



**eUpdate (March 30, 2020)**

## **Coronavirus Aid, Relief and Economic Security (CARES) Act**

Many of you have asked questions about whether or not you are eligible for SBA business loans under this Act and, in particular, whether any furloughs (or other types of layoffs) will affect the ability to procure one of these loans. Although we cannot provide guidance on what you need to do to apply for a loan, whether you will be approved, and what parameters will apply particularly to your business, the following is an attempt to give you some general information on this law as it relates to the status of your employees and other employment-related issues.

### **PAYCHECK PROTECTION PROGRAM (PPP)**

- **Borrower Eligibility:** Applicant was in operation on February 15, 2020 and had employees for whom they paid salaries and payroll taxes OR paid independent contractors. Applicant must be a small business as defined by the SBA – business or non-profit organization with generally fewer than 500 employees or size standards established for specific industries, any individual who operates as a sole proprietor, or as an independent contractor
- **Covered Period:** February 15, 2020 through June 30, 2020
- **Application Period:** Once established through June 30, 2020
- **Maximum Borrowing Amount:** Capped at \$10 million. Loan Amount is equal to 2.5 times the average total monthly payroll costs incurred in the prior year
- **Use of Funds:** “Payroll costs”, mortgage interest, rent, and utilities.
  - **“Payroll costs” include** salaries/wages, commissions, tips, certain employee benefits (e.g., health insurance and retirement benefits), state and local taxes, and certain payments to sole proprietors and independent contractors
  - **“Payroll costs” exclude** individual employee compensation in excess of \$100,000, FICA and income tax employees, and foreign employees
- **Deferment Relief:** Complete payment deferment relief offered for impacted borrowers with a loan for a period of not less than 6 months and not more than 1 year
- **Other Terms:** Nonrecourse unless used for unauthorized purposes, no personal guarantee required, no collateral required, no SBA fee
- **Certification Required:** 1) Loan required to support ongoing operations due to economic uncertainty; 2) Funds to be **used to retain and maintain payroll** and other proper uses
- **Loan Forgiveness:** Applicants are eligible for forgiveness of the loan in an amount equal to the sum of various costs for the **8-week period** from origination including payroll, mortgage interest, rent, and utilities. Forgiven amount is excluded from gross income for tax purposes. Loan forgiveness will be reduced if levels of employees or salaries are

reduced based on certain formulas. The loan recipient is required to provide verifying documentation of number of employees and pay rates; and that the funds were used for allowable purposes.

- **Reductions** based on average number of full-time equivalent (FTE) employees per month during the 8-weeks following the date of the loan divided by the average FTEs either from February 15, 2019 – June 30, 2019 or January 1, 2020 – February 29, 2020 (your choice) or a different period for seasonal employers, AND any reduction in salary of any employee (who did not receive wages or salary of more than \$100,000/year in 2019) during the 8-weeks following the PPP loan date that is in excess of 25% of the total salary of the employee during the most recent full quarter during which the employee was employed before the 8-week period
- **Special Rule on Forgiveness: Under certain circumstances**, loan forgiveness will be **determined without regard to a reduction in the number of full-time equivalent employees** of an eligible recipient **or a reduction in the salary of one or more employees** of the eligible recipient **during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this statute if the reductions** in number of employees and/or salary are **eliminated** by June 30, 2020
- The amount of a PPP Loan not forgiven will be payable over a 10-year period at a rate not to exceed 4%
- **Documentation:** in addition to standard loan documentation, applicants shall submit verification of employee, payroll, payroll tax, rent, mortgage interest, and utility payments.

*It is our understanding that application periods are not yet established so you may not be able to apply for and receive funds under this loan program for a while – perhaps for 30 days or more*

*The loan forgiveness is allowed for an 8-week period beginning on the day your loan is funded which, as noted, is not expected to occur immediately*

*As noted above, a reduction of employees or salaries in the period from February 15, 2020 until 30 days from the enactment (March 27, 2020) of the CARES Act may not be subject to the reduction on loan forgiveness.*

*Therefore, depending on your individual circumstances, you will need to determine whether you should/can retain employees you would otherwise need to furlough/ layoff; bring employees back to work from furlough/layoff; or change salaries immediately as you may be subject to the special rule on forgiveness and the 8-week period during which you would receive loan forgiveness may not occur until sometime in the future.*

This publication is designed only to provide general information on the topics covered. It is not intended to provide legal advice or render a legal opinion on any specific matters. Readers should not act upon this information without seeking professional counsel. ©Employer's Legal Advisor, Inc. All rights reserved.

*We understand that the formulas given above to determine reductions in the loan forgiveness may seem complicated and difficult to use. If you need assistance with this, discuss this with your banker or accountant (as you go through the process). We may also be able to answer some of your questions on these calculations. However, please also keep in mind that there will be regulations promulgated to provide guidance on many of these issues and if you can wait until that occurs it will be easier for us or other professionals to assist you.*

## **EMERGENCY EIDL GRANTS**

- **SBA emergency grants:** in the amount of \$10,000 to certain businesses with less than 500 employees that were in operation on January 1, 2020 who have applied for a SBA economic injury disaster loan. The loan should be provided to the business within three days of applying. The applicant must provide a self-certification that it is an eligible entity to apply. Even if applicants are later not approved for the economic injury disaster loan, they are not required to repay this advance payment.
- **Grant must be used for** allowable purposes including
  - Providing paid sick leave to employees unable to work for COVID-19
  - Maintaining payroll to retain employment during business interruption
  - Meeting increased costs to obtain materials unavailable due to interruption in supply chains
  - Paying rent or mortgage
  - Repaying obligations that cannot be met due to revenue loss

*It is our understanding that businesses can apply for these SBA Economic Injury Disaster Loan (EIDL) now and receive the advance monies above if they meet the requirements of an eligible entity.*

*Businesses can apply for both programs . . . however, if the business also transfers into, or is also approved for a PPP loan the advance amount shall be included in the reduction from the loan forgiveness amount of the PPP loan.*

## **UNEMPLOYMENT INSURANCE ASSISTANCE**

- **Federal Pandemic Unemployment Insurance:** \$600 in additional unemployment benefits per week (expires on July 31, 2020)
- **UI Benefits** extended for 13 weeks; **available to those traditionally not eligible for unemployment benefits** (e.g., have limited work history or have exhausted state benefits)
- **“Covered individual”** includes those individuals or their family members directly affected by the virus – including loss of job as a direct result of COVID-19

*This publication is designed only to provide general information on the topics covered. It is not intended to provide legal advice or render a legal opinion on any specific matters. Readers should not act upon this information without seeking professional counsel. ©Employer's Legal Advisor, Inc. All rights reserved.*

- Individuals able to work remotely or receiving other paid leave are **not eligible**

*The extension of unemployment benefits for those who may not otherwise be eligible may be very important for individuals who may not have had “wages” in the applicable quarters utilized by the California Employment Development Department (EDD) to determine benefits.*

*It is also important to note that the additional \$600 in benefits will apply across-the-board to those receiving unemployment benefits.*

## **SOCIAL SECURITY TAX CREDITS (EMPLOYEE RETENTION CREDIT) (2301)**

### **DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES (2302)**

- For employers subject to **full or partial suspension of business** due to COVID-19
  - Operations fully or partially suspended as a result of COVID-19 government order;  
OR
  - Gross receipts during calendar quarter are less than 50 % of gross receipts from same calendar quarter during 2019
- **Credit for 50% of “qualified wages”** paid to employee from March 13, 2020 through December 31, 2020; credit is against the employer portion of Social Security taxes after applying tax credits for payments under Families First Coronavirus Response Act (FFCRA)
  - “Qualified wages” depend on whether employer has more or less than an average of 100 employees in 2019; also includes qualified health plan expenses
  - Total “qualified wages” cannot exceed \$10,000 per employee
- **All employers can delay payment** of 2020 employer social security taxes (50% due by December 31, 2021 and 50% due by December 31, 2022)
- Employer is **not eligible** for these credits **if the employer receives a PPP loan**

For further assistance with regard to applying for an SBA loan and determining whether you will be eligible for tax credits or other business questions relating to the CARES Act, please contact your banker, accountant, business/tax lawyer, or other financial professional. If you would like us to provide you with contact information for any of these professionals, please let us know.

This publication is designed only to provide general information on the topics covered. It is not intended to provide legal advice or render a legal opinion on any specific matters. Readers should not act upon this information without seeking professional counsel. ©Employer's Legal Advisor, Inc. All rights reserved.