

Tax and Labor & Employment Law Alert: Small Business Employer Benefits during the COVID-19 Crisis

Small Business Association Paycheck Protection Program

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides a business with a loan up to \$10 million for payroll and operating expenses.

- **Amount of Loan:** A business can get a loan that covers up to 250% of average monthly payroll costs at 1% interest. The loan will be forgiven for businesses that retain or rehire workers, but if a company lays off workers or reduces payroll expenses, the loan forgiveness will be reduced or eliminated. The loan forgiveness is for payroll expenses incurred between March 12, 2020 and June 30, 2020.
- **Eligibility:** Businesses with fewer than 500 employees (including certain not-for-profit entities) are eligible. Certain businesses with more than 500 employees that meet SBA size and industry standards may also be eligible.
- **Application:** A business applies for the loan through a participating bank or lender. A business may need back-up documentation to substantiate payroll expenses for 2019 and 2020 year-to-date. Payroll expenses are capped at \$100,000 per worker.

Other Benefits

Income Tax Filing/Payment Deferral:

- **Eligibility:** Taxpayers can delay until July 15 to file their 2019 tax returns, pay any outstanding tax liability and submit estimated taxes for the first quarter of 2020. Note, however, that the June 15 deadline for filing estimated taxes for the second quarter is not extended and they must be paid on time unless the government takes further action.
- **Steps to Take:** No action is needed to take advantage of the July 15, 2020 extended due date for income taxes. If a further extension is needed, a taxpayer can file a request to delay filing their income taxes until October 15, 2020 but must pay an estimated amount of their income tax liability with the extension in order to avoid interest and penalties.

Payroll Tax Deferral:

- **Eligibility:** A business may delay paying the employer-side payroll taxes it owes for up to two years. However, if a business has any of its loans forgiven under the Payroll Protection Program, it is ineligible to defer its payroll taxes.
- **Steps to Take:** Businesses can defer paying all the 6.2% payroll levies they owe the government for the rest of 2020 and can spread those payments out over 2021 and 2022. At least 50% of the amount owed must be paid by December 31, 2021.

Employee Retention Tax Credit:

- **Eligibility:** Businesses of all sizes and non-profits forced to close or slow business could be eligible for a refundable tax credit if they keep workers on the job. However, a business that has any of its loans forgiven under the Payroll Protection Program is ineligible for this credit. Businesses with more than 100 employees can only claim the tax credit against wages paid to employees with work curtailed by the pandemic.
- **Steps to Take:** Employers can get up to \$5,000 per worker they keep on the job during the downturn. The credit is applied against payroll taxes on their quarterly returns, but a business can also request an advance using the IRS form and instructions at the following link or links:

Form 7200: Advance Payment of Employer Credits Due to COVID-19

Link to Form 7200: <https://www.irs.gov/pub/irs-pdf/f7200.pdf>

Link to Instructions to Form 7200: <https://www.irs.gov/pub/irs-pdf/i7200.pdf>

The tax break is refundable, meaning businesses can get a check back from the IRS if they have amassed credits larger than their payroll tax bills.

Employer Tax Credit for Paid Sick and Family Leave:

- **Eligibility:** Employers with fewer than 500 employees can receive dollar-for-dollar tax credits that reimburse them for providing paid sick and family leave wages for workers who have to take leave related to the virus. Self-employed individuals are able to claim a similar credit. However, a business that has any of its loans forgiven under the Payroll Protection Program is ineligible for this credit.
- **Steps to Take:** Employers that offer workers up to 80 hours of paid sick leave and up to an additional 10 weeks to care for a child due to school closures can claim credits for wages paid starting April 1. While companies can claim the tax breaks on their quarterly federal employment tax returns, they can obtain the benefit of the credits faster by reducing their employment tax deposits. If the credit amount is larger than the federal employment taxes, companies can request an advance payment of the credits from the IRS.

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