

COVID Programs and Legislation FAQs

How can my company obtain capital to cover the costs of retaining employees?

CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") allocates \$349 billion for the Paycheck Protection Program ("PPP"), and \$562 million for Economic Injury Disaster Loans ("EIDLs"), and \$10 billion for Emergency Economic Injury Grants ("EEIGs"), all of which may be used to cover the costs of retaining employees for certain companies.

The PPP provides for 100% federally-backed small business loans provided by participating lenders and federally insured depository institution, federally insured credit union, and Farm Credit System institution. The loan proceeds are intended to provide cash-flow assistance to small businesses for payroll and other costs. Small businesses with no more than 500 employees (full and part time), or those that employ less than the standard number of employees in their company's particular industry may be eligible to apply. Total loan amounts are generally 2.5 times the average monthly payroll cost in the year preceding the loan, up to \$10 million maximum for the 8 week period between February 15, 2020 and June 30, 2020.

Loans may be used to cover the following costs: (1) payroll costs; (2) group health care benefits; (3) salaries and other compensation; (4) mortgage interest payments on mortgages incurred prior to February 15th (5) rent and utilities for lease agreements entered into prior to February 15, 2020; and (6) interest on other debt obligations incurred prior to February 15, 2020. Payroll costs include: (1) salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee); (2) employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit; (3) state and local taxes assessed on compensation; and (4) for a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

The loan is forgivable, subject to certain conditions. You will owe money when your loan is due if you use the loan amount for anything other than the expenses explained above over the 8 weeks after getting the loan. It is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs. You will also owe money if you do not maintain your staff and payroll, as follows:

- (1) Number of Staff: If you decrease your full-time employee headcount.
- (2) Level of Payroll: If you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
- (3) Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

The CARES Act also makes available Economic Injury Disaster Loans ("EIDL") and Emergency Economic Injury Grants ("EEIG") through the Small Business Administration. Businesses with fewer than 500 employees and sole proprietors and independent contractors are eligible. Loans may be used to pay for expenses that generally would have otherwise been met had business not been impacted by COVID-19 (including payroll). Loans may be for a maximum of \$2 million. Interest rates are set at up to 3.75% for businesses and up to 2.75% for nonprofits. Eligible businesses may receive both Paycheck Protection Program and EIDL funds under specific circumstances and so long as the proceeds of the loans are not used for duplicative purposes.

In addition to the EIDL, eligible entities as described above may apply for EEIG of up to \$10,000 so long as they have applied for an EIDL.

NJ EDA Programs

The New Jersey Economic Development Authority ("EDA") has also approved programs aimed at helping the smallest and hardest-hit businesses in the state.

The EDA's Small Business Emergency Assistance Grant Program allocates \$5 million in funding to businesses with 1-10 full-time employees in specific industries. Businesses in retail, food service, entertainment and recreation, personal care, maintenance, repair and similar impacted industries may apply. Eligible businesses may receive a maximum grant of \$5,000. To qualify, the business must have a commercial location in New Jersey and the CEO must certify that: (1) the business has been negatively impacted by COVID-19 and provide examples of such impacts; (2) there are no business funds otherwise available to it; and (3) the business has not terminated or furloughed employees, and if it has, it will use its best efforts to re-hire those employees. The grant program would cover certain nonprofit companies. Home-based businesses are not eligible for this program.

The Small Business Emergency Assistance Loan Program allocates \$10 million to provide up to \$100,000 in working capital loans to small businesses and nonprofits with \$5 million or less in revenue. To be eligible the small business or non-profit must have been in existence for at least one year and have a commercial location in New Jersey. This program specifically excludes home-based businesses. Loans made through the program will have a maximum term of ten-years with 0% interest for the first five years. After the fifth year of the term, the interest rate will reset to the EDA's prevailing floor rate (capped at 3%) for the remaining term. The small business owner or CEO must make the same certifications as required for the Small Business Emergency Assistance Grant Program. A personal guaranty required for small businesses, as well as a pledge of collateral, if available.

The Small Business Emergency Assistance Guarantee Program allocates \$10 million to be used by nonprofits and micro and small businesses with revenues of \$5 million or less. The program will provide a first loss guarantee capped at the lesser of 50% of the loan or \$100,000, as well as waive all fees associated with existing EDA Premier Lender or Premiere Community Development Finance Institution ("CDFI") programs.

The NJ Entrepreneur Support Program allocates \$5 million to small businesses with less than 25 employees and \$5 million or less in revenues. The program is aimed at supporting start-up companies and will provide up to 80% guarantees on working capital loans and waive all fees on loans made through the EDA's existing Premier Lender or Premier CDFI programs.

How I can my company receive a quick infusion of cash to cover my costs and obligations right now?

The EEIG may provide up to \$10,000 to small businesses that have applied for EIGLs to use towards covering immediate costs. The EEIG is treated as an advance on the loan. Businesses are not required to repay the grant if they are eventually denied for an EIDL. You can apply for the EEIG directly with the SBA.

Eligible employers can receive an advanced tax credit for employer-paid leave under the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

The New Jersey EDA programs described above are also geared towards providing quick infusions of capital to employers that meet eligibility requirements. The EDA applications open on Friday, April 3, 2020 at 9am.

What if I am unable to keep up with my payments on my current or potential SBA loan?

You may qualify for loan forgiveness for certain covered loans (including PPP, 504 loans, and microloans, but not disaster loans). Forgiveness is calculated for the 8-week period beginning on the date of origination of a

covered loan. Forgiveness would take the form of cancelled indebtedness, and shall not exceed the loan principal. Portions of the loan that are not forgiven are payable over 10 years with a maximum interest rate of 4%.

The CARES Act also allocates \$265 million to Small Business Development Centers, Women's Business Centers, or SCORE mentorship chapters. The goal of this section is to expand the reach of these companies in order to better support small business owners through counseling and providing information regarding COVID-19. The bill contemplates a joint platform that consolidates information and resources related to COVID-19 to provide consistent and timely information to small businesses. Minority Business Development Agency Business Centers will also receive funding to hire staff and provide programming to help their clients respond to COVID-19 related challenges.

Can you explain the tax credit that my company may be eligible to receive?

There are several tax credits which may be available to you.

Employee Retention Credit: Qualified businesses may be eligible for refundable credit against the employer's share of payroll taxes for each calendar quarter, equal to 50% of qualified wages per employee, up to \$10,000 per quarter per employee. Credit is limited to taxes on wages paid, as reduced by any applicable tax credits, including those passed under the Families First Coronavirus Response Act. Credit is limited to taxes on wages paid, as reduced by any applicable tax credits, including those passed under the Families First Coronavirus Response Act.

Modifications for Net Operating Losses: Permits net operating losses from tax years 2018, 2019, or 2020 to be carried back for five years.

Modification of Limitation on Losses for Taxpayers Other than Corporations: For taxable years beginning after December 31, 2020 through January 1, 2026, the taxpayer's excess business loss for the taxable year will not be permitted. Excess business losses do not take deductions for losses from sales or exchanges of capital assets into account. Gains from sales or exchanges of capital assets shall not exceed the lesser of: (1) capital gain net income as determined by gains and losses attributable to a trade/business; or (2) capital gain net income.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations: Eligible companies may be able to recover corporate alternative minimum tax credits by claiming refund now.

Modifications of Limitation on Business Interest: The CARES act increases the 30% limitation on interest expense deduction to 50% of taxable income (with adjustments) for 2019 and 2020.

Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion Tax Credit:

The Families First Coronavirus Response Act allows employers to receive a credit for the employer portion of the FICA taxes paid each quarter, in an amount equal to 100% of the wages paid by the employer pursuant to the Emergency Paid Sick Leave Act, the Emergency Family and Medical Leave Expansion Act, and the amount paid or incurred to maintain the health insurance coverage for employees taking such leave. However, the amount of the wages taken into account cannot not exceed the statutory caps for the paid leave, which are \$200 (\$2,000 in the aggregate) or \$511 per day (\$5,110 in the aggregate), per individual for Emergency Paid Sick Leave and \$200 per day (\$10,000 in the aggregate), per individual, for the Emergency Family and Medical Leave Expansion Act. The tax credits are limited to the amount of tax actually paid by the employer. If the amount of the credits exceed such limit, the employer may be entitled to a refund for any overpayment.

The CARES Act allows eligible employers to receive, in advance, the tax credit for employer-paid leave under the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act.

Can I delay the payment of my employer payroll taxes?

Yes. Employers can postpone employer payroll taxes from March 27, 2020 through December 31, 2020. Half of deferred this amount is to be paid by December 31, 2021, and the other half by December 31, 2022. It is prudent to discuss the mechanics of withholding your payroll taxes with your payroll provider.

Is money paid by employers to employees for student loan assistance tax free to the recipients?

Yes. The amount paid by the employer up to \$5,250 is excluded from the employee's gross income.

What are the new rules related to loans and distributions from retirement savings?

The CARES Act permits early withdrawals of up to \$100,000 from IRAs or qualified retirement plans. Eligible individuals must be diagnosed with COVID-19, caring for a spouse or dependent so diagnosed, or experiencing financial impacts due to reduced work hours, furlough, quarantine, or job loss as a result of COVID-19, qualify to make these withdrawals.

The amount withdrawn may also be repaid at any time over a three-year period. To the extent the amount is not repaid, the amount withdrawn is still subject to income tax, but can be spread out over a three-year span.

What happens if I laid someone off? Should I bring them back and start paying them?

This will depend on the needs of your business and what loans and credits your company qualifies for.

In general, re-hiring employees who have already been laid off may increase an employer's amount of loan forgiveness on PPP loans. Employers who are considering re-hiring employees should do so by June 30, 2020 if they are planning to take advantage of the PPP program and loan forgiveness. The number of employees on your payroll may also impact the amount of Employee Retention Credit that you are eligible for.

In order to qualify for grants and low-interest loans, is there a requirement that I maintain all of my employees? Is it OK to reduce hours?

Small business loans under the CARES Act are structured to incentivize retention of all employees. Employers that opt to reduce the number of employees may have the amount of their PPP loan forgiveness reduced.