



PLATINUM GROUP  
CLOUD PAYROLL | HR | ACCOUNTING

# Webinar 9

*Employer Updates 05-21-2020*

## Platinum Group

Webinar-May 21, 2020

### WEBINAR LOGISTICS

- **All Participants are muted.**
- **Unlike previous webinars we will not be taking questions during this webinar. Most pre-webinar questions will be addressed in the presentation.**
- **A recording of the webinar and presentation slides will be available this afternoon.**
- **Rapidly changing environment – What we know now.**

# Platinum Group

Webinar-May 21, 2020

## COVID-19 WEBINAR 09

Top Rehire & Reopening Questions Answered  
Review of New PPP Forgiveness Application and Guidance  
5.21.20



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Webinar May 21, 2020

## AGENDA

- **Top Rehire & Reopening Questions Answered.**
- **Paycheck Protection Program (PPP) – New Forgiveness Application and Guidance.**

# COVID-19 Employment Law Update

Platinum Group  
May 21, 2020

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**McGUIRE WOOD & BISSETTE**  
LAW FIRM

# Setting PPE Rules

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- Treat new protocol like you do other safety requirements
- Training
- Employee Rules and Acknowledgement
- Enforce as a safety standard
- Do you have to provide it?
  - Cost
  - What if employee shows up without it?

# What if My Employee Refuses to Wear a Mask?

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- Are you requiring them and can you point to best practices/industry guidance?
- Is it for a medical reason?
  - Reasonable accommodation process – doctor information
  - Offer another position if available
- If it is not for a medical reason, employees cannot refuse to wear PPE



# What if Employee Refuses to be Tested?

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- Why is the test being conducted?
  - Go back to best practices from CDC and/or industry specific guidance
- Is employee citing documented medical or religious reasons?
- Are there alternatives to testing?
- Ultimately, based on safety requirement, may choose to terminate employment.



# What if an Employee Tests Positive?

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- The Health Department should already know from the medical provider
- You can inform employees that you have had a positive test result
- Have cleaning protocol in place for the area where the employee worked
- At least employees who had more than 10 minutes of close contact with employee will likely be quarantined and/or tested
- Remember if Health Department tells employee to quarantine, emergency sick leave applies



# A Word About Benefits...

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- Disaster Relief Notice 2020 01 – Extensions of time related to employee benefit plans
- Extended eligibility for loss in coverage or new dependent coverage
- Extended COBRA election deadlines
- Extended COBRA premium payment deadlines
- Extended Claims Procedure Timeframes
- Most extensions are based on the “Outbreak Period”: March 1 until 60 days after the announced end of the National Emergency



# 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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Webinar May 21, 2020

## AGENDA - New PPP Loan Forgiveness Application & Guidance

- **High Level Review of Application.**
  - Review important definitions.
  - Review required documents.
- **Review “Alternative Payroll Covered Period” example.**
- **Review of payroll costs (what to include and what not to include & timing). The 75% requirement.**
- **Review of non payroll costs (what to include and what not to include & timing). The 25% requirement.**
- **Other thoughts and open questions.**

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CARES ACT REVIEW

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

**The forgiveness form was designed to reduce compliance burdens and simplify the process of borrowers. It features:**

- Optional "alternative payroll covered period" to calculate payroll costs to align with a borrower's payroll cycle;
- Flexibility to include both payroll and nonpayroll costs paid or incurred during the eight-week period after receiving the loan;
- Detailed calculation instructions so a borrower may confirm eligibility for loan forgiveness;
- How to determine the exemption of loan forgiveness reduction based on rehiring by June 30; and
- How to determine the exemption of loan forgiveness reduction when an employee refuses to return to work after an offer has been made.

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CARES ACT REVIEW

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

Contents of the loan forgiveness application. The [PPP Loan Forgiveness application packet](#) includes:

1. PPP Loan Forgiveness Calculation Form and instructions
2. PPP Schedule A and instructions
3. PPP Schedule A Worksheet and instructions
4. List of documents that must accompany the PPP Loan Forgiveness Application
5. List of documents that borrowers must retain but are not required to submit
6. (Optional) PPP Borrower Demographic Information Form

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CARES ACT REVIEW

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

### PPP Loan Forgiveness Calculation Form. Note the following items:

- **Covered period.** The borrower must enter the eight-week period that the loan covers. The first date being the date the loan was disbursed and ending on the 56th day from that date. For example, a loan disbursed on April 20, 2020 would have a covered period of April 20, 2020 to June 14, 2020.
- **Alternative payroll covered period.** Borrowers with a bi-weekly pay frequency may use the first pay period date following receipt of the loan disbursement and ending 56 days from this date.
- **Loans in excess of \$2 million.** Borrowers (together with affiliates) who received a loan in excess of \$2 million must indicate this by checking a box.
- **Forgiveness amount calculation.** The forgiveness amount calculation is determined by adding the payroll costs (as determined by PPP Schedule A, line 10), mortgage interest payments, rent or lease payments, and utility payments.

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CARES ACT REVIEW

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

### PPP Loan Forgiveness Calculation Form. Note the following items (continued):

- **Eligible payroll costs.** Payroll costs are considered paid on the day pay is distributed, however, payroll costs are considered incurred on the day the employee's pay is earned. Payroll costs incurred but not paid by the last period of the covered period or alternative payroll covered period are eligible for forgiveness if paid on or before the next payroll date. Both payroll costs paid and incurred may only be counted once.
- **Eligible nonpayroll costs.** All nonpayroll costs must be paid or incurred during the covered period and paid on or before the next billing date, even if the billing date is after the covered period. Note that the alternative payroll covered period may not be used in this calculation. The amount may not exceed 25% of the total forgiveness amount. The covered period begins on the day the loan is disbursed and ends on the 56th day from that date.



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CARES ACT REVIEW

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

**PPP Loan Forgiveness Calculation Form. Note the following items (continued):**

- ***Adjustments for full-time equivalency (FTE) and salary/hourly wage reductions.*** The full-time equivalent (FTE) reduction and FTE reduction quotient is determined from calculations completed through PPP Schedule A Forgiveness amount.
- This amount is lesser of: (1) the modified total (based on total costs and the required reduction), (2) the PPP loan amount, or (3) 75% of the total payroll costs (as determined on line 10 of the PPP Schedule A).

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CARES ACT REVIEW

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

**Schedule A Worksheet. The Worksheet consists of two tables and a section to determine whether the FTE Reduction Safe Harbor applies to the borrower's situation.**

**Table 1.** Table 1 is used to determine the total cash compensation, the average FTEs, and the salary/hourly wage reduction. Do not include any independent contractors, owner-employees, self-employed individuals, or partners. Cash compensation for each employee is entered here for the Covered Period or Alternative Payroll Covered Period of up to \$100,000 for all pay periods in 2019 or received no compensation in 2019.

- **Cash compensation.** Includes salary, wages, tips, commissions, paid leave (but not paid leave required under the Families First Coronavirus Response Act), or allowances for dismissal paid or incurred during the Covered Period or Alternative Payroll Covered Period.

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

### Schedule A Worksheet. Table 1 (continued)

- **Average FTE.** For each employee, enter the average hours paid per week divided by 40. This is capped a maximum of 1.0. This amount determines whether a reduction in hours has occurred. Alternatively, borrowers may enter 1 for all employees who worked 40 or more hours and .5 for all employees who worked fewer than 40 hours. The reduction will not occur if the borrower is exempt under the FTE Reduction Safe Harbor.
- **Salary/Hourly Wage Reduction.** This calculation is used to determine whether loan forgiveness requires reduction due to a reduction in salaries and wages. This column is only completed when salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of Jan. 1, 2020 through March 31, 2020.

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

### Schedule A Worksheet. Table 1 (continued)

- **Salary/Hourly Wage Reduction Safe Harbor:** A borrower that restores the average annual salary or hourly wage for employees who were previously laid off or had their compensation reduced will be exempt from the reduction in loan forgiveness during the Covered Period (or Alternative Payroll Covered Period) provided that 1) such employee compensation reduction occurred between February 15, 2020 and April 26, 2020, and 2) the borrower restored each employee's average annual salary or hourly wage by no later than June 30, 2020 to the amount of such employee's average annual salary or hourly wage as it existed as of February 15, 2020.

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

### Schedule A Worksheet. Table 1 (continued)

- **FTE Reduction Exceptions.** The borrower indicates any positions where the borrower made a good-faith, written offer of work during the Covered Period or Alternative Payroll Covered Period and any employees who were fired for cause, voluntarily resigned or voluntarily requested and received a reduction in work hours. Only include FTEs that were not replaced by a new employee.

**FTE Reduction Safe Harbor.** This five step section helps to determine if the borrower restored FTE employee levels to meet safe harbor requirements for loan forgiveness. The borrower is exempt from the reduction in loan reduction in forgiveness if the borrower reduced its FTE employee levels in the period beginning Feb. 15, 2020 and ending April 26, 2020 and then restored its employee levels to its FTE employee levels in a pay period that included Feb. 15, 2020 by no later than June 30, 2020.

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

### **Documents required to accompany the PPP loan forgiveness application.**

1. Bank statements or third-party payroll supports that support the figure provided for cash compensation of employees;
2. Tax forms or equivalent third-party documents for periods covered by the loan including payroll tax reported (Form 941);
3. State quarterly wage reporting and unemployment insurance tax filings for each relevant state;
4. Receipts, canceled checks, or account statements documenting the employee and employer contributions to health insurance and retirement plans if included in the forgiveness amount; and
5. Documents that show the average number of FTE employees per month in the selected time period (the time period selected for completing PPP Schedule A, line 11).

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

### **Alternative Payroll Covered Period Example & Consistency Requirement.**

For example, if a borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period (56 days later) is Saturday, June 20. The Alternative Payroll Covered Period does not apply to borrowers that pay payroll twice per month or monthly as such payment periods would be less frequent than biweekly.

Borrowers that elect to use the Alternative Payroll Covered Period are required to maintain consistency and use the Alternative Payroll Covered Period for other purposes, although several sections of the Loan Forgiveness Application specifically require use of the Covered Period (the eight-week period beginning on the loan Disbursement Date). For example, for payroll-related items, borrowers will be allowed to use the Alternative Payroll Covered Period while payments for other nonpayroll eligible expenses must be calculated using the Covered Period.

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CARES ACT REVIEW

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

**A borrower may use the PPP loan proceeds only on the following expenses:**

**Payroll Costs include:**

1. salaries, wages, commissions, tips or similar compensation,
  2. vacation, parental, family, medical, or sick leave and severance pay,
  3. group health care benefits, including insurance premiums (employer's share only),
  4. retirement benefits (employer's share only),
  5. state and local tax assessed on the compensation of employees, and
  6. self-employment income paid to partners in a partnership and owner-members of a limited liability company (which is taxed as a partnership).
- **Note that the guidance does not specifically address whether bonuses can be paid with PPP loan proceeds.**



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CARES ACT REVIEW

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

**A borrower may use the PPP loan proceeds only on the following expenses:**

### **Payroll Costs (continued):**

The PPP's definition of " payroll costs" excludes salaries and wages in excess of \$100,000 on an annualized basis for any individual prorated for the Covered Period. Therefore, borrowers must be aware that forgiveness for salaries and wages for any individual will be limited to \$15,385.

Owner-employees, self- employed and general partners must not exceed eight weeks of 2019 compensation during the Covered Period (or the Alternative Payroll Covered Period) and this is similarly capped at \$15,385 per individual.

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CARES ACT REVIEW

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

### **Timing of Payment of Payroll Costs:**

- Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction.
- Payroll costs are considered incurred on the day that an employee's pay is earned.
- Payroll costs paid after the beginning of the Covered Period in the regular course that relate to an earlier payroll period may be included.
- Payroll costs incurred but not paid during the borrower's last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date.

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CARES ACT REVIEW

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

### **Non Payroll Costs Include:**

- Interest (not principal) on any mortgage obligations for loans incurred prior to February 15, 2020 (not including any prepayment). This includes mortgages on real and personal property used in the borrower' s business.
- Rent or leases in existence prior to February 15, 2020. This includes equipment leases, copier leases and vehicle leases used in the business. The guidance does not address whether the prepayment of rent is acceptable.
- Utilities for services begun prior to February 15, 2020. This includes electric, gas, water, telephone, internet and transportation (generally interpreted to mean expenses for business vehicles). The guidance does not address whether the prepayment of utilities is acceptable.

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CARES ACT REVIEW

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

### Timing of Non Payroll Costs:

- Eligible non-payroll costs must either be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period.
- In certain circumstances, borrowers may make payments of non-payroll costs in the Covered Period with respect to non-payroll costs that were incurred prior to the Covered Period.
- For example, if April rent was not paid on April 1, but later paid using PPP proceeds after such proceeds were received, then the April rent will be deemed paid in the Covered Period and thus eligible for forgiveness.
- The Alternative Payroll Covered Period does not apply to payments for non-payroll costs.

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CARES ACT REVIEW

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

### **Other Thoughts, Considerations & Open Questions:**

- Some small businesses need more flexibility on when the 8-week coverage period should start or need to have the covered period extended to more than 8 weeks.
- Can bonuses paid to employees during the covered period be included in the forgiveness amount and does that include bonuses which were accrued before the covered period but not yet paid?
- With respect to utility payments, what is included in transportation?
- What happens if the eight-week period extends beyond June 30<sup>th</sup>?

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CARES ACT REVIEW

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

### **Other Thoughts, Considerations & Open Questions:**

- How will the timing of payroll for employers who are on a pay frequency greater than a bi-weekly pay period (semi-monthly & monthly)
- EIDL funding is still occurring and the grant portion will reduce the PPP Forgiveness.
- Additional guidance is forthcoming from SBA & Treasury.

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# Thank you!

We may be conducting another webinar Next Friday, May 29<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 20<sup>th</sup>, 2020 and is subject to change.**