



## COVID-19: News & Updates Webinar

April 17<sup>th</sup>, 2020

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### Questions & Answers

We were funded for the Paycheck Protection Program loan on Wednesday 4/15 which falls right in the middle of our 2nd week of the payroll we are getting ready to process. We cut hours significantly 4/6 - 4/17. How long do we have to get all those hours back to normal FTE to meet our loan forgiveness?

You have until June 30<sup>th</sup> to restore your headcount and salary levels for any changes made between February 15, 2020 and April 26, 2020. The more significant challenge is the amount of wages paid during the 8-week period used to compute the amount of loan proceeds that will be forgiven. Since your 8-week period began on April 15<sup>th</sup> and you had reduced the number of hours your employees are working, your total wages paid will be lower due to the cutback in hours worked. For purposes of computing the amount of the loan proceeds that can be forgiven, at least 75% of the amount borrowed must be spent on payroll costs for the covered 8-week period and up to 25% can be spent on allowable operating expenses to ensure loan forgiveness. Once you determine the amount of proceeds that qualify for forgiveness, the next step is to look at headcount and individual employee salary levels. Those also need to be maintained. For that calculation, you have until June 30, 2020 to return headcount and salaries back to pre-COVID levels to ensure there is no reduction in loan forgiveness.

I heard previously in these calls that the 8-week period for payroll can be "8 weeks of our choice". That it didn't have to be immediately. We are still on social quarantine and many of our business activities are on hold until the community opens up a little. When should the 8-week period start?

When the CARES Act first became law, it indicated that the proceeds could be applied to qualifying expenses incurred over "an 8-week period". On April 8<sup>th</sup>, the SBA and Treasury Department published an FAQ document to provide clarification on various components of the Act. In that FAQ, it specifically defined the 8-week period as beginning on the date the lender makes the first disbursement to the borrower. This is a change from what was initially communicated and what was uniformly understood. It's important to remember that the programs were put in place to ensure employees are paid. The PPP loan program is designed to provide employers with "free" or low-cost money to pay their employees during this period of business disruption. The expectation is that these funds will be used to pay a company's workers regardless of whether there is actual work to be performed. However, if the borrower elects not to use the funds to pay its employees because their business is shut down or operations are severely reduced, the borrower can still retain the loan proceeds. However, they will not have the full amount of the loan forgiven and will instead have access to the funds at very advantageous borrowing terms. In that scenario, it is expected that employees who have been laid off, either temporarily or permanently, will most likely apply for unemployment.

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Just to clarify...We need to spend the funds during the 8-week period to get forgiveness?

Correct, the loan proceeds need to be used during the 8-week period immediately following loan origination for full forgiveness. Alternatively, you may choose to use the funds to cover other business costs, and in this case it would be a low interest loan.

Please clarify the 25% reduction in ones' pay; is that calculated on total payroll or by employee?

The 25% salary reduction is measured at the employee level. You cannot reduce any employee's individual salary by more than 25%. The qualifying forgiveness amount will be reduced by the dollar amount of any salary/wage reduction occurring during the 8-week covered period that is greater than 25% of an employee's salary/wages during the most recent full quarter for which the employee was employed prior to February 15, 2020. Any reduction in wages that occurred during the period February 15 – April 26, 2020 will not be considered in reducing the qualifying forgiveness amount if the reduction in salary is restored by June 30, 2020. If you have an employee making more than \$100,000 per year, you may reduce their salary to the equivalent of \$100,000 annually without penalty. Any reduction in salary below that level cannot be more than 25% or it will impact the qualifying loan forgiveness amount.

We work in an industry with a high turnover rate. Are we penalized for people laid off with respect to our "head count" calculation? Are those that quit also included in the calculation of our head count change?

As long as you maintain the same average headcount during the 8-week covered period as you had during your pre-COVID measurement period, you will not be penalized. It doesn't have to be the same employees, just the same number of employees. To the extent you had someone quit, it is anticipated that you will replace that individual. If your headcount number is the same, it is not anticipated that the lender will inquire as to whether it is the same person.

How do layoffs play into it?

If people are laid off and you don't bring them back on by June 30, 2020, you'll get a proportionate reduction in your loan forgiveness.

When we applied for the loan, we were told not to include independent contractors in our calculation of total payroll costs. Can we now include these expenses in the 8-week covered period?

The answer is yes. Initially, contractors were excluded because they could apply for the PPP loan on their own. This interpretation of the program requirements has changed. The assumption is that the sole-proprietor or contractor won't need to apply for the loan themselves so long as they're being paid by the borrower. You may have applied for the PPP loan prior to this change in interpretation and therefore did not include payments made to sole proprietors or independent contractors in your loan request calculation. Regardless of whether you originally picked up those expenses when requesting your loan, but because those costs fall under the definition of payroll costs for purpose of the original loan request, they are also allowed under the payroll costs incurred that you can apply against the loan. So yes, include any payments made to independent contractors during the 8-week covered period in addition to the payroll costs processed through Questco when computing your loan proceed uses.

For the employee retention tax credit, will we be able to retro the request to the effective date for the payroll back to the March 12, 2020 effective date? How far back can we retro this tax credit?

Questco will allow qualifying clients to request the Employee Retention Credit for wages paid on or after April 1<sup>st</sup> (beginning with the second quarter). The program applies to wages earned through December 31, 2020. The maximum amount of qualified wages taken into account with respect to each employee for all qualifying quarters is \$10,000, so the maximum credit for an eligible employer for wages paid to any employee is \$5,000 (50% of qualified wages). When you restore your business back to normal, you'll no longer qualify for the Employee Retention credit. This credit is applied against the employer portion of Social Security taxes to reduce the employer's tax liability. You'll likely have sufficient tax liabilities owed to allow you to apply the full amount of the credit for qualifying wages (up to the \$5,000 per employee limit).

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Can you please revisit the periods you stated earlier regarding payroll periods that should be used to compute the amount of loan forgiveness?

Employee or salary reductions that occur between February 15, 2020 and April 26, 2020 (30 days after enactment of the CARES Act) will NOT be considered in reducing the qualifying loan forgiveness amount if the reduction in employees or salaries are restored by June 30, 2020.

For purposes of computing the employee retention requirement, you have two time periods you can use to calculate your base employee count which you then compare to your employee count during the covered 8-week period to calculate any adjustment to the qualified forgiveness amount. The first time period you can use is in 2019. The average number of employees per month from February 15, 2019 through June 30, 2019 can be compared to your average headcount during the 8-weeks after loan origination. The other time period you may choose for your base period is the average number of employees per month from January 1, 2020 to February 29, 2020. To the extent that there is no change in your average monthly headcount or your current headcount is higher, no adjustment will be made to your qualifying loan proceeds. To the extent that your headcount is lower, the percentage by which your average monthly headcount is below the selected base period, there will be a proportionate reduction in your forgivable loan amount. The borrower should choose the period when you had the lowest average headcount to use as your measurement period to compare against your current pay period.

If your independent contractor makes more than \$100,000, are they still capped at the \$100K?

Yes. To the extent that your independent contractor makes more than \$100K on an annualized basis, you can only include the monthly amount that annualized is equal to or less than \$100k. For example, if you pay a monthly fee of \$12,000 to your independent contractor, you would need to limit the amount included in total payroll costs to \$8,333 for purposes of computing costs applied against your loan proceeds.

Is the forgiveness adjustment calculation applicable to employees that are not productive?

The employee calculation for the covered period includes paid employees only. If you have employees that are furloughed and not receiving pay, you cannot include them in your headcount for the covered 8-week period. If you have people on paid leave under the FFCRA, you can include them in your count as these individuals are receiving "paid" expanded sick leave or expanded FMLA.

What happens to the employers that are still operating partially? Do we have to split the payroll between productive and nonproductive?

Assuming you are continuing to pay the nonproductive employees, there is no need to split the payroll for purposes of computing total payroll costs incurred during the 8-week covered period.

We may be losing a large contract effective June 8<sup>th</sup> which would result in a large cut to our active employees associated with that contract. Are we required to maintain the same head count THROUGH June 30<sup>th</sup> in order to not have to repay the loan? In other words, would we need to hold on to and pay all those employees during the period June 8 – June 30, even if this is OUTSIDE of our 8 week period of the loan.

You are not required to maintain the pre-COVID headcount following the end of your 8-week covered period. It is expected that once you complete the 8-week period, there will be a standard form or calculation worksheet, probably lender specific, that the borrower will need to prepare and attest to the accuracy of. That form will require the borrower to provide details on the headcount for that time period, indicate the qualified payroll costs for the period and list any other allowable operating expenses. Once you calculate and submit the information for your covered 8 weeks, you no longer have any obligation to report additional financial or headcount information relative to your loan forgiveness calculation. As long as your 8-week period ends before that contract ends, you won't be penalized if you subsequently have to terminate employees due to the loss of the contract.

We have paid our non-productive Food and Beverage employees Vacation and Sick time that they have accrued under our standard policy. Most of this earned paid leave has been used up. Can we now continue to pay them under the extended paid sick leave program?

You can only pay employees extended leave covered under the FFCRA if they qualify for it.

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The EPSLA and EFMLA programs requires Eligible Employers to provide employees with paid sick leave or FMLA leave if the employee is unable to work (including telework) due to any of the following:

1. The employee is under a Federal, State, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. the employee is caring for the child of such employee if the school or place of care of the child has been closed, or the childcare provider of such child is unavailable, due to COVID-19 precautions;
6. the employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

An employee who is unable to work for reasons due to a COVID-19 circumstance described in (1), (2) or (3) above is entitled to paid sick leave for up to two weeks (up to 80 hours) at the employee's regular rate of pay, or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate.

Do we have to retain employees covered under our PPP loan until December 2020?

No. If you qualify for the loan and want to maintain headcount for the measurement period, then you only need to keep them until the end of the 8-week covered period. After that, it is the employer's decision as to what they want to do with their headcount. The hope is that your business would resume to normal operating levels at that point and you could retain your employees.

We've seen employees being awarded the 80 hours of sick pay, whether they're full time or part time. Is that pretty standard right now across the board, with just everyone getting 80 hours... vs the part time hours they traditionally work?

Employees that qualify for the ESPL under the FFCRA are entitled to be paid the average wages earned over the previous 2-week time period. If they normally work 20 hours per week, then their sick pay would be adjusted to 20 hours per week at their average hourly rate. If they are normally full-time, then they'll receive sick leave based on their normal full-time salary or hourly rate based on 40 hours worked.

If an employee's pay was reduced by only 8% (well below the 25% reduction limit specified under the PPP loan criteria), would the forgiveness still be reduced by this 8% or will 100% loan forgiveness be allowed so long as average payroll costs were being maintained?

First the qualifying forgiveness amount must be determined. This will be based on the amount of payroll costs and other qualifying operating expenses incurred during the 8-week period. The SBA and Treasury Department have stated that not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs. Once the eligible forgiveness amount is determined, the salary reduction test is completed. If the amount of any individual employee's salaries/wages paid during the 8-week period following the loan origination date is reduced by less than 25%, then no reduction to the qualifying loan forgiveness amount is required under the salary reduction test.

Can we clarify the sick pay? For part time employees, do they only get their average hours worked per week up to 80 hours or would an employee who gets an average of 20 hours per week, would they only get 40 hours of sick time.

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. The total amount paid cannot exceed 80 hours in the two-week period covered by the leave, but the employer is only obligated to pay the employee based on the average number of hours they normally work.

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