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Webinar 04

Employer Updates 04-10-2020

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Webinar 04-April 10, 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 04

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Webinar 04-April 10, 2020

COVID-19 : EMPLOYER WEBINAR SERIES : 04

EMPLOYER UPDATES 04 • 10 • 2020

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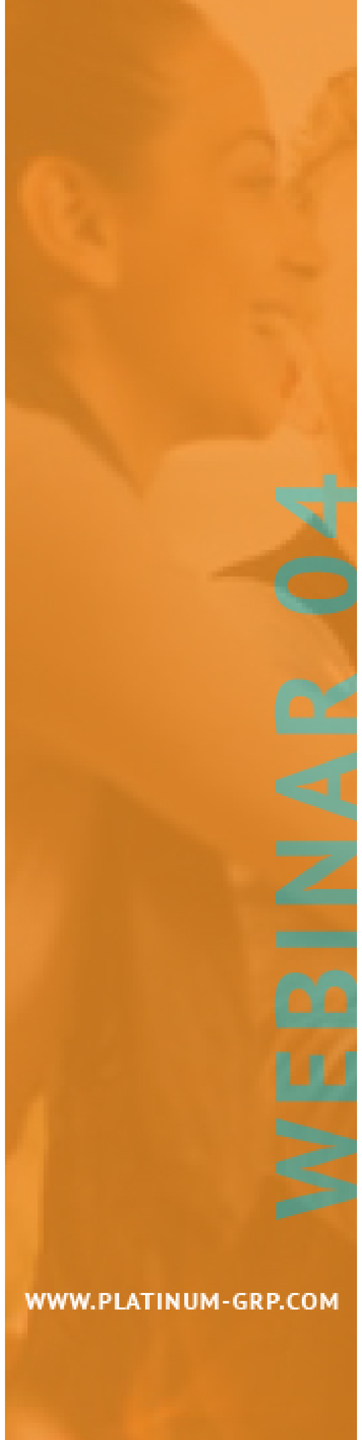

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Webinar 04-April 10, 2020

AGENDA

- **New DOL Guidance issued – Unemployment (including independent contractors)**
- **Paycheck Protection Program (PPP) – Forgiveness provisions you need to understand**
- **Employee Retention Credit & Deferment of Payroll Taxes**
- **Other Loan Options**
- **Financial Strategies & Considerations for business owners**

COVID-19 Employment Law Update

Platinum Group
April 10, 2020

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Topics for Today

- Unemployment Changes
  - Number of claims
    - 25,000/24 hour period
    - 85-90% are COVID related
  - Furloughs no longer matter!
  - Federal Unemployment Guidance
  - Check DES website FAQs every two days
- New ADA Guidance on COVID-related questions from the EEOC
- Revisiting Leave Documentation Questions

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Executive Order 131 (4/09/2020)

- Division may choose not to enforce the requirements of NC Gen. Stat. 96-15(a1)
- Employers may file attached claims
  - Attached claims – furloughs/temporary layoffs/reduced hours (more than 40%)
- Employees not limited to 6 weeks in 12 month period
- Employers not required to have positive account balance
- Employers not required to pre-pay unemployment costs
- Division shall establish an automated process for employers to file attached claims
- Retroactive to April 1, 2020 at 12:01 a.m. for 60 days.
- This means for insurance purposes if you need to furlough the attached claim ri is gone.

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Federal Unemployment Expansion Programs

- Federal Pandemic Unemployment Compensation (“FPUC”)
- Pandemic Unemployment Assistance (“PUA”)
- Pandemic Emergency Unemployment Compensation (“PEUC”)

Federal Pandemic Unemployment Compensation

- $600 per week in addition to other unemployment benefits
- 100% federally funded – cannot be charged to employer
- If eligible for North Carolina unemployment, automatically eligible for FPUC
  - If receive $1 in North Carolina unemployment benefit in a week, eligible to receive entire $600 in that week
  - Works for all programs, but is a weekly determination if employees are reduced rate or hours
- April – July 2020
- NC will implement this program: April 17, 2020 (retroactive)
- FPUC benefits are taxable

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Pandemic Unemployment Assistance

- Provides benefits for:
  - Those not eligible for traditional unemployment (religious workers)
  - Self-employed (gig workers, independent contractors)
- Provides up to 39 weeks of benefits
- Must certify that:
  - Able and available to work
  - Unable to work/unemployed due to COVID-19
- Not eligible if
  - Able to telework with pay
  - Eligible for paid leave benefits
- Anticipated date: April 25, 2020

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Pandemic Unemployment Assistance

- Independent contractors with reportable income are eligible for PUA if unemployed, partially unemployed, or unable to work because COVID-19:
  - Has “severely limited” ability to continue performing customary work activities, and
  - Thereby forced the individual to suspend such activities
- Example: Uber driver may qualify for PUA benefits if COVID-19 forced to suspend operations, such as when local order restricts movement and makes continued operations “unsustainable”
- Will be calculated based on 1099 payments and will be eligible for additional $600 as well according to DES
- DES working with NC Dept of Revenue

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Pandemic Emergency Unemployment Compensation

- Provides up to 13 additional weeks of unemployment assistance for those who have exhausted state unemployment benefits
- Maximum number of weeks in NC is set based on unemployment rate as of January 1 and July 1.
  - January 1 – 12 weeks
  - Based on when claim is filed
- DES does not have a timeline for implementation on this yet so unclear how this will actually work

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Practical Tips

- When laying off employees due to COVID-19, consider:
  - Objective criteria for selection (years of service; part-time versus full-time; department; cross-training)
  - Cannot layoff due to being in high risk category
  - Protected categories and protected activity
  - PTO forfeiture vs. payout
  - Health insurance and COBRA
- Do not give definite re-hire date or make promises you can't keep
- Be realistic about what start-up may look like

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EEOC Guidance: Requesting Medical Information

- You can ask employees if experiencing COVID-19 symptoms
  - Not a free-for-all: only symptoms identified by CDC, public health authorities, or other "reputable medical sources"
  - Examples: fever, dry cough, loss of taste or smell, gastrointestinal
- You can check employee temperatures
  - Medical examination under ADA
  - May keep daily log of temperature check
- Can retain COVID-19 medical information in existing employee medical file
  - Do <u>not</u> store in personnel file
  - Must keep confidential
  - Includes employee statement that suspects has COVID-19, temperature information, and employer notes about symptoms
- Can disclose name of employee diagnosed with COVID-19 to public health authority

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EEOC Guidance: Sending Employee Home

- Employer may require employee with COVID-19 symptoms to stay home
- May require doctor's note before returning to work
  - Flexibility is encouraged due to current strain on medical providers
  - New approaches: form, stamp, or email certifying that the employee does not have COVID-19
- Should not send home based on higher risk
  - Pregnancy
  - 65 or older

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EEOC Guidance: Hiring

- May screen for COVID-19 <u>after</u> conditional job offer
  - Must screen all employees entering that job
- May delay start date of new hire with COVID-19 symptoms
- If need employee to immediately start and exhibiting COVID-19 symptoms → may rescind the job offer
- Cannot postpone or withdraw offer because individual is pregnant or 65 years or older
  - May allow teleworking or discuss whether the employee would like to postpone the start date

Reasonable Accommodation

- Individuals with pre-existing mental health conditions exacerbated by COVID-10
  - Anxiety disorder, obsessive-compulsive disorder, PTSD
  - Treat like any other accommodation request → interactive process
- Individuals with pre-existing health conditions that make the more susceptible to COVID-19
  - Teleworking
  - Reduce contact (barriers, plexiglass, one-way aisles)
  - Modifying work schedule, temporary transfer, restructure job duties
- If everyone working remotely → may prioritize accommodation requests related to teleworking
- Additional/altered accommodations for employees with existing accommodations

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FFCRA Sick Leave Documentation

- Subject to federal, state, or local isolation or quarantine order
  - Name of government entity issuing order
- Been advised by healthcare provider to self-quarantine
  - Name of healthcare provider advising to self-quarantine
- Experiencing COVID-19 symptoms and seeking diagnosis
  - Symptoms
  - Name of healthcare provider seeking diagnosis

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FFCRA Sick Leave Documentation

- If caring for individual subject to government isolation or quarantine order, or advised by medical provider to self-quarantine
  - Name of individual for whom providing care
  - Relationship to individual
  - Name of government entity issuing order or medical provider advising to self-quarantine
  - Certify that cannot work or telework due to need to care for individual and individual is dependent upon employee's care

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FFCRA: Child Care Documentation

- Name and age of child(ren) to be cared for
- Name of school, place of care, or childcare provider unavailable or closed
- If providing care for child aged 14 or older during daylight hours → statement explaining special circumstances requiring employee to provide care
- Certify that no other suitable individual will provide care during time employee is requesting leave
- No other documentation can be requested

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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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PAYCHECK PROTECTION PROGRAM (PPP) LOANS

QUESTION: What costs are eligible for payroll?

Answer:

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees

CARES ACT REVIEW

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: What costs are not eligible for payroll?

Answer:

- Employee/owner compensation over $100,000
- Payroll taxes, railroad retirement taxes and income taxes
- Compensation of employees whose principal place of residence is outside of the U.S.
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response
- ***DO NOT COUNT INDEPENDENT CONTRACTORS***

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: What are allowable uses of loan proceeds?

- Payroll costs (as noted above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Employee salaries, commissions, or similar compensations (see exclusions above)
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before February 15, 2020
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: When does the loan forgiveness clock start & what costs apply?

- **To assess eligibility, the lender will evaluate the borrower's use of proceeds during the eight-week period following the loan origination. This eight-week period is also known as the "covered period".**

- **A borrower is eligible for loan forgiveness if it has used at least 75% of the loan proceeds for payroll costs, with any balance going towards covered mortgage interest payments, covered lease payments or covered utilities.**

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: How could the forgiveness be reduced?

The forgiveness analysis of a PPP loan requires a three-step analysis based on the following three metrics: (i) Reduction in Headcount, (ii) Reduction in Wages, and (iii) Rehires, all of which are discussed in more detail below.

1. **<u>Reduction in Headcount</u>**

Multiply the amount of the loan which qualifies for forgiveness by the following fraction:

- Numerator: average number of full time equivalent employees (FTEES) per month employed by the company during the eight-week period (**starting on the loan date**); divided by:

- Denominator:
    - the **<u>lower</u>** of (i) the average number of FTEES per month employed by the company during the period from **February 15, 2019 through June 30, 2019, <u>OR</u>**
    - (ii) the average number of FTEES per month employed by the company during the period from **January 1, 2020 through February 29, 2020**.

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: How could the forgiveness be reduced? (continued)

2. Reduction in Wages

Subtract a dollar amount computed as follows:

- identify all employees earning less than $100,000 (Applicable Employee(s)) who are still employed during the eight-week period;
- for each Applicable Employee, take that employee's wages/salary rate during the eight-week period and compare it to that employee's wages/salary rate for Q1 2020;
- for any Applicable Employee whose current wages/salary rate did drop by more than 25%: compute (x) the amount of wages/salary the employee would have received for the eight-week period at 75% of the Q1 rate and subtract (y) the amount the employee actually received for the eight-week period;
- add up all of the >25% reduction amounts for all of the Applicable Employees still employed during the eight-week period.

That aggregate dollar amount further decreases the amount of the loan that is forgivable. The Applicable Employees are only those employees whose wages/salary rates were not greater than $100,000 annually during 2019.

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: How could the forgiveness be reduced? (continued)

<u>3. Rehires</u>

Correct decreases from either of the first or second step, respectively, as follows:

- The Reduction in Headcount can be avoided if by June 30, 2020 the reduction in your total FTEES headcount for the period between February 15, 2020 and April 26, 2020 has been restored; and/or
- Reduction in Wages can be avoided if by June 30, 2020 you have restored to the Applicable Employees the same wages/salary they were earning as of February 15, 2020.

The Rehire step is meant to motivate companies to use loan proceeds to restore headcount **<u>AND</u>** wage levels. **<u>If you do both, then the full loan amount can be forgiven</u>**. If you do one or the other, then one reduction, or the other, can be ignored but there is no proportional relief for restoring part of one or part of the other.

There is no requirement that the borrower rehire the same employees; hiring full-time equivalent employees is sufficient

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

QUESTION: How could the forgiveness be reduced? (Continued)

Additional Guidance Needed:

- **Definition of average FT/FTE's – Does this apply to Full-Time equivalent (FTE's) as defined by the Affordable Care Act or does it only apply to Full-Time Employees ?**

PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

Note Regarding EIDL Loans

- If a borrower received an EIDL loan between 1/1/20 and 4/3/2 they may apply for a PPP loan.
- If the EIDL was not used for payroll costs, it does not affect their eligibility for a PPP loan.
- If the EIDL loan was used for payroll costs, the PPP loan must be used to refinance your EIDL loan.
- Any advance on the EIDL will be deducted from the loan forgiveness amount on the PPP loan.

EMPLOYEE RETENTION CREDIT

What is the Employee Retention Credit?

- The Employee Retention Credit is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees.

- This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021.

- The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is $5,000.

EMPLOYEE RETENTION CREDIT (continued)

Does my business qualify to receive the Employee Retention Credit?

- Eligible Employers for the purposes of the Employee Retention Credit are those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either:

    - Fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
    - Experiences a significant decline in gross receipts during the calendar quarter.

- **Note:** Governmental employers are not Eligible Employers for the Employee Retention Credit. Also, Self-employed individuals are not eligible for this credit for their self-employment services or earnings.

EMPLOYEE RETENTION CREDIT (continued)

How do I know which wages qualify?
Qualifying wages are based on the average number of a business's employees in 2019.

- **Employers with less than 100 employees in 2019***:* If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full time work, the employer still receives the credit.

- **Employers with more than 100 employees in 2019***:* Qualified wages are the wages paid to an employee for time that the employee is **not providing services** due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

EMPLOYEE RETENTION CREDIT (continued)

How is the credit calculated?

- The amount of the credit is 50% of **qualifying wages** (including qualified health plan expenses) paid up to $10,000 in total.

- **Wages paid after March 12, 2020, and before Jan. 1, 2021**, are eligible for the credit. Wages taken into account are not limited to cash payments, but also include a portion of the cost of employer provided health care.

Against what employment taxes does the credit apply to?

- The credit is allowed against the employer portion of social security taxes under section 3111(a) of the Internal Revenue Code (the "Code"), and the portion of taxes imposed on railroad employers under section 3221(a) of the Railroad Retirement Tax Act (RRTA) that corresponds to the social security taxes under section 3111(a) of the Code.

EMPLOYEE RETENTION CREDIT (continued)

What makes the credit "fully refundable"?

- The credits are fully refundable because the Eligible Employer may get a refund if the amount of the credit is more than certain federal employment taxes the Eligible Employer owes.
- That is, if for any calendar quarter the amount of the credit the Eligible Employer is entitled to exceeds the employer portion of the social security tax on all wages paid to all employees, then the excess is treated as an overpayment and refunded to the employer.
- Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the employment tax return and the amount of any remaining excess will be reflected as an overpayment on the return.

EMPLOYEE RETENTION CREDIT (continued)

What makes the credit "fully refundable"? (Example)

- Eligible Employer pays $10,000 in qualified wages to Employee A in Q2 2020.
- The Employee Retention Credit available to the Eligible Employer for the qualified wages paid to Employee A is $5,000.
- This amount may be applied against the employer share of social security taxes that the Eligible Employer is liable for with respect to all employee wages paid in Q2 2020.
- Any excess over the employer's share of social security taxes is treated as an overpayment and refunded to the Eligible Employer on the employment tax return.

EMPLOYEE RETENTION CREDIT (continued)

I am an eligible employer. How do I receive my credit?

- Eligible Employers will report their total qualified wages and the related credits for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's portion of social security and Medicare tax.

- In anticipation of receiving the credits, Eligible Employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.

- Eligible employers can request an advance of the Employee Retention Credit by submitting Form 7200.

EMPLOYEE RETENTION CREDIT (continued)

May an eligible employer receive both the Employee Retention Credit and a a Paycheck Protection Program Loan?

- **No,** An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act ("Paycheck Protection Loan"). An Eligible Employer that receives a paycheck protection loan should not claim Employee Retention Credits.

DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES

Delay of Payment of Employer Payroll Taxes

This provision would allow taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments,

- one at the end of 2021, the other at the end of 2022.
- Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.
- **Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.**

PAYCHECK PROTECTION PROGRAM (PPP) LOANS

QUESTION: What lenders might be currently accepting applications for the PPP Loans?

Answer:

- Google “online lenders making PPP loans”.
    - Kabbage, Lendio, Fundera, Credibly & Live Oak.
- Mountain Bizworks opened up yesterday able to do PPP loans

Note: We are not endorsing these lenders – simply providing information

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)

Purpose: To meet financial obligations and operating expenses that could have been met had the disaster not occurred

- **Eligibility:** small business with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organization or 501(c)(19) veterans organizations affected by COVID-19
  - Businesses in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries.

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

- **Terms:** Up to $2 million
- **Interest Rate** 3.75% small businesses & 2.75% for Non-Profits
- **Loan Forgiveness:** NO
- **Maturity:** 30 years
- **First Payment Due:** Deferred 1 year
- **Security of Loan:**
  - Secured up to $2 million, and
  - Unsecured loan up to $25,000.

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Criteria for loan approval

- Credit history – Applicants must have a credit history acceptable to SBA
- Repayment – SBA must determine that the applicant business has the ability to repay the SBA loan

Collateral requirements

- Economic Injury Disaster Loans over $25,000 require collateral
- SBA takes real estate as collateral when it is available
- SBA will not decline a loan for lack of collateral, but requires borrowers to pledge what is available

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Use of loan funds

These working capital loans may be used to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the disaster not occurred. The loans are not intended to replace lost sales or profits or for expansion.- **Loans will be modified impacted by stimulus package**

Application amount

You will not be asked how much you would like to borrow. The SBA uses the information you provide to determine the loan amount.

SBA - (EIDL)Forgiveness/Advance (grant up to 10K)

- On March 29, 2020, following the passage of the CARES Act, the SBA provided small business owners and nonprofits impacted by COVID-19 with the opportunity to obtain up to a $10,000 Advance on their Economic Injury Disaster Loan (EIDL)
- The Advance is available as part of the full EIDL application and will be transferred into the account you provide 7-10 days after your application is submitted.
- **Forgiveable:** YES
  - even if the grantee is subsequently denied an EIDL

SBA - (EIDL)Forgiveness/Advance (grant up to 10K)

Use of loan funds

Funds can be used to provide paid sick leave to employees, maintain payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.

Eligibility:

Advances are available to small businesses, sole proprietors, independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses in operation on January 31, 2020.

SBA - (EIDL) Economic Injury Disaster Loans

UPDATES:04/09/2020

- If you received a loan application confirmation number that begins with the number 2, You will need to re-apply
- 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 7-10 days on EIL ADVANCE & 14-20 days for EIDL

SBA - (EIDL) Economic Injury Disaster Loans

UPDATES:04/03/2020

- If you applied for EIDL prior to March 29th and you are interested in the EIDL Advance then you will need to go back on to SBA.GOV portal to re-apply and check the box that you are interested in the Advance.
- If you applied on or after March 29th for EIDL and did not check the box for wanting the Advance of up to $10,000, you will need to fill out the Simplified App on SBA.GOV and it would be caught up with original application and you will not lose your place in line.

Other Loan Options & Opportunities

1. **SBA Debt Relief for Existing Loans**
   - SBA will automatically pay the principal, interest, and fees of 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*. The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.

1. **EXIM Export Credit Insurance**
   - Encouraged to contact Sharyn Koenig | sharyn.koenig@exim.gov | (305) 526-7436 x17

1. **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

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.

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.

Keep yourself updated on Business Resources at our Covid-19 dedicated site:
http://www.sbtdc.org/coronavirus/

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Webinar 04

Financial Strategies – Ken Kaplan with Kaplan CFO Solutions

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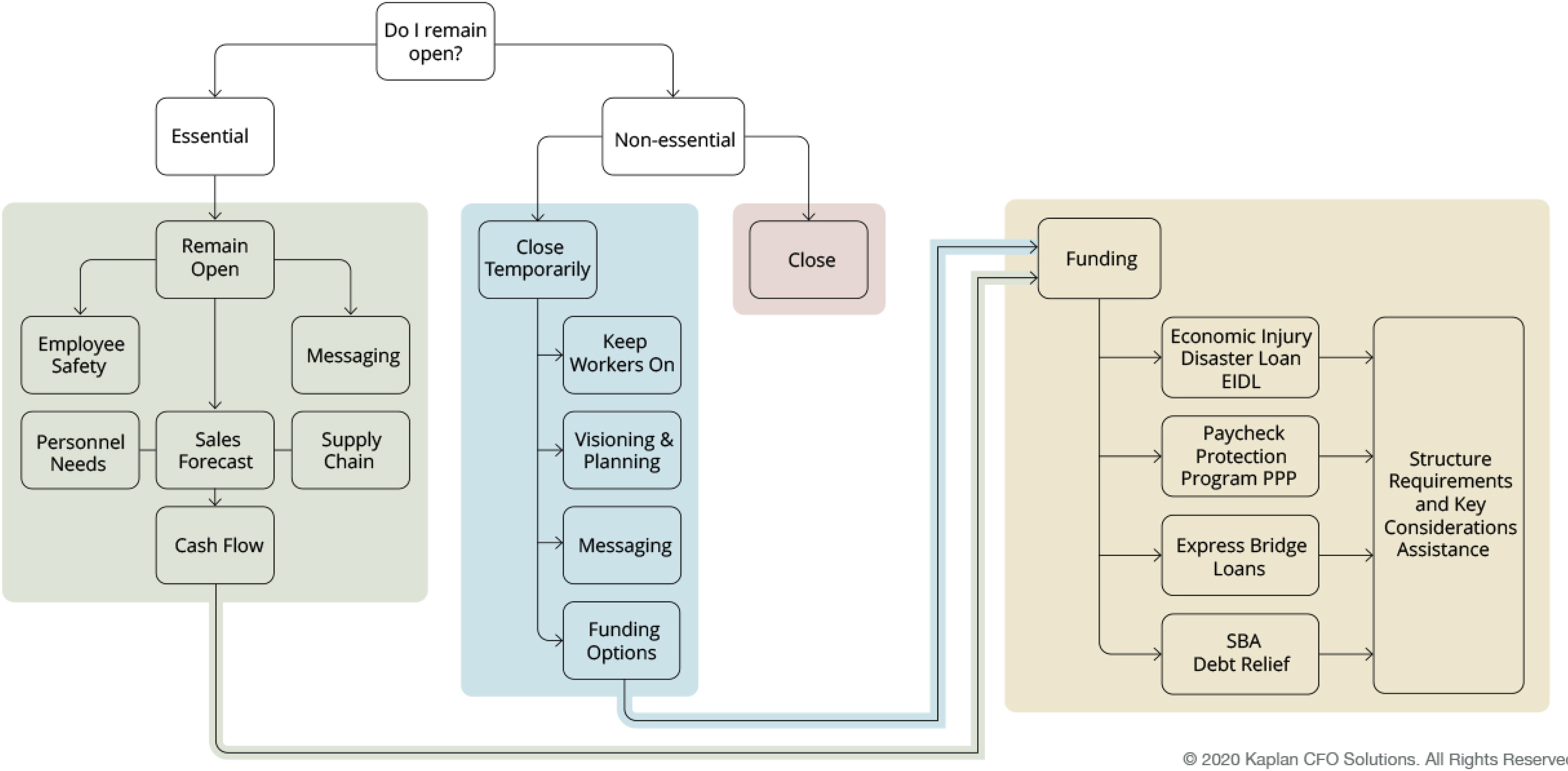
Kaplan CFO Solutions | A Strategic Business Approach to Navigating COVID-19



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Webinar 04-April 10, 2020

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PAYCHECK PROTECTION PROGRAM (PPP) LOANS-(CONTINUED)

Thank you!

We will be conducting another webinar next Friday, April 17th at 1:00.

Topics to be determined and invitations will be sent early next week.

Information in the presentation is based on information available on April 9, 2020 and is subject to change.