YOUNG MOORE
ATTORNEYS

April 2, 2020

By Jefferson P. Whisenant

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The sweeping legislation aimed to provide relief for many hard-hit industries including healthcare and aviation, as well as providing stimulus for the American people. The Act also designated $349,000,000.00 for small business loans through the Small Business Administration (SBA), including the new "Payroll Protection Program." This blog post will give you a basic understanding of the structure of this new loan program for small businesses.

Who is Eligible?

Businesses in operation on February 15, 2020, with less than 500 employees (including part-time) per physical location, will be eligible for this new loan program. The Act also contemplates eligible businesses with more than 500 employees if it is the standard size for the industry as determined by the SBA. The business will need to certify that the uncertainty of the current economic conditions makes the loan necessary to support ongoing functions. The business will also need to certify that the funds will be used to retain workers and maintain payroll, or make mortgage, lease, or utility payments. Unlike some other SBA loans, you will not need to prove that you cannot obtain credit elsewhere. You'll need to provide your lender with payroll documentation.

What is My Maximum Loan Amount?

This answer depends on how much you need to continue your payroll for two-and-a-half months. Businesses will be eligible for an amount up to two-and-one-half times their average monthly payroll costs for the year before the loan is made. If the business is seasonal, you can look at the 12-week period beginning either February 15, 2019 or March 1, 2019. If not in business from February 15, 2019 to June 30, 2019, look at the average monthly payroll costs from January 1, 2020 to February 29, 2020.

What are "Payroll Costs?"

"Payroll costs" are specifically defined in the Act, and this definition will come into play later with the loan forgiveness.

It includes:

- Salary, wage, or commission;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Group health insurance premiums;
- Retirements benefits;
- State and local tax on the compensation of employees; and
- Compensation of a sole proprietor up to $100,000.00 annually.
- It does <u>not</u> include:
- Compensation of an individual employee over $100,000.00 annually;
- Certain other taxes;
- Compensation for employees with a principal place of business outside the United States; and Qualified wages paid under the FFCRA for which a credit is allowed.

What Can I Use the Loan For?

The Act limits the use of the loan proceeds. Recipients can use the loan for:

- "Payroll costs" (see above);
- Continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries and commissions;
- Mortgage interest (but not principal);
- Rent;
- Utilities (including internet); and
- Interest on other debt obligations incurred before February 15, 2020.

Will This Loan Be Forgiven?

Businesses will be eligible for 100% forgiveness of an amount equal to all costs incurred and payments made for eight weeks after the date of the loan origination for the following:

- "Payroll costs" (see above);
- Payment of mortgage interest payments existing before February 15, 2020 (but not principal);
- Payment of rent obligation existing before February 15, 2020; and
- Utility payments.

Let’s call that sum the “forgiveness amount.” To start, the business gets 100% of the forgiveness amount. However, the forgiveness amount can be reduced if the business loses employees or cuts wages by more than 25%.

If the business loses employees, the forgiveness amount will be reduced as a function of the average number of employees for the eight-week period after the loan origination, divided by the average number of employees from February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020 (employer’s choice).

For example, let’s say the loan recipient has a forgiveness amount of $100,000.00. The loan recipient averaged having 100 employees per month on payroll from February 15, 2019 to June 30, 2019. However, for the first eight weeks after the origination of its loan, the business only averaged 80 employees on payroll per month. The loan recipient would only be entitled to have 80% of their forgiveness amount forgiven, or $80,000.00.

The forgiveness amount could also be reduced if employee wages are reduced by more than 25% for employees who earn less than $100,000.00. However, borrowers will be exempt from either of these reductions if they restore their number of full time employees and/or their wage levels by June 30, 2020.

This is only a small portion of the CARES Act, but it is incredibly important for small businesses struggling to make payroll. The **application** for small businesses and sole proprietors through existing SBA lenders opens on **April 3, 2020** and the application for independent contractors and self-employed individuals opens on **April 10, 2020**. Funding for this program is expected to run out, so apply early. Reach out to the attorneys on our COVID-19 task force for help or counsel in applying for this loan.

Please visit our **COVID-19 Resource Center** at youngmoorelaw.com/covid-19/ for more information related to the Coronavirus outbreak.

Jefferson P. Whisenant represents employers and insurers throughout all stages of litigation on matters involving employment and workers’ compensation. Contact Jefferson at (919) 861-5045 or Jefferson.Whisenant@youngmoorelaw.com.

Young Moore’s Employment Attorneys

Dawn Raynor
(919) 861-5067

Jeff Linder
(919) 861-5036

Angela Craddock
(919) 861-5087

Jefferson Whisenant
(919) 861-5045

Kandace Watkins
(919) 861-5017