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ACCOUNTING | TECHNOLOGY | WEALTH ADVISORY

3 Key Issues for Maryland Business Owners

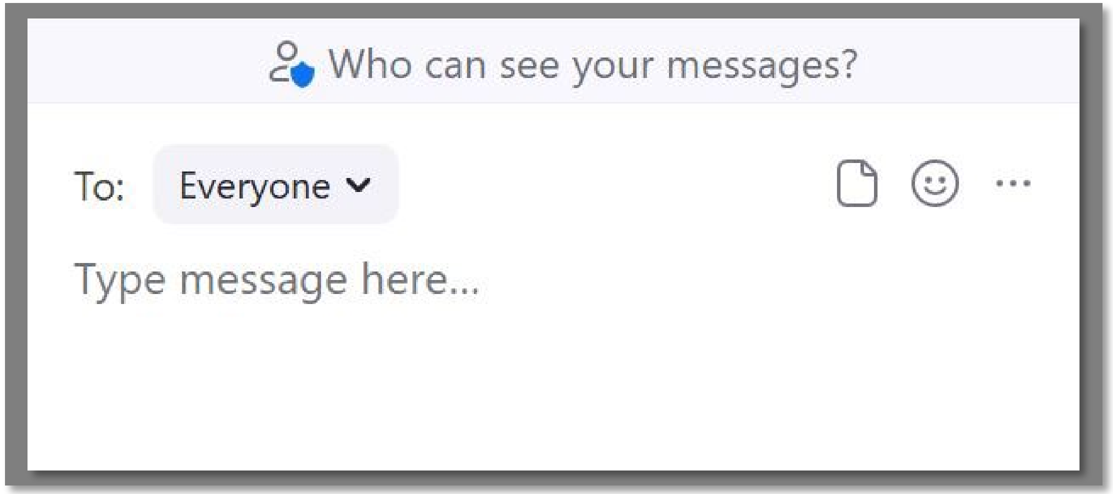
Webinar begins at 10:00 AM

Quick Housekeeping

After the webinar, you will receive:

- Webinar recording
- Slide deck

Questions?
Use the Zoom chat box.



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- Tax manager at Gross Mendelsohn
- 7+ years of experience
- Works with business owners to find tax saving solutions and provide a clearer picture of their finances

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- 10+ years of experience
- Provides business valuations, forensic accounting, fraud investigations and hidden asset analyses

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- Business and intellectual property lawyer at Goodell Devries
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- Works with companies of all sizes by assisting them with:
  - General corporate governance
  - Mergers and acquisitions
  - Intellectual property protection and management

Agenda

Provide an overview of:

- MarylandSaves
- Corporate Transparency Act (CTA)
- Time to Care Act (TCA) / Family Medical Leave Insurance (FAMLI)

MarylandSaves

What Is MarylandSaves?

- Created out of a law passed by Maryland’s general assembly in 2016

- Went into motion September 15, 2022 in the form of an employee-funded Roth account

- Mandates a retirement plan for most businesses and nonprofits that process payroll

Who Is Mandated?

- Businesses and nonprofits must enroll in MarylandSaves or an alternative program if the following criteria is met:
  - Registered to conduct business in Maryland
  - At least one employee earns Maryland W-2 wages
  - Has been in operation for at least two years
  - An employer-sponsored retirement plan for employees isn't currently offered
  - Employees are paid through an automated payroll system

How Does This Impact My Organization?

- If you provide your employees with a retirement plan, your business qualifies for an exemption from the **$300 filing fee** tied to the Maryland Annual Report/Personal Property Tax Return filing

- Signing up for MarylandSaves also qualifies your organization for the exemption

The Exemption

- The exemption is not automatic unless your company signs up for MarylandSaves
- Every year, organizations must attest they have a retirement plan in place and request the fee waiver
- Deadline was recently changed to December 31, 2023 for organizations to receive the exemption for the annual report due April 15, 2024

Implications for Employers & Employees

Employers

- No cost for employers — admin costs are paid through the fund expenses
- Employer doesn't hold a fiduciary responsibility over the plan's assets
  - You must ensure employees' accounts are funded as requested
- No employer match involved

Employees

- May opt-out at any time, but they will be automatically enrolled when your organization kickstarts the program
- Account is a Roth account — contributions are made post-tax
- Contribution limits are subject to the IRA limits for any given year ($7,000/$8,000 with catch-up for 2024)

Noncompliance

- Maryland is still in the pilot phase of administering the program — no current penalties/deadline for noncompliance

- We can expect news on penalties and deadlines soon

Corporate Transparency Act (CTA)

What Is CTA?

- A federal law that created reporting requirements for many U.S. companies, including corporations, limited liability companies (LLCs) or similar entities, along with foreign companies registered to conduct business in the U.S.

- Applicable organizations are required to submit a report to FinCEN with personal information about each beneficial owner and company applicant

- Aims to combat money laundering, tax fraud and corrupt activities by using corporate structure to hide company ownership

- CTA covers all companies then exempts several types of businesses, essentially leaving small businesses — the focus of the CTA

Reporting Company Basics

- Under the CTA, a “reporting company” is considered a corporation, LLC or similar entity, including:
  - An entity created by filing with the secretary of state, similar office of a state or American Indian tribe
  - An entity formed under the law of a foreign county and registered to do business in the U.S. by filing with the secretary of state, similar office of a state or American Indian tribe
  - As determined by FinCEN, a “similar entity” is considered any entity formed by filing with a state or American Indian tribe
    - There’s a difference from state to state about what types of entities can be formed in the state — FinCEN didn’t want to go further with listing the type of entities, so it remains somewhat of a gray area

Reporting Company Exemptions

- The CTA provides 23 specific exclusions from the definition of reporting company
- Most exemptions are unlikely to apply to small businesses since they're primarily related to entities that are subject to regulation already
- Examples of regulated entities that are not reporting companies include financial institutions, companies subject to SEC regulation, insurance companies, public accounting firms and 501(c)(3) nonprofits

Reporting Company Exemptions

- The broadest category is an exemption for a "large operating company" which may apply to certain small businesses
- Requirements:
  - Company must employ more than 20 full-time employees in the U.S.
  - Have an operating presence at a physical U.S.-based office — cannot be a residence, P.O. box or shared office space (except affiliates)
  - Generate more the $5 million in annual gross receipts/sales

Beneficial Owners & Company Applicants

- **Beneficial owners** are defined as any individual who directly or indirectly (a) exercises substantial control of a reporting company *or* (b) owns or controls at least 25% of the ownership interest in a reporting company

- **Company applicants** means the person that files to form or register a company and, if different, the person that directed the filing
  - This is tricky — if you're a newer entity getting assistance from a formation company or a law firm, you need to get the minimum information about who the company applicant was so you can report them
  - Company applicants are mainly there as an additional contact in the event there is an investigation

Beneficial Owner

- An individual exercises “substantial control” when the person:
  - Serves as a senior officer of the reporting company
  - Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)
  - Directs, determines or has substantial influence over “important decisions”
- FinCEN expects a reporting company to identify at least one beneficial owner under the “substantial control” component, even if all other individuals are subject to an exclusion or fail to satisfy the ownership interests requirement

Beneficial Owner Exemptions

- Beneficial owners exempts the following individuals:
  - Minor children
  - Individuals acting as a nominee, intermediary, custodian or agent
  - Employees of a reporting company, acting solely as an employee whose substantial control over, or economic benefit from, such entity is derived solely from the employment status of the employee, provided such person is not a senior officer
  - Individuals whose only interest in a reporting company is a future interest through a right of inheritance
  - Creditors (e.g., loans from friends, family or bank even if they have right to tell you what you can/cannot do)

Reporting Contents — Company

- Company must report:
  - Full legal name of the reporting company
  - Any trade name, fictitious names or DBAs, regardless of whether the name is registered
  - Street address of the "principal place of business"
  - Company's jurisdiction of where it was formed
  - IRS taxpayer ID number (TIN) (foreign reporting companies without a U.S. TIN can report a foreign TIN)

Reporting Contents — Owner & Applicant

- Each beneficial owner and company applicant must report:
  - Full legal name
  - Date of birth
  - Current residential street address
  - Unique ID number from certain government issued documents and an image of the document that provides the unique ID (image must include the person's photo)
    - Acceptable source of documentation: passport issued by the U.S. or foreign government, ID document issued by a state, local government or Indian tribe, drivers license issued by a state (all must be non-expired)

Reporting Deadline — 2025 Companies

- For domestic reporting companies created on or after January 1, 2025 initial reports to FinCEN must be filed within 30 calendar days of:
  - The date on which the reporting company receives actual notice that its creation has become effective
  - The date on which a secretary of state or similar office first provides public notice that the domestic reporting company has been created

Reporting Deadline — 2024 Companies

- For companies created on or after January 1, 2024 reports must be filed within 90 calendar days of:
  - The date on which the reporting company receives actual notice that its creation has become effective
  - The date on which a secretary of state or similar office first provides public notice that the domestic reporting company has been created

Reporting Deadline — Existing Entities (Formed Before January 1, 2024)

- Initial report must be filed by January 1, 2025
- Company applicants not required to be reported for entities formed prior to January 1, 2024
- Existing companies should gather information ASAP to submit to FinCEN at some point during 2024

Updating Initial Reports

- The CTA requires updates if any reported information changes:
  - Reporting companies must update information submitted in prior reports to FinCEN within 30 calendar days of a change with respect to any of that information

- Exceptions:
  - Changes to company applicant information
  - Images of ID document if changes didn't include information reported to FinCEN

Updating Initial Reports

- If the reporting company discovers that there is an error in the information submitted, it should be updated ASAP
- Correction is required to avoid civil and criminal penalties that may arise for failing to correct the report
- It must be filed within 30 days after the reporting company is made aware, or should be aware, of the error in the submission

FinCEN Identifier

- A unique ID number issued by FinCEN to an individual or reporting company upon request after the individual applies
- Rather than listing all the information for a specific beneficial owner and uploading an image of their ID document, the reporting company would only list the name of the beneficial owner and their FinCEN ID number
- When an individual or reporting company's previously reported information changes, FinCEN must be notified
  - FinCEN is assessing options that allow individuals to deactivate a FinCEN identifier, so they don't need to continuously update the underlying personal information

Beneficial Ownership Secure System

- All data will be entered into the Beneficial Ownership Secure System (BOSS) maintained by FinCEN
- All reports will be submitted online

Failure to Report

- Reporting company, beneficial owners, and company applicants are all potentially liable for willfully providing false beneficial ownership information

- Regulations include broad language that states ***any person*** who causes the reporting company's failure to report or is a senior officer of the reporting company at the time of the failure to report may be personally liable for reporting violations

- Civil penalties include a fine of $500/day for each day a violation is outstanding and up to two years in prison

Time to Care Act (TCA) /
Family Medical Leave Insurance (FAMLI)

What is TCA?

- Gives Maryland workers access to paid family and medical leave through a state-administered fund financed by employee and employer contributions
- Fund pays out up to 12 weeks of paid leave when an eligible employee requests leave for a qualifying event
- The Act has a broader definition of “family member” than the federal Family and Medical Leave Act to include biological, step and foster parents-in-law, grandparents, grandchildren, siblings and most recently, domestic partners
- Collection of the fund contributions has been pushed back and will begin October 1, 2024 and payouts will begin January 1, 2026

What Is Considered A Qualifying Event?

- Care for a newborn child or a child newly place for adoption, foster care or kindship care with the individual during the first year after the birth adoption or placement

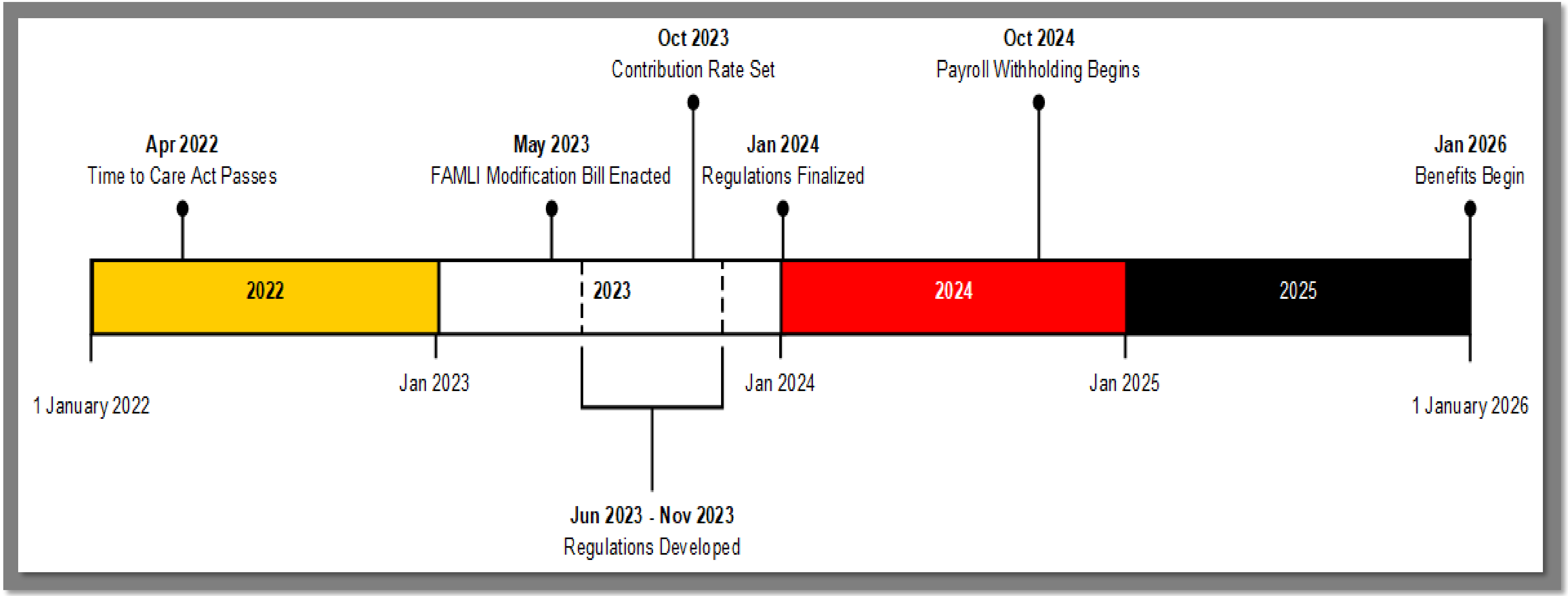
- Care for a family member with a serious health condition

- Attend to a series health condition that results in the individual being unable to perform the functions of the individual's position

- Care for a next of kin service member

- Attend to a qualifying exigency arising out of the individual's family member's deployment, as defined by the Act

TCA Timeline



Who is Eligible for Benefits?

- Employees (part time or full time) who worked at least 680 hours over the last 12 months

- Eligibility applies to the individual worker and hours worked **NOT** the specific employer

Contribution Rates — Who Pays?

- Employers with **15+ employees** — contributions are split 50/50 between employer and employee
- Employers with **14 or less employees** don't need to contribute to the program — only the employee contributes
- Total rate of contribution is **capped at 1.20% of an employee's covered wages** (combined contributions cannot exceed 1.20% of an employee's pre-tax wage up to the social security wage base)

Contribution Rates — Who Pays?

- Rates will be **set on an annual basis on or before February 1** and will be in effect for a 12-month period starting July 1 of the same year

- **For contributions beginning October 1, 2024 the rate is set at 0.90%** and will be split equally between EE and ER

Benefits Overview

- Eligible employees may not receive more than 12 weeks of benefits in a year, except under specified circumstances
  - Employees who received benefits for newborn care may be eligible for an additional 12 weeks if the employee must attend to their serious health condition that results in the employee being unable to perform their job
- Eligible employees may take leave on an intermittent leave schedule under specified conditions
  - An employer may not reduce the total amount of leave entitled to the covered individual beyond the amount of leave taken on the intermittent schedule

Exhaustion of Employer Provided Leave

- An employer may not require an employee to use or exhaust their paid vacation, paid sick leave or other paid time off before or while receiving paid leave under the Act
- The exception: an employee and employer may agree to the employee using employer-provided leave to supplement the Act's benefits
  - Employee may receive up to 100% of the employee's average weekly wages while on leave up to a maximum weekly wage of $1,000

Opt-Out Option

- Employers may choose to opt-out by providing coverage through a private plan consisting of employer-provided benefits, insurance or combo of both

- To the extent an employer utilizes insurance to fund a private plan, the 2023 Act's amendments require that the insurance be procured through an insurer certified by the Maryland Insurance Commissioner

- Employers leveraging private plans are also restricted from deducting more from an employee's wage than the max rate set by the Maryland Department of Labor — even if the plan provides benefits higher than those allowed under the Act

Questions?
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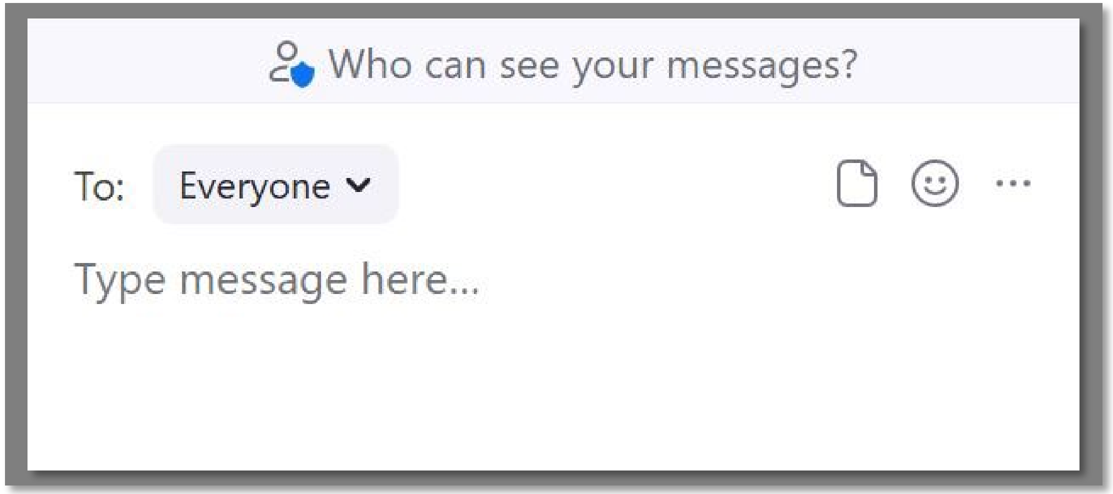

Resources

- **MarylandSaves** fee exemption waiver: https://www.marylandsaves.org/claim-exemption/
- **CTA** blog: What You Need to Know About The Corporate Transparency Act
- Additional guidelines and regulations for **TCA/FAMLI**: https://paidleave.maryland.gov/Pages/default.aspx

Contact Us

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