2020 CARES ACT

What it means for your business.

Presented by

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STRATEGY | EXECUTION | RESULTS

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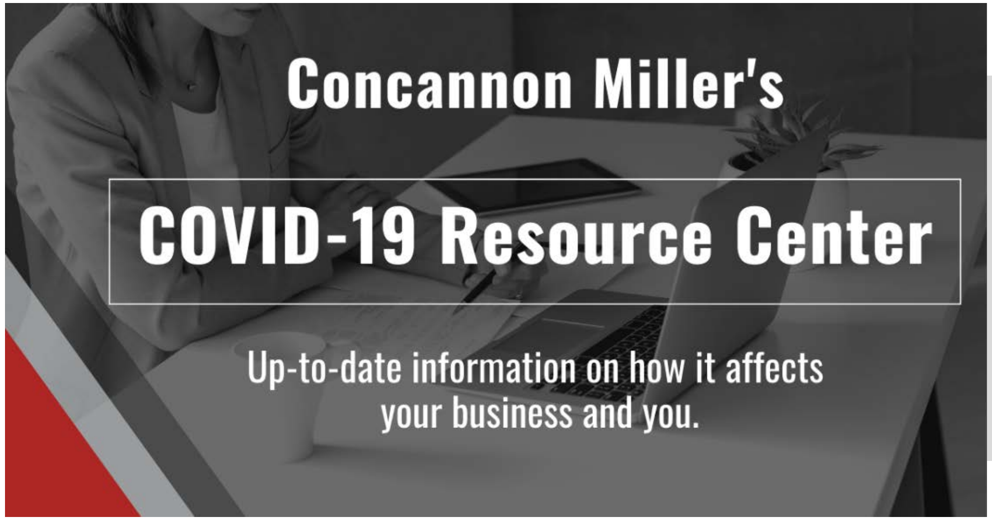

Additional information is available on our website at www.concannonmiller.com under the "Resources" tab.

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CARES ACT

“Paycheck Protection" Loans

- New type of 7(a) Small Business loan created by the CARES Act to help businesses cover payroll and certain other basic costs
- Because these loans fall under the SBA, they are generally only available for:
  - Businesses with fewer than 500 employees (or if the SBA has assigned it a higher industry standard, that number of employees)
  - In counting employees, the affiliation rules under the Small Business Act apply (13 CFR Sec. 121.103)
    - Exceptions to affiliation rule for Businesses w/NAICS industry Code 72 (accommodation and food services) and certain approved franchises in SBA’s franchise directory
      - In that case, only include employees per physical location
  - Also available to sole proprietorships, independent contractors, and self-employed individuals engaged in a trade or business to recover lost net income

CARES ACT

"Paycheck Protection" Loans (cont'd)

- Technically loans will be available through June 30th, but money will likely run out before that
- Note that although these loans are SBA loans, you will not find them on the SBA website. The SBA has authorized certain approved lenders to distribute these loans, so check with your bank- especially franchisees that already have approved lenders
- Loan is non-recourse - no personal guarantees or collateral is required

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"Paycheck Protection" Loans (cont'd)

In order to be eligible for the loan, other than meeting the 500-employee threshold, the borrower must 1) be in operation on February 15, 2020 and have employees for whom it pays salaries and payroll taxes and 2) provide a signed certification attesting:

- the loan is necessary due to current economic conditions,
- the loan proceeds will be used to retain workers and/or to pay mortgage interest, rent, and utility payments.
- The borrower hasn't already received a loan and will not seek a loan for the same payments

Note: There is no "credit elsewhere" test

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“Paycheck Protection" Loans (cont’d)

- The amount of the loan is equal to the sum of:
    - 2.5 times the borrower’s average monthly payroll costs (for either the immediately preceding 12 months or calendar year 2019)
    - Plus any qualified disaster loan taken out since January 1, 2020 that the borrower wants to refinance as part of the payroll protection loan
    - The total loan cannot exceed $10 million

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“Paycheck Protection" Loans (cont’d)

- To the extent that the proceeds are used for qualifying costs, the loan principal will be forgiven on a tax-free basis, meaning it will not be treated as forgiveness of debt income. The SBA issued additional guidance on April 2nd indicating that not more than 25% of the forgiveness amount may be for non-payroll costs. SBA loan applications have been updated to reflect this change.
  - In order to be forgiven, the costs must be paid or accrued within 8-week period after the loan proceeds are received.
  - Qualifying costs are all “payroll costs” and payments made for mortgage interest related to a mortgage on real or personal property, rent, and utilities. Utilities in this case include gas, water, electric, telephone, internet, and transportation costs.
  - You can’t use the loan for any prepayments or new costs – obligations must have existed on February 15, 2020.

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“Paycheck Protection" Loans (cont’d)

“Payroll costs” include all wages, commissions, salaries, tips, vacation, allowance for dismissal or separation, group health benefits and premiums, retirement benefits, payment of state or local taxes on employee compensation, family, medical, and sick leave (other than required paid leave eligible for a credit under the FFCRA)

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“Paycheck Protection" Loans (cont’d)

“Payroll costs” do NOT include compensation to any individual employee in excess of an annual salary of $100,000, pro-rated for the covered period, payroll taxes, compensation paid to employee who resides outside the U.S., or any Paid Sick Leave or Family Medical Leave paid under the FFCRA for which a payroll tax credit is claimed

- Regarding the $100,000 limitation, you can still count those employee’s wages- but can only include the amount that would result in $100,000 or less on an annual basis (i.e., $8,333 per month)

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“Paycheck Protection" Loans (cont’d)

For any amount not forgiven, the SBA has issued final guidance that provides that the loan term will be 2 years and will accrue interest at a rate of 1%. Also, the Small Business Administration will allow the business to defer payment for 6 months (although prepayments are allowed without penalty).

Note however that only the principal can be forgiven. Interest will accrue on the loan amount and be payable after the deferral period even if the entire principal balance is forgiven

CARES ACT

“Paycheck Protection" Loans (cont’d)

The amount forgiven will be reduced if the employer:

- Reduces its workforce; or
- Reduces the compensation of any of its employees who make less than $100,000 per year by more than 25%.
  - The reduction in forgiveness <u>due to a reduction in the number of employees</u> is based on a comparison of the # FTE workers that existed during the 8-week period following receipt of loan proceeds, to the # FTE workers that existed between the measurement dates of either:
    1) February 15, 2019 - June 30, 2019; OR
    2) January 1, 2020 - February 29, 2020. The borrower may choose which date range to use, except in the case of seasonal employers, who must use the dates February 15, 2019 – June 30, 2019.

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“Paycheck Protection" Loans (cont’d)

- The reduction in forgiveness due to a greater than 25% reduction in the salary is based on a comparison of the salaries (of employees making less than $100,000 per year) during the 8-week period following receipt of loan proceeds, to the salaries of those employees during the most recent full quarter that the employee was employed prior to the start of the 8-week period.
  - If the employer has no reduction in # FTE’s or salaries, then they are eligible for the full forgiveness (assuming total qualifying costs equal or exceed loan amount). If they did have a reduction, then they can look towards the exemption.
- The exemption (from having to reduce the forgiveness amount of a PPP loan) only applies if there is a reduction in the # of FTE employees or wages during the period February 15, 2020 – April 26, 2020 (30 days after enactment of the CARES Act).
  - The exemption allows the borrower to ignore any reductions in # the employees/salaries that occur between February 15, 2020 – April 26, 2020 if those reductions are restored by June 30, 2020.
  - **The exemption does not apply for any reductions occurring after April 26, 2020.**

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"Paycheck Protection" Loans (cont'd)

- In order to claim forgiveness, the borrower must submit an Application with the lender and the lender has 60 days to make a decision on the forgiveness amount

Remember- carefully document all of those qualifying costs either paid or incurred during the 8-week period following the receipt of the loan proceeds

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Other Small business Loans Available through the SBA Website (generally not forgivable)

- **Disaster loans up to $2mm- normal requirement that the business existed for at least one year is lifted**
  - If you already have this loan and want to use for payroll purposes, you can refinance it under the payroll protection loan.
  - However, if you go out and get a disaster loan after the payroll protection loans become available you are no longer eligible for a paycheck protection loan.
- **Emergency Grant with an advance payment of $10,000 within 3 days of applying.**
  - The $10,000 will be forgiven even if the disaster loan is ultimately denied
  - If you've already received the $10,000 and refinance it under the payroll protection loan, it will reduce the amount of the loan available for forgiveness
- **Traditional 7(a) loan for a max of $5mm**
  - Note that for all small business loans other than Paycheck Protection loans, the SBA will pay 6 months worth of principal, interest, and fees. (There is no provision for this payment to be tax-free in the Act.)

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Employee Retention Credit

- New credit created by the CARES Act- the purpose of this credit is to help offset the payroll costs for employers who retain employees throughout the healthcare crisis during 2020.
- Employer will be eligible for any quarter in which the business has either:
  - a full or partial suspension of operations due to orders from the government related to COVID-19; or
  - experiences a 50% or more decrease in gross receipts compared with the same quarter in 2019
    - in this case, employer will continue to be eligible until gross receipts return to at least 80% of receipts for the quarter compared to the prior year

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Employee Retention Credit (cont'd)

- Credit is taken against the employer's 6.2% portion of social security taxes and is equal to 50% of qualifying wages:
  - Amount of qualifying wages depends on the number of employees the employer has:
    - For businesses with more than 100 full-time employees, you can only count wages paid to those workers that were not working during the shut-down or the period of substantially decreased gross receipts
    - For businesses with more than 100 employees, you can count wages paid to all employees, regardless of whether or not they were working during that same period
  - Qualifying wages are capped at $10,000 per employee plus any allocable health care costs so if you have an employee making more than $40,000 per year, they will hit that cap in the first quarter this credit is calculated and you will not be able to claim any additional credit for that employee's wages for the rest of the year.
  - To the extent that you claim the credit, you must reduce your deduction for wages (i.e., no double dipping)

- You cannot claim this credit if you have a paycheck protection loan or if you used the wages for purposes of calculating the WOTC credit.

CARES ACT

Paid Sick Leave and Emergency FML

- These two provisions were included in the FFCRA signed into law in mid-March and they take effect today, April 1st
- Small employers with fewer than 500 employees will be <u>required</u> by law to provide paid sick leave and paid FML to employees who are unable to work due to six specific COVID-19 reasons as outlined by the Dept of Labor
  - For Paid Sick Leave, there is no length of service requirement so any employee is eligible
  - For FML, the employee must have been there for at least 30 days in order to be eligible for payment

CARES ACT

Paid Sick Leave and Emergency FML (cont'd)

- The reason why the employee cannot work is important because it determines the amount of pay they are entitled to:
  - If the employee themselves are sick with COVID-19 then they are entitled to their full regular pay for 10 days up to a total of 80 hours
    - Pay must be at least minimum wage
    - Maximum pay is capped at $511 per day / $5,110 in total for the 10 days
  - If the employee is unable to work because they are caring for another individual who is being quarantined or if they need to care for a child whose school has closed or daycare provider is unavailable due to COVID-19, they are entitled to 2/3rds of their regular pay for the 10 days
    - In this case, maximum pay is capped at $200 per day / $2,000 total for the 10 days
  - Additionally, if the reason for the leave is that the employee is unable to work because they are caring for a child whose school is closed or daycare provider is unavailable, businesses with fewer than 50 employees may be exempt from the required payments if they can establish that doing so would jeopardize the continued viability of their business.

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Paid Sick Leave and Emergency FML (cont'd)

- For FML under this new provision, the employee is entitled to 12 weeks of leave if they are caring for a child whose school has closed or daycare provider is unavailable due to COVID-19
  - First two weeks may be unpaid, unless they receive payment under the paid sick leave provisions we just discussed
  - For the remaining 10 weeks, pay is equal to 2/3rds of regular pay, capped at $200 per day
    - Maximum of $10,000 for the full 10-week period
- Employee generally has right to get same or equivalent position upon end of FML
  - For employer with less than 25 employees, this requirement is waived if:
    - Position no longer exists due to economic conditions caused by COVID-19, and
    - Employer makes reasonable effort to restore employee if position becomes available over the next twelve months

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Paid Sick Leave and Emergency FML (cont'd)

- Any payments made for paid sick leave and FML under this new provision is treated as wages to the employee and subject to income tax withholding. It is also subject to the employee's portion of social security and Medicare and employer Medicare tax. It is not subject to employer social security tax.
- These required payments are not meant to burden the employer so any amount required to be paid under these provisions will be offset by a credit to the employer's other social security taxes due on all wages for the quarter.
  - IRS provided Notice 2020-57 allowing taxpayers to retain all employment taxes, including federal income taxes withheld to claim the credit if the credit exceeds the employer's portion of social security tax.
  - Any credit still remaining is refundable- claim on new Advance Credit IRS form 7200

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Paid Sick Leave and Emergency FML (cont'd)

- **Final note-** the employer will only receive a credit for the amount of payment that is required under these provisions. They can pay more, but they won't get a credit for it.
- Credit is available for self-employed taxpayers, different calculation based on net self-employment income, but is still subject to the same caps of either $200/day or $511/day for paid sick leave and $200 per day for FML. Credit is taken on individual income tax return.

DOL website with an extensive list of Q&A:
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

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Deferral of Payroll Taxes

- The CARES Act allows for a deferral of the employer's 6.2% social security tax
- After application of any credits (i.e., retention credit and paid sick leave/FML credits) employers can defer payment of any remaining social security tax due on wages paid from the date of enactment through December 31, 2020
    - 50% of Social Security tax due December 31, 2021
    - Remaining 50% due December 31, 2022
- Self-employed taxpayers can defer paying 50% of total 12.4% Social Security tax due from date of enactment through December 31, 2020 (i.e., deferral allowed for 6.2%)
- Deferral NOT available to any business that has had debt forgiven on "Paycheck Protection" Loan

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