

# EO COVID-19 FAQ

\*Please know many of these responses are based on information available TODAY, but we all highly recommend you consult your advisor, banker, accountant, attorney, etc. for direct advice for your specific circumstances, before making any decisions.

## **Any information from the State of Tennessee whether or not the Federal \$600 per week will be augmented by TN's unemployment contributions or will it just be \$600/week unemployment?**

The \$600/week will augment Tennessee's unemployment compensation. Tennessee's current maximum unemployment compensation is \$275/week for a maximum of 26 weeks, see the Tennessee website at <https://www.tn.gov/workforce/unemployment/apply-for-benefits.html>. With the CARES Act, unemployment compensation is now a maximum of \$875/week until July 31, 2020. (WADDELL & ASSOCIATES)

## **If I have to lay off more than 50% of my employees, will I still be eligible for the loan forgiveness?**

Yes you will still qualify for the loan. The loan forgiveness will be calculated by the employees you still have on payroll during the 8 week period following when you qualify for the loan. (CONTINUUM PLANNING PARTNERS)

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages. (FRAZIER & DEETER)

No. If you terminated, furloughed or laid off employees from February 15, 2020 through April 26, 2020, you will not be penalized if you re-hire the employees by June 30, 2020. (FIRST HORIZON)

## **If I have a draw, can my draw be put into the payroll calculations to increase the amount I can get for a loan?**

Yes up to the limit of \$100,000 annualized, or \$8,333 per month. (CONTINUUM PLANNING PARTNERS)

Appears to be so up to 100K per year cap in the formula for the 8 week "covered period" (FRAZIER & DEETER)

## **I heard that if you were going to let people go, it should be before April 1st to avoid extra costs. Is this accurate?**

No. As of April 1, all businesses with fewer than 500 employees will be subject to the paid leave requirements of the FFCRA. This means if employees qualify for leave under either the EFMLEA or the Emergency Paid Leave Act, they will be entitled to paid leave. But if the employee is furloughed or laid off, there is no requirement to continue paying them because in that event, they are not unable to work or telework because of the reasons set forth under the FFCRA. You should not make layoff decisions under the pressure of trying to avoid the April 1 effective date of the FFCRA. (BAKER DONELSON)

Families First Act expanded sick leave benefits kick in April 1st, maybe that's what someone is referring to. (FRAZIER & DEETER)

## **For the \$100,000 salary cap for payroll loans, is it a cap or are those employees totally excluded?**

It is a cap, calculated at \$8,333 per month (CONTINUUM PLANNING PARTNERS)

My current interpretation and that of others in my firm is that it's a cap and the employee comp isn't disqualified in its entirety (FRAZIER & DEETER)

It's a cap. These employees can be included, but only up to \$100,000 (prorated) (FIRST HORIZON)

Payroll Costs shall NOT include: (a) any compensation to any individual in excess of \$100,000 per year as prorated for the covered period, (b) federal payroll taxes (Chapters 21, 22 or 24 of the Internal Revenue Code) (c) any compensation of an employee whose principal place of residence is outside the United States or (d) any qualified sick leave or family leave wages for which credit is allowed under the Families First Coronavirus Response Act. (BAKER DONELSON)

**Any ideas how it might work for owners who do draws that are not always consistent?**

It will be based on your average payroll monthly as of Feb. 15th, 2020. So the owner's average income at that point, capped at \$8,333 per month (\$100,000 per year) (CONTINUUM PLANNING PARTNERS)

**Any inclusion independent contractor team members in Payroll Protection Act or just payroll?**

Only employees on payroll. Independent contractors own their own business and are eligible to file for these benefits on their own. (CONTINUUM PLANNING PARTNERS)

Independent contracts are included in the definition of payroll costs in section 1102 of the CARES Act (FRAZIER & DEETER)

Generally, businesses with no more than 500 employees (including non-profit 501(c)(3)'s, sole proprietorships, independent contractors and self-employed individuals) that were operational on February 15, 2020 and had employees (and paid payroll taxes on them) or paid independent contractors (reported on a 1099-MISC) are eligible. A business with a NAICS Code beginning with 72 – accommodation and food service businesses- with more than one physical location is eligible if it employs no more than 500 employees at each location. For purposes of this program, the SBA's affiliate rules are waived for businesses in the hospitality and restaurant industries, franchises approved on the SBA's Franchise Directory and small businesses that receive financing through the Small Business Investment Company Program. (BAKER DONELSON)

**Can “guaranteed Payments” be considered for eligibility and/or forgiveness?**

That is the current understanding, yes. (CONTINUUM PLANNING PARTNERS)

Appears to be so up to 100K per year cap in the formula for the 8 week “covered period” (FRAZIER & DEETER)

**We own our building in a separate company and pay rent equal to our mortgage. It's not tied to fair market value. I'm assuming we have to use the lower amount we pay now.**

Yes it will be based on the amount actually being paid (CONTINUUM PLANNING PARTNERS)

**If we are an Ee and make over \$100K can the “up to” be considered for the loan?**

Yes (CONTINUUM PLANNING PARTNERS)

Appears to be so up to 100K per year cap in the formula for the 8 week “covered period” (FRAZIER & DEETER)

The purpose of the Paycheck Protection Program is to help you retain your employees, at their current base pay. If you keep all of your employees, the entirety of the loan will be forgiven. If you still lay off employees, the forgiveness will be reduced by the percent decrease in the number of employees. If your total payroll expenses on workers making less than \$100,000 annually decreases by more than 25 percent, loan forgiveness will be reduced by the same amount. If you have already laid off some employees, you can still be forgiven for the full amount of your payroll cost if you rehire your employees by June 30, 2020. (BAKER DONELSON)

**The summaries I have read state that we must certify that the loan is necessary for “ongoing operations”. We are closed, but still have all of the normal expenses. Will this count as “ongoing operations”.**

Yes it will count for the loan and for forgiveness if they go towards remaining payroll cost, interest, rent and utilities. (CONTINUUM PLANNING PARTNERS)

Qualifying businesses that have suffered significant disruption as a result of COVID-19 will be able to receive no-fee

“small business interruption loans.” Qualifying small businesses include “any business concern, nonprofit organization, veteran’s organization, religious organizations or Tribal business” that have:

- 500 employees or fewer, whether employed on a full-time, part-time, or other basis; or
- meet the SBA’s industry-based “size standard” requirements for the applicable North American Industry Classification System (NAICS) code, which are based either on number of employees or annual receipts, if larger than 500 employees, in which the concern operates.[1] (FRAZIER & DEETER)

**Is worker’s compensation available for employees with cut hours?**

Yes (BAKER DONELSON)

**Do commissions to employees get forgiven?**

If it was W2 income, then current information is yes. If it is treated as a separate stream of income then it will not. (CONTINUUM PLANNING PARTNERS)

Employees who earn commission as their compensation is referenced in the definition of “payroll costs” in section 1102 of the CARES Act assuming commissions are paid during the 8 week “covered period” (FRAZIER & DEETER)

**We have clients that are in good financial standing, can they still apply for this loan? ... are their eligibility requirements?**

Yes you may still apply. The same eligibility requirements apply to financially stable companies on how to calculate the loan amount and how the funds may be used to qualify for forgiveness. (CONTINUUM PLANNING PARTNERS)

Qualifying businesses that have suffered significant disruption as a result of COVID-19 will be able to receive no-fee “small business interruption loans.” Qualifying small businesses include “any business concern, nonprofit organization, veteran’s organization, religious organizations or Tribal business” that have:

- 500 employees or fewer, whether employed on a full-time, part-time, or other basis; or
- meet the SBA’s industry-based “size standard” requirements for the applicable North American Industry Classification System (NAICS) code, which are based either on number of employees or annual receipts, if larger than 500 employees, in which the concern operates.[1] (FRAZIER & DEETER)

Yes you can still apply if you are in financial good standing. The eligibility requirements relate to the impact your company has experienced due to the COVID 19 virus. (FIRST HORIZON)

**Do we withhold federal taxes for our payroll with this government money?**

No any loan or grant will be tax free (CONTINUUM PLANNING PARTNERS)

Employee Payroll Retention Credit under The CARES Act offers a credit to employers that provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit is for wages paid or incurred from March 13, 2020 through December 31, 2020, and is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee.

There are a few more details:

- The credit is taken against employment taxes, with any excess refunded to the employer.
- For employers with 100 or fewer employees (measured by average employment in 2019), the credit applies if the employer had to fully or partially suspend operations due to an order from a governmental authority or had a decline in revenue for any calendar quarter in 2020 of 50% compared to the same quarter in 2019.

- For employers with over 100 employees, the same conditions apply but the credit applies only to wages paid to employees who are on payroll but not working.
- The credit covers qualified wages paid March 13, 2020 through December 31, 2020. The credit expires when (1) the full \$10,000 per employee maximum is reached, or (2) when revenue for a quarter in 2020 is above 80% of gross receipts for the same quarter in 2019.
- The credit applies to tax-exempt organizations, including non-profit organizations.
- Employers receiving emergency SBA 7(a) loans would not be eligible for these credits. (BAKER DONELSON)

**If you have a home office, can you use last year's tax deduction to calculate that portion for the loan?**

Home office expenses are not included in the calculation. The amount of loan you are eligible to receive is based on payroll and related expenses (salary, wages, commissions, tips, paid leave, healthcare payments, and retirement benefit payments). The loan is forgivable if used to pay the following expenses: payroll and related expenses (see above), mortgage interest or other loan interest for loans entered into prior to 2/15/2020, rent for leases entered into prior to 2/15/2020, and utility payments. (WADDELL & ASSOCIATES)

**Can any costs for 1099 workers that are kept to keep things open eligible?**

Independent contractors are included in the definition of "payroll costs" in section 1102 of the CARES Act. (FRAZIER & DEETER)

**I have a colleague who stated that the forgivable loan under 7(a) is taxable...I am reading on your table though that it is not.**

It will not be taxable (CONTINUUM PLANNING PARTNERS)

Section 1106 states that it is not taxable, but we're not sure yet what that means, i.e. they'll forgive the loan and let you have the expenses? I'd think not, but this is an unprecedented time. We need more guidance on this one. This could create basis issues for partnerships so this one will be a wait and see. (FRAZIER & DEETER)

**Can you confirm that Payroll Protection applications should be made with local lenders?**

Yes, you should contact your local bank to apply for the Payroll Protection Program. (FIRST HORIZON)

**If someone quits or put in their notice before this, does it count against us?**

Yes they need to actually be on payroll on Feb. 15th for the loan amount. Then they must stay on payroll for the 8 week period following receipt of the loan to qualify for forgiveness (CONTINUUM PLANNING PARTNERS)

**How are tips-based employees' income treated?**

If W2 they can be counted. If 1099 or not reported, then they will not. (CONTINUUM PLANNING PARTNERS)

The statute defines payroll costs as: (a) salaries, wages, commission or similar compensation, (b) payment of cash tips or their equivalent, (c) payment for vacation, parental, family medical or sick leave, (d) allowance for dismissal or separation, (e) payment required for group health care benefits including insurance premiums (f) payment of retirement benefits, (g) payment of state or local tax assessed on the compensation of employees and (h) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is compensation from self-employment (limited to \$100,000 per year as pro-rated for the covered period). Payroll Costs shall NOT include: (a) any compensation to any individual in excess of \$100,000 per year as prorated for the covered period, (b) federal payroll taxes (Chapters 21, 22 or 24 of the Internal Revenue Code) (c) any compensation of an employee whose principal place of residence is outside the United States or (d) any qualified sick leave or family leave wages for which credit is allowed under the Families First Coronavirus Response Act. (BAKER DONELSON)

### **What about outsourced payroll services, bookkeeping, AR 1099s?**

They are their own business and will file on their own. You cannot count them as overhead. (CONTINUUM PLANNING PARTNERS)

Under the PPP sole proprietors, independent contractors, gig economy workers, and self-employed individuals are all eligible for the Paycheck Protection Program. (BAKER DONELSON)

### **What about 3rd party warehouse expense, which includes rent and order processing?**

The proceeds of the Paycheck Protection Program loans can be used for: (a) payroll costs, (b) cost related to continuation of group health care benefits during periods of paid sick, medical or family leave and insurance premiums, (c) employee salaries, commissions, or similar compensation, (d) payments of interest on any mortgage obligation (NOT any principal payments), (e) rent, (f) utilities, and (g) interest on any other debt obligations that were incurred before February 15, 2020. (BAKER DONELSON)

You may need to have the warehouse itemize their expenses. If you can show the portion of expense that is considered a covered rent obligation, i.e. under a leasing agreement that is in force prior to February 15, 2020, this portion of the expense should be eligible for forgiveness. Expenses eligible for forgiveness through the Paycheck Protection Program loan include:

- Payroll costs;
- Payment of interest on any covered mortgage obligation;
- Payments on any covered rent obligations; and
- Covered utility payments. (WADDELL & ASSOCIATES)

### **What amount of loan can be forgiven? Is it 100% of all employees who are currently there after furlough and we keep during the loan period? We already furloughed the majority of our employees and have no work for them because we were mandated closed.**

The amount of funds spent on payroll, rent, mortgage and utilities in the 8 week period following receipt of the loan can be forgiven. If you re-hire employees during that time, they will count towards forgiveness. (CONTINUUM PLANNING PARTNERS)

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness if by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages. (FRAZIER & DEETER)

The amount of principal that may be forgiven is equal to the sum of expenses for payroll, and existing interest payments on mortgages, rent payments, leases, and utility service agreements. Payroll costs include employee salaries (up to an annual rate of pay of \$100,000), hourly wages and cash tips, paid sick or medical leave, and group health insurance premiums. If you would like to use the Paycheck Protection Program for other business-related expenses, like inventory, you can, but that portion of the loan will not be forgiven.

The loan is forgiven at the end of the 8-week period after you take out the loan. Borrowers will work with lenders to verify covered expenses and the proper amount of forgiveness.

The purpose of the Paycheck Protection Program is to help you retain your employees, at their current base pay. If you keep all of your employees, the entirety of the loan will be forgiven. If you still lay off employees, the forgiveness will be reduced by the percent decrease in the number of employees. If your total payroll expenses on workers making less than \$100,000 annually decreases by more than 25 percent, loan forgiveness will be reduced by the same amount. If you have already laid off some employees, you can still be forgiven for the full amount of your payroll cost if you rehire your employees by June 30, 2020. (BAKER DONELSON)

**Any good resources for navigation through the SBA process for companies that were founded in 2019 and do not yet have tax history etc?**

Contact your local bank or the local SBA office in Nashville (FIRST HORIZON)

See our coronavirus webpage: [www.bakerdonelson.com/coronavirus](http://www.bakerdonelson.com/coronavirus) it is updated daily with valuable information on the pandemic. (BAKER DONELSON)

**Is the loan only forgiven if we keep the same amount of employees as we had last year at this time? Says the forgiveness is reduced if we have less employees than last year at same time?**

The amount of funds spent on payroll, rent, mortgage and utilities in the 8 week period following receipt of the loan can be forgiven. It is based on employees on payroll during that time.

Loan Forgiveness Criteria: Borrowers under the Paycheck Protection Program are eligible for forgiveness of loan principal in an amount equal to what the borrower expects to pay in payroll costs, rent payments, payments of interest on any covered mortgage obligation and utilities for the 8 weeks following the origination of the loan. However, the amount of loan forgiveness shall not exceed the principal financed. The forgiveness amount will be reduced if the borrower reduces the number of employees as compared to last year or if the employer reduces the pay of any employee by more than 25% as compared to last quarter.

Employers who re-hire workers by June 30, 2020 who previously terminated, furloughed or laid off from February 15, 2020 through April 26, 2020 will not be penalized for having a reduced payroll at the beginning of the assessment period.

The application for forgiveness shall include:

(a) Documentation verifying the number of full time equivalent employees on payroll and pay rates for the 8 weeks following loan origination and documentation verifying the number of full time equivalent employees on payroll and pay rates for the same period of time for the year preceding the date of loan origination which shall include:

- Payroll tax filings reported to the IRS; and
- State income, payroll and unemployment filings.

(b) Documentation verifying mortgage interest, lease and utility payments, such as cancelled checks, receipts or account statements;

(c) Certification from a representative that the documentation presented is true and correct and the amount for which forgiveness is requested was used to retain employees, make interest payments on mortgage obligations, pay rent or pay utilities; and

(d) Any other documentation the SBA determines necessary.

A decision on loan forgiveness will be made not later than 60 days after the date the lender receives the application for loan forgiveness.

Indebtedness forgiven under this program is not reported as part of gross income for federal income tax purposes.

All payments of principal, interest and fees are deferred for at least 6 months but not more than 1 year. For any amounts not ultimately forgiven, interest rates are capped at 4% with a maximum term of 10 years from the date that the borrower applies for forgiveness. (BAKER DONELSON)

**When should I furlough vs. fire a staff member?**

Furlough functions as a temporary leave of absence, implying you intend to bring the employee back as soon as business conditions allow. The employee can still be considered an active employee by the employee benefits insurance companies who have relaxed actively at work requirements for coverage. The employer is then still responsible for

paying its portion of the premium and can require the furloughed employee to continue to contribute their portion. Firing the employee ends the working relationship with no implication of bringing that employee back at a later time. For benefits it creates a COBRA or state continuation offering and would also allow for potential health insurance subsidy qualification at <http://www.healthcare.gov>. Both furloughed and terminated employees are eligible for unemployment. (WC DILLON)

In regards to the Payroll Protection Program, employers who terminated, furloughed or laid off employees from 2/15/20 through 4/26/20 will not be penalized for having a reduced payroll at the beginning of the assessment period if they re-hire the employees by 6/30/20. (FIRST HORIZON)

**Last year for April 1 - May 31st, 2019, we had 10 people on Payroll. This year, unless we make layoffs this week, we will have 9 people on Payroll for April 1 - May31st. You had advocated that if we were going to lay people off, we should do so now, HOWEVER, won't that reduce our FTE count even lower compared to last year, thus reducing the amount of our loan that is forgiven during the April 1 - May 31st 2020 period?**

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages. (FRAZIER & DEETER)

# EO NASHVILLE STRATEGIC ALLIANCE PARTNERS

Please know our Strategic Alliance Partners have been vetted and we feel they are the BEST at what they do. They would all love the opportunity to work with you on your specific needs.



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