

**Understanding the Paycheck Protection Program
and its Interplay with the
Newly Mandated Paid Sick Leave
under the Families First Coronavirus Response Act**

Michael A. Berson

Christopher J. Kane

Gregory F. Rouchell

The Paycheck Protection Program (PPP)

- \$349 billion aid package for small businesses
- Provide businesses with unsecured loans that are intended to cover their payroll (and other) expenses
- Time Period: February 15, 2020 through June 30, 2020
- 100% federally guaranteed
- Retroactive to February 15, 2020, so if you laid off workers, you can rehire them and still avail yourself of the PPP, subject to final rule promulgation by the Small Business Administration (SBA)

Who is eligible under the PPP?

- Available to those small businesses that were already eligible for a small business administration loan prior to the COVID-19 pandemic
- All business concerns that employ less than 500 employees
- 501(c)3 non-profits that employ less than 500 employees
- Also applies in limited circumstances to certain industries where they employ more than 500 employees, but there are no more than 500 employees at a given physical location, e.g., restaurants and hotels

Criteria

- Loans are capped at the lesser of:
 - \$10,000,000; or
 - 2 ½ times your average total monthly payments for payroll costs incurred during the one-year period before the date the loan is made
- Interest is capped at 4%

Criteria

- Loan payments are deferred for at least six months, but cannot be deferred for more than one year.
- Unlike a traditional SBA loan, borrowers do not need to establish that they are unable to secure credit elsewhere.
- Businesses will not need to establish creditworthiness and the ability to repay; rather, the relevant inquiry is whether you were in business as of February 15, 2020 and you were paying your employees.

Criteria

- Unlike traditional SBA Loans, no collateral is required to secure the loan, and no personal guarantees are required.
- There is no double dipping. In other words, you cannot use funds from the PPP to pay mandated sick leave under the Families First Coronavirus Response Act (FFCRA); rather, the tax credits under the new paid sick leave laws are your sole source of reimbursement for those expenses.

Acceptable Uses

- Payroll costs
 - Some notable exceptions include:
 - Individuals making more than \$100,000 per year
 - Withholding taxes
 - Sick leave that is already provided for by the FFCRA
 - Group health care benefits during periods of paid sick, medical or family leave and insurance premiums
 - Employee compensation
 - Mortgage interest payments (but only if the mortgage was in place prior to February 15, 2020)
 - Rent (but only if the lease was in effect prior to February 15, 2020)
 - Utilities

Loan Forgiveness

- Generally speaking, the amount of the loan forgiveness may not be 100%. Rather, only the following counts towards loan forgiveness:
 - Payroll costs (during the eight weeks following the loan origination date)
 - Mortgage interest (but only if the property was purchased before February 15, 2020)
 - Rent (but only if the lease was in place before February 15, 2020)
 - Utility payments (during the 8 weeks following the loan origination date)

Loan Forgiveness

- The amount of forgiveness may also be subject to reduction if your workforce headcount is less during the relevant period (February 15 – June 30) as opposed to last year.
 - If you have already laid off employees, you will not be penalized if you hire them back.
 - Similar reductions of the amount of loan forgiveness may also be triggered if you reduced your employees' compensation during the relevant period when compared to the same period last year. Again, if you have already laid off employees, you will not be penalized if you hire them back.
 - Employers will need to fill out paperwork to establish the amount of the loan forgiveness.
 - Any amounts remaining after forgiveness must be repaid no later than 10 years after being borrowed.

CARES ACT

- Impact on the Obligation to Pay Mandated Sick Leave?
 - SBA loans through the PPP is separate and apart from the paid sick leave tax credits
 - Paid Sick Leave will be reimbursed through tax credits
 - No double dipping
- Federal Guidance Relates to Paid Medical Leave and Tax Credit
 - <https://www.dol.gov/agencies/whd/pandemic>
 - Fact Sheets, Q&A and required posters

Interplay Between CARES Act & Families First Coronavirus Response Act

- If you are required to pay sick leave under the FFCRA, you will be reimbursed in the form of a payroll tax credit.
 - The CARES Act establishes that there is no penalty for failure to deposit your payroll taxes with the U.S. Treasury
 - The CARES Act provides for an immediate “advance” for the tax credits
 - Net Effect/Intent: Instead of paying the Treasury Department your quarterly payroll taxes, use that money instead to pay your employees’ mandated sick leave.
 - Required form paperwork for the “advance” will be provided soon.
- Separate and apart from sick leave, you will pay your employees their normal wages/payroll through the forgivable SBA Loans through the CARES Act.

CARES Act Amendments to FFCRA Mandated Sick Leave

- Must provide expanded FMLA leave (school closure/child care issues/cannot work remotely) for employees laid off between March 1 and April 1 if you rehire them before December 31, 2020.
 - Cannot sidestep the 12-week obligation through a mass layoff and then rehire.
- The Secretary of Labor can audit and investigate in the same manner as under the FLSA to ensure compliance.
 - Documentation is important in case there is a DOL audit; fraud/abuse could be rampant and investigations could ensue after the dust settles.

Thank you!



Michael A. Berson

michael.berson@arlaw.com

Mobile / Montgomery

251.650.0848 / 334.557.7065



Christopher J. Kane

christopher.kane@arlaw.com

New Orleans

504.585.0155



Gregory F. Rouchell

gregory.rouchell@arlaw.com

New Orleans

504.585.0285