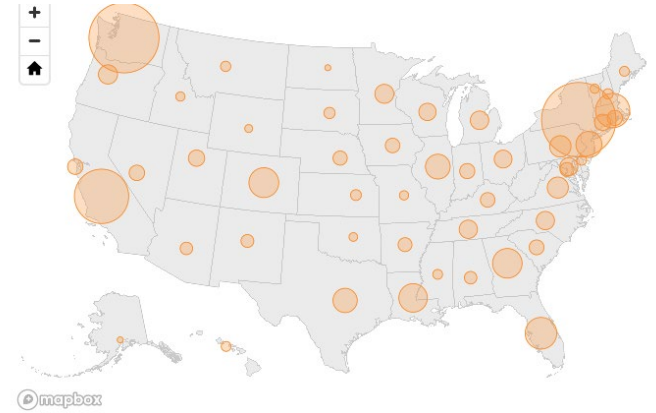
A microscopic view of several COVID-19 virus particles. The particles are spherical and covered in red, spike-like protrusions. They are set against a blurred, light-colored background that appears to be a surface or tissue.

# The Legalities of a Tough Situation: Covid-19

- with Don Phin, Esq.

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**It's NOT What You Think!**

**N95**

**MYTH: v/s FACT:**

**MYTH:** An N95 respirator and a surgical mask provide the same protection.

**FACT:** A NIOSH-approved N95 respirator forms a seal against the user's face, preventing particle penetration around the edges. The filter has passed NIOSH tests to determine that it protects against at least 95% of airborne particles.

**MYTH:** I can decorate my N95 respirator to look stylish!

**FACT:** Any alteration of the N95 will void the NIOSH approval because respirator can no longer be guaranteed to provide the necessary level of protection.

**MYTH:** There's no way to verify if an N95 respirator is actually NIOSH-approved.

**FACT:** A list of approved N95 respirators is updated every month. Find it at [Kennedysouth.com](https://www.kennedysouth.com) under the "Approved Particulate Filtering Facepiece Respirators" tab.

**NIOSH**



# What we will discuss...

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How to Handle Things with Responsibility and Grace

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Emergency Paid Sick Leave Act

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Mandatory Sick Leave and Paid Family Leave

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Employee Termination-Layoffs vs Furloughs

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CARE Act

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Paying for all of this

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Wage and Hour Concerns

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ADA/FMLA/HIPAA

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OSHA/Work Comp

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Impact of state laws for sick pay, childcare leave, PFL, disability, unemployment, and more

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Essential Operations

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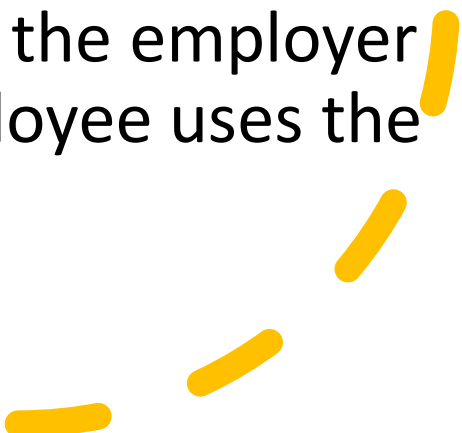
Some Best Practices

**ORDER**


**CHAOS**

# **Responsibility and Grace**

# Emergency Paid Sick Leave Act

- Takes effect April 1
  - Notices required- email or text
  - Under 500 with “exceptions” for under 50- Any length of employment. Includes part-timers (Ave. time over 6 mos. Or “expected” time)
  - Two weeks (up to 80 hrs.) pay
  - An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the Act.
- 

# Emergency Paid Sick Leave Act, cont.

- Why sick pay:
    1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
    2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
    3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
    4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2), above.
    5. The employee is caring for a son or daughter whose school or place of care has been closed, or whose childcare provider is unavailable, due to COVID-19 precautions.
    6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
  - Categories 1-3, 7-9 \$511 per day and \$5,110
  - Categories 4-6 \$200 per day and \$2,000
  - Then rolls into EFMLA if kids at home.
  - After that they can use their own sick pay, PTO, etc.
  - Check MGAs- pay directly into the Fund.
- 

# Emergency Family and Medical Leave Expansion Act

- Under 500 ee's.
- **30 days** employment . Gives an employee that was recently rehired access to paid family leave if the employee (1) was laid off after March 1, 2020, (2) worked for the employer for at least 30 of the last 60 calendar days, and (3) was rehired by the employer.
- **School and daycare** closure. Intermittent leave allowed if teleworking.
- First 10 days unpaid (use EPSLA or PTO, etc.)
- 2/3rds payment benefit is capped at **\$200 per day and \$10,000** total. if receiving 2/3 and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour. No tax credit for amounts in excess of the FFCRA's statutory limits.
- **Traditional FMLA** (unpaid but continued benefits) still applies to care for other family members and one's own health. Note: common flu is not covered. OK to request documentation (Use the forms).
- Job restoration if 25 or over, same as traditional FMLA.
- Employees with fewer than 25 employees: No obligation to restore returning employees to their position if:
  - The employee's position no longer exists due to coronavirus-related economic impacts.
  - The employer makes a reasonable effort to find a similar position for the employee, up to one yr.



# So...

- Provide Notices to Employees.
- If I have the problem, 100% pay, with a maximum of \$511 each day, for up to 80 hrs. If they have the problem, 2/3 pay up to a maximum of \$200 each day, for up to 80 hrs.
- FMLA benefit applies to employees who have to stay home with a child whose school or childcare facility is closed due to the coronavirus.
- No pay for first 10 days. An employee may qualify for emergency sick leave pay, or elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.
- Quarantined workers, or those who were caring for affected family members, are not eligible for the FMLA pay benefit.
- Note: business closure ends these leave benefits. Cannot be use for partial layoffs.

# Per the DOL FAQ:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.
- if an employer closes the worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive, you are NOT entitled to sick pay.
- you and your employer may agree that you may take paid sick leave or EFMLA intermittently.
- if an employer closes or furloughs you due to no work (even if you requested leave prior to the closure), you will not get paid sick leave or EFMLA, but you may be eligible for unemployment.
- if your employer reduces your work hours because it does not have work for you to perform, you may not use paid sick leave or expanded family and medical leave for the hours that you are no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19.
- paid sick leave under the EPSLA is in addition to other leave provided under the law, MGA, or your employer's existing company policy.


# Per the DOL FAQ:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- after the first two workweeks you may elect—or be required—to take your remaining EFMLA at the same time as any existing paid leave that, under your employer’s policies, would be available to you in that circumstance. This would likely include personal leave or paid time off, but not medical or sick leave if you are not ill.
- if fewer than 25 employees, no reinstatement if the following hardship conditions exist:
  - your position no longer exists due to economic or operating conditions that affect employment and due to COVID-19 related reasons during the period of your leave;
  - your employer made reasonable efforts to restore you to the same or an equivalent position;
  - your employer makes reasonable efforts to contact you if an equivalent position becomes available; and
  - your employer continues to make reasonable efforts to contact you for one year beginning either on the date the leave related to COVID-19 reasons concludes or the date 12 weeks after your leave began, whichever is earlier.

Decision  
Time-

Term/Layoff  
Furlough  
Retention  
Exemption

- Terminate (layoff) and send ee's into unemployment and state disability. Paid Family Leave under some state laws.
  - After April 1 may generate retaliation claim.
  - Provide required notices- change of status, unemployment, COBRA, WARN, benefit plan notices.
  - Pay out accrued vacation where required to do so. (Law, practice or contract).
- 

Decision  
Time-

Term/Layoff  
Furlough  
Retention  
Exemption

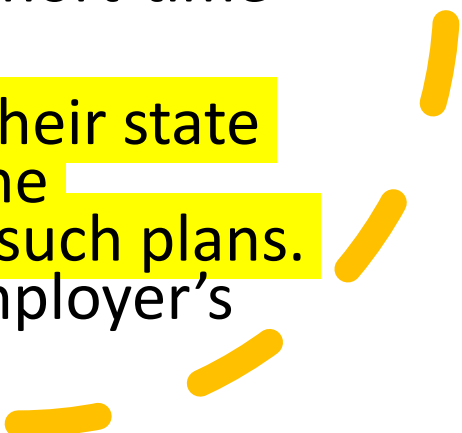
- Furlough- still an employee and remain subject to emergency sick leave and FMLA
- WA- “Furloughs are a form of temporary layoff that may consist of a complete stoppage of work or reduced work hours over a period of time (for example, a reduction of one day a week for a year).

Since unemployment benefits are determined on a weekly basis, full-time workers whose hours of work are reduced by one work day each week, usually will not be eligible for partial unemployment benefits because they earn too much in the week to be eligible.

If you are placed on furlough, you may apply for unemployment benefits and we will determine if you are eligible.”

- Watch benefit eligibility! “Actively employed”
- 

# CARES Act and Unemployment

- The maximum weekly benefit in Alabama is \$275, but it's \$450 in California and \$713 in New Jersey. **PLUS \$600!**
  - Incentivizes states to waive the week-long waiting period. Provides for up to **13 weeks** of emergency unemployment benefits for eligible individuals who have exhausted the **39 weeks** of state benefits and remain unemployed.
  - Eligible employees subject to short-time compensation programs receive a **pro-rated unemployment benefit**. Individuals employed on a seasonal, temporary or intermittent basis are not eligible for benefits under short-time compensation programs.
  - **Employers are obligated to pay to their state one half of the amount of short-time compensation benefits paid under such plans.** This amount will not impact the employer's contribution rate.
- 

# Small Biz Exemption

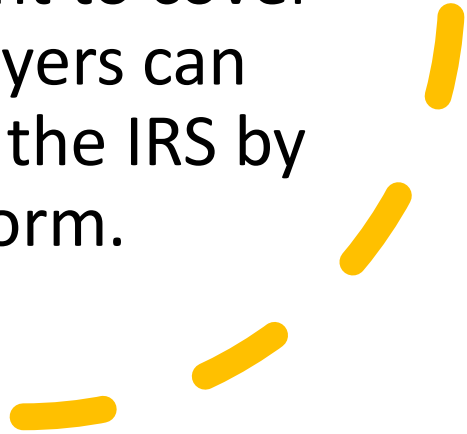
Per the DOL FAQ <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions #58>

## When does the small business exemption apply?

A small employer is exempt from providing (a) paid sick leave (b) expanded family and medical leave when doing so would **jeopardize the viability of the small business as a going concern**. A small business may claim this exemption if an authorized officer of the business has determined that:

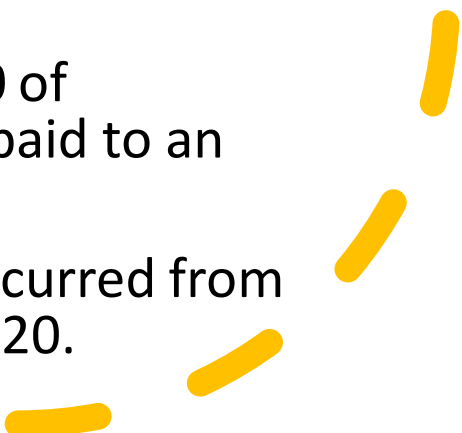
- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial **obligations exceeding available business revenues** and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their **specialized skills, knowledge of the business, or responsibilities**; or
- There are **not sufficient workers** who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.
- **Document** why your business with fewer than 50 employees meets the criteria set forth by the Department.

# How Do I Get Help Paying for Keeping Employees on Payroll?

- With Credits and Loans
  - Employers can begin taking advantage of two refundable payroll tax credits, designed to immediately and fully reimburse them starting by April 2nd, 2020, dollar-for-dollar, for the cost of providing coronavirus-related leave to their employees. Wages and health care benefits.
  - If these amounts are not sufficient to cover the cost of the paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form.
- 



# CARES Act Payroll Credits

- Refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to 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.
  - For 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 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.
  - The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee.
  - The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
- 

# CARE Act and SBA Loans

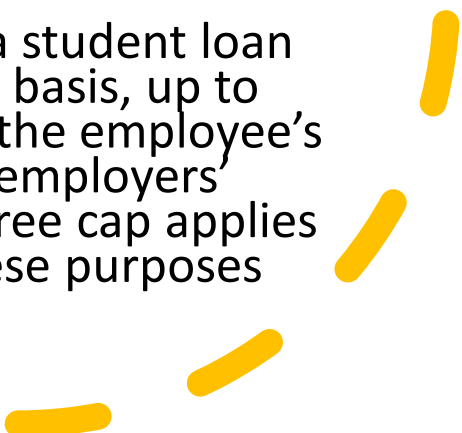
- Allows advance payments under the SBA Emergency Economic Injury Disaster Loans grants to be used to, among other purposes, “provide paid sick leave to employees who are unable to work due to the direct effect of COVID-19.”
- Paycheck Protection Loan-SBA to make loans small businesses with no more than 500 employees. – Loan amount is tied to payroll costs incurred by the business. – Allowable uses include payroll support, paid sick leave or medical leave, insurance premiums, rent and utility payments. – Maximum interest rate of 4%. – No prepayment fees. – No collateral or personal guarantee requirements. – Loan forgiveness equal to amount spent during an 8-week period after loan origination on payroll costs, interest payment on any mortgage, payment of rent, and utility payments.
- Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest.
- However, you are not eligible for this if you receive the SBA disaster loan.

# CARES Act, cont.

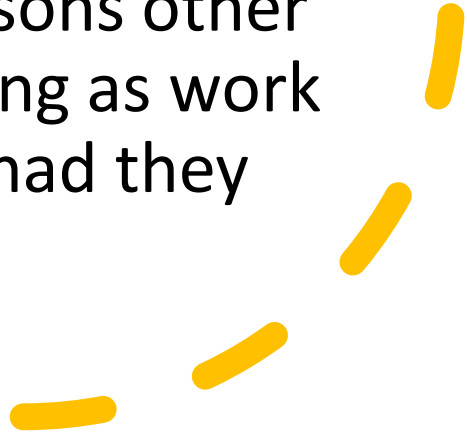
## Limits on Employee Compensation

- Employers who are recipients of direct lending under the Act are prohibited from increasing the compensation and offering certain severance benefits to highly compensated employees.
- Employers cannot increase the compensation of any officer or employee whose total compensation in calendar 2019 exceeded \$425,000 or pay any severance or other benefits to these employees or officers upon termination that exceed twice the maximum total 2019 compensation paid to the employee or officer.
- In addition, employees who earned more than \$3 million in calendar year 2019 cannot receive more than \$3 million plus 50% of the amount their 2019 compensation exceeded \$3 million. Total compensation is defined to mean salary, bonuses, awards of stock and “other financial benefits.”

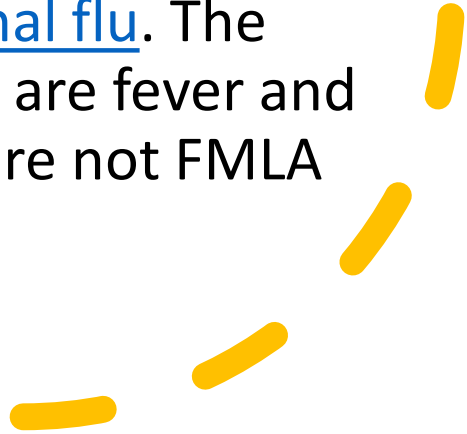
## Employer Payments of Student Loans

- The CARES Act permits employers to provide a student loan repayment benefit to employees on a tax-free basis, up to \$5,250. This amount would be excluded from the employee’s income and can also include payments under employers’ existing tuition assistance programs. The tax-free cap applies to any payments made by an employer for these purposes before January 1, 2021.
- 

# Wage and Hour

- You may reduce wages down to min. wage and exempt employees down to their threshold. \$684 wk.(28 hr./35K yr.) and \$107,432 for Highly Compensated Employees. (Check with state and local wage rates)
  - Exempt employees paid for entire week. Deductions from salary may be made if the exempt employee is absent from work for a full day or more for personal reasons other than sickness and accident, so long as work was available for the employee, had they chosen to work.
- 

## ADA/FMLA/HIPAA

- ADA- telecommuting accommodation unless undue hardship.
  - ADA/FMLA- OK to require a doctor's note, a medical examination, or a time period during which the employee has been symptom free, before it allows the employee to return to work. Notify in advance.
  - HIPAA- OK to test for fever or send home. Limit info on need to know basis. Watch California Consumer Privacy Act (CCPA)notice
  - Inquiries into an employee's symptoms should attempt to [distinguish the symptoms of COVID-19 from the common cold and the seasonal flu](#). The most common symptoms of COVID-19 are fever and a dry cough. (Common Flu and Colds are not FMLA covered events.)
- 

# OSHA/Work Comp

- OSHA- [Guidance on Preparing Workplaces for COVID-19](#)
- Is anyplace “safe”?
- Work Comp- Health Care workers, first-responders.
- WA- quarantine normally would not be covered by workers’ comp unless the worker was made ill by workplace exposure.  
Coronavirus claims by Washington workers outside of health care or emergency services will be decided on a case-by-case basis.
- Most state workers’ comp statutes exclude “ordinary diseases of life” such as the common cold or flu. Greater exposure to the general public tends to limit liability for workers’ comp insurers.

## Occupational Risk Pyramid for COVID-19





# State Laws



State mandated sick pay



School or daycare closure



Paid Family Leave



First responder leave



State disability



Unemployment



Vacation accrual laws





# Essential Businesses







<https://www.cisa.gov/critical-infrastructure-sectors>

# Business Continuity

- Dislocation from office or key physical assets due to an emergency situation
- Information backup processes and procedures
- System restoration processes and procedures
- Continuation of customer service and customer communications
- Loss or unavailability of business operational systems and components
- Loss or unavailability of key personnel
- Supply or distribution channel impacts
- Processes and procedures for training employees
- Recordkeeping and supervisory obligations
- Emergency contact and communications trees
- Risk and liability mitigation strategies
- <https://www.bain.com/insights/ceo-plan-for-coronavirus-actions-to-take-now/>

## CEO checklist:

We recommend organizing efforts around the following six urgent priorities

 <p><b>Protect Your Employees and Customers</b></p> <ul style="list-style-type: none"> <li>• Implement the best known guidelines available for both employees and customers - overinvest</li> <li>• Monitor global health guidelines, other companies - and continue to fine tune</li> <li>• Over-communicate with full transparency</li> <li>• Provide assistance to epidemic-limiting initiatives in any way possible (CSR)</li> </ul>	 <p><b>Model your exposure; Stress test P&amp;L and liquidity</b></p> <ul style="list-style-type: none"> <li>• Outline macro scenarios by market, translate to revenue decline and P&amp;L scenarios           <ul style="list-style-type: none"> <li>– Units, revenue, costs</li> <li>– Cap Ex, working capital, cash/liquidity</li> <li>– 13 week, 4Q outlook</li> </ul> </li> <li>• <b>Build extreme downside scenarios – this has the potential to be a “100 year” event</b></li> <li>• Outline major operational actions triggered           <ul style="list-style-type: none"> <li>– Do now ‘handbrake’ actions vs. do-later ‘break glass’ initiatives</li> </ul> </li> </ul>	 <p><b>Defend against revenue declines</b></p> <ul style="list-style-type: none"> <li>• Take a customer centric view to this situation – how will you build trust, loyalty and market share through and beyond this crisis?</li> <li>• Build specific revenue mitigation actions for core revenue stream declines</li> <li>• Pivot resources to pockets of current and future growth, online and beyond</li> </ul>	 <p><b>Stabilize operations to “new normal”</b></p> <ul style="list-style-type: none"> <li>• Stabilize supply chain of physical goods from likely geographic and labor disruptions           <ul style="list-style-type: none"> <li>– Manufacturing, distribution, suppliers, suppliers to suppliers</li> </ul> </li> <li>• Build contingency operational plans for all aspects of business           <ul style="list-style-type: none"> <li>– Front line facilities, costs, variable labor staffing</li> <li>– Cross regional variations in utilization</li> <li>– HQ, IT</li> </ul> </li> </ul>	 <p><b>Plan urgent cost take-out to conserve cash</b></p> <ul style="list-style-type: none"> <li>• Spend handbrakes           <ul style="list-style-type: none"> <li>– Immediate actions (e.g. hiring freeze, op ex, cap ex, working capital)</li> </ul> </li> <li>• Set aggressive ‘break glass’ cost actions triggered by more extreme revenue scenarios           <ul style="list-style-type: none"> <li>– This is (may be) about saving the company – no ideas are too extreme</li> </ul> </li> <li>• Mid-term, outline a plan to lean out the cost structure for the future – more automated, more variable, more shock resistant</li> </ul>	 <p><b>Play Offense, not just defense</b></p> <ul style="list-style-type: none"> <li>• Define how you will outperform competitors and take share through and beyond the crisis           <ul style="list-style-type: none"> <li>– M&amp;A roadmap</li> <li>– Product/service/customer intimacy investments</li> </ul> </li> <li>• Prepare for ‘bounce-back’ and recovery           <ul style="list-style-type: none"> <li>– E.g. Marketing investment, leveraging macro trends for ‘if, then’ moves</li> </ul> </li> <li>• Plan for and leverage a ‘leap-frog’ change in customer behaviors           <ul style="list-style-type: none"> <li>– Especially digital</li> </ul> </li> </ul>
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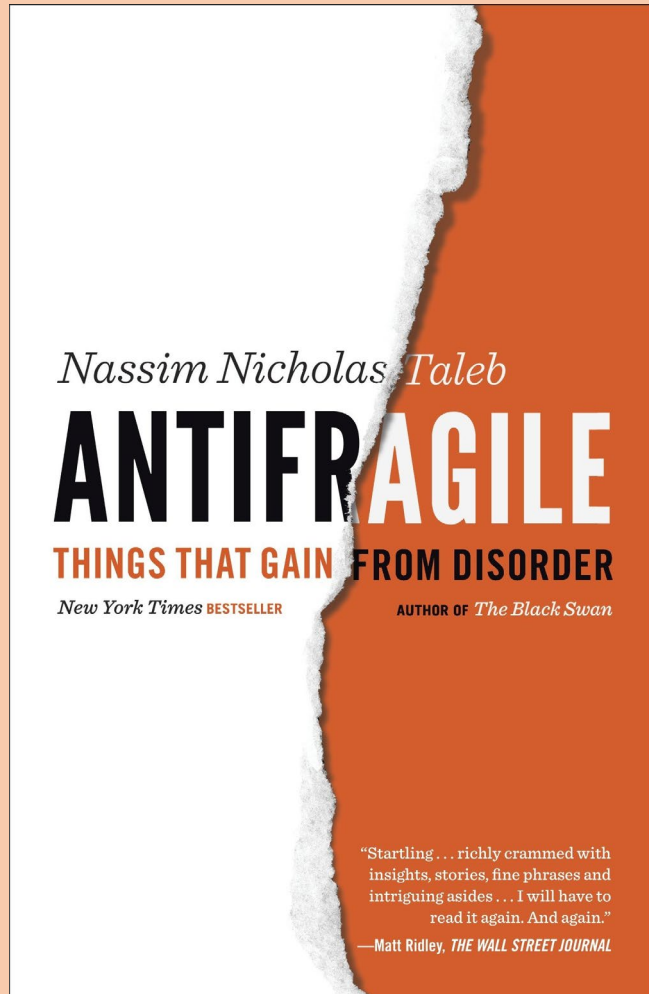
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# Learn or Create Something!

- Read some good books- including *The 40/40 Solution to Managing Emotional Energy!* and *Stop Making Mistakes*
- **LinkedIn Learning**-check out my programs on Employee Engagement and Increasing Performance.
- Don's programs- **GreatHR** and **Great Employee**.
- Industry blogs, magazines, etc.
- Get a Certification.
- Check into something you've been curious about.
- Run an experiment, survey, test, online focus group, etc.
- Write an article, blog post, video, checklist, SOP, book!
- Create a new product. Get creative!



# Come Back Stronger!



## Contact Info

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