Town Hall *Q&A*

May 27, 2020

SBA Interim Rule 5/22/2020

Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?

Yes. The CARES Act defines the term “payroll costs” broadly to include compensation in the form of salary, wages, commissions, or similar compensation. If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are eligible for forgiveness as long as they do not exceed an annual salary of $100,000, as prorated for the covered period.

The Administrator, in consultation with the Secretary, has determined that this interpretation is consistent with the text of the statute and advances the paycheck protection purposes of the statute by enabling borrowers to continue paying their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations. if an employee’s total compensation does not exceed $100,000 on an annualized basis, the employee’s hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation.

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"…additional wages paid to tipped employees are eligible for forgiveness."

Employers who have employees that receive tips will have the loan forgiven for tips provided during the "covered period," even though these come from customers, and not the employer.

The employer should keep records of tips, or if there are no such records, the employer can use "a reasonable, good-faith, employee estimate of such tips."

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Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

Yes, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation can be no more than the lesser of 8/52 of 2019 compensation or $15,385 per individual in total across all businesses.

In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf.

Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.3

General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by their section 179 deductions, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235.

No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.

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Will a borrower's loan forgiveness amount be reduced if the borrower laid-off or reduced the hours of an employee, then offered to rehire the same employee for the same salary and same number of hours, or restore the reduction in hours, but the employee declined the offer?

No. Employees whom the borrower offered to rehire are generally exempt from the CARES Act's loan forgiveness reduction calculation. This exemption is also available if a borrower previously reduced the hours of an employee and offered to restore the employee's hours at the same salary or wages.

Specifically, in calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

i. the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;

ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;

iii. the offer was rejected by such employee;

iv. the borrower has maintained records documenting the offer and its rejection; and

v. the borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

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Borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests. Borrowers that avail themselves of this de minimis exemption shall maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction. The borrower shall provide such documentation upon request.

Partial Forgiveness

A borrower must spend 75% of the loan forgiveness amount on payroll costs. The Application explains how the SBA will enforce this requirement. Specifically, it clarifies that the requirement is not an “all or nothing” calculation, and the borrower is eligible for loan forgiveness on the payroll costs it actually spends during the covered period. However, the total amount eligible for forgiveness may not exceed the total amount spent on payroll costs during the covered period, divided by 0.75.

PPP Loan Forgiveness Application

Dates To Remember

FTE Reference Periods

2/15/2019-6/30/2019

1/1/2020-2/29/2020

Salary/Wage Reference Period

1/1/2020 – 3/31/2020

Safe Habor – FTE and Salary/Wage Reduction

6/30/2020

Lender has 60 days to determine forgiveness after receiving a complete application

SBA then has 90 days to review application

Borrowers have 30 days to appeal SBA determination

EIDL Loan Update

-Loan amount has been reduced from $2 million to $150k

-The EIDL grant program was reduced from $10,000 per company to $1,000 per employee up to 10 employees.

-Information regarding the changes for the grant and reduction have not been confirmed by the SBA but receipients are reporting receiving less funds than what were approved

-The interest rate on EIDLs will not exceed 4 percent per year. The term of these loans will not exceed 30 years. The repayment term will be determined by your ability to repay the loan

-There are no prepayment fees

- EIDL Grants and EIDL loan recipients may apply for and take out a PPP loan as long as there is no duplication in the uses of the funds. Proceeds from an EIDL Grant will be deducted from the loan forgiveness amount on the PPP loan

PPP Loan Forgiveness – Self Employed

- Generally is calculated based on average payroll expenses
  - For self-employed individuals, its based on their 2019 Net Profit divided by 12 (months)
  - This number times 2.5 will equal your PPP loan amount

- Owners Compensation Replacement
  - Instead of spending your funds on payroll, you can automatically get eight week's worth of net profit forgiven, without having to spend it on anything (Owners Compensation Replacement)
  - The remaining PPP funds will need to be spent on utilities, rent, and mortgage interest expenses in order to be forgiven
  - The amount of "owner compensation replacement" you're eligible to claim for forgiveness is calculated by multiplying your reported net income in 2019 on your Schedule C by **8/52** (or 0.154).

Things to consider:

- Generally, the amount a business can borrow through the PPP is based on a firm’s payroll, including health-care and retirement plan contributions
- As it currently stands, retirement plan contributions and health-care premiums are not eligible for forgiveness as part of payroll if you’re self-employed, according to the rule.
- “The 75/25 guideline fails to consider self-employed people in areas with high rents” - Katie Vlietstra, (VP for government relations at the National Association for the Self-Employed).
  - “Rent and mortgage far exceed 25% of costs for locations in cities,” she said. “They have low payroll and high overhead expenses.”
  - The SBA anticipated that primary costs for self-employed people would be paying themselves, according to its April 20 interim final rule.
  - “Many self-employed individuals have few of the overhead expenses that qualify for forgiveness under the Act,” the SBA said.
  - “For example, many such individuals operate out of either their homes, vehicles or sheds and thus do not incur qualifying mortgage interest, rent or utility payments,” the agency said. “As a result, most of their receipts will constitute net income.”

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

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

Don’t forget to wash your hands!