

COVID-19

Information for Contractors

Presented by:



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WEDNESDAY, MAY 27, 2020

OVERVIEW OF TODAY'S WEBINAR

Presenters:

Philip Siegel – Employment Issues

Stephen Phillips – Construction & Contract Issues

Scott Calhoun – Economic Assistance Programs

WHAT TO KNOW ABOUT THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT



Presented by

Philip J. Siegel, Esq.



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Families First Coronavirus Response Act

- Which employers are covered?
- Effective April 1, 2020.
- Sunsets December 31, 2020.

Emergency Paid Sick Leave

- Who qualifies?
- How much leave is provided?
- At what rate is leave paid?

Reasons for Paid Sick Leave

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

Question

If we do not have work available for our employees, will they qualify for paid sick leave?

What if we are an essential business and we have work available?

Reasons for Paid Sick Leave

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.

Reasons for Paid Sick Leave

4. The employee is caring for an individual subject to a quarantine or isolation order or the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

Reasons for Paid Sick Leave

5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to **COVID-19** precautions

Documentation Requirement

- Employees must provide documentation to qualify for paid sick leave.
- Signed statement with:
 - the employee's name;
 - the dates of requested leave;
 - the COVID-19 qualifying reason for leave;
 - a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason; and
 - Self-certification there is not another individual suitable to provide care for the child.

Emergency Family Medical Leave Act

- Who qualifies?
- How much leave is provided?
- At what rate is leave paid?

Small Business Exception

- Fewer than 50 employees
- Limited application
 - Limited to child care leave.
 - Limited to instances where leave would cause expenses and financial obligations to exceed available business revenue, pose a substantial risk, or prevent from operating at minimum capacity.
- Documentation required.

Paid Sick Leave Tax Credit



- Employers may claim a quarterly payroll tax credit for 100% of the amounts paid out to eligible employees.
- Employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and childcare leave that they paid, rather than deposit them with the IRS.

Notice Requirements

- Notice is required.
- All employers with fewer than 500 employees must display notice in a conspicuous place in the employer's main office.
- Email or direct mail satisfies this notice requirement.

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at $\frac{2}{3}$ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627

dol.gov/agencies/whd



WH1422 REV 03/20

Frequently Asked Questions



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Questions

Can we terminate an employee on paid sick leave if we go through a reduction-in-force or layoff?

Questions

Can we require the employee to provide a doctor's note before the employee returns to work?

Questions

We have employees who are fearful of the coronavirus and don't want to come into work. Do we have to pay them if they do not come into work?

Questions

Am I entitled to take my employees' temperature before we begin work for the day?

Can we legally ask an employee for COVID-19 test result?

Can we ask employees if they are experiencing COVID-19 symptoms, have been diagnosed with COVID-19, or if they have been exposed to COVID-19?

Questions

What do we do if we have an employee who has tested positive for COVID-19 or is exhibiting COVID-19 symptoms?

Addressing Co-Worker Safety

Person	Exposure to	Recommended Precautions for the Public
<ul style="list-style-type: none">• Individual who has had close contact (< 6 feet)** for a prolonged period of time ***	<ul style="list-style-type: none">• Person with symptomatic COVID-19 during period from 48 hours before symptoms onset until meets criteria for discontinuing home isolation (can be a laboratory-confirmed disease or a clinically compatible illness in a state or territory with widespread community transmission)	<ul style="list-style-type: none">• Stay home until 14 days after last exposure and maintain social distance (at least 6 feet) from others at all times• Self-monitor for symptoms<ul style="list-style-type: none">• Check temperature twice a day• Watch for fever*, cough, or shortness of breath• Avoid contact with people at higher risk for severe illness (unless they live in the same home and had same exposure)• Follow CDC guidance if symptoms develop

Return to Work Considerations

Employee was symptomatic but was not tested for COVID-19.

The employee may return to work if:

- They have not had a fever for at least 72 hours and have not used fever-reducing medication during that time.
- Coughs and other symptoms have improved.
- Seven days have passed since they first experienced symptoms.

Employee was tested for COVID-19.

The employee may return to work if:

- They no longer have a fever.
- Coughs and other symptoms have improved.
- They have received two negative COVID-19 tests in a row.

Questions

If an employee has been advised by a health care provider to self-quarantine related to COVID-19 then, after the self-quarantine, has to care for an individual subject to a shelter-in-place order, does the employer pay for both?

Questions

If employee is out for any of the qualifying reasons can we use their vacation time against the paid sick leave or EFMLA?

Questions

If an employee is seeking a medical diagnosis and gets negative results or cannot be tested and returns to work before 80 hours of paid sick leave are up, do they not get paid for anything? Are the paid 80 hours “all or nothing?”



RETURNING TO WORK

OSHA Guidance

- Encourage workers to **stay home if they are sick**.
- Allow workers to **wear masks** over their nose and mouth to prevent them from spreading the virus.
- Continue to use other normal control measures, including **personal protective equipment (PPE)**, necessary to protect workers from other job hazards associated with construction activities.
- Advise workers to avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six feet, where possible. Where work trailers are used, all workers should maintain **social distancing** while inside the trailers.
- **Train workers** how to properly put on, use/wear, and take off protective clothing and equipment.
- Encourage respiratory etiquette, including **covering coughs and sneezes**.

OSHA Guidance

- **Promote personal hygiene.** If workers do not have immediate access to soap and water for handwashing, provide alcohol-based hand rubs containing at least 60 percent alcohol.
- **Use Environmental Protection Agency-approved cleaning chemicals** from [List N](#) or that have label claims against the coronavirus.
- To the extent tools or equipment must be shared, provide and instruct workers to **use alcohol-based wipes to clean tools before and after use.** When cleaning tools and equipment, workers should consult manufacturer recommendations for proper cleaning techniques and restrictions.
- **Keep in-person meetings (including toolbox talks and safety meetings) as short as possible,** limit the number of workers in attendance, and use social distancing practices.
- **Clean and disinfect** portable jobsite toilets regularly. Hand sanitizer dispensers should be filled regularly. Frequently-touched items (i.e., door pulls and toilet seats) should be disinfected.
- Encourage workers to **report** any safety and health concerns.

Unemployment Benefits Under the CARES Act


- Provides an additional \$600 benefit
- Extends benefits up to 39 weeks
- Allows for unemployment benefits where individuals would otherwise not qualify

Questions

Do employees who choose not to come to work because of fear of COVID-19 qualify for unemployment benefits under the CARES Act?

We furloughed our employees, but now we have work available for them. If our employees refuse to return to work, do they qualify for unemployment benefits under the CARES Act?

My workers rather quit for the unemployment benefit than work when I have work available. Will they qualify for unemployment benefits under the CARES Act?



Please do not hesitate to call or email us with any additional questions.

We will be here for you throughout this pandemic.

Take care and stay safe.

<https://hpsslaw.com/covid19-legal>

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COVID-19 AND CONSTRUCTION – CONTRACT ISSUES



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CONSTRUCTION - IN A COVID-19 ENVIRONMENT

- But definitely not a return to normalcy and business as usual
- Construction will need to adopt for an indefinite duration to a COVID-19 environment
- Work will be slower; jobs will take longer.
- Costs will increase to comply with COVID-19 requirements and procedures.

PREPARING FOR THE FUTURE

Report by the Center for Infectious Disease Research and Policy at the University of Minnesota, Dr. Michael Osterholm



- COVID-19 outbreak could go on for at least another 18 to 24 months with hot spots popping up periodically in diverse geographical areas (assuming at least some level on ongoing mitigation measures)
- U.S. should prepare for a resurgence of infections this fall or winter that might dwarf the current wave
- More than 20,000 Americans are testing positive for COVID-19 each day - primarily those who can't afford not to work and have limited ability to socially distance, including grocery store workers, housekeepers, nursing home workers, jail inmates, construction workers, police officers, firefighters, health-care workers

HOW CONSTRUCTION WILL BE CHANGED?

- Jobsites will be cleaner, safer and less crowded
- OSHA might require employers to develop written infectious disease preparedness and response plans
- Distancing will be the norm,
- Increased use of technology - BIM; virtual training; some building departments are implementing remote technology for inspections
- Projects will take longer - consider when bidding
- Telework will become more common

HOW CONSTRUCTION WILL BE CHANGED?

- Union influence may increase - union membership has declined from about 87% of the workforce in 1947 to 12.8% in 2018. Trade unions will be active in pushing for more safety requirements; AFL-CIO has filed suit in D.C. Circuit seeking to require OSHA to issue rules for worker COVID-19 protection
- Demand for project types will change - retail and entertainment projects are likely to be less in demand while healthcare construction and healthcare-related manufacturing projects could see more activity; demand for distribution and warehouse capacity likely to increase
- Modular construction and offsite fabrication will increase

JOB SITE SAFETY GEARED TO AVOID SPREADING OF THE VIRUS

- OSHA and CDC guidelines will be considered minimums
- Develop a company COVID-19 safety plan for every job
- Know what the General Contractor or Owner requires
- Unions are pushing for a nationwide standard

PENNSYLVANIA CONSTRUCTION REQUIREMENTS

Construction firms must:

- Ensure workers are traveling to and from the jobsite separately; whenever possible employees should not share a vehicle
- Employ jobsite screening based on CDC guidance to determine if employees should work and prohibit work of any employees with symptoms of COVID-19
- Establish practices for handling employees with probable or confirmed cases of COVID-19
- Prohibit unnecessary visitors to any project or worksite and limit supplier deliveries
- Identify a “Pandemic Safety Officer” for each project or worksite or for each contractor on site at large-scale construction projects. Pandemic Safety Officer is to convey, implement and enforce social distancing and other requirements.

PENNSYLVANIA CONSTRUCTION REQUIREMENTS

- Stagger shifts, breaks, work areas and/or stacking of trades where feasible to minimize workers on site
- Face masks/facial coverings for all employees (unless impedes vision or would create an unsafe condition in which to operate equipment or perform a task)
- Provide hand wash stations at appropriate locations
- 6' minimum distance between all workers “unless the safety of the public or workers require deviation”
- Ensure all gatherings are limited to no more than 10 people, maintaining 6' social distancing when required to meet, even when outside

PENNSYLVANIA CONSTRUCTION REQUIREMENTS

- Limit tool sharing and sanitize tools if they must be shared
- Implement cleaning or sanitizing protocols; identify and regularly clean and disinfect areas that are at high risk for transmission
- Use virtual meetings and disseminate information electronically
- Establish protocol for execution upon learning that business has been exposed to a person who is a probable or confirmed case
- Local jurisdictions can elect to impose more stringent requirements
- Residential construction projects may not permit more than 4 individuals on the jobsite at any time, not including individuals who require temporary access and are not directly engaged in construction

POTENTIAL 3RD PARTY PERSONAL INJURY OR WORKERS COMPENSATION CLAIMS

There will be workers compensation claims from construction workers due to COVID-19; did the employee contract the disease at work?

If there are personal injury liability claims or workers' compensation claims for COVID-19 disease, the steps that the contractor took to avoid the spread of the disease will be scrutinized.

MATERIAL SUPPLY CHAIN ISSUES

- Less reliance on long (geographical) supply chains (particularly overseas)
- Uncertainty of material availability and timeliness of deliveries
- Less reliance on getting materials just as needed
- Lead times on orders are increasing
- Price volatility
- Sheet metal and steel products are a concern

MATERIAL SUPPLY CHAIN RECOMMENDATIONS

- Need to be pro-active
- More advance planning, ordering and delivery of materials and local storage
- Avoid sole source specifications and reliance on sole sources
- Build flexibility into material selection and schedule options
- Identify potential problems as early as possible
- Be transparent with customers and communicate promptly
- Contract provisions to deal with potential supply chain problems

DELAYS, DISRUPTIONS, EXTRA COSTS - EXECUTED CONTRACTS

Is there a *force majeure* clause?

- *Force majeure* excuses contract performance for reasons beyond the control of the contractor
- In construction contracts, *force majeure* clauses generally allow the contractor additional time, but not additional compensation
- Need to determine if there is a *force majeure*, know what it states, give timely notice and follow the contract requirements
- *Force majeure* clauses are not uniform

Force Majeure

AIA A 201 -2017 General Conditions

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, **unusual delay in deliveries**, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, **or other causes beyond the Contractor's control**; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by **other causes that the Contractor asserts, and the Architect determines, justify delay**, then the Contract Time shall be **extended** for such reasonable time as the Architect may determine.

AIA A201 - 2017 *Force Majeure*

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

FEDERAL GOVERNMENT CONSTRUCTION PROJECTS

- Epidemics and quarantine restrictions are specifically identified as excusable delays
- Time extension only, not additional compensation
- 48 CFR §52.249 Excusable Delay

NOTICE AND DOCUMENTATION

Follow Contract Procedure and Requirements for Claims

- Be sure to comply with notice requirements as soon as you are aware of an unforeseen COVID-19 caused condition, event, or occurrence that will or has adversely affected your ability to perform the job as planned and expected pre-COVID-19
- Document delays and extra expenses just as you would any other claim for delay or additional costs so that you can establish the adverse impact caused by COVID-19. Be prepared to prove the impact on your productivity. Set-up separate cost codes to track and record additional COVID-19-caused expenses

WHAT IF THERE IS NO *FORCE MAJEURE* CLAUSE IN AN ALREADY EXECUTED CONTRACT?

Review the entire contract carefully. There may be other contract provisions that are potentially applicable.

- Suspension of the Work
- Changes in the Work
- Delay clauses that entitle the contractor to an extension of time
- Provision dealing with a national emergency
- Provision requiring compliance with laws - effect of shelter orders
- Protection of persons and property
- Emergency clauses

IF NO *FORCE MAJEURE* CLAUSE IN CONTRACT

- Be certain to give notice if you are adversely impacted just as you would for any other claim, following contract provisions applicable to claims
- Need for documentation of loss of productivity, delays and extra costs
- Doctrine of impossibility of performance; does not apply if contract is just made more expensive or difficult to perform
- What's the likelihood that a judge, jury or arbitrator would assess liquidated or actual damages if contractor proved that delay was due to COVID-19?

DUTY TO MITIGATE

As is always the case, you have a duty to mitigate damages. For instance, if a product or material you were intending to use is no longer available, you need to search for and identify a suitable substitute material and gain approval for the use of the substitute material.

CONTRACT PROVISIONS

- Include provisions in your proposals and contracts to deal with potential supply and delivery problems
- Include force majeure provision for delays and problems beyond your control
- Include specific provisions to deal with issues that you suspect might arise
- Don't agree to liquidated damage provisions
- Limit liability for delay damages
- Provide for price protection downstream and upstream so you don't bear the risk of unexpected price increases
- Include provisions for use of substitute materials; may want to be specific so there is advance acceptance of the proposed substitute product

FOR UPCOMING AND FUTURE PROJECTS AND PRESENTLY UNEXECUTED CONTRACTS

Insert a COVID-19 *force majeure* clause in your proposals and contracts. Here's an example:

Force Majeure - Coronavirus Disease 2019 (“COVID-19”)

The parties acknowledge that the potential effects of the coronavirus disease (“COVID-19”) pandemic on the construction industry and the performance of construction projects are not yet fully known and are beyond the control of the parties. The effects of this pandemic may adversely affect the contractor’s workforce, the supply chain for materials, the delivery of materials and/or otherwise adversely impact the contractor’s ability to perform as planned, causing delays in the prosecution and completion of the work and the project. The parties agree that delays resulting from the effects of the COVID-19 pandemic are beyond the control of the parties, and if such delays occur, the contractor will be granted a reasonable extension of time and an equitable adjustment in the contract amount for the additional costs incurred by contractor resulting from the COVID-19 pandemic. Contractor shall give owner/general contractor written notice of delay it experiences due to the COVID-19 pandemic and any additional costs it incurs due to such delay.

TO DEAL WITH MATERIAL UNAVAILABILITY AND VOLATILE PRICING

Normally a contractor bears the risk of an unexpected increase in price of materials absent a contract provision. Therefore, it is essential to include a provision in your contract to deal with a material unavailability problem or unexpected increase in price.

Here's an example of a provision you could include in your proposals and contracts:

Price Volatility and Increased Costs Due to COVID-19:

The parties acknowledge that some of the materials and products to be used and installed in the construction of this project may become unavailable, delayed in shipment and/or subject to price increases due to circumstances beyond the control of the contractor, including the COVID-19 pandemic. If a specified product is unavailable or shipment is delayed, contractor shall provide written notice and shall be afforded additional time and substitute products may be considered. If there is an increase in price of materials, equipment or products between the date of this contract and the time when the job is ready for the installation of the affected material, the amount of this contract shall be increased to reflect the additional cost to obtain the materials, provided that the contractor gives the owner/general contractor written notice and documentation of the increased costs.

KNOW YOUR CUSTOMERS BEFORE SIGNING A CONTRACT

- Be mindful of potential bankruptcies (e.g. Hertz, J. Crew, Gold's Gym, J.C. Penny, Neiman Marcus, Whiting Petroleum)
- More careful selection of customers than prior to the pandemic; prequalification of customer
- Inquire regarding the customer's financial ability; can the lender withdraw the construction loan? Under what circumstances
- Utilize AIA contract provision allowing contractor to confirm Owner has the financial resources to pay for the job

INSURANCE ISSUES

- **Workers compensation** - historically there had to be a showing of a direct casual connection between work activities and the disease such that the disease followed as a natural incident of exposure by reason of employment; movement in several states that there is a rebuttable presumption that a worker (particularly essential workers) who contracted the disease did so during the course of employment

INSURANCE ISSUES

- **Business interruption insurance** - generally will not apply because of the absence of “direct physical loss or damage, but there are already numerous court challenges and legislative proposals

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PPP LOAN FORGIVENESS AND AVAILABLE FINANCIAL ASSISTANCE UNDER THE CARES ACT



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Overview of The Coronavirus Aid, Relief and Economic Security (CARES) Act

- Establishes several programs to provide financial assistance to businesses and individuals affected by the COVID-19 pandemic

Overview of The Coronavirus Aid, Relief and Economic Security (CARES) Act

- Paycheck Protection Program
- Employee Retention Tax Credit
- Deferral of Payroll and Self-Employment Taxes
- Other SBA Loan Provisions

Paycheck Protection Program (PPP)

- Size of program: Initial funding: \$349 billion; subsequent funding \$310 billion
- Administered by the Small Business Administration (SBA) and the U.S. Treasury Department
- Purpose: enable businesses with less than 500 employees to remain operational and keep employees on their payrolls

PPP – Self-Certification

- Applicants must have good faith basis for certification that “current economic uncertainty makes the loan request necessary to support ongoing operations”
- “Current” as of the date of the application
- Assess the applicant’s ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is “not significantly detrimental to the business”

PPP – Self-Certification

- All facts and circumstances
- Document factors involved in decision process and keep all documentation for 6 years (applies to forgiveness documentation also)
- All loans less than \$2 Million deemed to have made certification in good faith

PPP - Loan Forgiveness

- PPP loans are forgivable (partially or wholly)
- Forgiven amount is tax-free - but IRS has ruled that payroll payment made with proceeds of PPP loans are not deductible (double dipping - possibility of statutory modification?)
- Payroll costs limited to \$15,385 per employee (pro rata amount of \$100,000 annual salary)

PPP - Loan Forgiveness

- Cap on forgivable amount is the sum of the payroll costs, mortgage interest or rent, and certain utility payments made by the employer during the 8-week period beginning on the date of the loan (or the Alternate Covered Payroll Period)
- Non-payroll costs include interest on mortgages and debt secured by personal property (if debt was in place on or before February 15)
- Non-payroll costs include costs paid or accrued during the covered period
- Non-payroll costs will be limited to 25%

PPP – Loan Forgiveness – Payroll Timing

- Forgivable payroll costs are those paid during the 8-week period after the loan is received
- “Alternative Covered Payroll Period” – 56 days beginning the first day of the first payroll cycle beginning after the loan is received
- Election to be made as part of forgiveness application

PPP - Loan Forgiveness - Conditions

- Employer cannot reduce its workforce during the 8-week period (as compared to one of 2 measuring periods), and
- Employer cannot reduce the salary or wages paid to any employee who earns less than \$100,000 per year by more than 25% during the 8-week period as compared to the most recent calendar quarter.
- Measuring periods: either February 15, 2019 - June 30, 2019 OR January 1, 2020 - February 29, 2020

PPP - Loan Forgiveness - Conditions

- Headcount reduction does not include employees who are fired for cause, resign, or voluntarily request a schedule reduction
- Full-time equivalent employee means an employee who works 40 hours or more on average per week
- Reduction in compensation that results from a reduction in employee's hours will not be counted as a reduction in compensation for purposes of the 75% reduction in salary test

PPP - Loan Forgiveness - Grace Period

- If employers have already made staffing reductions, the Act permits a business to qualify for loan forgiveness if they re-hire the workforce back to pre-existing levels by June 30, 2020.

PPP - Loan Forgiveness - Attempt to Re-Hire

- If employee has been laid off, can be excluded from calculation of reduction in workforce if:
 1. Make good faith written offer to re-hire
 2. Offer made at same salary or wages
 3. Offer rejected by employee
 4. Company maintains written record and
 5. Company informs state unemployment office within 30 days of employee's rejection of offer

Deferral of Payroll and Self-Employment Taxes

- Employers allowed to defer payment of the employer's share of the 6.2% Social Security taxes owed.
- Deferral period: between now and December 31, 2020
- 50% payable by December 31, 2021 and the other 50% payable by December 31, 2022.

Deferral of Payroll and Self-Employment Taxes

- Self-employed taxpayers can defer 50% of their self-employment taxes due for the rest of 2020 in a similar fashion.

NOTE: This deferral is not available to any business which received loan forgiveness under a Payroll Protection Program loan.

Employee Retention Tax Credit - In General

- Businesses that are forced to shut down or suspend operations due to COVID-19
- but which continue to pay employees during that period, are entitled to a credit against the employer portion of Social Security payroll taxes.

Employee Retention Tax Credit - Amount of Credit

- For wages paid after March 12, 2020 and before January 1, 2021, the credit equals 50% of “qualified wages” paid of \$10,000 per employee. Therefore, the total maximum credit available is \$5,000 per employee.
- The credit is refundable if it exceeds the business’s liability for payroll taxes.
- Use Form 7200

Employee Retention Tax Credit - Eligibility

- Eligible if operations were fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate government entity resulting from COVID-19.
- OR, if a business remained open but had gross receipts for any quarter in 2020 that were 50% of what they were for the same quarter in 2019, eligible for the credit for each quarter until the business has a quarter in which gross receipts exceed 80% of what they were for the same quarter in the previous year.

Employee Retention Tax Credit - Qualified Wages

- For employers with more than 100 full-time employees (average for 2019), “qualified wages” are the wages paid to employees when they are not providing services due to the COVID-19 outbreak (either shut down by government order or significant decline in gross receipts) reduced.
- For businesses with 100 or fewer employees, all wages paid qualify. In general, qualified wages includes amounts paid to maintain group health insurance.
- “Qualified wages” do not include wages for which employer receives credit for sick or family leave under FFCRA

Employee Retention Tax Credit - Limitation

- **NOTE:** This credit is not available to any business which takes out a Paycheck Protection Program loan.

SBA Loan Programs

- The Economic Injury Disaster Loan (EIDL) program is expanded to include availability to all businesses with fewer than 500 employees and to sole proprietors and ESOPs. Maximum loan is \$2 Million.
- No personal guarantees required for any of these loans under \$200,000 made prior to December 31, 2020.

SBA Loan Programs

- A new Emergency Grant is available to allow any business which has applied for a disaster loan to receive up to \$10,000
- The grant is not required to be repaid even if the loan is not approved
- EIDL and grants are directly funded by U.S. government

SBA Loan Programs

- Existing Section 7(a) loans: forgiveness of up to six (6) months of principal, interest and fees
- The statutory limit on SBA Express loans has been raised from \$350,000 to \$1 million through December 31, 2020
- Express Bridge Loans - up to \$25,000; stop gap bridge loans while Express loan application is being processed

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