HR and COVID-19: Q&A on FFCRA and the Paycheck Protection Plan with Downs Rachlin Martin, PLLC
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This presentation is for informational purposes only. Any statements provided in the presentation or by the speakers cannot be relied upon as tax or legal advice.

The information presented here is current as of April 8, 2020. The government is frequently issuing new guidance, and we will address updates in regular NFP communications as soon as practicable.
### CARES Act Paycheck Protection Program

**Who qualifies for a loan?**

- Employers with fewer than 500 employees
- 501(C)(3) nonprofit organizations,
- 501(C)(19) veterans organizations,
- 31(b)(2)(C) tribal organizations

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CARES Act Paycheck Protection Program

• Who does NOT qualify for a loan?

Generally:
• Household employers
• Businesses engaged in any activity that is illegal under federal, state or local law, including cannabis
• Owner with a recent criminal past
• Businesses (or business owners) that have ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years.
CARES Act Paycheck Protection Program

• What is the timeline to apply?

• Small businesses lending started 4/3.
• Independent contractors and self-employed individuals start applying on Friday 4/10
• The program is open until June 30, 2020, or until funds are extinguished.
CARES Act Paycheck Protection Program

- What are the first things I should do?
- Contact your bank.
- Check existing credit and loan agreements for covenants related to additional indebtedness.
- Analyze the net benefit of loan forgiveness.
CARES Act Paycheck Protection Program

• How do I apply?

• Complete and submit the Paycheck Protection Program application form and provide the other required documentation such as documentation of your payroll expenses (wages, benefits, taxes on compensation, etc.).

• No fees; No guarantees; No collateral; e-signatures are allowed
CARES Act Paycheck Protection Program

- **What is my maximum loan amount?**
  
  - the lessor of $10M or 2.5 times your payroll costs
  
  - Step 1: Aggregate payroll costs from the last 12 months for employees whose principal place of residence is the United States.
  
  - Step 2: 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.
  
  - Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
  
  - Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.
  
  - Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, and subtract the amount of any “advance” under the EIDL loan.
Can I apply for multiple PPP loans?

No. Only one loan is permitted under PPP.

What time period should I use to determine the number of employees and payroll costs to calculate the maximum loan amount?

- aggregate payroll costs using data either from the previous 12 months or from calendar year 2019
- There are alternatives for seasonal businesses and for applicants not in business from February 15, 2019 to June 30, 2019
CARES Act Paycheck Protection Program

• What is included in “payroll costs”?

• Compensation to employees (whose principal place of residence is in the United States) in the form of salary, wages, commissions, or similar compensation

• Cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips)

• Payment for vacation, parental, family, medical, or sick leave.

• Allowance for separate or dismissal

• Payment of employee benefits consisting of group health care coverage, including insurance premiums, and retirement

• Payment of state and local (NOT federal) taxes assessed on compensation of employees
What does not qualify as “payroll costs”?

- Compensation of an individual employee in excess of an annual salary of $100,000;
- Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee’s and employer’s share of FICA (Federal Insurance Contributions Act), Railroad Retirement Act taxes and income taxes required to be withheld from employees; and
- Qualified sick and family leave wages under sections 7001 and 7003 of the Families First Coronavirus Response Act.
CARES Act Paycheck Protection Program

• How should I account for federal taxes when determining payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

• Payroll costs are calculated on a gross basis and are not reduced by taxes imposed on an employee and required to be withheld by the employer.

• E.g., an employee earns $4,000 per month in gross wages, from which $500 in federal taxes was withheld, counts as $4,000 in payroll costs.
CARES Act Paycheck Protection Program

• What is included in “group health care coverage?”

• Health
• Dental/Vision
• HSA

• Additional guidance required concerning HRA and broker fees
CARES Act Paycheck Protection Program

- Once I get my loan, how may I use the funds?
- Should I reinstate my furloughed employees even if I don’t have work for them to do?

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

- CAVEAT – Although other uses may be allowed, the certification on the PPP Application may restrict uses of the funds to those that are forgivable. Additional guidance may be forthcoming.
I’m still confused on loan forgiveness. What are the criteria for forgiveness?

Borrowers are eligible for forgiveness of up to 100% of a covered loan under the PPP for the costs incurred and payments made by the borrower during an eight-week covered period after the loan origination date for:

- (a) payroll costs and additional wages to tipped employees,
- (b) interest on any real or personal property mortgage incurred prior to February 15, 2020,
- (c) rent on any lease in force prior to February 15, 2020, and
- (d) utility payments for electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020.

Forgiveness must include >75% payroll costs/wages.
CARES Act Paycheck Protection Program

• How much of the loan will be forgiveable?

• Up to 100 percent of the loan is forgiveable. However, your loan forgiveness can be reduced by any of the following:

  1. Reducing your FTEs during the eight-week period after receiving your loan,
  2. Decreasing wages by more than 25 percent for employees making less than $100,000,
  3. Failing to restore your staffing and salary levels from changes made between February 15 and April 26, 2020, prior to June 30, 2020
  4. Not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.
CARES Act Paycheck Protection Program

• What happens after the loan is forgiven?
  
  * * * * *

• What is the interest rate and maturity date of loans?
  
  * * * * *

  • 1.00 percent, and two-year maturity date
  • Payments are deferred for six months, but interest will accrue during this time

  • Amounts forgiven are considered canceled indebtedness under Section 7(a) of the Small Business Act and are not includible in gross taxable income of the borrower.
  • Any covered loans not forgiven remain outstanding under their existing terms under Section 1102.
FFCRA

• Is an employee on furlough eligible for FFCRA?

• If I reinstate my employees to payroll due to a PPP loan, but don’t have much work for them to do, will I still need to grant them FFCRA leave if they qualify, given the fact that I am paying them their full salary whether they’re working or not?

• We are a healthcare provider, so would be exempt from offering FFCRA leave. However, we want to do the right thing and offer it provided it will not negatively impact the care we provide. Is it OK to make it available even if we aren’t required to, and would we still get our payroll tax credit?
• Do I have to permit intermittent leave under FFCRA?

• Can both parents take time off under EPSL and EFMLA to take care of the kids due to COVID-19 school/daycare closure?

• We have 30 employees and are therefore subject to Vermont PFL and the new EPFLA, but not FMLA. We have an employee who will be taking EFMLA. If that person has a subsequent event that would qualify for Vermont PFL, would they then be entitled to an additional 12 weeks under VPFL?
• If one of our employees has travelled out of state, can we require that they self-quarantine for 14 days? If so, will this qualify for EPSL time?

• If an employee is exhibiting possible symptoms of COVID 19 but the symptoms don’t warrant a test, can we assume that it falls under EPSL, or should the employee be taking their own earned sick time? What medical documentation would you suggest we obtain?
• What do I need to do to qualify for the small business exception?

• I have an employee who is threatening to quit and collect unemployment because she doesn’t think it is safe to work here anymore. She claims she is going to make more on unemployment. Can she do that?
Resources

- **FFCRA**  [https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf](https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf)
- **FFCRA Q&A**  [https://www.dol.gov/agencies/whd/pandemic/ffcra-questions](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions)
- **FFCRA Nonenforcement Bulletin**  [https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1](https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1)
- **FFCRA Notice FAQs**  [https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions](https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions)
- **CARES Act**  [https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf](https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf)
QUESTIONS?

Submit questions to
Claire Raabe and Sean McManus
vtbenefits@nfp.com

Thank you for listening!
Link to recording and slides will be forthcoming.

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