



PLATINUM GROUP  
CLOUD PAYROLL | HR | ACCOUNTING

# Webinar 11

*Employer Updates 06-12-2020*

# Platinum Group

Webinar-June 12, 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-June 12, 2020

## COVID-19 WEBINAR 11

PPP Loan Forgiveness "Flex Act" Changes & Top 5 Employment Law Rehire Questions Answered  
6.12.20



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# Platinum Group

Webinar June 12, 2020

## AGENDA

- **Top Rehire Questions & New EEOC Guidance**
- **Paycheck Protection Program Flexibility Act (PPPFA) Forgiveness Provisions**
  - **Summary of Changes**
  - **Examples**
  - **What Didn't Change**
  - **Practical Considerations & More Guidance Needed**

# COVID-19 Employment Law Update

Platinum Group  
June 12, 2020

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LAW FIRM

# New EEOC Guidance: Reasonable Accommodation

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- Employee without disability is not entitled to accommodation to avoid exposing family member with a medication condition to COVID-19
  - Not required to allow teleworking
  - May allow if choose to—but no disparate treatment
  - Remember emergency paid sick leave
- If an employee requests alternative screening method due to disability → request for reasonable accommodation
  - Same if requested due to religious reasons



# New EEOC Guidance: Pregnancy

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- Cannot exclude from workplace during pandemic solely due to pregnancy (even if good intentions)
- Reasonable accommodation
  - Pregnancy-related medical conditions can be disabilities under the ADA
  - Women affected by pregnancy, childbirth, and related conditions must be treated the same as others who are similar in their ability or inability to work under the Pregnancy Discrimination Act
- Female employees cannot be given more favorable treatment in terms of flexibility related to care for school-aged children based on assumptions about caretaking responsibilities



# New EEOC Guidance: Harassment

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- Addresses harassment based on national origin related to perception that employee is from Asia
  - Comments about COVID-19 or its origins in China
- Remember that harassment can occur by electronic communications
  - Employer should take some actions as if occurred in the workplace
- May choose to send reminder to entire workforce about harassment





# Rehire: Practical Considerations

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- Rehiring is a good time to address other issues like:
  - Employee handbooks
    - Vacation or PTO policies
    - Severance pay
    - Bonus policies
  - Non-competition, non-solicitation, or non-disclosure agreements
  - FLSA classification issues



# Rehire: Practical Considerations

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- Restricting employees' out of work activities
  - Secondary employment
  - Travel
  - Mass gatherings
- Consider how the employee will be affected by these restrictions



# Rehire: Practical Considerations

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- Not rehiring can be an adverse action under Title VII, ADEA, and ADA
- Remember the expectations you set
- Objective criteria
- PPP loan forgiveness implications
- Reasonable accommodations

# 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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## AGENDA

- **Top Rehire Questions & New EEOC Guidance**
- **Paycheck Protection Program Flexibility Act (PPPFA) Forgiveness Provisions**
  - **Summary of Changes**
  - **Examples**
  - **What Didn't Change**
  - **Practical Considerations & More Guidance Needed**

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FLEX ACT REVIEW

### PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

#### Summary of Key Provisions:

- The Act extends the “covered period” for a borrower to spend the PPP loan from eight weeks to 24 weeks (but not beyond 12-31-20).
- Borrowers whose loans predate the Act have the **option** to keep the eight-week covered period for their loan forgiveness applications.
- Borrowers will receive forgiveness as long as **at least** 60% of the loan proceeds are used for payroll costs, and they may receive forgiveness for up to 40% of the loan spent on non-payroll costs (e.g., rent, mortgage interest, and utilities).
- The Act extends the deadline for employers to restore wage and salary reductions and rehire workers in order to qualify for the loan forgiveness “safe harbors” from June 30, 2020, to December 31, 2020.

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FLEX ACT REVIEW

## PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

### Summary of Key Provisions:

- Borrowers now have a safe harbor from loan forgiveness reductions even if FTEs have not been restored by December 31, 2020, provided the employer can
  - (A) document “in good faith” that (i) they have been unable to rehire the FTE and (ii) have been unable to hire a similarly qualified employee for that unfilled position **or**
  - (B) document that they have been unable to return to the level of business that existed prior to February 15, 2020, due to the limitations placed on the business by [CDC](#) and [OSHA](#) pertaining to COVID-19, such as sanitation, social distancing and worker and customer safety requirements.
- The Act extends the time before payments of interest and principal are due on a PPP loan, from six months until the date the SBA pays the borrower’s loan forgiveness amount to its lender **or** ten months in the case of borrowers that do not make an application for PPP loan forgiveness.

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FLEX ACT REVIEW

## PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

### Summary of Key Provisions:

- The Act permits employers to delay payment of payroll taxes (social security taxes) even if they are planning to seek loan forgiveness. This means that PPP loan borrowers may defer 2020 payroll taxes in accordance with the CARES Act, repaying 50% on or before December 31, 2021, and 50% on or before December 31, 2022.
- The Act increases to five years the maturity of PPP loans that are approved by the SBA (based on the date the SBA assigns a loan number) on or after June 5, 2020.
- For loans made before June 5, 2020, the maturity is two years; however, borrowers and lenders may mutually agree to extend the maturity of such loans to five years.
- The “covered period” still begins on the PPP funding date.
- June 30, 2020 remains the last date a PPP loan application can be approved. New PPP Application Available.



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FLEX ACT REVIEW

## PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

### Examples of Key Provisions:

- **Deferral Period for PPP Loans:** If a borrower’s PPP loan is disbursed on June 25, 2020, the 24-week period ends on December 10, 2020. If the borrower does not submit a loan forgiveness application to its lender by October 10, 2021, the borrower must begin making payments on or after October 10, 2021.
- **Partial Forgiveness:** If a borrower uses 59% of its PPP loan for payroll costs, it will not receive the full amount of loan forgiveness it might otherwise be eligible to receive. Instead, the borrower will receive partial loan forgiveness, based on the requirement that 60% of the forgiveness amount must be attributable to payroll costs. For example, if a borrower receives a \$100,000 PPP loan, and during the covered period the borrower spends \$54,000 (or 54%) of its loan on payroll costs, then because the borrower used less than 60 percent of its loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is \$90,000 (with \$54,000 in payroll costs constituting 60 percent of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40 percent of the forgiveness amount).

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FLEX ACT REVIEW

## PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

### What remains the same?:

- Definition of Payroll Costs eligible for forgiveness
- Definition of Non-Payroll Costs Eligible for forgiveness
- FTE Base Periods (Either 02/15/19 to 06/30/19 or 01/01/20 to 02/29/20)
- FTE Count Based on 40 hours per week (two calculations available)
- FTE & Salary reductions still apply – New 12/31/20 measurement date & safe harbor rules

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FLEX ACT REVIEW

### PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

#### **Practical Considerations & New Guidance Needed:**

- If FTE headcount and wages prior to 24 weeks or December 31st, is safe harbor met?
- Is owner compensation now capped at the lower of 2019 average wages or \$100,000 for the new 24 week period?
- Is the “alternate covered payroll period” for weekly and bi-weekly payrolls still available under the 24 week period? May not be necessary.
- New forgiveness application needed.
- Will we be allowed to take the expenses related to Forgiveness? No for now.
- Inability to return to same level of business based on CDC/HHS/OSHA. What about more localized shut downs?
- Do previously issued rules for reductions related employees that were fired, resigned or voluntarily reduced hours still apply under the 24 week period?
- What will 12/31/20 look like for your business? Income Tax return considerations?
- Depending on your particular situation there may be a case for sticking with the 8 week period. Who knows how new guidance will work?
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CARES ACT REVIEW

**Questions?**

CARES ACT REVIEW

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# Thank you!

We will not be conducting next Friday but plan to resume the following Friday,  
June 26<sup>th</sup> at 1:00.  
Invitations to be sent

**Recordings and presentation slides will be sent out this afternoon.  
Information in the presentation is based on information available on June 11th,  
2020 and is subject to change.**