



PLATINUM GROUP  
CLOUD PAYROLL | HR | ACCOUNTING

# Webinar 10

*Employer Updates 05-29-2020*

# Platinum Group

Webinar-May 29, 2020

## WEBINAR LOGISTICS

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

## Platinum Group

Webinar-May 29, 2020

# COVID-19 WEBINAR 10

PPP LOAN FORGIVENESS: Resignations, Terminations, Guidance, & Top Questions Answered

5.29.20



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Webinar May 29, 2020

## AGENDA

- **Resignations & Terminations related to PPP Loan Forgiveness**
- **Paycheck Protection Program (PPP) Forgiveness Provisions – Additional Guidance & Top Questions.**

COVID-19 WEBINAR 10

# COVID-19 Employment Law Update

Platinum Group  
May 29, 2020

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**McGUIRE WOOD & BISSETTE**  
LAW FIRM

# New PPP Forgiveness Guidance

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- If employee voluntarily resigns or voluntarily requests a reduced schedule, will not result in reduction of forgiveness
- Must document that the employee voluntarily resigned or requested a reduced schedule
  - Require employee to provide you resignation or reduced schedule request in writing
- Will not apply if you reduce an employee's schedule due to business needs



# New PPP Forgiveness Guidance

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- If employee is terminated “for cause,” will not result in reduction of forgiveness
- Must document that the employee was terminated “for cause”
  - Must provide documentation upon request
- No definition of “for cause”
  - Policy or rule violation
  - Documented history of performance problems

# Other Reopening Issues

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- Can you require employee to sign release or waiver related to COVID-19?
  - Unenforceable
  - Cannot waive workers' compensation claim
  - May be used against you
- Travel and group gathering concerns
  - Can ask about travel plans
  - No guidance about requiring to quarantine
  - Consider religious travel and gatherings



**McGUIRE WOOD & BISSETTE**  
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# 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 (PPP) – NEW FORGIVNESS GUIDANCE

### New Clarifications Second Final Interim Rule issued 05-22-20:

- For payroll costs only, borrowers can use the covered period (56 days following loan disbursement). Borrowers with biweekly or more frequent pay periods may instead use an alternative covered payroll period, which is the 56-day period beginning on the first day of the first pay period occurring after the loan disbursement date.
- Forgiveness is available for payroll costs that are paid **OR** incurred during the Payroll Covered Period if paid on or before the next pay date.
- Salary and wages paid to furloughed employees during the Payroll Covered Period are included in payroll costs eligible for forgiveness.
- Bonuses and hazard pay paid to employees during the Payroll Covered Period also constitute payroll costs eligible for forgiveness for employees whose compensation does not exceed \$100,000 on an annual basis.

# Platinum Group

CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### New Clarifications Second Final Interim Rule issued 05-22-20:

- Compensation to "owner-employees" that is eligible for forgiveness is capped at the lesser of 8/52 (approximately 15.38%) of 2019 compensation or \$15,385 (\$100,000 annually, prorated for the eight-week period).
  - The guidance uses the term "owner-employee," which is an undefined term.
  - Guidance appears to be using this terminology to collectively refer to self-employed individuals, general partners, and members of LLCs who file as partnerships.
  - Are shareholder-employees intended to be covered by this new terminology?
  - For now, we have to assume YES.
- Non-payroll costs are eligible for forgiveness (subject to the 25% cap) if paid during the 56 days following loan disbursement, or incurred during that 56-day period and paid on the next regular billing date.
- Advance payments of mortgage obligation (interest) are not eligible for loan forgiveness. Rent was not addressed but I would assume it will apply to rent as well.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### New Clarifications Second Final Interim Rule issued 05-22-20:

- The loan forgiveness application confirmed an exception to forgiveness reduction in situations where an employee was given an offer to return to work but refused to do so.
  - The interim final rule confirms this exception, but in addition to documentation concerning the offer and refusal (which the borrower must maintain), it requires the borrower to have informed the state unemployment insurance office of the rejected offer within 30 days of the rejection.
- The guidance confirms that a full-time equivalent (FTE) employee is based on a 40-hour-per-week standard. Employees who are paid for an average of 40 hours per week or more are a 1.0 FTE employee.
- For employees who were paid for less than 40 hours per week, borrowers may choose to calculate the full-time equivalency in one of two ways.
  1. Calculate the average number of hours a part-time employee was paid per week and divide the number by 40.
  2. Borrowers may elect to use a full-time equivalency of 0.5 for each part-time employee.

### PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

#### **New Clarifications Second Final Interim Rule issued 05-22-20:**

- Borrowers will not be double penalized for reducing an FTE employee.
  - The salary/wage reduction provision applies only to a decline in employee salary or wages that is not attributable to an FTE employee reduction.
  - Also, note that the salary/wage comparison is based on the employee's average salary or wages.
- FTE employee or salary/wage reductions that occurred between February 15, 2020, and April 26, 2020, do not adversely impact forgiveness if they are remedied by June 30, 2020.
  - This appears to suggest that as long as you "remedy" the reduction by June 29<sup>th</sup> you will be granted full forgiveness.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### Calculations for FTE Reductions:

#### 1) Baseline Reduction in Headcount:

- i. the average number of FTEES per month employed by the company during the period from **February 15, 2019 through June 30, 2019, OR**
  - ii. the average number of FTEES per month employed by the company during the period from **January 1, 2020 through February 29, 2020.**
- For seasonal employers, any consecutive 12-week period between May 1, 2019, and Sept. 15, 2019.

#### 2) Calculate your FTE's for Covered Period or Alternative Payroll Covered Period:

Note: Need to adjust FTE's for terminations, resignations and those who refuse a documented offer of employment along with other stipulations.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### Calculations for FTE Reductions:

#### 3) FTE Safe Harbor

There is a forgiveness reduction should the average number of FTEs in the covered period (or alternate) fall below the baseline average FTE. A borrower need not calculate the reduction if both the following safe harbor conditions are met:

- FTE for the period between Feb. 15, 2020, and April 26, 2020, is less than the total FTE in the borrower's pay period that includes Feb. 15, 2020; and,
- The borrower's FTE as of June 30, 2020, is greater than or equal the total FTE in the borrower's pay period inclusive of Feb. 15, 2020.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVENESS GUIDANCE

### New Clarifications Second Final Interim Rule issued 05-22-20:

- Lenders must make forgiveness decisions within 60 days after the borrower makes a forgiveness application.
  - If a lender denies a borrower's forgiveness application, the borrower may, within 30 days, ask SBA to review the lender's decision.
- SBA to complete its review process within the 90-day period thereafter.
- SBA may review **any loan** (not just those above the \$2 million threshold) at **any time**. The guidance specifically notes the six-year retention period for PPP loan documents, suggesting that review could come at any time during that six-year period.
- Borrowers may appeal an adverse determination by SBA on loan eligibility or forgiveness—SBA intends to issue additional guidance on the appeal process.



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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### More Changes Possible:

- **The House** on Thursday passed (417-1) bipartisan legislation to provide struggling small businesses with more flexibility while using loans provided through the Paycheck Protection Program, in the latest effort by lawmakers to help limit the economic impact of the coronavirus pandemic.
  - The bill would give small businesses up to 24 weeks, up from the current eight weeks, to use the loans and extend the deadline for rehiring workers from June 30 to the end of this year.
  - Change the ratio to at least 60 percent on payroll and up to 40 percent on rent, overhead and other costs.
- **The Senate** introduced a bill that would extend the forgiveness period from 8 weeks to 16 weeks.
- Although neither Bill is final there seems to be bipartisan support for extending the forgiveness period.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### More Changes Possible:

#### The Senate

- Introduced a bill that would allow for expenses related to loan forgiveness to be deductible.

#### The Senate – JOBS Credit Act

- Employee Retention Credit
  - Proposed and increase from 50% to 80% of “qualified wages” increasing the cap from \$5,000 in “qualified wages” per quarter to \$12,000 per quarter.
  - Employee Retention Credit – Currently, if you received a PPP Loan you are not able to utilize the Employee Retention Credit. This bill would make it possible for those that received a PPP to also use the (ERC) this with some stipulations that prevent “double dipping”.
  - Lower the “Gross Receipts Reduction Test” from 50% of same prior year calendar quarter gross sales to 80%.
  - Health plan expenses would be included as part of “qualified wages” including where an employer furloughs employees but continues provide health benefits.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – NEW FORGIVNESS GUIDANCE

### **Just Announced:**

- The U.S. Small Business Administration, in consultation with the U.S. Treasury Department, announced that it is setting aside \$10 billion of Round 2 funding for the Paycheck Protection Program (PPP) to be lent exclusively by Community Development Financial Institutions (CDFIs).
- CDFIs work to expand economic opportunity in low-income communities by providing access to financial products and services for local residents and businesses. These dedicated funds will further ensure that the PPP reaches all communities in need of relief during the COVID-19 pandemic.

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CARES ACT REVIEW

## PAYCHECK PROTECTION PROGRAM (PPP) – LINKS & RESOURCES

*[PPP Loan Forgiveness application packet](#)*

[Second Final Interim Rule - Loan Forgiveness Requirements](#)

[Second Final Interim Rule - Borrower and Lender Responsibilities](#)

# Questions?

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# Thank you!

We may be conducting another webinar Next Friday, June 5<sup>th</sup> 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 May 28th, 2020 and is subject to change.**