship due to COVID-19
  1. If your business was closed or suspended due to a governmental order caused by COVID-19 (can be local, state, or federal order)
  2. If your business experiences a significant decline in gross receipts
- Tax-exempt employers are eligible



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## Employee Retention Credit

### Not eligible

- Employers who received PPP loans
- Governmental employers (fed, state, local)
- Self-employed individuals for own services and earnings (can take credit if employ other people)
- Household employers
- Wages paid to family members of individuals owning more than 50% of the stock/interest in the employer



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## Employee Retention Credit

### What is a decline in gross receipts?

- When gross receipts for a calendar quarter in 2020 are less than 50% of the gross receipts in the same quarter in 2019
- The decline ends after the employer's gross receipts for a quarter in 2020 are greater than 80% of its gross receipts in the same quarter in 2019



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## Employee Retention Credit

### How do you define a nonprofit's gross receipts?

- Gross receipts from all operations, not only from activities that constitute unrelated trades or businesses
- Investment income, including from dividends, rents, and royalties
- Contributions, gifts, grants, and similar amounts
- Gross amount received as dues or assessments from members or affiliated organizations



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## Employee Retention Credit

### How does the credit work?

- Based on wages subject to FICA tax paid between March 13, 2020 and December 31, 2020, plus related qualified health plan expenses
- Limited to \$5,000 per employee (50% of wages and health plan expenses of up to \$10,000)
- The \$5,000 annual credit can be claimed across multiple quarters if the full amount is not used in the first quarter(s) that the credit is applied



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## Employee Retention Credit

### How does the credit work?

- Employers with an average of 100 or fewer full-time employees (30 hours per week) during 2019
  - The credit can be taken on all wages and health plan expenses paid to all employees during the economic hardship, *whether or not the employees were performing services during this time*
  - Wages can include paid vacation, sick leave, or other leave (not including FFCRA leave)



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## Employee Retention Credit

### How does the credit work?

- Employers with an average of more than 100 full-time employees (30 hours per week) during 2019
  - The credit can be taken on wages and health plan expenses paid to employees during the economic hardship, *only during the time the employees were not performing services (such as laid off or furloughed)*
  - Includes health plan expenses even if wages are not being paid to employees not performing services
  - Qualified wages do not include any type of leave



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## Employee Retention Credit

### How does the credit work?

- Qualified health plan expenses include employer and employee pre-tax contributions for group health plan coverage (but not employee after-tax contributions) on a pro rata basis
- Includes contributions to employees' HRA or health FSA but does not include contributions to HSAs
- Does not include 2% S corp shareholder health insurance because not excluded from gross income



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## Employee Retention Credit

### How does the credit work?

- Employer reduces wage expense by the amount of the ERC received; therefore the credit is not included in gross income



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## Claiming the Credits



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## Claiming the Credits

- In anticipation of receiving the employee retention credit and/or paid family, medical and sick leave credits, employers can fund qualified wages by:
  1. Retaining federal employment taxes, including withheld taxes that are required to be deposited with the IRS, and reconciling on the quarterly Form 941; and/or
  2. Requesting an advance of the credit by filing Form 7200 if the credit amount is not fully funded by accessing the federal employment tax deposits



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## Claiming the Credits

- Retain federal employment tax deposits
  1. Do not deposit the amount of the employee retention credit you are taking for the quarter with your regular employment tax deposits
  2. Reconcile on Form 941 along with other payroll tax relief items
  3. If the credit claimed is greater than employer's share of social security tax reported for the quarter, the excess is treated as an overpayment and refunded to the employer



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## Claiming the Credits

- Retain federal employment tax deposits
  4. Credits for the period from March 13 through March 31, 2020 will be claimed on the Form 941 for Q2 2020, due July 31, 2020
  5. If your Q2 2020 Form 941 has already been filed, you can amend the return by filing Form 941-X in order to claim the employee retention credit for that quarter. Except for Q1/Q2, you cannot claim the credit in a subsequent quarter for wages paid in a prior quarter.



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## Claiming the Credits

- Request advance payment of the credit
  1. If the anticipated credits exceed the employer's federal employment tax deposits, an employer can file Form 7200 to request an advance payment of the credit for amounts of \$25 or more
  2. This could happen when an employer chooses to defer the deposit and payment of the employer's share of social security tax under the payroll deferral discussed earlier
  3. To expedite the process, Form 7200 is filed by fax to IRS



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## Claiming the Credits

- Reconcile on Form 941
  1. Employee retention credit, reduced federal employment tax deposits, and any advance payments of the credits will be reconciled on Form 941
  2. Also report paid sick leave and paid family and medical leave credits on Form 941 (these reduce the amount of employee retention credit available for the quarter)
  3. Errors on Form 7200 are corrected on Form 941



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## Comprehensive Example



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## Comprehensive Example

- Employer F pays wages and incurs taxes during April 2020 in the following amounts:
  1. \$10,000 of qualified wages
  2. \$3,500 of qualified sick and family leave wages under FFCRA
  3. Federal employment tax obligation of \$9,000, which includes \$1,500 for employer's share of social security tax (prior to any payroll tax deferrals and regular tax deposits)



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## Comprehensive Example

- Employer F expects credits in the following amounts:
  1. \$5,000 for employee retention credit (50% of qualified wages)
  2. \$3,500 for qualified sick and family leave credit



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## Comprehensive Example

- Employer F reports the following amounts on Form 941 for Q2 2020:
  1. \$1,500 deferral of the deposit for the social security taxes it owes for this month
    - Reduces the tax deposit obligation to \$7,500
  2. \$3,500 credit for paid sick and family leave
    - Reduces the tax deposit obligation to \$4,000
  3. \$5,000 employee retention credit
    - Reduces the tax deposit obligation to \$0, with \$1,000 left over



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## Comprehensive Example

- Employer F reports the following amounts on Form 941 for Q2 2020:
  4. The excess \$1,000 from the employee retention credit is refundable as an overpayment for the quarter
    - If Employer F requested an advance payment of this amount using Form 7200, then that amount is also reconciled on Form 941, and the net amount owed and/or refunded is \$0.
    - If Form 7200 was not filed, then Employer F may request that the \$1,000 overpayment be refunded on Form 941 for Q2 2020.



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## Next Steps



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## Next Steps

- Assess eligibility for each of the payroll tax relief programs:
  - Do you have any employee headcount limitations?
  - Have employees requested leave that is eligible for credits?
  - Do you meet the decline in gross receipts test?



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## Next Steps

- Quantify the payroll tax relief available:
  - Review payroll and hours information to identify employees and wages that are eligible for credits
  - Identify the qualified payments related to each payroll tax relief program
  - Calculate the credits



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## Next Steps

- Recover cash to use for operations:
  - Prepare current or amended Form 941 to include credits or initiate refund claims
  - Credits can be claimed starting in Q2 2020 but if the return was already filed, you can amend it
  - Prepare Form 7200 to request an advance refund of eligible credits if more than \$25



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## Next Steps

- Prepare and retain documentation:
  - Paid leave request forms as mentioned earlier
  - Document eligibility and qualifying wage payments for all credits
  - If using the payroll deferral option, don't forget to pay the deferred taxes in 2021 and 2022



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## Additional Information



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## EIDL Summary

- Funding is available for loans up to \$150,000
- Available to nonprofits, including 501(c)(6) and 501(c)(4) organizations that were not eligible for PPP loans
- 3.75% interest rate and 2.75% for nonprofits
- 30-year repayment with 12-month deferral of interest and principal payments and no pre-payment fees
- Borrowers must prove economic injury



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## 401(k) Safe Harbor Plans

- IRS Notice 2020-52 provides temporary relief to 401(k) plan sponsors
- Allows an amendment of safe harbor plans to reduce or suspend employer safe harbor matching or nonelective contributions
- Plans need to be amended between March 13, 2020 and August 31, 2020



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## Other Policy Updates

- Congress is intent on crafting a bipartisan COVID-19 relief measure that can be signed into law by the President by the end of July
  - Scale: \$1 to \$2.5 trillion
- Upcoming expiration of the enhanced unemployment benefits established by the CARES Act
  - \$600 per week replaced with a weekly cap based on person's weekly income pre-COVID
  - 14-week extension of benefits (through Election Day)



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## Other Policy Updates

- Federal aid provided to states, territories, cities, and counties, and how they will be allowed to use it
  - \$500 billion proposed under the SMART Act
  - Conformity with federal changes in doubt
  - Special VA legislative session on “budget”
  - DC/MD looking for new revenue streams
- Additional “stimulus” payments to American consumers
  - \$1,200 payments to those with \$40,000 income and below
- Vacation/entertainment tax credit
  - All quiet on this



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## Other Policy Updates

- Employee retention tax credit
  - Expanded so that more businesses qualify
- Payroll tax cut or deferral
  - To be determined
- PPP loans
  - Expenses to be deductible – tenuous agreement
  - Forgiveness with no documentation for “smaller” loans
  - Second round of program but proof of “substantial” revenue loss required



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## Other Policy Updates

- Liability protection for businesses and other entities from COVID-19-related lawsuits
  - Defendants would be held liable only if no reasonable efforts to comply with public health guidelines and demonstrated gross negligence or intentional misconduct
  - Defendants have right to move to federal court, which could be favorable alternative to state courts
  - Sets a clear-and-convincing-evidence burden of proof for personal injury and medical liability cases and cap on damages
  - Backdate to Dec 2019 thru 2024



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## Questions?



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