



## MCGINNIS LOCHRIDGE

### **Navigating The CARES Act for Employers**

Following on the heels of the Families First Coronavirus Response Act (“FFCRA”), which, among other things, provided paid sick and family leave to workers affected by novel coronavirus (COVID-19), President Trump signed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act on March 27, 2020.

The CARES Act was designed, in part, to provide economic relief to businesses and workers impacted by the closure or disruption of businesses due to COVID-19. Specifically, the CARES Act creates a new lending program, the Paycheck Protection Program, which provides businesses access to a loan for which the proceeds are required to be used to cover payroll costs, rent, interest and utilities. Additionally, the CARES Act implemented the Relief for Workers Affected by Coronavirus Act, which creates an employee retention tax credit for employers and extends the unemployment benefits an individual may be entitled to receive.

#### **PAYCHECK PROTECTION PROGRAM**

As part of the CARES Act, a new lending program was established for eligible businesses to cover payroll and other qualifying operational costs, known as the Paycheck Protection Program (“PPP”). Under the Act, the Small Business Administration (“SBA”) is the agency tasked with administering the PPP. The following is high-level summary of the PPP.

#### **Which entities may be eligible?**

- Many businesses, including 501(c)(3) organizations, that either:
  - Have no more than 500 employees; or are
  - “Small business concerns” which are entities that satisfy the industry size standards as determined by the Small Business Administration and as published by the North American Industry Classification System
- Sole proprietors, independent contractors, and self-employed individuals

Businesses in the accommodations and food industry (assigned a North American Industry Classification System Code starting with 72) with more than one physical location may be eligible as long as it does not employ more than 500 employees at a single physical location.

#### **Which employees are “counted” to determine eligibility?**

Full time and part time employees are counted to determine whether a business may be eligible to receive a covered loan.

### **How do I apply for a PPP loan?**

The CARES Act delegates to participating SBA lenders all administrative aspects of the loan including the application, processing and administration of the loan. Eligible entities should contact their bankers to determine if their bankers are handling PPP loans. If so, interested businesses should start the application process as soon as possible due to the anticipated large number of applicants.

### **How much is an eligible entity allowed to borrow under a PPP loan?**

Generally, the maximum amount of money an eligible entity may borrow is the lessor of:

- \$10 million; or
- 2.5 times the average total monthly payroll costs incurred during the 1-year period before the PPP loan is made.

### **What is considered “payroll costs” for the purposes of a PPP loan?**

Eligible businesses can use a PPP loan to cover payroll costs, which include:

- Salary, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Payment required for the provision of group health care benefits, including insurance premiums;
- Payment of any retirement benefits; or
- Payment of State or local tax assessed on the compensation of employees.

However, “payroll costs” exclude:

- The compensation of an individual employee in excess of an annual salary of \$100,000;
- Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code which are FICA taxes and payroll withholding obligations;
- Compensation of an employee whose principal place of residence is outside the United States;
- Qualified sick leave wages for which a tax credit is allowed under the FFCRA; or
- Qualified family leave wages for which a tax credit is allowed under the FFCRA.

### **How can the proceeds of a PPP loan be used?**

Eligible businesses may only use the proceeds of a PPP loan for the following costs:

- Payroll costs;
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

- Employee salaries, commissions, or similar compensation;
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
- Rent (including rent under a lease agreement);
- Utilities; and
- Interest on any other debt obligations that were incurred before February 15, 2020.

**Is the PPP loan forgivable?**

Generally, proceeds from a PPP loan used for to pay qualifying costs within the 8-week period after the loan is made may be forgivable. However, the forgivable amount will be reduced if:

- there is a proportionate reduction in the business's workforce during the covered period (e.g., layoffs, furloughs, etc.) from the prior year; or
- The total salary or wage of an employee (excluding employees with annual salaries of more than \$100,000) is reduced by more than 25% during the covered period.

To apply for forgiveness of a PPP loan, businesses will be required to retain and submit documentation to the lender relating to:

- The number of full-time employees on the payroll and the applicable pay rates, including federal payroll tax filings and state income, payroll, and unemployment filings;
- Cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, and covered utility payments;
- Certifications from a representative of the recipient of the PPP loan proceeds that:
  - The documentation presented is true and correct; and
  - The amount for which forgiveness is requested was use to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- Any other documentation the SBA determines is necessary.

***What is the deadline to apply for a PPP loan?***

The deadline to apply is June 30, 2020.

## RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS ACT

As many employers face difficult financial realities, the U.S. Department of Labor reported the number of workers filing unemployment from March 15 to March 21, 2020 surged to nearly 3.3 million. The Relief for Workers Affected by Coronavirus (“RWAC”) Act is the federal government’s attempt to address the financial burden on workers applying for unemployment benefits and incentivize employers to retain its workforce. More specifically, among other things, the RWAC Act created a tax incentive for employers to retain its workforce and calls for an expansion of unemployment benefits to individuals. The provisions that are primarily relevant to employers are summarized below.

### EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19

The RWAC Act created a new tax credit for eligible employers referred to as the “Employee Retention Credit.” In a nutshell, in 2020, eligible employers can claim a tax credit against applicable employment taxes of 50% of qualified wages paid to employees during the applicable calendar quarter. If a business obtains a Paycheck Protection Program loan, the business is not eligible to take the Employee Retention Credit.

#### ***What is an eligible employer for purposes of this tax credit?***

An “eligible employer” is any employer:

- i. Which was carrying on a trade or business during 2020; **and**
- ii. With respect to any calendar quarter:
  - a. The business operations were partially or fully suspended during the calendar quarter due to a governmental order limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19;
  - OR**
  - b. There was a significant decline in the business’s gross receipts.
- iii. Tax-exempt 501(c) organizations are eligible only if business operations were suspended due to a governmental order, not a significant decline in business gross receipts.

For a “significant decline” in gross receipts, the applicable time period:

- **Begins** on the first calendar quarter after December 31, 2019, for which the business received less than 50% of gross receipts as compared to the same calendar quarter in the prior year; and
- **Ends** on the first calendar quarter for which gross receipts are more than 80% of gross receipts, as compared to the same calendar quarter in the prior year.

***Are there any limitations on the amount of qualified wages an employer can claim for each employee?***

Yes. The maximum amount of qualified wages an employer can claim is \$10,000 per employee for the calendar year.

***How are “qualified wages” determined for purposes of this tax credit?***

“Qualified wages” for purposes of determining the eligible tax credit depends on the number of employees employed:

<b>For employers with less than 100 employees</b>	Includes wages* paid to an employee during the period of time that the business was partially or fully suspended due to a governmental order or that the business suffered a significant decline, <u>regardless whether the employee was providing services to the employer or not.</u>
<b>For employers with more than 100 employees</b>	Includes wages* paid to an employee who was not providing services to the employer due to a partial or full suspension of business operations or a significant decline in gross receipts

\*Please note, “wages” for the purposes of determining the eligible tax credit does not include wages paid for sick or family leave provided under the FFCRA.

***Is the tax credit refundable?***

Yes. Any amount of the tax credit that exceeds the applicable employment taxes for the calendar quarter is treated as an overpayment, and the excess amount shall be refunded to the employer.

**EXPANSION OF UNEMPLOYMENT BENEFITS**

The RWAC Act, a component of the CARES Act, provides for an increase in financial support for workers partially or totally unemployed. In general, the RWAC Act aims to provide unemployed individuals a \$600 weekly unemployment benefit provided by the federal government ***in addition*** to the weekly unemployment benefit provided by the state. The provision of the weekly federal unemployment benefit, including the amount and eligibility requirements, will be governed by an agreement between the federal government and the individual states.