

NFIB UPDATE

Weekly Briefing for Small Business

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May 6, 2020 - Getting Back to Business: COVID-19 Financial & Workplace Safety Updates

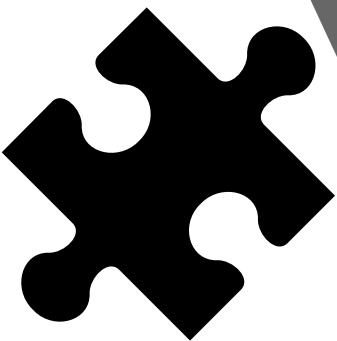


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Loan Programs: Updates and Tips



Paycheck Protection Program (PPP) Weekend Update

As of Friday, May 1st, the SBA has processed 2.2 million loans for a total of \$176 billion of \$310 billion of new funding.

Average loan amount for round 2 of PPP loans is just over \$76,000.



PPP Loan Forgiveness: Re-Hire Exemption

Question: Will a borrower's PPP loan forgiveness amount be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

Answer: No. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower.

Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.



New Deduction Rule for Forgiven Expenses

IRS Notice 2020-32

Specifically, this notice clarifies that no deduction is allowed under the Internal Revenue Code (Code) for an expense that is otherwise deductible if the payment of the expense or results in forgiveness of a covered loan pursuant to section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281, 286-93 (March 27, 2020) and the income associated with the forgiveness is excluded from gross income for purposes of the Code pursuant to section 1106(i) of the CARES Act.



Deferment of Social Security Tax

Can an employer that has applied for and received a PPP loan that is not yet forgiven defer deposit and payment of the employer's share of Social Security tax without incurring failure to deposit and failure to pay penalties?

Yes. Employers who have received a PPP loan may defer deposit and payment of the employer's share of Social Security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan in accordance with paragraph (g) of section 1106 of the CARES Act, without incurring failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of Social Security tax due after that date. However, the amount of the deposit and payment of the employer's share of Social Security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates," as described in FAQs 7 and 8.



To help you meet this requirement, consider implementing the following best practices:

- Set up a separate bank account for PPP funds, or deposit funds into your business savings account and transfer the money to checking and payroll accounts when needed.
- If you feel that 75% of the loan won't be used for payroll, consider modifying your payroll periods (from semimonthly to weekly, for example) or paying out bonuses toward the end of the eight-week period.
- Gather and analyze mortgage documents, leases, and utility bills to make sure obligations were in place prior to 2/15/20.
- Track expenses in the general ledger. The general ledger tracking will be a good summary, but you will still need to include the details.
- If expenses are paid with a business credit card, make sure that portion of the credit card bill is paid with PPP funds before the end of the eight-week period.

To help you meet this requirement, consider implementing the following best practices:

Use a simple Excel spreadsheet to track your qualifying expenses. This will allow you to see your progress in real-time and project where you will be after 60 days. To substantiate the amounts listed in the spreadsheet, gather and organize your backup documentation. Although not foolproof, the [attached excel sheet](#) might help.

PPP payroll calculators for loan application: American Institute of CPAs (AICPA)

The PPP provides three scenarios for calculating maximum loan amounts depending on how long the business has been in operation and whether it's seasonal. You can add all three to your COVID-19 resource library. They're designed so that your client can complete them following the steps outlined in the calculator. When you click the link, please look for an Excel file calculator to download rather than opening in a new window.

[PPP Loan Calculator – Non-seasonal & In business 2/15/19 – 6/30/19 \(Excel\)](#)

This calculator will apply for most businesses that operated in 2019.

[PPP Loan Calculator – Nonseasonal & NOT in business 2/15/19 – 6/30/19 \(Excel\)](#)

This calculator will apply for new businesses.

[PPP Loan Calculator – Seasonal business \(Excel\)](#)

This calculator will apply for clients that don't operate year-round.

[PPP Loan Calculator – Self-Employed \(Excel\)](#)

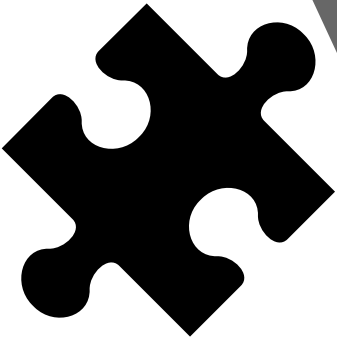
This calculator will apply for self-employed individuals.



Possible Congressional Action

- More funding for PPP
- Extending the 8-week forgiveness window
- Flexible timing of the 8-week forgiveness window
- Easing the 75% payroll rule

Workplace Safety Updates



Health and Safety Questions to Consider

Assuming stay-at-home and shelter-in-place orders permit reopening, with or without restrictions, consider the following:

- Does the physical layout of my business allow me to reopen in compliance with applicable laws?
- Do I feel confident that I can adequately protect the health of my employees?
- Do I feel confident that I can adequately protect the health of my customers?
- Would the level of business generated support additional payroll costs or can I adjust payroll or staffing to make it work?

Health and Safety Checklist

- Educate employees on how to reduce the spread of COVID-19 at home and at work ([follow Centers for Disease Control and Prevention recommendations](#)).
- Explain new company policies related to illness, cleaning, disinfecting, social distancing, work meetings, and travel.
- For employees returning to a worksite, make sure they understand what's expected of them in the workplace. For example, must they wear face masks or face coverings? Will protective items and hand sanitizer be provided? Are workplace hours different? Will you be taking employees' temperatures or doing a health screening each day when they arrive? Will you do a return to work questionnaire? Is teleworking or staggered shift work allowed/encouraged?

Health and Safety Checklist (continued)

- Ensure that all employees who are currently ill or have contact with an ill family member stay home ([follow CDC recommendations for length of time](#)).
- If an employee becomes sick at work, send them home.
- Promote [safe social distancing](#) in the workplace by encouraging employees to: Remain at least 6 feet away from each other. Email, message, call, or video call rather than meeting face to face. Clean computer equipment, desktops, phones, and workstations often. Discourage handshaking.
- If possible, provide hand sanitizer, cleaning supplies, and face masks or face coverings (where appropriate/[necessary](#)) and no-touch disposal receptacles.
- [Follow OSHA's Ten Steps](#).

Notify Employees of Face Covering Requirement

Note: State and local laws and orders may provide different or additional requirements for employers regarding masks or face coverings, including guidance on whether employers must provide and pay for them, who must maintain and clean them, and more. Review applicable mandates to ensure compliance. [Littler continues to update](#) face covering orders.

Sample Notice: Unless otherwise notified, you are required to wear a face covering at work. A **face covering** is generally a cloth, bandana, or other type of material that covers an employee's mouth and nose. The CDC recommends that individuals wear cloth face coverings in public places or when it is impossible to practice social distancing. Remember that wearing a face covering can help prevent the spread of the disease, but only in addition to other measures that you should be taking in the workplace and at home, such as frequent hand washing, cleaning and sanitizing frequently-touched surfaces, and practicing social distancing.

If you have any questions about the use of masks or face coverings in the workplace, contact **[insert contact name]**.



Plan for a Confirmed COVID-19 Case

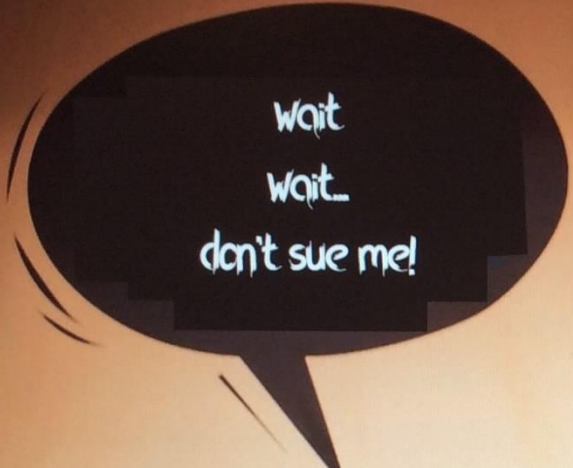
- Have a policy for handling a confirmed or suspected case.
- State/local law may require specific protocol.
- Consider the following questions:
 - How will you communicate to your employees and/or customers?
 - Will you require self-isolation for employees who have been in close contact?
 - Do you have deep clean policy/vendor in place?

Notify Employees of COVID-19 Infection

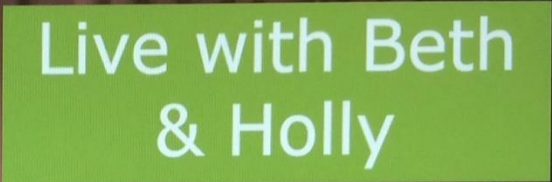
Sample Notice: Please be advised that **[company name]** was notified that an employee has **[tested positive/insert circumstances]** for COVID-19. As an immediate response to protect the health and safety of our employees, we are sharing the following information with you:

- ❑ We are taking the following steps (as applicable):
 - **[Instituting remote work]**
 - **[Sanitizing and closing workplace until date]**
 - **[Other]**
- ❑ We ask that you follow the Centers for Disease Control and Prevention (CDC) guidelines to protect your health and those around you:
 - Wash your hands often with soap and water for at least 20 seconds, especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
 - If soap and water are not readily available, use a hand sanitizer that contains at least 60 percent alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
 - Avoid touching your eyes, nose, and mouth with unwashed hands.
 - Follow all recommendations provided by the CDC here:
<https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.
- ❑ If you, or someone in your household, exhibits COVID-19 related symptoms, please notify **[contact info]** so that we may track any potential outbreaks within **[company name]**. All such personal information will be maintained confidentially.
- ❑ Your health and safety are our priority. You may contact **[contact info]** with your questions.





wait
wait...
don't sue me!



Live with Beth
& Holly

Jan's HR Headache


- Jan has an employee (Nick) with three kids. Nick's wife has been able to provide care for their children over the past few weeks because she was furloughed. But now Nick's wife has been called back to work.
 - Does Jan have to provide paid COVID-19 FMLA leave?
 - Can they work out a schedule so that Nick can both work and provide care for his kids?
 - How should Jan proceed over the summer since she knows Nick's kids wouldn't be in school during normal times?



How much paid leave can employees take?

In general, applies to you if you are an employee of either a private employer with fewer than 500 employees or a covered public sector employer




 You are following a federal, state, or local quarantine or stay-at-home order or are quarantined by a health care provider

OR

You have COVID-19 symptoms and are seeking a diagnosis


TIME OFF
Up to two weeks or 80 hours of paid sick leave at higher of regular rate or minimum wage*

 You must care for someone under a federal, state, or local quarantine or stay-at-home order or are quarantined by a health care provider

OR

You must care for your child whose school, child care provider, or place of care is unavailable due to COVID-19

TIME OFF
Up to two weeks or 80 hours of paid sick leave at higher of 2/3 regular rate or minimum wage*

 You must care for your child whose school, child care provider, or place of care is unavailable due to COVID-19

AND

You've been employed at least 30 calendar days

TIME OFF
Up to 10 additional weeks of family leave paid at 2/3 regular rate*

*Paid leave is capped at specific maximum amounts per worker



Learn more at dol.gov/FFCRA



Harold's Data Entry Guy Won't Come In

- Harold needs Mike to return to work because only Mike knows how to do essential data entry. Without him the entire operation would grind to a halt. But Mike is in his Mid-50s and says that he is afraid to come into the office?
 - Can Harold threaten to replace Mike if he won't return to work?
 - Can Harold ask questions that might reveal information about a disability?
 - What if Mike has asthma and high-blood pressure?
 - Would Harold's response differ if Mike is an electrician or a plumber?

Recall from COVID-19 Furlough

Employers have a right to recall workers. Generally, if a worker refuses to return to work after reasonable notice, the worker can be separated and possibly disqualified from receiving further unemployment benefits.

What if you need that employee and don't want to take the "stick" approach of saying we need you back and if you don't want to come back, fine, but you won't be able to collect unemployment.

"Carrot" approach: address the unemployment claims issue by temporarily increasing the pay of recalled workers by providing increased pay through July 31, 2020 when the federal supplement of \$600/wk ends.



Recall from COVID-19 Furlough Letter

- ❑ Send letter or email notifying employee of date you would like them to resume work.
- ❑ Provide details on terms of employment: of job, wage/salary, and specify employment-at-will terms.
- ❑ Explain what business is doing to create and maintain a safe and healthy workplace and include new safety methods/expectations of employees and your reliance on CDC and local health department information to keep the workplace safe.
- ❑ Require employee to accept the position by returning a signed and dated copy of letter/email by a set date and specify that if not returned you will assume that they are turning down this offer to return to work and employment will be terminated.
- ❑ Ask the employee to contact you if they have any questions or concerns about current safety procedures or their personal safety, or if they need any type of assistance to be able to return to work.



Carol's Scheduling Conundrum

- Carol is having a difficult time scheduling shifts because Joe has called-in sick. Joe says he has a cold, but Carol suspects he is lying.
 - Does Carol have to provide paid sick leave?
 - What if Joe claims that he is trying to get a COVID-19 test, but his health care provider says he doesn't qualify to be tested?
 - If Joe posts pictures of himself hiking while he is receiving paid leave, can Carol reprimand him and deny further leave?

Sandra is Back to Business

- Sandra is relieved that her Governor has lifted her “stay-at-home” order. She opens her retail shop but wants to minimize risks.
 - What if her employee is saying that she wants to come back, but is uncomfortable wearing a mask?
 - What if customers are not abiding the rules she has established to minimize risks?
 - Is it a problem if she hires back everyone but her book-keeper in her late 70s?
 - Sandra cannot find hand sanitizer, is this a problem?

Jim's Juggling Act

- Jim is trying get PPP loan forgiveness; however, he is struggling to meet the requirement to spend 75% on payroll. For one his employees are refusing to return to work. And to boot, some of his employees are calling-out sick with COVID-19 symptoms.
 - Can Jim force his employees to come back?
 - Can Jim pay his skeleton crew more on a temporary basis?
 - Is it problematic for his salaried-exempt employees if they would see a reduction in pay after 8-weeks?
 - Does FFRCA paid leave qualify as a payroll expense for the purpose of PPP loan forgiveness?

Jim's Head is Officially Spinning

- Jim wants to pull his hair out. He has so many questions and he can't find definitive guidance from SBA or the Department of Treasury.
 - Is Jim safe relying on the ACA's definition of a "full-time equivalent" for the purpose of bringing his employee head-count up to its pre-crisis level?
 - Can Jim count his employer-match contributions to his employee's IRA or 401K as "payroll?"
 - Does it matter if Jim's PPP loan is held in an account at XYZ Bank if another institution processes his payroll from another bank account?

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