

Forgivable “Paycheck Protection” Small Business Loans

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Federally mandated paid sick leave and emergency paid family leave goes into effect on April 1st (originally April 2nd). For many employers who are concerned about covering payroll costs moving forward, the CARES Act may provide significant relief via an expansion of the ability to obtain loans under Section 7(a) of the Small Business Act. This act was signed into law by President Trump on March 27, 2020. In short, it provides that if an employer maintains their employees through June 30, 2020, they can receive a loan that will be forgiven, in the amount spent on payroll, interest on mortgages, rent or utility payments during an 8 week period.

Specifically the “Loan Paycheck Protection Program” provides **forgivable** SBA business loans that will allow any businesses, private nonprofit, public nonprofit organization, franchisors, franchises and self-employed individuals which employ fewer than 500 employees to obtain a loan up to 2.5 times their monthly payroll costs measured over the prior twelve months, or \$10 million, whichever is smaller. Payroll costs include salaries and certain employee benefits such as vacation, parental, family, medical, and sick leave; allowances for dismissal or separation; payments for group health care benefits, including insurance premiums; and retirement benefits. Note that federally mandated sick leave and emergency family leave, which are eligible for tax credits, are excluded and may not be used for this loan. Also specifically excluded in “payroll costs” is the pro-rated portion of employee compensation exceeding 100,000 annually.

The loan forgiveness is equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs (subject to the pro-rated limitation on compensation exceeding \$100,000 referenced above), interest payment on any mortgage incurred prior to February 15, 2020 (but not prepayments or principal payments), payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020 (electric, gas, water, transportation, phone & internet).

Loan forgiveness will be reduced proportionally by any reduction in employees. This will be, generally calculated by comparing the number of employees at the time of the loan to either, (1) the

number of employees between February 15, 2019 and June 30, 2019; or (2) the number of employees between January 1, 2020 and February 29, 2020. However, if you re-hire employees before June 30, 2020, you will generally not have to reduce the forgiveness amount. The amount eligible for forgiveness will also be reduced because of reduction in pay of 25% or more to employees earning less than \$100,000 per year.

Any loan amounts forgiven under the CARES Act shall be excluded from gross income for tax purposes. A business is not eligible to receive these loans if they are otherwise ineligible to receive an SBA loan or if the business receives an economic injury disaster loan for the same purpose.

The loans will be administered by local banks. According to the SBA website, turnaround times for “express loans” will be 36 hours (\$1,000,000 max loan). There will be no upfront and annual fees.

We expect significant additional guidance will be issued by the Treasury Department and/or Small Business Administration in the next 48 hours. Employers are strongly encouraged to contact their accountants to confirm their eligibility for these loans.

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