QUESTCO

COVID-19: CARES Act Stimulus Package

Date: *April 2nd, 2020*

Speakers:

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WEBINAR Q & A

Questco recently sponsored a Q&A webinar on Thursday, April 2nd, 2020 surrounding the Coronavirus Aid, Relief and Economic Security Act and how it pertains to employers and employees. We've compiled all questions and answers presented during the webinar, as well as adding additional questions subsequently posed by our Clients. Please note that the responses to these questions are based on the most recent information available and are subject to change or modification based on continuing updates released by various legislative bodies.

Coronavirus Aid, Relief and Economic Security Act – H.R. 748

Terms used in this Document:

CARES	Coronavirus Aid, Relief, and Economic Security Act
PPP	Paycheck Protection Program
IFR	Interim Final Rules (issued by SBA to explain PPP loan requirements)
SBA	Small Business Association
FFCRA	Families First Coronavirus Response Act
EPSL	Emergency Paid Sick Leave
EFML	Expanded Family and Medical Leave

APPLICATION PROCEDURES

Do you have any idea what payroll documents will be required for a loan? My lender was still unsure as of yesterday.
The SBA IFR clarified that lenders are not limited in the types of documentation they can use to determine eligibility for a PPP loan. This will generally vary by lender. Documentation can include payroll processor records. And for borrowers

that do not have required documentation, such as payroll tax filings, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount. The SBA does not require lenders to use any tax information, such as Form 941, for purposes of underwriting the PPP loan; however, we have heard that some lenders are asking for 941s despite the fact that they are not required. Please reach out to your Questco service provider if you would like a letter to provide to your lender in support of this position.

If we have 4 separate companies can we obtain 4 separate loans, OR roll all 4 into 1 large loan?
If there is common ownership for all 4 entities, they would likely be aggregated, and therefore all of the employees would be counted together. You should apply for one PPP loan that covers the payroll costs across all companies.

We are a 3rd party management company whose employees' payroll is on our Parent company's EIN with Questco, but the Clients pay the payroll for the employees managing their properties. The clients are contacting us to find out if they can apply for the PPP or, do we have to apply on their behalf since the payroll is under our EIN? Our concern is if that we apply for the PPP on their behalf, then aren't we liable to pay back the loan rather than the clients? How can we handle this unique situation so they can benefit from the PPP?
Given that the wages are paid for by the Clients, we would recommend that the Clients apply for the loan and use the wages paid during the covered period to qualify for the forgiveness of the loan. You can provide the payroll processer reports obtained from Questco to your Clients as supporting documentation for the loan when they submit the application to their borrower. Under no circumstances can you and your Clients both apply for the loan to cover the same payroll costs.

Do we need to show a loss to get approved for these types of loans? Or, it's just if we're staying open and have payroll costs?
You can apply for the loan based on historical payroll costs. Any forgiveness of the loan will be based on providing evidence of payment of wages during the 8-week covered period. At least 75% of the loan proceeds must be used for payroll costs. And the borrower must retain the same number of employees and level of wages as existed immediately prior to the COVID-19 disruption in order to qualify for loan forgiveness.

I work with two banks and neither are authorized lenders for SBA. Who do I go to for this PPP loan?
The SBA website should provide a list of qualified banks approved to offer the PPP loan. However, it appears that most lenders will only accept applications from borrowers with whom they have existing customer relationships. You may wish to reach back out to your bank to determine if they have been approved for the PPP loan program as the list of approved lenders has been expanded for this program.

PAYROLL COST DEFINITION

Define "payroll costs"?
Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees;

Explain how the $100K annualized cap per EE works?
For purposes of computing payroll costs used in determining the maximum amount of loan proceeds available, wages up to $100,000 per year per employee can be included in the calculation of total annual payroll costs. For example, if someone makes $150,000, you will only include $100,000 for that employee in your calculation.

Does the 100K INCLUDE or EXCLUDE non-compensation costs?
Under the definition, only compensation costs are coverable in the calculation of the maximum allowable loan proceeds. It is our understanding that non-compensation costs should be excluded from the PPP loan calculation.

Do payroll costs include Workers Comp?
Based on the above definition of payroll costs, it appears that workers compensation premiums are excluded from the definition of "payroll costs" for purposes of determining the maximum loan amount and for what amounts may be forgiven.

Can the fees paid to Questco for processing payroll be included in the calculated payroll number on the application?
The IFR recently issued by the Treasury department is silent with respect to the inclusion of PEO administrative fees as a component of payroll costs. In an effort to be extremely conservative, and ensure that your loan application is approved, Questco has made the decision to **exclude** administrative fees from total payroll costs in the loan application reports provided to our clients.

Are 401k matches included in payroll costs?
Yes, as indicated in the definition provided above, the employer portion of 401(k) contributions can be included in payroll costs.

Can Questco provide the payroll reports needed for application, including excluding those over $100K?
You may contact your CSM to request the required Questco payroll reports that provide the information needed to complete the PPP loan application. In response to further clarification received over the weekend with various constituencies involved in the process, Questco has modified the payroll cost calculation. Updated reports will be processed and available to clients on Monday, April 6. Please see separate instructions for further clarification of the updated payroll reports here.

Can we get a breakdown of worker's compensation and state unemployment charge included in fees?
Workers compensation costs are **not** included in total payroll costs for purposes of the PPP loan application. See above for information available on allowable payroll costs.

My business is a music school, and my teachers are contractors. Over half of what I take in goes directly to them, but they're not technically employees. Am I eligible?
In this example it is possible to include amounts paid to independent contractors up to $100,000 per year per contractor. If the contractor is engaged in lieu of hiring someone to perform the same function for your company, you should be able to include their payments, although we would recommend discussing this with your lender. However, contractors can independently apply for payroll protection. Before you include the wages paid to independent contractors, you should confirm whether that individual is applying for the loan themselves. If you are keeping that contractor and paying them, then you should be entitled to the relief as they are being paid by you and should not need to apply for the relief.

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I have 14 employees in my LLC. Half my employees are paid through Questco and the other half are paid through a company (Hospital) that has > 500 employees. They do not own us we are just partners. Am I eligible for PPP through the hospital and Questco?
You may apply for a PPP under your LLC and include the payroll costs for those employees that are paid for by Questco (defined as a third-party payroll provider under the IFR). It does not appear that you can include the wages for those employees paid by the Hospital. First, you will not have to "cover" their wages during the 8-week cover period. Second, those employees are paid for by a company that does not qualify for a PPP loan. We would recommend discussing your specific situation with your lender to confirm our opinion.

PPP LOAN RESTRICTIONS

Can we apply for SBA Economic disaster loan and the PPP loan?
Yes, you can; however, it's important to understand the implications. While both loans are authorized by Section 7(a) of the Small Business Act (as amended by the CARES Act) and are meant to help businesses hurt by the COVID-19 pandemic, an EIDL is not the same as a PPP loan in many key areas.

PPP loans are primarily meant to help businesses with "payroll costs," which includes certain wages, benefits, and state and local taxes, as well as to help with payments on mortgage interest, rent, utilities, and interest on pre-existing loans. EIDLs, on the other hand, are meant to provide working capital and can be used to pay fixed debts, accounts payable, and other similar bills, as well as the items covered under PPP loans.

Their covered periods and loan caps are different. COVID-19 EIDLs are available for economic injuries that occurred between January 31, 2020 and December 31, 2020 and are capped at $2,000,000, while PPP loans only cover costs incurred from February 15, 2020 through June 30, 2020 and are capped at the lesser of 2.5 times the average monthly total of "payroll costs" or $10,000,000.

The biggest difference between the two is that, under certain conditions, some (or all) of the PPP loan is forgivable while EIDLs are not forgivable (although eligible applicants for an EIDL can receive a $10,000 emergency grant within three days of application). The amount of a PPP loan that is forgivable may not be comprised of more than 25% of non-payroll (but otherwise qualifying) costs. Such costs would include certain qualifying payments for rent, utilities, and mortgage interest. And the amount that is eligible for forgiveness is generally reduced if the employer reduces headcount or reduces an employee's total salary or wages. **EIDLs have no such provisions for forgiveness.**

If you received an EIDL loan between January 31, 2020 and April 3, 2020, you may still apply for and receive a PPP loan. To prevent "double dipping," EIDL funds cannot be used for "payroll costs" or other PPP allowable uses if you want to qualify for both. **HOWEVER**, even if you used some of the EIDL's funds for PPP purposes, you may still be able to "refinance" those amounts into the PPP loan during the application process and then be able to seek forgiveness on certain of the PPP loan proceeds (because the qualifying costs incurred during the life of the EIDL would now relate to a PPP loan versus an EIDL).

Can we get both the tax credit under FFCRA for qualified paid sick and FMLA leave and obtain PPP loan?
Yes, you can receive the tax credit for payments issued under the FFCRA and apply for a PPP loan; however, any wages paid under the FFCRA must be excluded from payroll amounts used to determine the amount of loan forgiveness under the PPP. This is to avoid "double dipping" for reimbursement of the wages paid.

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You are saying that new hires before this COVID-19 time (within 90 days) should be kept on or replaced. I thought that time period is based on last years' values for employee numbers.
The calculation of the available loan amount is based on the prior year's employee numbers. The ability to qualify for forgiveness of the loan is based on the ratio of the average number of employees during the covered 8-week period divided by the average number of employees during a **choice period**. For this purpose, the choice period will be, at the election of the borrower, **either 1) 2/15/19 – 6/30/19 or 2) 1/1/20 – 2/29/20**. And in order to maintain headcount for purposes of loan forgiveness, previously terminated or furloughed employees can be rehired during the covered period.

As far as maintaining current employee numbers and salary levels, how long past the loan coverage date must the employer maintain that? Is it just during the 8-week window that the loan covers?
The loan is intended to cover operating expenses for a specific 8-week period. That 8-week period is the employers' choice. The law says the covered period can begin as early as the day the loan is approved but you can select the appropriate 8-week period through June 2020 to use as your covered period. Once the loan has been forgiven, there are no further requirements with respect to maintenance of the headcount or wage levels.

If the loan is forgiven and not treated as taxable income, will the expenses be tax deductible?
Any operating costs, including payroll costs, covered under a forgiven PPP loan will not be tax deductible for purposes of computing the company's taxable income for that period.

FFCRA ELIGIBILITY AND IMPLEMENTAION

If the employee is "self-isolating" because they've potentially been exposed, do they have to ask for the paid sick leave? Or should we, as employers, be automatically paying them during this isolation time, considering a lot of counties are unable to even test at this point in time and are just having people isolate at home.
No to both. Under the law you cannot dictate, mandate or tell the employee how and what to use in the way of leave to use during their absence. You can only recommend what the available options are, and they can choose.

If the employee has elected himself to self-isolate because of he/she has been exposed, experiencing the symptoms and not able to get a test done, we would encourage the employer to provide for paid leave under the FFCRA up to the 80 hours allowed beginning April 1. In the interest of wanting to protect the rest of your company from this disease, you do not want to make it difficult for any employee to take advantage of this leave. Furthermore, the employer is eligible for a tax credit equal to any qualifying wages paid under the FFCRA.

We have an employee that has been out for several weeks without going to a doctor and has symptoms different from COVID-19. Are we required to pay him under the CARES act?
If the employee's medical condition is not attributed to COVID-19-related issues, then you should refer to your standard paid time off (PTO) policy to determine whether the employee is entitled to any type of sick leave pay. The FFCRA (not the CARES Act) addresses qualifying conditions whereby you must provide for up to 80 hours of extended paid sick leave (in addition to your standard PTO policy). If the employee has provided the appropriate documentation that he/she meets one of the FFCRA qualifying conditions on or after April 1, you will be required to compensate the employee in accordance with the FFCRA paid leave rules.

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We are a non-medical home care service company. Are we considered a "health care provider" because we are a "similar" type agency?

On March 28, 2020, the DOL released a list of applicable health care providers to clarify. While home health care providers were explicitly named, home care agencies were not. Despite the omission, industry stakeholders, including the National Association for Home Care & Hospice (NAHC) have interpreted the DOL guidance to mean both medical and nonmedical home-based care organizations fall into the “home health care provider” category, thus meeting the criteria that allows them to exempt employees from the paid sick leave rules mandated by FFCRA.

Internal Revenue Service	Questco Resource Page	Fisher Broyles
https://www.irs.gov/coronavirus	https://info.questco.net/covid-19-resource-page	https://www.fisherbroyles.com/gordon-m-berger/

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