

Family First Coronavirus Response Act provisions: Emergency Paid Sick Leave (“**EPSL**”) and Emergency Paid Family and Medical Leave Expansion Act (“**EFMLA**”)

EPSL: You must provide 80 hours of paid leave to any employee that cannot work or telework because the employee meets one of the following:

1. Is subject to a federal, state, or local quarantine or isolation order
2. Has been advised by a health care provider to self-quarantine
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis

Employer pays 100% of normal pay- capped at \$511 per day (\$5,110 in the aggregate).

First 80 Hours

4. Is caring for an individual subject to a quarantine or isolation order, or has been advised to self-quarantine
5. Is caring for a child whose school or care provider is closed or unavailable*
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

Employer pays 2/3 of average wage - capped at \$200 per day (\$2,000 in the aggregate).

First 80 Hours

EFMLA: An eligible employee (worked for you at least 30 days) is entitled to 12 weeks of leave during any 12 month period for one of the existing FMLA reasons, or for the following newly enacted qualifying need where they meet all of the following (until December 21, 2020):

1. Employee is unable to work or telework
2. Needs to care for a child under 18 AND
3. Child’s school or care provider is closed or unavailable because of a COVID-19 related public health emergency declared under federal, state, or local law

Payment under the newly enacted qualifying need as follows (see existing FMLA rules for leave under another FMLA covered reason):

Unpaid (sort of). Employee may use any available PTO or may take the EPSL leave (#5 on EPSL).

Employer Compensated – at 2/3 regular rate of pay but may be capped at \$200 a day (\$10,000 in the aggregate). Combined with the 80 hours of EPSL, total employer pay capped at \$12,000 in the aggregate.

First 80 Hours

Up to 10 weeks, in the event an employee continually **remains subject** to the “Categories of Employees” above and hasn’t already used FMLA leave this year

*** Overlaps with EFMLA leave**

- Based on regular rate of pay (6 month average)
- If part-time, take average over 2 weeks (or 6 months, if unpredictable)
- Employees must be allowed to use EPSL before any other leave (Employer cannot force Employee to use PTO)
- Until December 31, 2020

A NEW workplace poster required for most employers can be found on the Department of Labor website:

https://www.dol.gov/sites/dolgov/files/WH/ posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Disclaimer: The information included here is provided for general informational purposes only and should not be a substitute for legal advice nor is it intended to be a substitute for legal counsel. For more information or if you have further questions, please contact one of our Attorneys.



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Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”): Paycheck Protection Program (“**PPP**”) under Section 7(a) of the Small Business Act

Apply for a loan - Paycheck Protection Program under Section 7(a) of the Small Business Act – “SBA Loans”

Who Qualifies? Any business with 500 or fewer employees that was operating and paying payroll as of February 15, 2020. There are additional rules for restaurants and hotels. **Waived:** rules requiring recipients to pay certain fees, provide collateral, or be unable to obtain credit elsewhere.

But you must make a good faith certification. Borrowers must certify:

- that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

Note: There are additional certification requirements generally stating that you are not duplicating SBA loan requests.

What is the maximum amount of the loan? The maximum loan amount must be the *lesser of*: (1) 2.5 x the average total monthly payments by the business for payroll costs incurred during the 1-year period before the date on which the loan is made or (2) \$10,000,000. **Restricted from being included in the payroll calculation are:** Any salaries above \$100,000 per year and any qualified sick leave wages for which a tax credit is allowed for Emergency Paid Sick Leave (“**EPSL**”) and Emergency Paid Family and Medical Leave Expansion Act (“**EFMLA**”).

What are loan proceeds to be used for? Recipients could use the loans to cover: (i) Payroll costs, (ii) Costs related to continuation of health care benefits, including insurance premiums, sick, medical and family leave, (iii) Employee salaries, commissions or similar compensation, (iv) Rent, (v) Utilities, and (vi) Interest on any debt obligations including a mortgage incurred before February 15, 2020. **But you can’t use the funds** to compensate individual employees at an annual rate above \$100,000, or to pay for EPSL and EFMLA.

Get part or all of that SBA Loan **Forgiven**

What is the amount forgiven? Recipients of SBA loans under the PPP are eligible for loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan to the extent the loaned funds were used on the following:

1. Payroll costs - excluding compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period but including the following:
 - (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;
2. Mortgage interest (on debts incurred prior to February 15, 2020);
3. Rent payments on any lease in force before February 15, 2020; and
4. Utilities for service which began before February 15, 2020.

Note: Canceled debt would be excluded from borrowers’ gross income for tax purposes.

Documentation. Borrowers will verify through documentation to lenders their payments during this period.

What should I consider when deciding to request the maximum amount? The formula for calculating the maximum amount of the loan you are eligible for does not match the calculation for how much of the loan is forgiven. If you want to try to limit how much you request to loan proceeds that will be forgiven, *let us help you with an individualized calculation of how much to request.*

Reduced Forgiveness if Reduce Payroll. If the employer furloughs or lays off employees the amount that can be forgiven is further reduced (if you have furloughed or laid off employees let us know so we can determine how this would apply to you). If employer rehires employees before June 30, 2020 this can offset the reduction in the loan forgiveness amount.

Remaining Loan Balance. Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact.

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