

COVID-19 RESPONSE ACT
which includes
the CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT (CARES)
& FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

TIPS SHEET

CARES ACT

Payroll Protection Program – Small Business Loans:

WHO IS ELIGIBLE:

- Businesses with 500 or fewer employees.
- A small business that otherwise meets the SBA's size standard.
- A 501(c)(3) with fewer than 500 employees.
- An individual who operates as a sole proprietor.
- An individual who operates as an independent contractor.
- An individual who is self-employed who regularly carries on any trade or business.
- A Tribal business that meets the SBA size standard.
- Continue to employ and pay employees through the coronavirus crisis. Feb 15 – June 30, 2020 to have loan forgiven.
- A 501(c)(3) Veterans Organization that meets the SBA size standards.
- If you are in the accommodation and/or food services sector (NAICS 782), the 500-employee rule is applied on a per physical location basis.
- If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company the normal affiliation rules do not apply.
- If employer laid off or furloughed employees during above period they have to rehire and begin paying them through this loan.

WHAT IS PROVIDED:

- Forgivable loans up to 2.5 times average monthly payroll costs not to exceed \$10 million.
 - For non-seasonal employers, maximum loan = 2.5 X average monthly payroll costs incurred during the year prior to the loan date; for businesses not operational in 2019, 2.5 X average payroll costs incurred for Jan. and Feb. 2020'
 - For seasonal employers, maximum loan = average total monthly payments for payroll costs for the 12 week period beginning Feb. 15, 2019 or March 1, 2019 (decided by the loan recipient) and ending June 30, 2019.
- Average monthly payroll costs = sum of included payroll taxes – sum of excluded payroll taxes.
 - **Payroll Costs include:** salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; payment required for the provision of group health care benefits, including insurance premiums; payment of retirement benefits; and, payment of state and local tax assessment on the compensation of the employee.
 - **For sole Proprietors, Independent Contractors and Self-Employed Individuals, Payroll Costs include:** 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 one year, as pro-rated for the covered period.

- **Excluded Payroll Costs:** compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the period Feb.15 to June 30, 2020; payroll taxes, railroad taxes and income taxes; any compensation of an employee whose principal place of residence is outside of the US; qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-5 127) or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act.
- Granted for the purpose of assisting employers to maintain their payroll through the crisis.
- The amount to be guaranteed is the average total monthly payroll costs in the 1 year prior to the loan.
- Employers can use the loan for: payroll, paid time-off, leaves (except FFCRA), group health plan costs, salaries, mortgage payments, rent payments, utilities and debt.
- Employers cannot use the loans for individual employee compensation that exceeds \$100,000, compensation for an employee whose principal place of residence is outside the US or for FFCRA leave payments.

LOAN FORGIVENESS:

- A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan: payroll costs (see definition above), interest on the mortgage obligation incurred in the ordinary course of business; rent on a leasing agreement; payments on utilities(electricity, gas, water, transportation, telephone or internet); and, for borrowers with tipped employees, additional wages paid to those employees.
- The forgiveness can be reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees.

WHEN WILL IT BE AVAILABLE:

- 15 days after the Act is signed into law (Friday, March 27, 2020) which means we can expect it to be enacted no later than probably Monday, April 13, 2020.
- The US Treasury has stated that a streamlined application process should take as little as one day to obtain the funds once approved.

WHAT WILL THEY LOOK FOR:

- That the borrower was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.
- A good faith certification that:
 - The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
 - The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease and utility payments.
 - From Feb.15 to Dec. 31, 2020 the borrower has not received a loan duplicative of the purpose and amounts applied for here.(Note: There is an opportunity to fold emergency

loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan.

- If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from sole proprietorship.

TO APPLY:

- Keep checking on the SBA website. It should be available any day.

Economic Injury Disaster Loans:

- This is a separate Emergency Grant program which will provide immediate relief to small businesses through the SBA Economic Injury Disaster Loan (EIDL) program.

WHO IS ELIGIBLE:

- Businesses with 500 or fewer employees.
- Private nonprofits.

WHAT IS PROVIDED:

- Businesses and nonprofits will be able to obtain an advance loan of up to \$10,000.
- The SBA is likely to have a quick turn-around of only 3 days.
- The bill provides an additional \$10 billion to fund this program.
- During the crisis the SBA has waived the requirements of personal guarantees, that a business exist for at least one year, and that the applicant be unable to find a loan elsewhere.
- The interest rate is 3.75% for small businesses and 2.75% for nonprofits.
- Loans can be used to pay debts, payroll, accounts payable, employee sick leave and utilities.
- It cannot be used to refinance debt, make payments on other loans from the government, pay tax penalties or fines, repair damage or pay dividends.

WHEN WILL

IT BE AVAILABLE:

- This program is currently available through the SBA.
- The US Treasury has stated that a streamlined application process should take as little as one day to obtain the funds once approved.

TO APPLY:

- To apply for a COVID-19 Economic Injury Disaster Loan, go to <https://covid19relief.sba.gov/#/>

Unemployment Expansion

WHO IS ELIGIBLE:

- Self-employed individuals, independent contractors, part-time workers who are not always covered under normal circumstances for reasons related to COVID-19.
- Workers will be eligible for the following reasons: (1) they are diagnosed with COVID-19; (2) experiencing symptoms of COVID-19 and are seeking a diagnosis or testing; (3) a member of the individual's household has been diagnosed with COVID-19; (4) caring for a family/household member who has been diagnosed with COVID-19; (5) caring for a child or other household member whose facility has been shut down due to the coronavirus pandemic; (6) unable to reach the place of work due to a quarantine imposed as a direct result of the COVID-19 public health emergency; (7) unable to reach the place of employment because a health care provider has advised self-quarantined due to concerns related to COVID-19; (8) scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency; (9) now the breadwinner or major support for a household because the head of the household died as a direct result of COVID-19; (10) quitting a job as a direct result of COVID-19; or (11) closure of place of business as a direct result of COVID-19.

WHAT IS PROVIDED:

- Individuals who qualify may be eligible for retroactive unemployment benefits from Jan 27 through the enactment of the CARES Act.
- Unemployment benefits are not available for individuals who are able to telework for pay or individual receiving paid sick leave or other paid leave benefits.
- On top of regular state unemployment benefits determined by each state, an additional \$600 per week for up to 4 months.
- The unemployment benefits will extend the eligibility for benefits by 13 weeks not to exceed a total of 39 weeks.

WHEN WILL IT BE AVAILABLE:

- It should be available shortly through the NY state Department of Labor website: <https://www.labor.ny.gov/unemploymentassistance.shtm>
- File a claim as soon as possible after becoming unemployed.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) GUIDANCE

GUIDANCE:

- Where individuals are furloughed or unable to work for the employer because of business closure/no work available, those employees are not eligible for the FFCRAS leave. An employee can take intermittent expanded FMLA or paid sick – but only with an employer's permission.
- This **TIPS** piece is simply a consolidation of information taken from articles about the various acts. It should not be taken as a complete or final word on the various Acts discussed. At minimum, read the original articles – the links are below. This is also not a substitute for counsel by a good attorney and a good accountant.

The two primary documents this **TIPS** sheet was derived from are:

https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final_revised.pdf

<https://orleanscapecod.org/a-must-read-foley-foley-pc-cares-act-unpacked-more-ffcra-leave-guidance/>