Legislative Update

What We Know Now

May 18, 2020

PPP Loan Forgiveness Application and Instructions Released by SBA

Some of the key items clarified include:

•The "incurred" and "paid" language in §1106 of the CARES Act regarding expenses that count for forgiveness is defined to allow, with certain limitations, both expenses paid and incurred in the 8-week period;

•A relatively borrower friendly interpretation of the calculation of both the full-time equivalent and wage/salary reduction provisions that would reduce the amount of debt forgiven;

•An indirect bar on using bonuses to owner employees to fill shortfalls in eligible expenses used to apply for loan forgiveness buried in the representations;

•An explicit statement that covered rent obligations include leases on both real and personal property; and

•The creation of a new Alternative Payroll Covered Period that allows borrowers to align the 56-day period with their own payroll period.

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Covered Period

Enter the eight-week (56-day) Covered Period of your PPP loan. The first day of the Covered Period must be the same as the PPP Loan Disbursement Date.

For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the "Alternative Payroll Covered Period").

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Covered Period vs Alternative Payroll Covered Period

However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to "the Covered Period" only.

Generally, only payroll related items will be allowed to use the Alternative Payroll Covered Period, while payments on other expenses will continue to refer to the 56-day period beginning on the date the loan funds are deposited into the borrower's account.

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Payroll Costs Paid and Incurred in the Covered Period (or Alternative Payroll Covered Period)

Eligible payroll costs. Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or Alternative Payroll Covered Period) ("payroll costs").

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Special Limit on the amount of Payroll Costs that can count for Owner-Employees

At the end of the first certification is found the following language regarding items included in the dollar amount for which forgiveness is requested, certifying that the amount requested:

...does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at $15,385 per individual.

Presumably eight weeks' worth of 2019 compensation would be the owner-employee's W-2 wages multiplied by 8/52.

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Paid and Incurred

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 the employee's pay is earned.

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. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period). For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of $100,000, as prorated for the covered period.

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Nonpayroll Costs Eligible for Forgiveness

(a) covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 ("business mortgage interest payments");

(b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 ("business rent or lease payments"); and

(c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020 ("business utility payments").

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Nonpayroll Costs Eligible for Forgiveness

An eligible nonpayroll cost must 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. Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once.

Note that use of the Alternative Payroll Covered Period is not permitted for these expenses.

The "paid" and "incurred" issue for non-payroll costs is also resolved in a manner similar to the resolution of the payroll costs issue.

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FTE Count

Average FTE: This calculates the average full-time equivalency (FTE) during the Covered Period or the Alternative Payroll Covered Period. For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0

A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower.

Summertime Childcare and the EFMLA

I took paid sick leave and am now taking expanded family and medical leave to care for my children whose school is closed for a COVID-19 related reason. After completing distance learning, the children's school closed for summer vacation. May I take paid sick leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.

CDC Decision Tools

On May 14, the CDC released new Decision Tools for certain sectors:

• Schools	• Businesses	• Camps
• Restaurants	• Childcare	• Mass Transit

{ These are decision trees to help you determine whether you should/are ready to reopen within state and federal guidelines, as well as within your own capacity to prepare for employees and customers to return to your location. }

WORKPLACES DURING THE COVID-19 PANDEMIC

The purpose of this tool is to assist employers in making (re)opening decisions during the COVID-19 pandemic, especially to protect vulnerable workers. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

Should you consider opening?

- ✓ Will reopening be consistent with applicable state and local orders?
- ✓ Are you ready to protect employees at higher risk for severe illness?

ALL YES →

ANY NO
↓

DO NOT OPEN

Are recommended health and safety actions in place?

- ✓ Promote healthy hygiene practices such as hand washing and employees wearing a cloth face covering, as feasible
- ✓ Intensify cleaning, disinfection, and ventilation
- ✓ Encourage social distancing and enhance spacing between employees, including through physical barriers, changing layout of workspaces, encouraging telework, closing or limiting access to communal spaces, staggering shifts and breaks, and limiting large events, when and where feasible
- ✓ Consider modifying travel and commuting practices. Promote telework for employees who do not live in the local area, if feasible.
- ✓ Train all employees on health and safety protocols

ALL YES →

ANY NO

Is ongoing monitoring in place?

- ✓ Develop and implement procedures to check for signs and symptoms of employees daily upon arrival, as feasible
- ✓ Encourage anyone who is sick to stay home
- ✓ Plan for if an employee gets sick
- ✓ Regularly communicate and monitor developments with local authorities and employees
- ✓ Monitor employee absences and have flexible leave policies and practices
- ✓ Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area

ALL YES →

ANY NO
↓

OPEN AND MONITOR

SBA FAQs Q#46 – Safe Harbor

Question: How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?

Answer: When submitting a PPP application, all borrowers must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: Any borrower that, together with its affiliates,[20] received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.
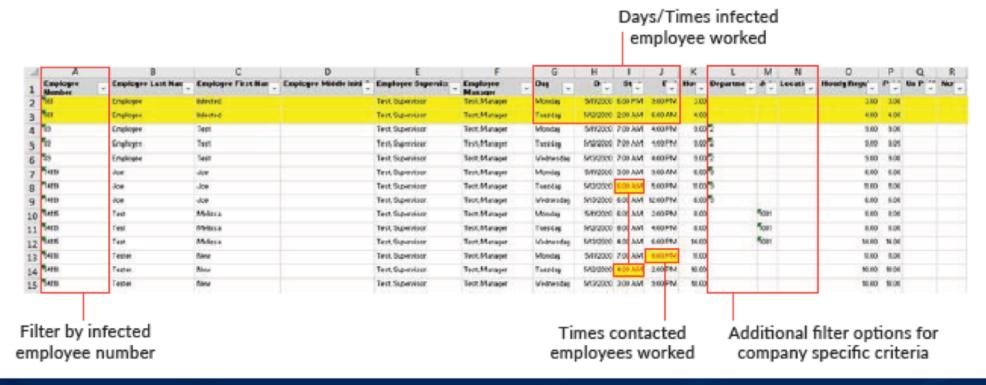
Employee Contact Tracing

The Hours Detail Report is easy to use. Simply run this report from Close Pay Period (for open pay periods) or Client Reports (for closed pay periods) for the date range needed. With that report you can filter by department and location along with applicable days/times to see all contacts that worked with the infected employee. No health related information is required or utilized in compiling the report.

Follow up with contacts to monitor symptoms and tests for signs of infection. Find employee Contact information *(right)* by going to Employee Self Service>Contact Information

Contact Tracing

Key Considerations for COVID-19

- Since COVID-19 can be spread before symptoms occur or when no symptoms are present, case investigation and contact tracing activities must be swift and thorough.

- The complete clinical picture of COVID-19 is not fully known. As scientists learn more, updates may be made to recommendations for testing priorities and the contact initiation window (when the patient was infectious and not under isolation) in which contacts should be elicited.

- Remote communications for the purposes of case investigation and contact tracing should be prioritized; in-person communication may be considered only after remote options have been exhausted.

- Given the potentially large number of cases and contacts, jurisdictions may need to prioritize case investigation and contact tracing activities. Prioritization should be based on vulnerability, congregate settings/workplaces and healthcare facilities.

Contact Tracing

- Depending on jurisdictional testing capacity, case investigations may be considered for patients with a probable diagnosis of COVID-19, not just confirmed COVID-19 cases.

- Broad community engagement is needed to foster an understanding and acceptance of local case investigation and contact tracing efforts within each community.

- Significant social support may be necessary to allow patients with probable and confirmed COVID-19 diagnoses to safely self-isolate and close contacts to safely self-quarantine.

- Due to the magnitude of the pandemic, jurisdictions will likely need to build up their workforce, recruit from new applicant pools, and train individuals from varied backgrounds.

- The use of digital contact tracing tools may help with certain case investigation and contact

New guidance from the VA Employment Commission

http://www.vec.virginia.gov/employer-issue-report

The forms will ask you to provide detailed information that the VEC will need in order to take action on a claim for benefits.

Please complete an entry for each situation or individual.

◆ **I recently attempted to recall an employee from a layoff/furlough and that person has refused this offer of work.**
Go to Form ❯

◆ **I have received funds from the Small Business Administration under the Payroll Protection Plan (PPP) and I am paying my employee his or her wages or I am paying wages from another source.**
Go to Form ❯

◆ **I recently hired or rehired an individual and would like to report this action to the VEC.**
Go to Form ❯

Best Practices - Telework

- Establish which roles will telework and on which days (and be prepared to answer why)

- Ensure that everyone has the technology they need

- Establish regular check-ins with team. Share tips (ie. Get dressed!)

- Circulate a Work from Home Agreement (see our website)

- Be flexible! Be creative! Be understanding!

Updating your Handbook for the "New Normal"

Some examples of "new normal" policy changes include:

- Paid-leave policies adjusted to reflect regulatory requirements and actual business needs.

- Attendance policies relaxed to encourage sick employees to stay home.

- Time-off request procedures clarified to indicate when time off can be required by the employer should sick employees need to be sent home.

- Flexible scheduling options implemented allowing for compressed workweeks and flexible start and stop times.

Updating your Handbook for the "New Normal"

Some MORE examples of "new normal" policy changes:

- Meal and rest break policies adjusted to stagger times and processes implemented to encourage physical distancing.

- Travel policies updated to reflect essential versus nonessential travel and the impact of domestic or global travel restrictions.

- Telecommuting policies detailed to reflect the type of work that is able to be done remotely and the procedures for requesting telework.

- Information technology policies revised to reflect remote work hardware, software and support.

We are answering your questions live on the air right now.

Please submit questions through the Q&A function, *not* the chat option at the bottom of your screen.

Questions?

Please email:

questions@dominionpayroll.com

For resources, updates, webinar schedule, and FAQ's, please visit our

COVID-19 Updates & Resources page

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As requirements change and laws are passed, we will update you as soon as possible.

Don't forget to wash your hands!