

## First Come-First Served! Paycheck Protection Program Launches Today!

April 3, 2020

Applications can be made starting today\* for Small Business Association loans under the Paycheck Protection Program (“PPP”), which was created as part of the Keeping American Workers Paid and Employed Act (Title I of the Coronavirus Aid, Relief, and Economic Security Act or the “CARES” Act, enacted on March 27, 2020). **But funds are limited and it is first-come, first-served so employers hoping to take advantage of the forgivable loan must act now.**

Eligible employers, those with up to 500 employees (for whom the employer pays salaries and payroll taxes), as well as sole proprietorships and independent contractors:

- Can borrow up to 2.5 times their average monthly payroll costs (up to \$100,000 in annual salary per employee) to maintain their workforce for a period of 8 weeks following loan origination (maximum loan \$10 million)
- Can have 100% of the loan principal and interest forgiven if they maintain their workforce and use the loan for qualifying payroll costs, rent, mortgage interest obligations and utilities during the covered 8-week period
- Must use at least 75% of the loan for payroll costs during the covered 8-week period
- Can use up to 25% of the loan for other qualifying costs, such as mortgage interest obligations, rent and utilities
- Are NOT required to make a personal guaranty or provide collateral
- Can borrow the money at a 1% interest rate
- Can defer payment for up to 6 months following loan disbursement but interest will continue to accrue during this period
- Must repay loan (other than amounts that are forgiven) within 2 years
- Can prepay the loan without penalty

### Qualifying Payroll Costs

Payroll costs, for which 75% of the loan must be used during the 8-week covered period, include salary, wages and payment of cash tips (up to an annual rate of pay of \$100,000 and prorated for the covered period); covered leave; severance; employee group health care benefits, including insurance premiums; retirement contributions; state and local payroll taxes.

Payroll costs do NOT include certain federal taxes; compensation to employees whose principal place of residence is outside of the United States; and qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act. In addition, amounts paid to independent contractors (who can apply for loans directly) do not qualify as payroll costs.

### Loan Forgiveness May be Reduced

The amount forgiven will be reduced by any:

- reduction in employees; and
- the reduction in pay of any employee (paid \$100,000 or less) by more than 25% of his or her total wages/salary during the most recent full quarter during which the employee was employed before the covered period.

### **How to calculate whether there is a reduction in employees**

Compare the average number of full-time equivalent employees during the covered period to either (employer can choose):

- the period between February 15, 2019 to June 30, 2019 or
- the period between January 1, 2020, to February 29, 2020.

Seasonal employers can compare to the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

**How to calculate the effect of a reduction in employees on loan forgiveness:** (qualifying costs during covered period) multiplied by (average number of full-time equivalent employees per month during covered period) divided by (the number of employees during employer's choice of time period)

### **ALREADY REDUCED YOUR WORK-FORCE?**

The Act provides an exemption to employers who have laid off employees during the time from February 15, 2020 to April 26, 2020. If the employer eliminates the reduction-in-force by the end of the covered period, it will not be penalized for having a reduced payroll at the beginning of the period. The same applies for any reduction in salary.

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The PPP is being offered to help small businesses impacted by COVID-19. It provides a great opportunity for employers to keep their workforce going for at least 8 weeks from the date the loan is made. Some who have been forced to close, may decide the PPP does not make sense for their business. Employers should consult with legal and tax advisors to weigh their options based on their individual circumstances. See other [State and Federal Grant and Loan Programs Available to New Jersey Small Business](#).

\*While the PPP loans applications can start today, some lenders may not be ready to start accepting applications until next week.

Information contained in this alert includes updates to the program announced in the Interim Final Rule released on April 2, 2020. As additional rules, regulations and/or updates are issued, Saiber's attorneys are available to help guide employers.