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# The CARES Act: An Overview for Non-Profit and Charitable Organizations

April 7, 2020

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# MCLANE MIDDLETON

## Coronavirus aid, relief, and economic security (cares) Act

KEEPING AMERICAN WORKERS  
PAID AND EMPLOYED ACT  
PAYROLL PROTECTION  
PROGRAM

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# Keeping American Workers Paid & Employed Act

## Overview:

- \$359B in funds to guaranty loans to small businesses
- Expanded eligibility
- 100% SBA Guaranty
- Loans are eligible for forgiveness

# Paycheck Protection Program

## What is it, and who is eligible?

- The Paycheck Protection Program (“PPP”) is administered by the SBA providing loans to small businesses.
- Loans are being made through banks and other lenders, not directly through the SBA.
- US businesses including 501(c)(3) non-profits, sole proprietors and independent contractors are eligible.

# Paycheck Protection Program (cont'd)

## What factors are considered in determining eligibility?

- Total number of employees (full and part-time) cannot exceed 500
- Operating on February 15, 2020
- Paying salaries and payroll taxes for employees or paid independent contractors on February 15, 2020
- Availability of additional sources of funding does not preclude otherwise eligible businesses from participating
- SBA affiliation rules do not apply in determining eligibility for hospitality, franchises assigned a franchise identifier code by the SBA, and otherwise qualified faith-based organizations

# Paycheck Protection Program (cont'd)

## What must a borrower certify to receive a loan?

- The uncertainty of current economic conditions makes a loan necessary to support the operations of the business.
- The funds will be used to retain workers and maintain payroll and make mortgage, lease, and utility payments.
- 75% of the funds must be used for payroll.
- The business has not received SBA funds for the same purpose.

# Paycheck Protection Program (cont'd)

## How much can I borrow?

1. Calculate average monthly payroll costs during 12-month period prior to loan origination or 2019
2. Multiply this number by 2.5
3. The result is the maximum loan amount subject to a cap of \$10M

# Paycheck Protection Program (cont'd)

## What is considered a payroll cost?

- Salaries, wages, commission, and tips up to \$100,000
- Payments for vacation, parental, family, medical, or sick leave
- Allowances for dismissal or separation
- Payments required for group health care benefits, including insurance premiums
- Retirement benefits
- Payment of any state or local taxes assessed on the compensation of employees
- Exclude compensation over \$100k and Federal employment taxes imposed or withheld between 2/15/20 and 6/30/20



# Paycheck Protection Program (cont'd)

## How much can a seasonal employer borrow?

1. Determine the average total monthly payments for the 12-week period beginning February 15, 2019 or, at the election of the company, March 1, 2019 and ending June 30, 2019
2. Multiply this number by 2.5
3. The result is the maximum loan amount subject to a cap of \$10M

# Paycheck Protection Program (cont'd)

## How can funds be used?

- Funds can be used to pay operating costs during the eight (8) week period following the origination of the loan
- “Operating costs” include payroll costs, mortgage interest, rent, utilities (including phone and internet), and interest on any debt obligations incurred before loan origination

# Paycheck Protection Program (cont'd)

## Do businesses need to grant a lien on business assets or provide a personal guarantee?

- No asset lien
- No personal guaranty

# Paycheck Protection Program (cont'd)

## What fees will be charged in connection with the loans?

- All SBA fees are waived

# Paycheck Protection Program (cont'd)

## Will all or a portion of the loan be forgiven?

- Operating expenses incurred by the business during the eight (8) week period following the loan origination date will be forgiven

# Paycheck Protection Program (cont'd)

## Are there limitations to the loan forgiveness?

- Yes. The forgiven amount is subject to reduction based on (1) a reduction in the business' workforce and (2) a reduction in employee salaries

# Paycheck Protection Program (cont'd)

## Reduction in loan forgiveness due to reduction in workforce:

- The forgiven amount is reduced by the percentage obtained by dividing:
  1. The number of employees during the eight (8) week period following the origination of the loan, by
  2. The average number of employees during the period from (a) February 15, 2019 – June 30, 2019 OR (b) January 1, 2020 – February 29, 2020

# Paycheck Protection Program (cont'd)

## Reduction in loan forgiveness due to reduction in salaries:

- The forgiven amount is reduced by the percentage by which compensation is reduced in excess of 25% during the eight (8) week period following the origination of the loan as compared to the most recent calendar quarter



# Paycheck Protection Program (cont'd)

## What documentation is needed for loan forgiveness?

- Payroll tax filings, state income, payroll and unemployment insurance filings, and other documentation verifying the number of full-time employees on payroll and their pay rates
- Cancelled bank checks, payment receipts, transcripts of accounts, or other documents verifying mortgage interest, lease, and utility payments
- Certification from a representative of the business that the documentation is true and correct and that amount of forgiveness requested was used to retain employees, or make mortgage interest, rent or utility payments

# Paycheck Protection Program (cont'd)

## What happens to any balance remaining after forgiveness?

- The SBA will continue to guaranty the loan
- Payments will be deferred for six (6) months
- Two year term
- 1% Interest Rate

# Paycheck Protection Program (cont'd)

## Will businesses be penalized for terminating or furloughing workers prior to receipt of the loan?

- Not with respect to the forgiven amount, provided that terminated or furloughed employees are rehired and paid during the covered period

# Paycheck Protection Program (cont'd)

## Will a business be taxed on the forgiven amount?

- No. The forgiven amount is specifically *excluded* from gross income

# Paycheck Protection Program (cont'd)

## When will the loans be available?

- Some banks starting accepting applications on April 3<sup>rd</sup>
- Funds dates remain uncertain

# Paycheck Protection Program (cont'd)

## Are other funds available to businesses?

- Businesses applying for loans under the Paycheck Protection Program may also obtain an Economic Injury Disaster Loan (EIDL)
- Applying for an EIDL does not impact a business' Paycheck Protection Program application provided the funds are not used for the same purpose.
- EIDL loans allow for broader use of funds, so important to keep track of the uses of each loan to ensure that forgiveness is not negatively impacted

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## Employment and Wage Related Issues

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# Families First Coronavirus Relief Act

- Provides Emergency Paid Sick Leave and Emergency Family and Medical Leave to qualifying employees
- Applies to all employers with fewer than 500 employees
- Funded through tax credits to employers
- Went into effect on April 1
- Benefits available through December 31
- Leave may be intermittent under certain circumstances, if agreed by both employer and employee



# Emergency Paid Sick Leave

- Up to eighty hours of leave at full pay to employees
  - Who are diagnosed with COVID-19
  - Who are experiencing symptoms and seeking testing or treatment
  - Who are quarantined due to government or physician's order
- Up to eighty hours of leave at two-thirds of pay to employees
  - Who are caring for someone diagnosed with COVID-19 or is quarantined
  - Who are caring for child(ren) whose school or daycare is closed
- Part time employees receive prorated benefits
- Full-time rate capped at \$511 per day and \$5,110 in total
- In addition to other employer-provided PTO

# Emergency Family and Medical Leave Expansion

- Provides up to 12 weeks of job protected leave for employees who are unable to work because of a need to care for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19-related reasons
- First 10 days are unpaid but can use paid sick leave available through the Act or other PTO available from employer
- Remainder of time is paid at 2/3 of regular pay up to \$200 per day or a maximum of \$10,000 per employee
- 30 day eligibility rather than one year under FMLA

# Small Business Exemption

- Employers, including nonprofits and religious organizations, with fewer than 50 employees can claim an exemption from providing emergency sick leave or emergency family leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern.
- Employers electing to use the exemption will need to document the facts and circumstances justifying the exemption.
- Employers do not submit the documentation to the DOL, but retain it for their records.

# Tax Credits

- Employers are eligible for a payroll tax credit at 100% of amounts of any leave paid under the Paid Sick Leave or Emergency Family Leave laws through quarterly payroll tax credits.
- If the costs paid for leave under the law exceed the employer's tax obligations, employers will receive a refund.

# Notice Requirements

- FFCRA requires that employers post notice of employees' rights under the act.
- The DOL has provided sample posters which can be downloaded from the DOL website.
- Employers should consider providing notice to employees who are away from the workplace.

# Options for Reducing Payroll

- Voluntary Furlough or Layoff
- Job Sharing or Reduction in Hours
- Mandatory Furlough
- Lay Off
- Lay Off with Severance

# Job Reduction Traps for the Unwary

- Be mindful of discrimination issues
  - Layoff
  - Recall
- Use legally compliant separation agreements
- WARN Act Compliance
- NHES Notice Requirements
- Employment contracts

# Salaried Employees

- Pay Requirements
- Reducing Pay or Hours of Work
- Payment at Lay Off or Termination

# Hourly Employees

- Managing Remote Work
- Accurate Recordkeeping
- Overtime Issues



# Unemployment Update

- Changes to state unemployment benefits
  - Expanded eligibility
  - Elimination of waiting periods
- Changes to federal unemployment benefits
  - Additional benefits
  - Extension of benefit periods

# New Hampshire

- One week waiting period eliminated
- Reasons to Collect Expanded
  - Current Diagnosis of COVID-19
  - Quarantined at the instruction of a medical provider, employer, or government official
  - Caring for a family member or dependent who has COVID-19 or is under quarantine
  - Caring for dependent or family member unable to care for themselves due to school closure or loss of daycare
  - Payments to be charged to the trust fund rather than the employer's account

# Massachusetts

- One week waiting period eliminated
- May collect if workplace is shut down as a result of COVID-19 issues but expects to reopen without need for job search
- All hearings will be telephonic

# Federal

- Up to 13 additional weeks of benefits for a total of up to 39
- Pandemic Unemployment Assistance available to employees who might otherwise be ineligible for benefits
- Federal Pandemic Unemployment Compensation of \$600 per week through July 31 is available to employees receiving other unemployment benefits

For more information and updates on COVID-19 related initiatives, please refer to McLane Middleton's Coronavirus Resource Center at:

<https://www.mclane.com/Coronavirus-Resource-Center>

# Questions