



PLATINUM GROUP
CLOUD PAYROLL | HR | ACCOUNTING

Webinar 5

Employer Updates 04-17-2020

Platinum Group

Webinar-April 17, 2020

WEBINAR LOGISTICS

- **All Participants are muted.**
- **We would love to hear from you! (questions bar).**
- **A note about questions.**
- **A recording of the webinar and presentation slides will be available this afternoon.**
- **Rapidly changing environment – What we know now.**

WEBINAR 05

Platinum Group

Webinar-April 17, 2020

COVID-19 WEBINAR 05

Employment Law, Loan, and CARES Act Updates

4.17.20



The SBTDC is a business and technology extension program of the UNC System and is funded in part through a Cooperative Agreement with the U.S. Small Business Administration.



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WEBINAR 05

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Webinar 04-April 17, 2020

AGENDA

- **Practical Scenarios Regarding Employees**
- **Paycheck Protection Program (PPP) – SBA additional Guidance 04-15-20**
- **Independent Restaurants & Non-Essential Businesses**
- **SBA Update & Other Loan Options**

WEBINAR 05

COVID-19 Employment Law Update

Platinum Group
April 17, 2020

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Practical Guidance

- Employee who has exhausted emergency paid sick leave but medical condition prevents from returning to work
 - Consider ADA reasonable accommodation
 - Unpaid leave as an accommodation
 - May not be able to obtain unemployment
 - Health insurance implications
 - Consider traditional FMLA leave
 - Employee's own serious health condition
 - Health insurance coverage remains
 - Concurrent use of accrued PTO

Practical Guidance: Small Business Exemption

- Leave requested would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
 - No definition of "minimal capacity" → but preamble states that DOL did not want business to have to close
 - Run the numbers and document your determination
- Employee requesting leave would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities
 - Similar to "key employee" analysis of traditional FMLA
 - Only one individual in the organization who has those specialized skills (example: HR person)
 - Document why that individual's absence would cause a substantial risk
- Not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee requesting leave and these labor or services are needed for the small business to operate at a minimal capacity
 - Document efforts to locate additional workers
 - Issues relating from expanded unemployment

New EEOC Guidance

- The circumstances of the pandemic are relevant to whether a requested accommodation is an “undue hardship”
 - Significant difficulty or expense
 - An accommodation which would not have caused undue hardship may do so now because of the pandemic
- Examples of significant difficulty
 - May be more difficult to obtain items or delivery may be delayed (especially if teleworking)
 - May be more difficult to readily hire temporary worker for specialized position
 - May be more difficult to remove marginal duties or create temporary assignments
 - Should work together to determine if alternative exists
- Significant expense
 - Sudden loss of some/all of income stream
 - Availability of discretionary funds in light of expenses
 - Expected date when restrictions on operations will be lifted
 - Does not mean can reject any accommodation that costs money

Practical Guidance: Reducing Exempt Employees

- Based on salary – not on time
 - Consider the salary threshold
- Change expectations regarding when in the office but require availability
- Don't reduce the salary by the same percentage you are reducing the time
- Offer additional PTO with requirements and specifications
 - How often can it be used?
 - Can't be carried over or paid out
 - Forfeit if salary is increased
- Full work weeks without pay
 - Availability problem
- Offer weeks without significant work responsibilities

Practical Guidance: Navigating Unemployment

- You can now file attached claims
 - Certify employees have accepted all work available to them
 - DES is encouraging attached claims particularly for employees who have significantly reduced hours (worked less than 60%)
- You cannot know exactly how much unemployment employees will get
- You cannot know how much you can work the employee and the employee still qualify for unemployment and unemployment does not encourage those calculations.
- Employees have to report income in the week they work, not the week they get paid
- If you file attached claim, you can report for the employee.
- Do not tell employees whether they are eligible or not or create expectations about benefits, rather encourage employees to apply (or apply for them) and see what happens.



Practical Guidance: PPP Employment Issues

- Must rehire to pre-covid numbers by June 30 safe harbor
- You can pay employees to do nothing in order to make the loan forgivable
- Consider whether the loan is benefiting your business or you are becoming unemployment while taking on the risk
- Consider timing of rehiring employees without work
 - End of \$600 benefit
 - Health insurance issues
- Employees may be making more now on unemployment – how to do you encourage them to return?



Questions?

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Disclaimer: This presentation is intended and made available to provide information of general interest to the public, and for educational purposes only, and is not intended to offer legal advice about specific situations or problems. No representation is made about the accuracy of the information provided herein.



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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM FAQ (As of 04-15-20)

Question: Paragraph 3.b.iii of the PPP Interim Final Rule states that lenders must “[c]onfirm the dollar amount of average monthly payroll costs for the preceding calendar year by reviewing the payroll documentation submitted with the borrower’s application.” Does that require the lender to replicate every borrower’s calculations?

Answer: No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower’s calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rule indicates, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

If the lender identifies errors in the borrower’s calculation or material lack of substantiation in the borrower’s supporting documents, the lender should work with the borrower to remedy the issue.

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM FAQ (As of 04-15-20)

Question: What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

Answer: In general, borrowers can calculate their aggregate payroll costs using data either from **the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.** An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM FAQ (As of 04-15-20)

Question: Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?

Answer: No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM FAQ (As of 04-15-20)

Question: How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?

Answer: Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax.

For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM FAQ (As of 04-15-20)

Question: I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?

Answer: No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

Question: The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?

Answer: The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM FAQ (As of 04-15-20)

Question: How do the \$10 million cap and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?

Answer: Under the CARES Act, any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a PPP loan.

In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees. As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees is permitted to apply for a separate PPP loan provided it uses its unique EIN.

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM – (More Guidance Needed)

Question: How do the two “covered periods” interact?

- Section 1102 of the CARES Act provides that PPP loans are only available during the “covered period” of February 15 – June 30, 2020, and during that time, may only be used to pay payroll costs, mortgage interest, rent, utilities, and interest on other debt.
- Then, Section 1106 provides that only amounts spent during the “covered period” are eligible for forgiveness. But for these purposes, the covered period is the 8-week period following the receipt of the loan proceeds.
- Assuming a second or even third wave of funds become available, what happens to a borrower who receives a PPP loan on June 1st? The covered period for use of the funds ends on June 30th, but the covered period for forgiveness will end at in the last days of July. Will payments made post-June 30th be eligible for forgiveness?

<https://www.forbes.com/sites/anthonymitti/2020/04/15/ten-things-we-need-to-know-about-paycheck-protection-program-loan-forgiveness/#74d42c013291>

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CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM – (More Guidance Needed)

Question: Are payments made with forgiven funds deductible?

This is a big one. Section 1106 of the CARES Act states that amounts forgiven on a PPP loan “shall be excluded from gross income.” But Section 265 of the Internal Revenue Code provides that expenses “allocable to” tax-exempt income are not deductible; this prevents a “double dipping” of sorts, whereby a taxpayer would otherwise get both a deduction and tax-exempt income related to the same transaction or investment.

But if an extremely generous outcome is what was intended, Congress could simply amend Section 265 to accommodate this situation. They’ve done it before, most notably in response to a previous Revenue Ruling that disallowed deductions of a minister of a church who received a tax-free housing allowance under Section 107.

Whatever the result, borrowers need guidance immediately.

<https://www.forbes.com/sites/anthonymitti/2020/04/15/ten-things-we-need-to-know-about-paycheck-protection-program-loan-forgiveness/#74d42c013291>

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CARES ACT REVIEW

INDEPENDENT RESTAURANTS & NON-ESSENTIAL BUSINESSES

- **Unemployment Considerations – See Sabrina’s Comments**
- **Payroll Protection Program – Funded or Not?**
- **If not funded, could be a blessing!**
- **If funded, please review forgiveness provisions from Webinar 4 at <https://www.platinum-grp.com/webinars>**
- **Changes and Clarification is needed!**
- **Reach out to your representatives.**

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CARES ACT REVIEW

SOME OF YOUR STATE AND FEDERAL REPRESENTATIVES

House Speaker Nancy Pelosi: <https://pelosi.house.gov/contact-me/email-me>

Senator Chuck Schumer: <https://www.schumer.senate.gov/contact/email-chuck>

Senator Thom Tillis: <https://www.tillis.senate.gov/email-me>

Senator Richard Burr: <https://www.burr.senate.gov/contact/email>

Congressman Kevin McCarthy: <https://kevinmccarthy.house.gov/contact/email-me>

Congressman Patrick McHenry: <https://mchenry.house.gov/contact/zipauth.htm>

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CARES ACT REVIEW

INDEPENDENT RESTAURANTS - #saverestaurants

Katie Button – Curate | Button & Co. Bagels

Facebook Message:

The time to act is NOW and we need EVERYONE shouting from the rooftops. If we do not get the aid that we need and DESERVE since we are bigger than the airline industry, we and the 11 million people we employ and all the farmers and purveyors who depend on us for a living will all FAIL. Go to <https://www.saverestaurants.com/take-action/> and join the fight. Also share this to your IG stories or make your own post to help spread the word.

Facebook Post link:

<https://www.facebook.com/ChefKatieButton/videos/574796499822187/>

(There is a link to various state, local and federal representatives Facebook pages are in above post)

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WEBINAR 05

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Thank you!

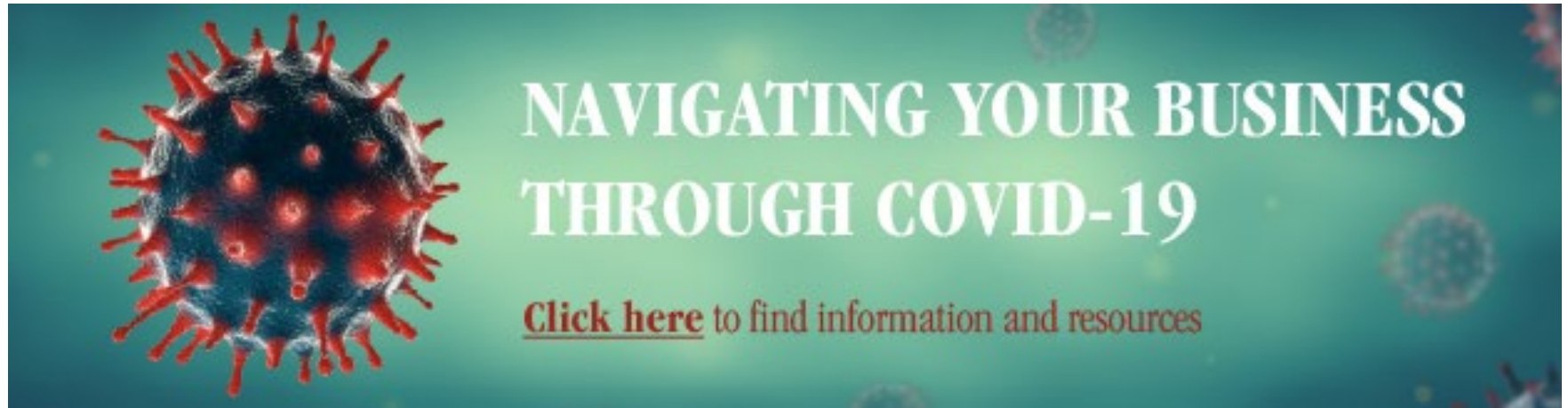
We will be conducting another webinar Next Friday, April 24th at 1:00.

Invitations to be sent next week

Recordings and presentation slides will be sent out this afternoon.

Information in the presentation is based on information available on April 16, 2020 and is subject to change.

SBTDC



The SBTDC is a business and technology development extension service of the North Carolina University System operated in partnership with the US Small Business Administration.

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SBA ECONOMIC INJURY DISASTER LOANS (EIDL)-UPDATES

As of April 15, 2020, SBA is unable to accept new applications at this time for the Paycheck Protection Program and Economic Injury Disaster Loans (including EIDL Advances) based on available appropriations funding. Applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis. Click [here](#) to read the SBA press release.

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)-UPDATES

UPDATES:04/09/2020

- If you received a loan application confirmation number that begins with the number 2. You will need to re-apply- If did not re-apply yet then you are not in the que for EIDL.
- To ensure that the greatest number of applicants can receive assistance during this challenging time, the amount of the Advance will be determined by the number of the small business' pre-disaster (i.e., as of January 21, 2020) employees. The Advance will provide \$1,000 per employee up to a maximum of \$10,000
- Look for 14-20 days on EIL ADVANCE & EIDL

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)-UPDATES

Question 1: If you have applied for EIDL and received a number then are you in process for loan?

The application # simply means they have received the application. To find out where the application is in the process you will need to call 800-659-2955.

Question 2: If you have received an EIDL advance will you be able to still get a loan?
It all depends on where you are in the process. Money has been earmarked so it just depends on where it is earmarked.

Question 3: What happens if someone is approved for the loan and decide not to take it or reduce the amount they take?

Yes, you can do this. And, this is how the money will keep going through in circulation until it is all depleted.

Other Loan Options & Opportunities

- **SBA Debt Relief for Existing Loans- Section 1112 of CARE Act 7(a) and 504 Loan Program**
 - SBA will pay the principal, interest, and fees of any current 7(a), 504, and microloans for a period of six months.
 - The 6 month payment relief is not a deferment, but actual *debt forgiveness*.
 - Generally, a loan in “regular servicing status” should not include any loan that is more than 120 days past due (as counted back from the first payment due date covered under section 1112).
 - The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.

Other Loan Options & Opportunities

NC COVID-19 Rapid Recovery Loan Program:

Loan Details

Loans are available for up to \$50,000, based on the business's current revenue. Loan agreements are structured as follows:

- Loan sizes capped at approximately two months of current revenue.
- Six months of no interest and no payments, followed by 48 months of principal and interest payments at 5.5% interest.
- Interest will begin to accrue on any unpaid balance at the beginning of the seventh month.
- There are no prepayment penalties.
- Defaulted loans are subject to collections.

Other Loan Options & Opportunities

NC COVID-19 Rapid Recovery Loan Program:

Who is eligible?

- Applicants must be a North Carolina small business affected by COVID-19 (all 100 NC counties are eligible).
- Applicants must have at least one (1) employee, who could be the self-employed owner.
- Start-up businesses that began operations before March 23, 2020 are eligible.

Requirements:

- Any individual with greater than 20% ownership in the applying business must personally guarantee the loan.
- Proceeds from the loan may only be used for maintaining or restarting a business.
- The use of loan funds to pay off debts already incurred for qualifying business maintenance or restart purposes may be authorized on a case-by-case basis.
- Borrowers are required to assign the proceeds of future assistance programs, including SBA loans, to the repayment of their Rapid Recovery Loan.

Other Loan Options & Opportunities

NC COVID-19 Rapid Recovery Loan Program:

Logistics & Timeline

- Businesses interested in applying should be prepared to complete an [online application](#) and provide tax returns, profit and loss statements, and bank statements.
- The partners in this program are committed to moving quick to assist businesses and they will be in touch with applicants as soon as possible.
- Loans subject to availability of funds.

One Buncombe Fund: [One Buncombe Fund](#)

- COVID-19 Response Fund
- Assistance to Individuals that have lost employment due to COVID-19
- Assistance for locally owned small businesses

Other Community Funds in your County- Check with us or your Chamber of Commerce



Disaster Recovery Contracting Assistance

Contact the North Carolina SBTDC near you for assistance in developing your overall COVID-19 Recovery plan. Our organization has been helping small and mid-size business in NC for 35 years. We have extensive experience working with businesses recovering from disasters. Our business counselors can help you:

- Assess the financial impact on your business
- Develop strategies for your business continuity and recovery
- Analyze your cash flow
- Evaluate options with creditors
- Prepare your SBA economic injury loan application (if appropriate)

Disaster Recovery Contracting Assistance

The NC Procurement Technical Assistance Center (PTAC) is available to assist businesses with federal, state, and local contracting in response to COVID-19. View the “Working with FEMA and Disaster Recovery Operations” publication [Here](#) To contact a PTAC counselor, visit nc-ptac.org.

NC PTAC is offering weekly webinars each Wednesday at 2:00 pm EST (starting April 8) on **Working with FEMA and Disaster Recovery Operations**. It will include both a general overview of disaster relief government contracting and COVID-19-specific resources. Click [Here](#) to register.

Keep yourself updated on Business Resources at our Covid-19 dedicated site:

<http://www.sbt dc.org/coronavirus/>



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The SBTDC is a business advisory service of The University of North Carolina System operated in partnership with the U.S. Small Business Administration.