

Over the last week we have been fielding numerous calls from our clients regarding CARES Act payroll protection loans. With that in mind we decided to provide a few answers to the most frequently asked question.

### **GENERAL LOAN QUESTIONS**

- **How fast are these loans going to be processed and funded?**

The timelines are dictated by the SBA at this point. I have spoken to a number of banks and have told they will have online applications portals live this Friday. The timeline for application availability will be dependent on your bank.

On that note, you should contact your business banker to find out the status for your bank. The rules vary by bank, but many banks will be requiring the business to have an account at the bank to get a loan. Some banks are requiring that the account existed as of February 15, 2020.

Additionally some local banks will either not be providing loans at all or be holding these applications until they determine how much they will need and thus may reduce applicants loan amounts based on internal factors.

Another point on timing: you need to act fast! First, the law requires that the 8 week covered period for spending the loan proceeds on forgivable expenses must end by June 30. Second, the pool of \$349 Billion that pays for the program is not endless. Loans are granted on a first-come, first-served basis.

### **How do the CARES Act payroll protection loans relate to the SBA Covid-19 Economic Injury Disaster Loans?**

The CARES Act payroll protection loans are focused on payroll with a very transparent calculation on the loan funds: everyone who is eligible gets 2.5 times average monthly payroll. The payroll protection loans are fully forgivable if the rules are followed.

The COVID-19 Economic Injury Disaster Loans are not forgivable, but they are available for any kind of working capital expense. The interest rate is locked in at 3.75%.

Please beware that you are allowed to apply for both. However, if you get an economic disaster loan and a payroll protection loan, only the payroll protection loan may be spent on payroll. The economic disaster loans are strictly for working capital to cover overhead expenses.

Also, the economic disaster loans require a physical location in an affected area.

My advice to businesses is that everyone should apply for payroll protection loans. If your business really needs the money to make ends meet beyond the payroll protection loan funds, apply for the disaster loan.

- **I have a business that pays myself and one independent contractor. Is his pay eligible for the CARES Act forgivable loans?**

Yes, as long as you can prove it to your bank with documentation. Payroll costs are defined to include payments to independent contractors. The specific language is that payroll includes “the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as pro-rated for the covered period. Section 1102(a)(1)(A)(viii)(bb).

- **Are Federal and State payroll taxes included in the definition of Payroll?**

Payroll includes state and local payroll taxes, but not federal payroll taxes. You will have to pay federal income taxes on this loan.

### **LOAN FORGIVABILITY UNDER THE CARES ACT**

**Can I get a payroll protection loan and not lose any loan forgiveness under the "same amount of FTEs rule" if I have the same number of Full Time Employees, but they are different employees?**

Yes. The Act requires that the business must have the same number of Full Time Employees to get loan forgiveness. It does not require that the same people are the same employees. In theory, you could have an entirely new staff and still qualify for full loan forgiveness so long as FTEs are the same in the 8 week covered period and in the measurement period you choose.

- **If I apply for the CARES Act payroll protection loan this week, am accepted, and receive the funds later this month, can I use the funds to pay rent that was due on April 1st?**

No. The funds must be used only for expenses during the covered 8 week period. To be clear, we are just talking about moving money around from one allocation to another. So, as a practical matter, you can use the money that you would have had to use to pay payroll in April and May to pay your April rent (that was due before the Covered Period). But, the bank is going to ask you how you used the loan disbursement. If you say it was for anything that is not in the 8 week period after the loan is issued, then that expense will not be forgivable.

- **Can we use the CARES Act payroll protection loan to pay for cost of goods sold and inventory?**

No. Cost of goods sold and inventory are not covered expenses under the CARES Act. You must spend the money on payroll, rent, mortgage interest or utilities.

- **Can the I pay myself as the owners during the covered 8 week period?**

Yes. The business can pay owners during the covered 8 week period and have those payroll payments count toward loan forgiveness.

- **Are you able to spell out any advice for business owners who have already made layoffs and want to rehire?**

Section 1102(d)(5) specifically covers the situation of rehiring laid off employees. It provides that the IRS will not count rehired employees against the FTE ratio. So, yes, once you get the

payroll protection loan, go ahead and rehire your employees. That is what the law wants you to do.

If you have any additional questions or would like additional help please do not hesitate to contact us.

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