



HR POWER  
**HOUR**

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# Navigating the CARES Act



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2

# Introduction

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- Top 10 Professional Employer Organization (PEO)
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- Payroll, Benefits, Risk Management, and HR Administration
- We serve nearly 4,500 clients and approximately 90,000 employees

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# The Coronavirus Aid Relief and Economic Security (CARES) Act

- Agenda
  - SBA Loans
  - Unemployment Insurance
  - Tax Credits and Deferrals

# Section 1102 – Paycheck Protection Program

# The Basics

- Generally, companies with **not more than 500 employees** are eligible for “Paycheck Protection” Loans under Sect. 1102 (although there are some additional ways to qualify).
  - All employees count toward this threshold, including full-time, part-time, and individuals employed on another basis (i.e. temporary or per diem).
  - The general rule is that employees of affiliates count toward the 500-employee threshold.
  - Two exceptions make it easier for businesses in the **hospitality and restaurant** industries to qualify for loans – one exception allows businesses in these industries to qualify as long as they have no more than 500 employees per **physical location** and the other exception waives the affiliation rules.
- Eligibility considerations include whether the business:
  - Was in operation on February 15, 2020, **and**
  - Had employees whom the borrower paid salaries and payroll taxes.
- Borrower is required to make a **good faith certification** that due to the uncertainty of the current economic conditions it is necessary to obtain the loan to support ongoing operations of the business.
- Funds must be used to maintain payroll or make mortgage interest, lease or utility payments.

# The Finer Points

- Covered employers may receive loans up to a maximum amount equal to the lesser of:
  - The sum of:
    - 2.5 x the average total monthly payments by the applicant for payroll costs incurred during the one-year period prior to the date on which the loan is made or during 2019, **plus**
    - Any outstanding amount of an EIDL loan made during the period beginning on January 31, 2020.
  - **Or** \$10,000,000.
  - Special rules apply for seasonal businesses and new employers.
- Loan amounts must be used for allowable purposes, including:
  - Payroll costs
  - Costs related to the continuation of group health care benefits during period of paid sick, medical or family leave, and insurance premiums
  - Employee salaries, commissions, or similar compensation
  - Payments of interest on any mortgage obligation
  - Rent
  - Utilities
  - Interest on any other debt obligations incurred before the covered period

# Section 1106 – Loan Forgiveness

# The Basics

- Borrowers are eligible for forgiveness of indebtedness on a PPP loan in an amount equal to the sum of the following costs **incurred and payments made** during the **covered period**:
  - Payroll costs
  - Any payment of interest on any covered mortgage obligation (not including prepayment of or payment on principal)
  - Any payment on any covered rent obligation
  - Any covered utility payments
  - Additional wages are considered for employers with tipped employees
- Not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.
- The covered period means the 8-week period beginning on the date the covered loan is first disbursed. The lender must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval - for the purposes of this rule, a loan is considered approved when the loan is assigned a loan number by SBA.
- This “Base Loan Forgiveness Amount” may be subject to potential reductions for reduction in employees and reductions in salaries, though reductions will not apply if employer rehires *certain* employees and/or restores wages to certain employees no later than June 30, 2020.

# The Finer Points

- To claim loan forgiveness, the borrower must submit to the lender an application that includes:
  - Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the applicable periods including:
    - Payroll tax filings reported to the Internal Revenue Service and
    - State income, payroll, and unemployment insurance filings;
  - Documentation verifying payments on covered mortgage interest, lease obligations and utility payments;
  - Certifications that:
    - The documentation presented is true and correct,
    - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
  - Any other documentation the SBA determines necessary.
- The loan forgiveness is not considered taxable income to the borrower, forgiven expenses are not deductible.

# Open Questions

# Open Question No. 1:

How is the reduction fraction impacted when employee counts/compensation amounts change?

- **Generally, the reduction fraction is:**
  - avg # of full time equivalent employees (FTEs) per month employed by the employer during the 8-week period following loan disbursement **divided by**
  - avg # of FTEs per month between February 15, 2019, and June 30, 2019, or January 1, 2020, and February 29, 2020, as selected by the employer
- **How should employers count employees who voluntarily terminated or were terminated?**
  - Laid-off employees who an employer offers to rehire (for the same wages/number of hours) may be excluded from forgiveness calculation. To qualify for this exception, employer must make good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower.
- **Do employees on paid leaves of absence count?**
- **Do employees receiving severance count?**
- **Does an employee need to be actively working to be counted or is the fact that the employee is being paid sufficient?**
- **How do wage reductions impact the fraction?**

## Open Question No. 2:

### What is the definition of full-time equivalent employee?

- **Not defined in CARES Act.**
- **SBA FAQs provide that “for purposes of loan forgiveness, the CARES Act uses the standard of “full-time equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.”**
  - However, the term is not defined in FAQs.
- **Possible definitions?**
  - Follow ACA definition under Section 4980H of the IRC - Count each full-time employee (those expected to work 130 hours a month) as one employee, add hours of all part-time employees and divide by 120 to determine total full-time equivalent employees?
  - Under Section 4980H regulations – the term hour of service means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.
- **Of course, such interpretation is not binding on the SBA.**

## Open Question No. 3:

**What are costs incurred and payments made during the covered period?**

- Not clear based on language in CARES Act.
- Do the costs have to be both incurred and paid within the 8-week period following loan disbursement to be eligible for forgiveness?
- How is the forgivable portion of rent, mortgage interest and utilities computed?
- When are retirement expenses incurred and paid for this purpose? Most employer contributions are actually made after the applicable plan year.

## Open Question No. 4:

**How are eligible payroll costs, rents, mortgage interest, utilities determined? Are there any limitations?**

- May an employer increase an employee's pay during the covered period and still have such payroll expense be eligible for forgiveness?
- What if an employer pays rent to a related entity?
- What if an employee is receiving unemployment due to a workshare arrangement? If the employer also pays the employee with PPP funds, will such expenditure be forgiven?
- May I use PPP funds to pay a relative that is also an employee?

# Next Steps

- **What should an employer who has received PPP funds do to ensure maximum forgiveness?**
  - There is not a one-size fits all answer.
  - Depends on each employer's unique situation and tolerance to withstand all or a portion of the PPP loan not being forgiven.

# Unemployment Insurance Expansion

# The Basics

- Extends unemployment insurance by 13 weeks.
  - All but eight states (Arkansas, Alabama, Florida, Idaho, Kansas, Missouri, North Carolina, and South Carolina) offer 26 weeks of unemployment insurance benefits.
- Provides an additional \$600 per week payment to each recipient of unemployment insurance for up to four months (expires on July 31, 2020).
- The total amount of benefits will be equal to the amount determined under state law, **plus** an additional amount of \$600 per worker per week.
- Individuals are not eligible if:
  - They are able to work remotely.
  - They are receiving paid sick or paid family leave benefits under the FFCRA.
  - Their salary has been reduced but regular work schedule remains the same.
- The Act provides payment to those not traditionally eligible for unemployment benefits, such as individuals who are independent contractors, self-employed, or have a limited work history but are unable to work as a direct result of COVID-19.

# The Basics Continued

- **An individual may provide self-certification that he or she is able and available to work, but is unemployed or partially unemployed due to any of the following:**
  - Has been diagnosed with COVID-19 or is experiencing symptoms and seeking a medical diagnosis,
  - A member of the individual's household has been diagnosed with COVID-19
  - The individual is providing care for a family member or household member who has been diagnosed with COVID-19,
  - The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility as a direct result of COVID-19,
  - The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19
  - The individual is unable to work because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns,
  - The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19,
  - The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19,
  - The individual has to quit their job as a direct result of COVID-19
  - The individual's place of employment is closed as a direct result of COVID-19.

# The Finer Points

- To receive expanded benefits, the individual must be employed in a state that chooses to enter into an agreement with the U.S. Secretary of Labor to provide expanded benefits under these Sections.
- All States have now agreed to provide these enhanced benefits.
- States maintain the authority to determine eligibility, however all states are required to expand eligibility to those affected by COVID-19 as outlined on the previous slide.
- The Act provides funding to pay the cost of the first week of unemployment benefits for states that choose to waive the 7-day waiting period (expires on December 31, 2020).
- Section 2109 of the Act provides funding to support states which begin short-time compensation programs and will pay 50 percent of the costs that a state incurs in providing short-time compensation through December 31, 2020. Further, Section 2110 provides \$100 million in grants to states that enact short-time compensation programs to help them implement and administer these programs.

22

# More Finer Points

- To The \$600 expanded weekly benefit is federally funded.
  - States may not charge employers for these benefits. Thus, no impact to employer's experience rating.
- Employees who have had their hours reduced or are otherwise partially unemployed are likely eligible for unemployment benefits under the Act, though individuals who receive a reduced salary but work the same weekly schedule are likely not to be eligible (of course all dependent on state eligibility requirements).
- “Actively seeking work” requirements still in place but states are directed to provide flexibility in meeting requirements in the case of individuals unable to work because of COVID-19, including illness, quarantine or movement restriction.
- The U.S. Secretary of Labor has the ability to issue operating instructions or other guidance as necessary in order to implement these provisions.

23

# Tax Credits and Deferrals

# The Basics

- Employer tax credit equal to 50 percent of “qualified wages” (including certain health plan expenses) paid to employees from March 13, 2020 through December 31, 2020.
- The tax credit applies against the employer portion of Social Security taxes payable on W-2 wages paid to all employees (after first applying the tax credits for payment of required sick leave and required FMLA leave).
- The tax credit is available to employers who meet either of the following conditions:
  - Employer fully or partially suspends operations during any calendar quarter in 2020 due to “orders from an appropriate governmental authority” limiting commerce, travel, or group meetings due to COVID-19; or
  - Employer experiences a “significant decline in gross receipts” during the calendar quarter (in comparison to the same calendar quarter<sup>25</sup> in 2019).

# Which employers are aggregated and treated as single employers for purposes of the Employee Retention Credit?

- In general, the same controlled group and affiliated service group rules that apply in determining whether an entities are treated as a single employer for purposes of the rules applying to 401(k) plans and other tax-qualified retirement plans apply here – except that here single employer status is triggered by 50% or more direct or indirect common ownership (instead of 80%)

26

# When is an employer's operations considered to be fully or partially suspended due to a governmental order?

- IRS FAQs address two issues
  - i. what is an appropriate governmental order and
  - ii. factors that indicate whether and when an employer's operations are considered to be fully or partially suspended due that order.
- Orders, proclamations, or decrees from the Federal government, or any State or local government are considered "orders from an appropriate governmental authority" if they
  - limit commerce, travel, or group meetings due to COVID-19 in a manner that affects an employer's operation of its trade or business, including orders that limit hours of operation and, if they are from a State or local government, they are from a State or local government that has jurisdiction over the employer's operations.
  - However, a declaration that limits commerce, travel, or group meetings, but does so in a manner that does not affect the employer's operation of its trade or business does not rise to the level of a governmental order.
- FAQs address various fact patterns regarding whether there has been a full or partial suspension.

# What is a “significant decline in gross receipts”?

- A “significant decline in gross receipts” **begins** on the first day of the first calendar quarter of 2020 in which an employer’s gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts **ends** on the first day of the first calendar quarter following the calendar quarter in which the employer’s 2020 gross receipts greater than 80 percent of its gross receipts for the same calendar quarter during 2019.
- **Important:** The gross receipts of all members of an aggregated group of employers that are treated as a single employer must be taken in determining whether there has been a significant decline in gross receipts. If the aggregated group does not experience a significant decline in gross receipts, then no member of the group may claim the Employee Retention Credit on that basis.

# The Finer Points

- The available tax credit is based on the qualified wages (including certain health plan expenses) paid by the eligible employer during the calendar quarter.
- For employers with more than an average of 100 full-time employees during 2019:
  - Qualified wages includes **only** wages that continue to be paid to employees who are **not** providing services due to a COVID-19 suspension of business operations or the greater than 50 percent reduction in gross receipts.
- For employers with less than an average of 100 full-time employees during 2019:
  - Qualified wages include **all** wages paid to employees regardless of whether or not the employee is providing services.
- In all cases, the total amount of qualified wages that can be counted for an individual employee during the entire COVID-19 period cannot exceed \$10,000.
- “Wages” refers to W-2 wages used to determine FICA (Social Security and Medicare) taxes, but **does not include** FFCRA required sick and FMLA leave payments.
- An employer cannot receive the Employee Retention Credit if it receives a PPP Loan under the CARES Act Paycheck Protection Program regardless of the date of the loan.

## May an employer treat health plan expenses as qualified wages for purposes of the Employee Retention Credit if it does not pay any wages to employees for the time in which the employees are not providing services?

- No. This position directly conflicts with the Joint Committee on Taxation report (at page 41) which states that health plan expenses may be treated as qualified wages even if no other wages are paid by the employer.
- On the other hand, FAQs provide that health plan expenses can be treated as qualified wages as long as some level of wages (even at a reduced level) is being paid to employees for nonworking time.

# Tax Deferrals

- All employers, regardless of whether or not their business is affected by COVID-19, may delay payment of their 2020 employer Social Security taxes.
- 50% of the deferred 2020 employer Social Security tax is payable by December 31, 2021.
- The remaining 50% of the deferred tax is payable by December 31, 2022.
- Note, however, an employer cannot delay payment of these taxes after it receives the PPP loan forgiveness.
- Withheld employee Social Security and Medicare taxes and withheld federal income taxes remain subject to normal reporting and payment due date requirements.
- Coordination with PPP loans. Importance of notifying PEO of forgiveness.

# Stay Up To Date

Use the Jackson Lewis COVID-19 page on our website as a resource tool and sign up for free updates and webinar invitations:

<https://www.jacksonlewis.com/practice/coronaviruscovid-19>

Frequently check cdc.gov and/or coronavirus.gov.

Frequently check your state COVID-19 webpage.

# Where Do You Go From Here?



- Call your CoAdvantage HR Account Executive or the Client Care Center

Client Care Center

[ClientCare@CoAdvantage.com](mailto:ClientCare@CoAdvantage.com)

877.535.5229

- CoAdvantage is here to help. Visit the CoAdvantage COVID-19 Resource Center to access resources to help you plan, prepare, and respond to the coronavirus (COVID-19).

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Thank you