

Attendee Questions – CRA Webinar 4/9/20

1. What if you use some PPP money to pay purveyors?

Answer: No. Use of PPP loan proceeds for anything other than the permitted purposes would constitute a violation of the terms of the loan. This could potentially lead to personal liability and penalties imposed upon the business and/or its owners. Here is the section from the PPP:

— The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

— The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

— I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

2. In a 3P loan is workman's compensation forgivable?

Answer: We do not believe workman's compensation premiums are forgivable payroll costs. Neither the statute nor the SBA guidance to date includes any interpretations directly on point. It does not appear that the language of the relevant statute is broad enough to include workman's compensation insurance premiums.

3. In regards to California sales tax (\$50,000. or lower), is that forgiven or extended?

Answer: The governor has proposed that affected businesses can retain up to \$50,000 in sales tax as a "loan." This is a proposal only at this time and will have to be approved by the legislature, which process will undoubtedly add detail to the proposal.

4. When calculating "Payroll Costs" can/should I include UNREPORTED tips? My loan form specified ""as reported on IRS form 940"" (which definitely did not include UNREPORTED tips) ALSO: when I get the loan can I add that calculated tip amount to my staff paychecks?"

Answer: The SBA Interim Final Rule of April 2, 2020 states that payroll costs include "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)." An employer could be subject to penalties for failure to report tips.

5. With respect to the Paycheck Protection Program Loan the coverage period started on February 15, 2020. Does that mean we can use the proceeds for payroll that we have already paid?"

Answer: No. For purposes of the loan forgiveness rule, only payments made following loan origination qualify.

6. Any idea on timing on disbursement of the PPP Loans? I have spoken to one restaurateur and they have already received their loan (Chase Bank). Our bank has received approval from the SBA loan but has no idea when they will be able to fund.

Answer: This turns entirely on each respective bank's processing timeline.

7. Is there guidance on calculating full time equivalents?

Answer: The relevant rules do not provide any explicit guidance as to how employers should calculate full-time equivalent employees. We are advising businesses to defer to the Affordable Care Act and Patient Protection Act ("Obamacare") guidance on the topic.

8. Can we get more information on the Employee Retention tax credit please

Answer: Employee Retention Tax Credits are refundable tax credits available to employers who have either (i) had their business operations fully or partially suspended by governmental order or (ii) suffered a 50% reduction in year-over-year gross receipts (comparing calendar quarters). The employer gets a refundable tax credit equal to 50% of the first \$10,000 paid to each eligible employee (in other words, the credit is capped at \$5,000 per employee). If an affiliated group of businesses together have 100 or less employees in the aggregate, all wages up to \$10,000 are eligible for the credit. If the affiliated group of businesses together have more than 100 employees, only wages (up to \$10,000) paid to employees who are not currently working for the employer are eligible. This credit is not available to PPP loan recipients.

9. We have a question about a few of the SBA loans that were mentioned. Do you know if any of the funds from these loans can be used to pay vendors? (I have reps asking.)

Answer: Not with respect to PPP loans. See answer to Question 1 above. However:

Yes, with respect to EIDL loans (including the \$10,000 advance). Proceeds from EIDL loans can be used for any allowable purpose for a loan made under Section 7(b)(2) of the Small Business Act ([15 U.S.C. 636\(b\)\(2\)](#)), including:

- "(A) providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
- (B) maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- (C) meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
- (D) making rent or mortgage payments; and
- (E) repaying obligations that cannot be met due to revenue losses."

Remember to avoid using PPP funds and EIDL funds for the same purpose.

10. What was the SEC form you mentioned to update?

Answer: I had in mind public companies' disclosure documents, such as annual and periodic reports filed under the Securities Exchange Act of 1934, as amended (Exchange Act), such as Form 10-K, Form 10-Q. Private companies may include similar disclosures in their private placement memorandum that they give to prospective investors.

The public documents include risk factors and also a Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A).

Examples:

BestBuy Co., Inc.:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/764478/000076447820000017/bby-20200201x10k.htm>

Dick's Sporting Goods, Inc.:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1089063/000108906320000014/dks-20200201.htm>

FedEx Corp.: https://www.sec.gov/ix?doc=/Archives/edgar/data/1048911/000156459020011411/fdx-10q_20200229.htm

11. Can an employer take the 50% Employee Retention tax credit for a period of the time from when the business (restaurant) closed by government mandate (for us the date was March 17th) and through April 1st, as we will be abiding by the Families First Coronavirus Response Act beginning April 2nd to provide emergency paid sick leave for two weeks to our employees?

Answer: Yes. "Qualifying wages" paid after March 12, 2020 and before January 1, 2021 are eligible for the credit. So here, the restaurant's period March 17 through April 1 falls within that period of the Employee Retention Credit. The amount of wages regarded as "qualifying wages" differs based on whether the employer has more than 100 employees on average in 2019. IRS FAQs are available here: <https://aboutbtax.com/PUG>.

As for using the FFCRA for all employees beginning April 2, note that the paid sick leave under the FFCRA is available for those employees an employer is otherwise able to provide work for but who are unable to work for the reasons specified in the FFCRA. If an employee is not working because the business is unable to provide work to that employee in any given pay period, the employee is eligible for unemployment insurance benefits for that pay period rather than paid leave under the FFCRA.