

# Making Sense of COVID-19 Legislation for Small Businesses

# Presenter

Melinda Gau



Jeff Clancy



Chad Staul





# SUPPORT FOR EMPLOYEES: NEW BENEFITS

- As of **April 1, 2020** employees may be entitled to new paid leave
    - Emergency Paid Sick Leave
    - Emergency Paid Family and Medical Leave
  - Unemployment benefits “more” available
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# WHO IS COVERED

- Private employers with fewer than 500 employees
- Government and agency employees with 1 or more employees
- All employees are covered for Emergency Paid Sick Leave
- Only employees who have worked for 30 days are eligible for Emergency FMLA

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

# EMERGENCY PAID SICK LEAVE

- When an employee is unable to work or telework due to:
  - (1) Federal, state, or local quarantine or isolation order
  - (2) Health care provider quarantine
  - (3) COVID-19 symptoms and is seeking a medical diagnosis
  - (4) Caring for an individual subject to a quarantine or isolation order, health care provider quarantine
  - (5) Caring for a child whose school or care provider is closed or unavailable
  - (6) Other substantially-similar condition specified by the Sec of HHS, in consultation with Sec of Labor and Treasury

# EMERGENCY PAID SICK LEAVE

- For full-time employees, up to 80 hours (based on 6 month average pay)
- For part-time employees, average number of hours (over 2 week period)
- Capped at:
  - \$511/day and \$5,110 total for reasons 1 -3 on previous slide
  - \$200/day and \$2,000 total for reasons 4-6 on previous slide

# EMERGENCY FMLA LEAVE

- **Need for leave to care for son or daughter AND school or care provider is closed**
- Employee has to be unable to telework
- Employees only have 12 weeks in 12 month period





# EMERGENCY FMLA LEAVE

- Exemption for small employers if it would put them in “jeopardy”
- Runs concurrently with EPSL
- First 2 weeks unpaid
  - Employees may use PTO or EPSL to cover first 2 weeks
- Next up to 10 weeks paid at 2/3 regular rate of pay
  - Cap of \$200/day and \$10,000 total

# ADDITIONAL FEDERAL UNEMPLOYMENT BENEFITS

- Emergency increase of \$600 per week for up to 4 months
- Added 13 weeks
- 100% funding of “Short-time compensation”

# RELAXED STATE UNEMPLOYMENT ACCESS

- No 1 week waiting period for pandemic related layoffs and hour and pay reductions
- Relaxed standards
  - Might not have to be actively seeking work
  - Even employees taking voluntary leaves may qualify

<https://www.uimn.org/applicants/needtoknow/news-updates/covid-19.jsp>

# DOCUMENTATION FOR TAX CREDIT

- Reason for the leave
- Who advised/ordered quarantine
- Name of child, school/place of care and no other suitable care provider
- <https://www.irs.gov/coronavirus>



# SUPPORT FOR BUSINESSES: PAYCHECK PROTECTION PROGRAM

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides emergency assistance and healthcare response
- The Small Business Administration received funding (\$349 million) and authority to modify existing loan programs and establish a new loan program to assist small business and nonprofits.
- The Act temporarily permits the SBA to guarantee 100% of 7(a) loans under a new program, the Paycheck Protection Program (“PPP”).
- The Act provides forgiveness for up to the full principal amount.

# PPP Loan Eligibility Requirements

- Generally, to be eligible for a PPP loan an applicant must:
  - Have been in operation on February 15, 2020;
  - Be a small business concern as defined by the SBA Act.(LLCs, S Corp, C Corp, Partnerships, Sole Proprietorships, Independent Contractors, or eligible Self-Employed Individuals with a place of business in the U.S..
  - Be an eligible nonprofit, is either (a) exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (“Code”) or (b) a war veterans’ organization exempt under section 501(c)(19) of the Code (faith based organizations are eligible);
  - Generally, have 500 or fewer full and/or part-time employees whose principal place of residence is in the U.S. (subject to the SBA’s affiliation rules-Restaurant and Hospitality industry may be eligible even if a large franchise- Typically assessed by employees per location) or the “alternative size standard test”: a maximum tangible net worth of \$15 million as of March 27,2020, and an average net income of \$5 million or less over the previous two fiscal years.
  - Some entities may be eligible with more than 500 employees in some situations (Meet SBA business concern statutory definition and industry size standard) See SBA website, and
  - Provide a good faith certification that the loan is necessary due to economic conditions brought about because of COVID-19. Different from EIDL Program where entity must show actual loss.

# Required Documents for the Lender

- Payroll processor records
- Payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship.
- For applicants who do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate qualifying payroll amount.

# Ineligible Entities That Meet Eligibility Requirements

- If the entity is engaged in any activity that is illegal under any federal, state, or local law;
- You are a household employer (individuals who employ household employees such as nannies or housekeepers);
- Your business has ever obtained a direct guaranteed loan from the SBA or any other Federal agency that is currently delinquent or defaulted within the last seven years; or
- An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to indictment, or any formal criminal charges in any jurisdiction, or conviction of a felony in the last 5 years.



# Loan Terms

- Loan term is for two years, with an interest rate of 1%. (If entity uses funds for payroll costs)
- Generally, during the covered period of February 15- June 30 2020 eligible entities with less than 500 employees (defined as full time/part time or other) are eligible for a PPP loan in the amount equal to:
  - Aggregate payroll costs (defined on next slide), from the last 12 months for employees whose principal place of residence is the United States, (Businesses created after June 30, 2019 may use calculations from January 1- Feb. 29 2020, Seasonal may use 8 week period between Feb 15-June 30, 2019 if no substantial activity on the Feb. 15, 2020 date;
  - Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.
  - Calculate the average monthly payroll costs (Number from item 1 subtracted by item 2, divide that number by 12 or 2 if a new business using 2020 dates) This is the average monthly payroll.
  - Multiply the average monthly payroll (number from item 3) by 2.5.
  - Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any advance (\$10,000) under and EIDL COVID-19 loan. Advance does not have to be repaid.
- Loan payments are deferred for 6 months but interest rate still accrues.

# Eligible Payroll Costs

- Compensation (salary, wages, commission, or similar compensation, cash tips, etc.);
- Payment for vacation, family, medical, and sick leave;
- Allowance for employee dismissal or separation;
- Payment for group health-care benefits, including insurance premiums;
- Payment of employee retirement benefits; and
- Payment of state and local taxes imposed on the compensation of employees.

# Expenses Excluded in Calculating PPP Payroll Cost:

- Any compensation over \$100,000 per employee;
- Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA and Railroad Retirement Act taxes required to be withheld from employees;
- Independent contractors cannot be counted as "employees" when calculating payroll costs.
- Compensation of employees whose principal place of residence is outside the United States; and
- Qualified sick and family leave for which a credit is already allowed under other sections of the Family First Coronavirus Response Act.

# What can PPP Loans Be Used For?

- Within 8 week period of the origination date, the loan can be used for payroll costs, Again, 75% for employee salary and wages, 25% for allowed operational expenses such as rent, utilities, etc. (See below).
- Employee's salaries, commissions, or similar compensation (75% of loan amount meant to retain and maintain workforce);
- Costs related to the continuation of group health-care benefits during periods of paid sick, medical, or family leave and insurance premiums;
- Rent, under lease agreements in force before February. 15, 2020;
- Utilities, for which service began before February 15, 2020;
- Interest on any other debt obligations that were incurred before the relevant covered period; and
- Payments of interest on any mortgage obligations (not payments on principal or prepayment fees) incurred before February 15, 2020;

# Loan Terms/Forgiveness Amount

- You will owe money if you do not maintain your staff and payroll. In order to be maintain loan forgiveness, you must review:
  - Number of Staff- Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
  - Level of Payroll- Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
  - Re-Hiring- You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.
  - The amount of forgiveness cannot exceed the principal loan amount.
- SBA will not require a personal loan guarantee or collateral requirement and will have no recourse unless borrower uses funds for purposes not authorized (outside the scope of “payroll costs” definition in the Act.)

# Forgiveness Amount In Sum

- No eligible borrower may receive more than one PPP loan.
- “Forgiveness Penalty”- The amount of loan forgiveness is reduced proportionally by any reduction in the borrower’s workforce and/or using loan amount outside of “payroll costs”.
- In other words, the loan amount will be forgiven as long as:
  - The loan proceeds are used to cover payroll costs (75%), and allowed operational costs (most mortgage interest, rent and utility costs) (25%) over the 8 week period after the loan is made; and
  - Employee and compensation levels are maintained.(Goal of the PPP Loan)

# PPP Funds Misused

- If borrower uses PPP funds for unauthorized purposes, the SBA will direct you to repay those amounts.
- If borrower knowingly uses the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud.
- If one of borrower's shareholders, members, or partners use PPP funds for unauthorized purposes, the SBA will have recourse against the shareholder, member, or partner for the unauthorized use. –SBA Interim Final Order





# FOR MORE INFORMATION

- Refer to the COVID Resources page on our website at [QUINLIVAN.COM](http://QUINLIVAN.COM)
- Contact the attorneys at Quinlivan & Hughes to assist your organization
  - Jeffrey P. Clancy 320 258-7857 or [jclancy@quinlivan.com](mailto:jclancy@quinlivan.com)
  - Melinda M. Gau 320-258-7845 or [mgau@quinlivan.com](mailto:mgau@quinlivan.com)
  - Chad A. Staul 320-258-7844 or [cstaul@quinlivan.com](mailto:cstaul@quinlivan.com)