



Summary of the CARES Act's Key Provisions for Businesses

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act which includes many key provisions to assist small and mid-sized businesses. Here are some of the key provisions that may have an immediate impact on your business.

Paycheck Protection Act Forgivable Loans

The Small Business Administration ("SBA") will administer new federally funded loans that are forgivable up to 100% of the principal and amount borrowed for payroll costs, group health insurance premiums, interest on mortgage, rent, and certain covered utilities such as electric, gas, water, transportation, telephone, and internet access. The SBA must issue additional regulations and guidance on these loans within 15 days from the date the Act was signed into law. Here is what we know to-date....

Which Businesses Are Eligible for Paycheck Protection Loans?

- Businesses with 500 employees and under including Non-Profits, Veterans Organizations, Tribal Businesses, Sole Proprietors, Independent Contractors, and Self-Employed Individuals (some businesses may have higher employee thresholds under the SBA Roles)
- For hotels and other lodging companies, restaurants, bars, and other food services companies with an NAICS Code of 72 they will be eligible if they have 500 or less employees at each physical location
- Normally businesses must include the employees of all affiliated entities as defined by Section 121.103 of the Code of Federal Regulations. This Act waives the standard "affiliation rules" for businesses with 500 or less employees, businesses operating as a franchise, hotels and other lodging establishments, restaurants, bars, and businesses that receive financial assistance from one or more small business investment companies (SBIC).
- Full-time, part-time, and employees employed on "other basis" are included in the calculation (i.e. independent contractors)

Who Can Issue Paycheck Protection Loans?

Lenders currently approved by the SBA as 7(a) lenders can issue the loans. The SBA may also approve additional lenders. The SBA will publish a list of approved vendors.

What is the application deadline for the Paycheck Protection Program?

You may apply for the loan through June 30, 2020.



How is the Paycheck Protection Loan Calculated?

- It is Capped at \$10,000,000.
- The calculation is 2.5x's the employer's average monthly payroll costs in the one-year period before the date of the loan. Payroll costs include wages, tips, paid time off, severance payments, group health benefits, retirement benefits, and state or local payroll taxes.
- For seasonal employers, the period is between February 15, 2019 (or March 1, 2019) and June 30, 2019.
- For employees paid more than \$100K, only the amount up to \$100K is included in the loan amount and the amount must be prorated for the period of the loan.
- If an employer already has an SBA loan which was obtained after January 31, 2020, this loan may be included in the loan amount and can be refinanced.

What is the Interest Rate and Terms of the Loan?

- No personal guarantee or collateral is required for the covered loan.
- Payment of principal, interest and fees may be deferred for a period of not less than 6 months and up to a year.
- In qualifying for the loan, there is a presumption that the borrower was adversely impacted by COVID-19.
- There is no prepayment penalty.
- For any amounts that were not forgiven, it is a maximum 10-year term with an interest rate capped at 4%.

How Does the Loan Forgiveness Work?

The payroll costs, mortgage interest payments, rent, and covered utilities paid by the borrower during the 8-week period beginning on the loan origination date are forgivable. The amounts of the loan that are forgiven are excluded from taxable income. When applying for loan forgiveness, the amount forgiven is reduced if the employer laid off employees or reduced wages of employees between February 15, 2020 and June 30, 2020. If you have laid off employees during this timeframe, then the amount is reduced by the percent decrease in the number of employees.

If your payroll expenses on employees making less than \$100K annually decreases by more than 25%, the loan forgiveness will also be reduced by this amount. For businesses who already have laid off employees or are planning to lay off employees or cut salaries, as long as the changes were made between February 15, 2020 and April 26, 2020, the reductions will not be applied if the business rehires the employees or increases the cut salaries by June 30, 2020.



SBA Economic Injury Disaster Loans

If you are a business waiting for the processing of an SBA Economic Injury Disaster Loan, you may receive up to \$10,000 to cover immediate payroll, mortgage, rent and other expenses. The grant does not need to be repaid. Once a business receives this loan, the business may refinance it under the Paycheck Protection forgivable loan.

Delay of Payment of Certain Payroll Taxes

Employers may defer payment of the employer share of the 6.2% Social Security Tax. This applies to wages paid beginning on March 27, 2020 through December 31, 2020. These deferred amounts can be paid in two installments. Fifty percent is due on December 31, 2021 and the rest is due on December 31, 2022. The deferral is not permitted where an employer has had a covered loan forgiven.

Refundable Tax Credit for Employer's Share of Social Security Tax

If your business had its operations fully or partially suspended because of a shut-down order from a governmental authority due to COVID-19 or you had gross receipts decline more than 50% in a calendar quarter when compared to the same quarter in 2019, then you may be eligible for a refundable tax credit for the employer's share of the 6.2% of Social Security tax. The credit is for 50% of the first \$10,000 in qualified wages (including health expenses) paid to each employee effective March 13, 2020. For employers who are eligible due to a decline in gross receipts, they will remain eligible until the gross receipts exceed 80% relative to the same quarter in the prior year or December 31, 2020, whichever is sooner.

If your business employs more than 100 employees (calculated on certain 2019 levels), credits can only be claimed on wages paid to employees who were not providing services as a result of COVID-19. This relief is NOT available if the employer receives a covered loan under the Paycheck Protection forgivable loan program.

Tax Filing Deadline Extended

The tax filing deadline is extended from April 15, 2020 to July 15, 2020. Businesses and individuals can postpone estimated tax payments until October 15, 2020.

Expanded Unemployment Benefits

The Federal government provided further Federal Unemployment relief and benefits in excess of what is already provided under certain state unemployment benefits. The key points are:

- **Relief for those not normally eligible:** Employees who are not traditionally eligible for state provided unemployment benefits or who have exhausted such benefits can receive the same assistance they would have received through the state's unemployment program for the period of January 27, 2020 through December 31, 2020.
- **Additional Compensation over and above state provided benefits:** Employees may also receive an additional \$600 per week for up to 4 months (even if it takes the employee above their pre-unemployment earnings level). This is in addition to what employees are eligible to receive or are currently receiving under state unemployment benefits. If employees are unemployed after state unemployment benefits are exhausted, the federal government will continue to fund up to 13 weeks
- **Restrictions:** Employees who are able to telework with pay and those who are receiving Emergency Paid Sick Leave or FMLA Public Health Emergency Leave under the FCRA or are receiving paid leave under an employer plan or other state or local law cannot simultaneously receive unemployment benefits.

Additional Provisions Supporting Businesses

The CARES Act provides additional modifications designed to provide cash flow and liquidity to businesses. It is important to contact your tax adviser as some of these items (including the modification of rules relating to net operating losses, alternative minimum tax credits and trade, interest expense deductions, and trade or business losses of non-corporate taxpayers) may assist your business with claiming tax refunds or reducing tax payments.