



Paycheck Protection Program CARES Act COVID-19 HR Update



Any questions?

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Agenda

Agenda:

- Paycheck Protection Program – Section 1102
- Loan Forgiveness – Section 1106
- Emergency Economic Injury Grants – Section 1110
- Employee Retention Tax Credit
- Deferral of Employment Taxes
- Advance Refunding of Credits
- H.R. 6201 Bill Update/Analysis-Impact Restaurants
 - Paid FMLA Leave
 - Paid Sick Leave
 - Employer Tax Credits
- FLSA Compliance: Things to Keep in Mind Regarding Pay
- Unemployment Insurance
- Impact on Health Benefits for Layoffs or Furloughs
- Q&A



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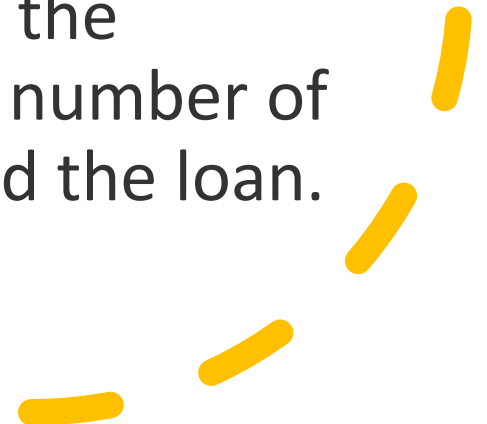


Paycheck Protection Program Section 1102

Paycheck Protection Program – Section 1102

The bill establishes a new guaranteed loan program at SBA for small businesses to cover payroll during the immediate crisis. The Paycheck Protection Program would:

- Support \$349 billion in 100 percent guaranteed, low interest, no fee loans of up to \$10 million with repayment deferred for at least six months; and
- Forgive up to 100% of the loan if the borrower has retained the same number of employees as when they received the loan.



Paycheck Protection Program Section 1102

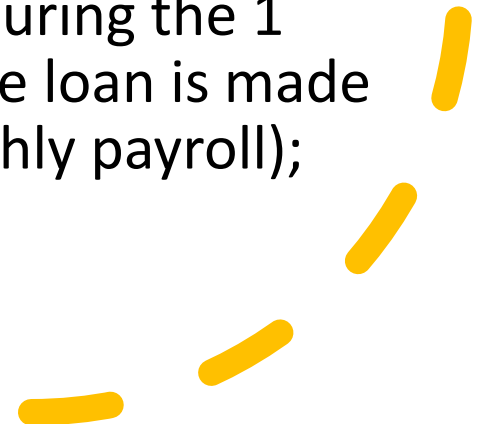


Who Is eligible?

- Small business, sole proprietorships, non-profits, independent contractors with less than 500 employees
 - a. The 500 employee limitation is waived for NAICS codes beginning with 72 – Accommodation and Food Services (Restaurants and Hotels);

How much?

- The maximum loan amount is average monthly payroll costs (a defined term) incurred during the 1 year period before the date on which the loan is made TIMES 2 and ½ (2.5 times average monthly payroll);
 - - a) it is capped at \$10 million



Paycheck Protection Program Section 1102



How much?

Example: Loan Made on 5.1.2020

- Average Monthly Payroll Cost 5.1.2019 to 5.1.2020 = \$500,000
- Maximin Loan Amount = \$1,250,000 (2.5 X Average Payroll Cost)



Paycheck Protection Program Section 1102



For purposes of computing the Maximum Loan Amount (as well as for the permitted use of loan proceeds discussed more fully later), the term “Payroll Costs”:

The sum of payments of any compensation with respect to employees that is a –

- A. salary, wage, commission, or similar compensation,
- B. payment of cash tip or equivalent,
- C. payment for vacation, parental, family medical, or sick leave,
- D. allowance for dismissal or separation,
- E. payment required for the provisions of group health care benefits, including insurance premiums,
- F. payment of any retirement benefit,
- or G. payment of State or local tax assessed on the compensation of employees; and

The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered

Paycheck Protection Program Section 1102



For purposes of computing the Maximum Loan Amount the term “Payroll Costs”:

(II) shall not include –

- the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the Covered Period if used;
- taxes imposed or withheld under Chapter 21, 22, 24 of the Internal Revenue Code of 1986 during the Covered Period;
- any compensation of employees whose principal place of residence is outside of the United States;
- qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-127); or
- qualified family leave wages for which credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116-127).

Paycheck Protection Program Section 1102



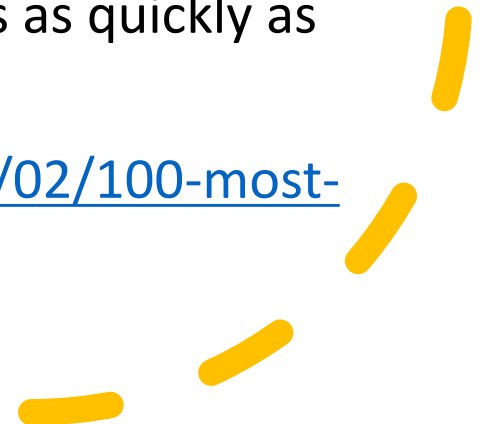
What about franchises and hotels?

The program temporarily waives SBA “affiliation rules” to allow businesses with multiple locations that normally are not considered small, to qualify. This is especially important for our restaurant and lodging sector. They are still limited to the same maximum loan size - \$10 million - as a business with one location.

How are loans made?

The SBA’s network of 2,500 7(a) lenders will be used to process these loans. There is also authority to fast track additional lenders to process and disburse these loans to reach as many small businesses as quickly as possible.

<https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders>



Paycheck Protection Program Section 1102



When?

- Can apply for loan as soon as 3/31/2020

SBA stating information should be ready by this Friday 4/3/2020 for Payroll Protection Program.

- Loans to be made/closed between February 15, 2020 and June 30, 2020 (the “Covered Period”)



Paycheck Protection Program Section 1102



Use of proceeds “Permitted Uses”? The loan can ONLY be used for:

1. Payroll costs (presumably having the same meaning as defined prior),
2. costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
3. employee salaries, commissions, or similar compensations (it is interesting to note that there is no reference here to excluding portions of compensation above \$100,000 per year);
4. payments of interest on mortgage obligations (not principal); (v) rent (including rent under a lease agreement);
5. utilities;
6. and interest on any other debt obligations that were incurred before the Covered Period.

At present, there is no guidance on what “rent” may include but presumably it includes rent paid for land and buildings and may include rent paid for equipment, vehicles and other movable (tangible) property.

Paycheck Protection Program Section 1102



Are these grants?

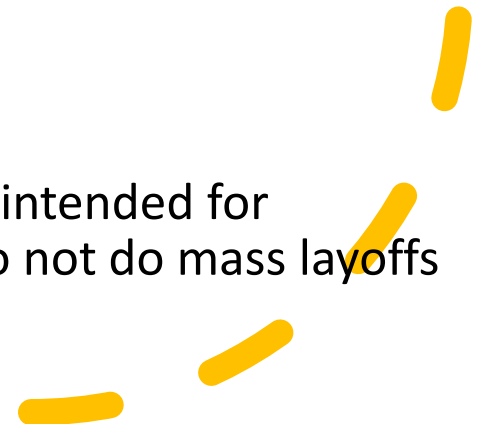
Yes and No. The amount of the loan forgiven at the end of the year will be determined by how many employees were retained on the company's payroll, up to 100 percent for full retention. There are safeguards built in to protect against employers gaming the program, as well as recognizing some employers will be forced to do temporary furloughs but bring their employees back on.

What is covered?

This bill allows firms to get a loan to cover up to 2.5 months of payroll and any new EIDL loan balances incurred because of Coronavirus but cannot exceed \$10 million.

How long does the program last?

The program is open until June 30, 2020, as it is intended for immediate payroll relief to ensure businesses do not do mass layoffs during this crisis.



Loan Forgiveness Section 1106



- Forgiven amounts will not be considered income for tax purposes!
- Borrower may be eligible to loan forgiveness on principal for the amounts spend on the following items during the 8-week period beginning on the day the loan was originated:
 - Payroll Cost
 - Interest on mortgage obligation (originated before 2/15/2020)
 - Rent on a business lease (originated before 2/15/2020)
 - Utility Payments (services that begin before 2/15/2020)
 - Additional Wages paid to tipped employees
- Any amounts not forgiven will be covered in the ongoing loan for a term of 10 years, not to exceed 4% interest with the 100% guarantee.

Loan Forgiveness reduced Section 1106



Reduction in Force Reduction

The covered period is the “8-week cover period” following the loan closing. Loan forgiveness will be limited to the percentage obtained by dividing:

The number of full-time equivalent employees during the 8-week period after the SBA loan closes

The number of employees on the payroll between February 15, 2019 and June 30, 2019

or average number of employees on the payroll between January 1, 2020 and February 29, 2020

* whichever is a better result for the applicant

Loan Forgiveness Reduced Section 1106



Example:

Applicant had an average of 20 full-time equivalent employees per month for the period of eight weeks after the SBA loan closes and 30 full-time equivalent employees between the period February 15, 2019 and June 30, 2019
o and 23 full-time equivalent employees between January 1, 2020 and February 29, 2020;

an SBA loan balance of total “Payroll Cost” \$150,000;

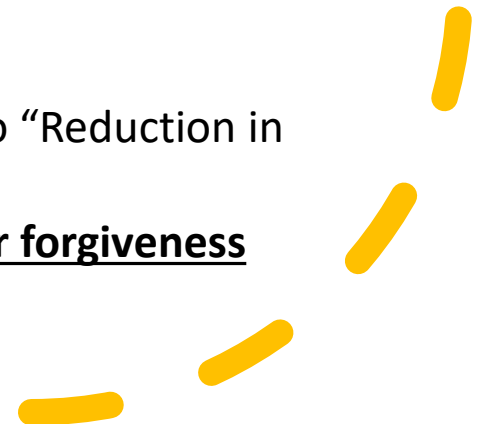
Total “Permitted Uses” of \$75,000 and \$20,000 of covered mortgage interest, rent and utility payments in “8 week Covered Period”.

o The most the applicant can exclude is \$95,000 (the Maximum Loan Forgiveness)

o However, the forgiveness is further limited to “Reduction in Force Reduction” 20/23

(87%) or \$82,650 of the loan will be eligible for forgiveness

(87% of \$95,000)



Loan Forgiveness Reduced Section 1106



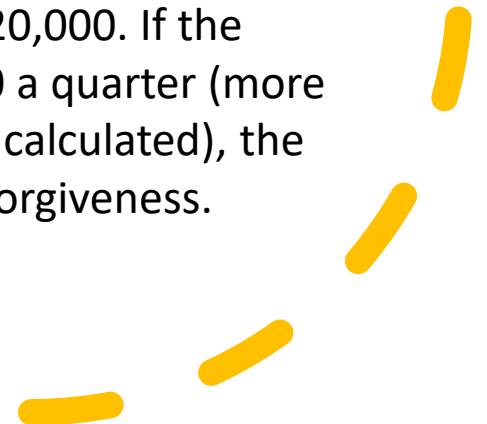
Reduction in Wages Reduction:

The Maximum Loan Forgiveness Amount shall be reduced by the amount of any reduction in total salary or wages of any “employee” during the “8-Week Covered Period” that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the 8-Week Covered Period.

Example:

Company receives a PPP loan. After the 8-week Covered Period, Company determines that its potential loan forgiveness amount is \$150,000.

Jim worked for the Company last year. Jim has a salary of \$80,000. During the first quarter of 2020, Jim’s salary was \$20,000. If the Company reduces Jim’s salary by more than \$5,000 a quarter (more than 25% based on most recent full quarter salary, calculated), the amount in excess of \$5,000 must reduce the loan forgiveness.



Loan Forgiveness Reduced Section 1106



Exemption for rehires:

For employees rehired that were terminated or furloughed between February 15, 2020 and approximately April 26, 2020 (30 days following enactment) no reduction in loan forgiveness is required as long as they are rehired prior to June 30, 2020 at their previous salary/wage rate. It doesn't have to be the same employee. They only look at the number of employees, not specific employee and amounts paid.

It is not clear whether the rehire reversal referenced above requires a total reversal in the reduction in force and a total reversal in the reduction in wages to get the benefit of this provision.



Loan Forgiveness Reduced Section 1106



The loan forgiveness cannot exceed the principal.

How could the forgiveness be reduced?

The amount of loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees. Specifically:

Reduction based on reduction of number of employees



**PAYROLL
COST**
Calculated
on page 2

X

Average Number of
Full-Time Equivalent
Employees (FTEs)
Per Month for the
8-Weeks Beginning
on Loan Origination

÷

Option 1:

Average number of FTEs per month from
February 15, 2019 to June 30, 2019

Option 2:

Average number of FTEs per month from
January 1, 2020 to February 29, 2020

For Seasonal Employers:

Average number of FTEs per month from
February 15, 2019 to June 30, 2019

Reduction based on reduction in salaries



**PAYROLL
COST**
Calculated
on page 2

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For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.

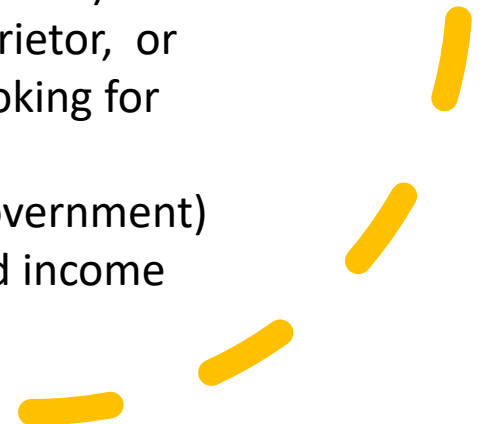
small businesses, visit
uschamber.com/co

What will Lenders be looking for?



Lenders will ask you for a good faith certification that:

- Was the borrower in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.
- The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
- The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
- Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here
- From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan)
- If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents
- (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.



What will Lenders be looking for?

- Ø Completed Application
- Ø SBA Form 1919 or corresponding SBA Form 912, if applicable.
- Ø Articles of Incorporation/Organization of each borrowing entity
- Ø By Laws/Operating Agreement of each borrowing entity
- Ø All owners Driver's Licenses
- Ø Payroll Expense verification documents to include:
 - Ø IRS Form 940 and 941
 - Ø Payroll Summary Report with corresponding bank statement
 - Ø If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or corresponding period) with corresponding bank statement, and,
 - Ø Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits, retirement benefits, etc.
- Ø 1099s (if Independent Contractor)
- Ø Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States
- Ø Trailing twelve-month profit and loss statement (as of the date of application) for all applicants
- Ø Most recent Mortgage Statement or Rent Statement (Lease)
- Ø Most recent Utility Bills (Electric, Gas, Telephone, Internet, Water



What will Lenders NOT be looking for?

- Personal Guarantee
- Collateral
- Ability to Repay
- Disclosure that the borrower was unable to obtain credit elsewhere

Find information here:

- <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>



Emergency Economic Disaster Loan EIDL Section 1110



- The bill creates a new \$10 billion grant program, leveraging SBA's Office of Disaster Assistance infrastructure, to provide small businesses with quick, much needed capital.
- Small businesses, cooperative, ESOPS, private non-profits, independent contractors and the self-employed
- The borrower will be eligible to receive up to \$10,000 to cover immediate payroll, mortgage, rent, and other operating expenses while they wait for additional relief to be processed.
- Different Loan Terms than the PPP

Who is eligible?

- Independent contractors, the self-employed, private non-profits, and small businesses and medium sized businesses with up to 500 employees, including startups, cooperatives, and ESOPs.
- Complete application on the Website
- <https://www.sba.gov/page/disaster-loan-applications#section-header-0>



EIDL and PPP

- We believe there will be interplay but we are waiting for direct guidance from the SBA.
- Consider economic needs/ overlaps / speed of funding needed during application.



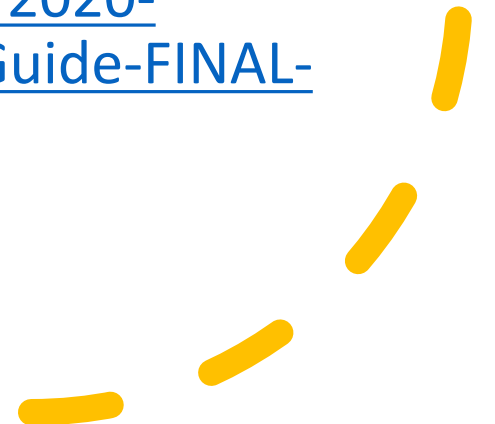
EIDL Express Bridge Loan Section 1110

Express Bridge Loan (Pilot)

- Complete the application on the SBA Website
- Could take up to 4 weeks
- First \$25,000 is disbursed within 5 business days
- Each applicant is assigned a case officer

Find information here:

<https://www.sba.gov/sites/default/files/2020-03/Express-Bridge-Loan-Pilot-Program-Guide-FINAL-3.25.20.pdf>



Immediate SBA Help



How quickly will grants be made?

The legislation requires SBA to disburse within 3 days of verifying the business's eligibility.

Are grant recipients eligible for other SBA programs?

Yes, businesses remain eligible for the paycheck protection program, disaster loans, and regular SBA-backed loans.



Current SBA Recipients

Section 1112

6-months of Principal and Interest Relief - Section 1112

Small businesses in industries heavily impacted by coronavirus—such as travel, tourism, and hospitality—are experiencing dramatic cash flow problems. The government is ultimately responsible for guarantees on these loans and has a vested interest in averting mass defaults.

To provide immediate relief to small businesses with SBA-backed loans, the bill would:

Provide small businesses with relief from SBA loan payments, including principal, interest, and fees, for six months;

Encourage banks to provide further relief to small business borrowers by enabling them to extend the duration of current loans beyond existing limits; and

Provide \$17 billion in relief to SBA borrowers.



Current SBA Recipients

Section 1112



Who is covered?

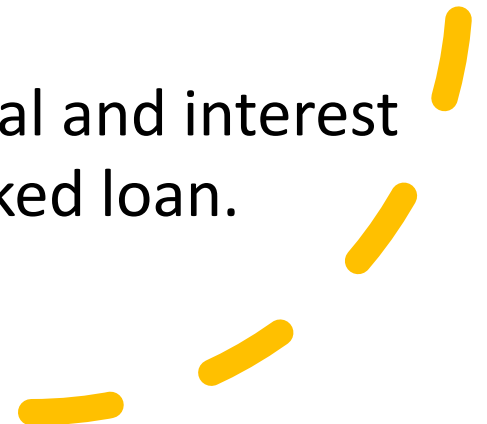
Current and new 7(a) and 504 borrowers, under current SBA eligibility requirements. Those include small businesses, sole proprietors, cooperatives, and ESOPs.

Is eligibility expanded for this program?

No, this uses current, long-standing eligibility criteria.

How does it work?

The SBA will pay a borrower's principal and interest for the next 6 months on an SBA-backed loan.



Employee Retention Tax Credits (ERTC)



Employers get refundable payroll tax credit equal to 50% of the “qualified wages” paid from March 13, 2020 through December 31, 2020 if

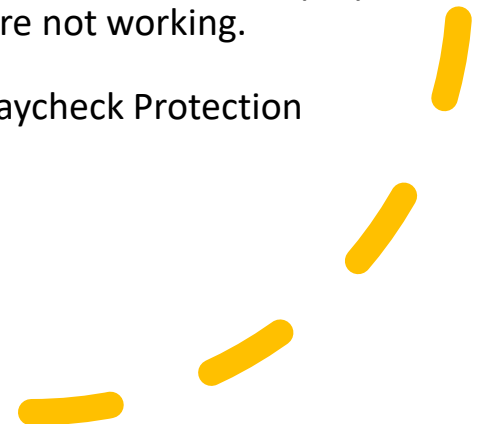
1. operations were fully or partially suspended, due to COVID-19 related shut-down order, or
 2. gross receipts declined by more than 50% when compared to the same quarter in 2019.
- NOTE: (1) similar to FFCA, tax credit “only” applies to SSN taxes, and (2) Deposit Guidance

Qualified Wages

1. For employers more than 100 full-time employees, qualified wages if paid to employees NOT providing services due to COVID-19 (actual shutdown)
2. For employers with 100 employees or less, all wages paid to employees are considered qualified.

Qualified Wages are capped at \$10,000 per employee, and so, Tax Credit is capped at \$5,000 per employee, which is 50% of \$10,000. Employers with more than 100 employees, wages are capped at what employee was paid prior 30 days before not working.

Tax Credit is not available for Employers taking 7(a) SBA Loan (“Paycheck Protection Program”)



Employer Tax Deferments

- Social Security Taxes (6.2%) due between May 27, 2020 and January 1, 2021 are subject to payment deferral.
- 50% of deferred taxes will be due by December 31, 2021 and 50% of deferred taxes will be due by December 31, 2022.
- Same deferral applies to 50% of such taxes incurred by self-employed



ERTC and Deferral vs. PPP



Questions and Answers

- Should I do EIDL or PPP?
- If PPP loan will not be made available for 30 + days, how should I manage payroll and other expenses?
- Can you defer Payroll Tax and have PPP?
- Who can help me make this decision?
- Should I furlough or lay off?



Recovery Rebates

- \$1,200 for individual taxpayers / \$2,400 for joint filing taxpayers
 - PLUS \$500 for each dependent child
 - Rebate starts phasing out at \$75,000 individual / \$150,000 joint filers (AGI)
 - Phases out at \$5 per \$100 of excess over such thresholds
 - Fully phased out at \$99,000 individual / \$198,000 joint filers with no children. Phase out increases by \$10,000 for each child.
- AGI based on 2018 tax return numbers unless individual has filed 2019 tax return
- IRS Notice 2020-18 postponed filing deadline from April 15, 2020 to July 15, 2020.
- Notice 2020-17 had previously delayed tax payment due date April 15, 2020 until July 15, 2020.



Adding Limitations to FFCA

- CARES Act amended language in FFCA to make it clear that employers are not required to pay more in Paid Sick leave or Emergency FMLA wages than the applicable credit under FFCA.
- Under the Emergency Paid Sick Leave Act, employers are only required to pay \$511 per day / \$5,110 aggregate or \$200 per day / \$2,000 aggregate per eligible employee
- For Emergency FMLA, employers are only required to pay \$200 per days in sick wages / \$10,000 aggregate per eligible employee.



Advance Refunding of Credits

- CARES Act added statutory authority for Treasury to advance the tax credit refundable to the employer because the employer paid Sick Paid Leave or Emergency FMLA wages pursuant to the FFCA.
- Treasury will produce instructions and forms for claiming such advance of the credit.



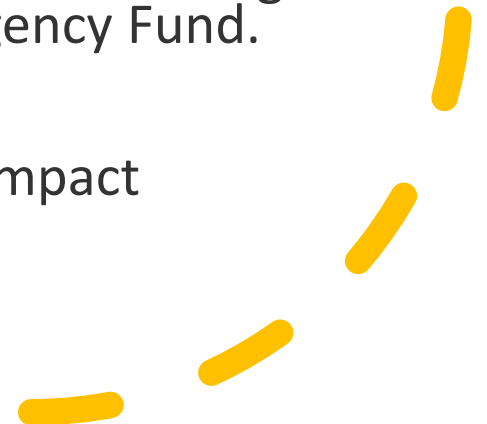
Family First Coronavirus Response Act (H.R. 6201)



President Trump Wednesday night signed the Families First Coronavirus Response Act (H.R. 6201), hours after the Senate overwhelmingly approved the legislation. On March 16, the House of Representatives passed by unanimous consent a revised version of the bill that made technical corrections to the legislation that the House originally approved March 14.

The legislation eliminates patient cost-sharing for COVID-19 testing and related services, establishes an emergency paid leave program, and expands unemployment and nutrition assistance. Moreover, the bill provides a temporary increase in the Medicaid Federal Medical Assistance Percentage (FMAP), and creates two mechanisms for coverage of testing for the uninsured – one through the Medicaid program and another through the Public Health and Social Services Emergency Fund.

Today we will focus on the key pieces that impact Employers and Employees.



Emergency FMLA Leave

- Signed into law on March 18, 2020, effective April 1, 2020 as an extension of FMLA.

Who

- Applies to employers with less than 500 employees.
- Employees who have been on payroll for 30 days or more are eligible.

What

- Expansion of FMLA, which requires 12 weeks of leave for serious health condition.



Emergency FMLA Leave

What

- **Reason for Leave**: Eligible employees can take up to 12 weeks of FMLA leave for a qualifying need “related to a public health emergency,” or in this case, COVID-19.
 - This means the “employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable” due to COVID-19.



Emergency FMLA Leave

What

- **Required Pay**: The first ten days of leave (two weeks) are unpaid. The employee, however, can substitute accrued paid leave during this time period, including emergency paid sick leave (which Craig covers next).
 - The remaining ten weeks are to be paid at 2/3 the employee's regular rate a pay for the number of hours the employee would usually be scheduled to work.
 - Maximums- \$200 per day, \$10,000 total per employee.
- **Small Employers**: The Act gives the Secretary of the Department of Labor the authority to issue regulations exempting business with fewer than 50 employees from these requirement when the imposition of these requirements would jeopardize the viability of the business as a going concern.
- No regulations yet, hopefully before it goes into effect.



Emergency FMLA Leave

What

- **Job Restoration**: Emergency FMLA leave is job protected, and the employer must restore an employee to the same or equivalent position upon return to work.
 - Exception for employers with fewer than 25 employees when position no longer exists due to operational changes due to COVID-19 (economic downturn, etc).



Emergency FMLA Leave

What

- **Question**: If this law applies to me, am I able to layoff employees or reduce my workforce prior to the effective date of April 2 and avoid these requirements?
- **Answer**: Although this is not completely clear, as it currently stands, the answer to this question is probably yes. The law contains no retroactivity provisions. However, guidance may be issued in the near future clarifying this issue.



Paid Sick Leave Act

The Emergency Paid Sick Leave Act is contained in Division E of H.R. 6201 and requires certain employers to provide employees with two weeks of paid sick time if the employee is unable to work (or telework) for the following coronavirus-related reasons:



Paid Sick Leave Act

PAID SICK TIME REQUIREMENT

GENERAL.—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
- (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 seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
- (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.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

- (1),(2),(3), Care for you and your person
- (4), (5,) Caring for others(6)

Paid Sick Leave

Who

- Fewer than 500 employees
- Sick, exposed, or caretaker
- No time on job exclusions
- The Secretary of Labor can:
 - provide regulations to exclude certain health care providers and emergency responders from the definition of employer.
 - exempt small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.



Paid Sick Leave

What

- **Full-time** employees are entitled to 80 hours of paid sick leave.
- **Part-time** employees are entitled to the number of hours that the employee works, on average, over a two-week period.

For hourly employees whose schedules vary, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave.

If the employee did not work in the preceding six-month period, the paid leave rate should equal the "reasonable expectation" of the employee at the time of hiring with respect to the average number of hours per day that the employee would be scheduled to work.



Paid Sick Leave

When

- Immediately upon effective date, which is 4.1.2020
- Once an employee's coronavirus-related need for using the emergency paid sick leave ends, then the employer may terminate the paid sick time.
- Further, paid sick time provided under H.R. 6201 shall not carry over from one year to the next.



Paid Sick Leave

How Much

- **Paid Leave Rate:** Employees who take paid sick leave because they (1)(2)(3) are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis are entitled to be paid at their regular pay rate or at the federal, state or local minimum wage, whichever is greater. In these circumstances, the paid sick leave rate may not exceed \$511 per day, or \$5,110 in aggregate.
- Employees who take paid sick leave to care (4) (5) (6) for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) are entitled to be paid at two-thirds their regular rate. In these circumstances, the paid sick leave rate may not exceed \$200 per day, or \$2,000 in aggregate.
- The bill requires the Secretary of Labor to issue guidelines to assist employers in calculating paid sick time within 15 days of the bill's enactment 4.2.2020.



Paid Sick Leave

- **Effect on Existing Paid Leave Agreements:** An employer may not require an employee to use other paid leave provided by the employer before using the paid sick time provided under H.R. 6201.
 - **Employee Notice Requirement:** After the first workday (or portion of a day) an employee receives paid sick time, an employer may require the employee to follow “reasonable notice procedures” in order to continue receiving paid sick time.
 - **Employer Notice Requirement:** Employers shall post and keep posted, in conspicuous places, notice of the emergency paid sick leave requirements made available under H.R. 6201. Within seven days of the enactment of the bill, the Secretary of Labor will provide a model notice for use by employers.
- 3.25.2020



Paid Sick Leave

- **Multiemployer Bargaining Agreements:** H.R. 6201 provides that employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave for coronavirus-related reasons.
- **Prohibitions and Enforcement:** Employers may not discharge, discipline, or discriminate against any employee who (a) takes paid sick leave or (b) has filed a complaint or proceeding or testified in any such proceeding related to the benefits and protections provided by H.R. 6201. Further, employers may not require, as a condition of providing paid sick time, that an employee search for a find a replacement employee to cover the hours during which the employee is using paid sick time.
- Employers who violate the paid sick leave requirements or retaliation prohibitions of H.R. 6201 shall be subject to civil penalties under the Fair Labor Standards Act.
- **Effective Date and Expiration:** The requirements set forth under Division E of H.R. 6201 are in effect 15 days after the enactment of the legislation 4.2.2020 through 12.31.2020.



DOL UPDATES



Mandatory Postings

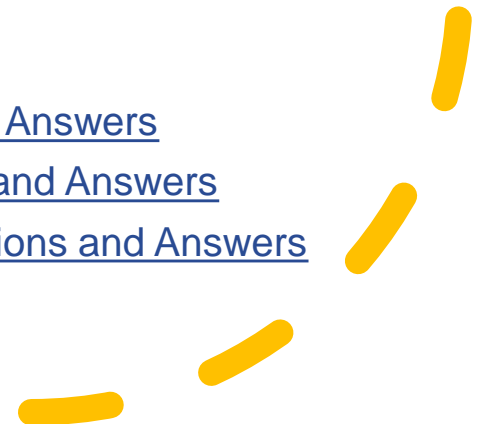
- [Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#)
- [Families First Coronavirus Response Act Notice – Frequently Asked Questions](#)

Fact Sheets

- [Families First Coronavirus Response Act: Employee Paid Leave Rights](#)
- [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)

Questions and Answers

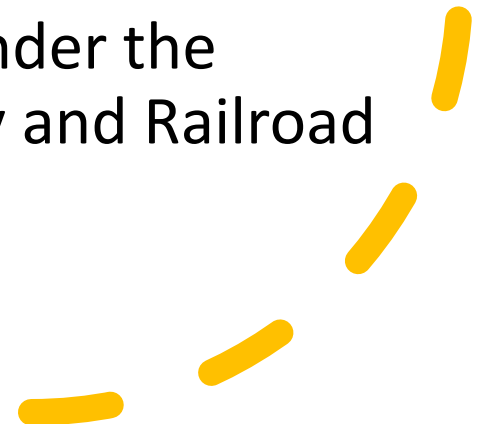
- [Families First Coronavirus Response Act: Questions and Answers](#)
- [COVID-19 and the Fair Labor Standards Act: Questions and Answers](#)
- [COVID-19 and the Family and Medical Leave Act: Questions and Answers](#)



Employer Tax Credits

H.R. 6201 provides for employer tax credits to offset the costs associated with the paid public health emergency leave and sick leave required for employees under Divisions C and E of the bill.

- **Payroll Tax Credit:** The bill provides a refundable tax credit worth 100 percent of qualified public health emergency leave wages (as provided by Division C) and qualified paid sick leave wages (as provided by Division E) paid by an employer for each calendar quarter through the end of 2020. The tax credit is allowed against the tax imposed under the employer portion of Social Security and Railroad Retirement payroll taxes.



Employer Tax Credits

How Much

Credit Amount: The bill allows employers to take tax credits for qualified public health emergency leave wages and qualified sick leave wages:

- **Credit Amount for Public Health Emergency Leave Wages.** The amount of qualified public health leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.
- **Credit Amount for Sick Leave Wages.** In instances when an employee receives paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day.



Employer Tax Credits

How Much

- In instances when an employee receives paid sick leave because they are caring for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day.
- In determining the total amount of an employer's qualified sick leave wages paid for a calendar quarter, the total number of days that the employer can take into account with respect to a particular employee for that quarter may not exceed 10 days minus the number of days taken into account for that employee for all previous quarters.

Keep Track of your earnings codes and/or leave payments

Paid Sick Leave

Credit for Health Plan Expenses. The credit allowed is increased under the Bill by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is allowed.

Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan.

Qualified health plan expenses will be allocated to qualified sick leave wages as the Secretary of the Treasury (or the Secretary's delegate) may prescribe in future guidance. Except as otherwise provided by the Secretary, such allocations are treated as properly made under the provision if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).



Paid Sick Leave

Refundability of Excess Credit: The amount of the paid sick leave credit that is allowed for any calendar quarter *cannot* exceed the total employer payroll tax obligations on all wages for all employees. If the amount of the credit that would otherwise be allowed is so limited, the amount of the limitation is refundable to the employer in the quarter for which leave is taken.



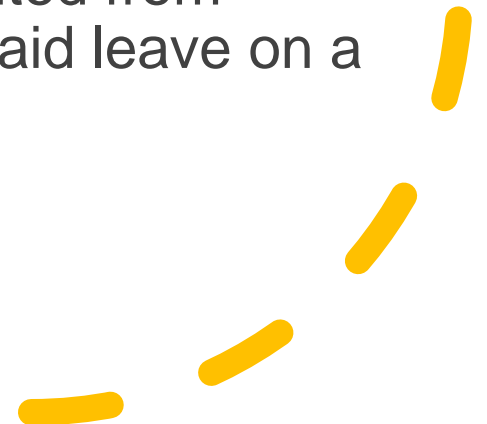
FLSA and Covid-19

- Fair Labor Standards Act governs minimum wage and overtime requirements.
 - Many employees working from home, teleworking, or not working at all.
- For **non-exempt, hourly employees**- FLSA generally applies to hours actually worked.
 - Press the need to hourly employees working remotely to accurately track their time and to follow all time keeping policies and procedures to the extent possible.



FLSA and Covid-19

- For **exempt, salaried employees**, generally speaking, an exempt employee must be paid an entire week's salary if he or she performs **any work** during the workweek.
 - This includes work at the office or work from home.
 - If the employee performs **no work** during the workweek, you are not required to pay the employee's salary
- **Question:** If a salaried, exempt employee does not work an entire workweek, can we require him or her to use accrued, paid time off?
- **Answer:** Recent DOL guidance states when an employer offers bona fide paid vacation time to its employees, an employer is not prohibited from requiring the employee to take such paid leave on a specific day.



FLSA and Covid-19

- As long as the employee is paid for a full week when he or she does any work, accrued vacation can be used. If the employee is out of accrued vacation or has none, he or she must still be paid for the entire week if any work is done.



Workers Compensation

- Workers' Compensation applies when an employee is injured in an accident in the course and scope of his employment or contracts an occupational disease in the course and scope of his employment.
- An occupational disease “means only that disease or illness which is due to causes and conditions **characteristic and peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such diseases.**” La. R.S. 1031.1 (B).



Workers Compensation

- So what if an employee submits a workers' comp claim stating he or she contracted COVID-19 while working, or within the course and scope of employment?
 - Based on Louisiana law and caselaw, unless the employee's position made him or her more likely to contract COVID-19 than other jobs, it is unlikely contraction of COVID-19 would be covered by workers' compensation.
 - For example, those in the medical field providing care to COVID-19 patients may have valid claims for workers' compensation.

Of course this does not mean employees will not try to submit workers' compensation claims, but they will face an uphill battle



Health Benefits for Layoffs and Furloughs

- **Employees Who Continue Working:** For employees who continue to work, either at the worksite/facility or from home, those employees should see no disruption to benefits.
- **Employees on Leave/Furlough:** Continued Eligibility will depend on plan documents, and may differ by plan, carrier or funding structure.



Health Benefits for Layoffs and Furloughs

- **Fully Funded**: Eligibility will generally depend on the plan documents and the employer's leave policies. If the employer is the plan sponsor, it should review these documents carefully.
- **Insurance Carriers**: Insurance carriers may allow employers to change their hourly requirements for employees to be eligible, but this is not yet clear.



Health Benefits for Layoffs and Furloughs

- BCBS: For example, BCBS has informed us that it will “continue to allow coverage of employees through this crisis as long as the group considers them employees.”
- United Healthcare: UHC has informed us that if groups want to be proactive about protecting benefits, groups can submit hourly changes (for eligibility) on company letterhead.
- Humana: Humana also recommends submitting, on company letterhead, any request to change a company’s hourly eligibility requirements.



Health Benefits for Layoffs and Furloughs

- Of course it is possible that legislation will be passed to provide some kind of temporary reprieve for employees to stay on the plan when on leave or furloughed, but nothing to date has been passed.
- Otherwise, if employees are terminated, COBRA (for 20 or more employees) or state continuation (for under 20 employees) requirements are still in place.
- No matter what, payment requirements are still in place, meaning an employee must pay his or her share while on leave, or must pay premiums under COBRA or state continuation, or it is expected coverage will be cancelled for non-payment.



Health Benefits for Layoffs and Furloughs

- **Self Funded**: If your benefits plan is self-funded, you have some additional flexibility with waiving or amending plan eligibility requirements. However, this should still be run by reinsurance carriers, as they may have their own eligibility requirements.



Practical Concerns For Employers

- Act does create issues for certain employers who will have economic difficulties, cannot seek exemption under the Act, but also cannot afford to cover the paid leave mandated?
- The international emergency raises questions regarding the continued enforceability of contracts that contain “force majeure” clauses covering such emergencies based on Covid-19 and Workers Compensation and OSHA claims brought by employees who allege they contracted Covid-19 during their employment?
- How to handle employees and cash flow until business operations return to normal?
- How to communicate to employees until model notice is released by the Secretary of Labor with 7 days or 3.25.2020?
- How to handle employees who are not sick, caring for a family member, or child but the business was forced to close due to a local/state mandate?
- How to handle State Law and Federal Law?



Items we did
not cover

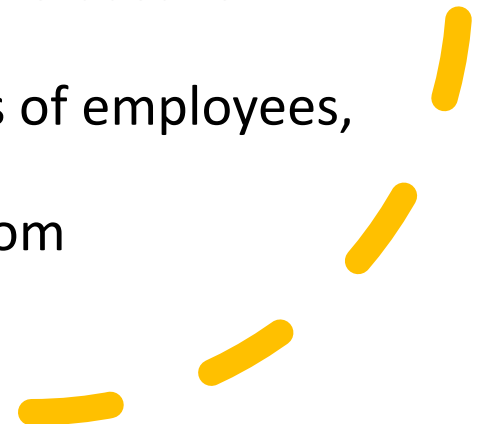
- **Unemployment Insurance**—Every state is removing restrictions for fast filing. Law mandates employers inform employees at the time of separation. More to come from Secretary of Labor.
- Remote Employees Policy / Agreements
- COBRA



Questions and Answers

- Q: If the law is not effective until 4.2.2020 what do I do with my employees until then?
- Q: What if the employee is not sick but we were mandated to close the doors for a month?
- Q: Should I lay off or furlough?
- Q: Can my employee refuse to come to/travel work?
- Q: Can we send employees home if they are symptomatic?
- Q: If an employee is out due to sickness, can we ask about their symptoms?
- Q: What if my employee discloses that their family member or roommate has Covid-19?
- Q: What if I have a fearful employee who refuses to come to work?
- Q: Can we require or allow certain groups of employees, but not others, to work from home?

Send questions to hello@highflyerpayroll.com



Getting Back to Work

- Questions and Answers
Send questions to hello@highflyerpayroll.com



Resource Guides

Employer Guides/Samples

- <https://www.highflyerhr.com/covid-19-updates/>

SBA Loan Resources

- <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

S.3548 - CARES Act

- <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

H.R. 6201

- <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

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