

Remaining Questions & Answers from our webinar:

“PPP: A Matter of Forgiveness” - Thursday, May 7th, 2020 at 2pm

Question 1

How much do I pay tipped employees if the restaurant is closed and they are not working? Does it affect the forgiveness component if their wages are less than 25% compared to previous months?

Forgiveness will be reduced if employee's salary wages are cut more than 25% compared to the full prior quarter.

Question 2

The Cares Act does not state that you must pay employees any amount in particular, nor does it touch upon whether you can pay employees for hours that they did not work. Generally, there is no prohibition to paying employees for hours they have not worked.

Do I pay them an average of tips even if they are not working?

There is no guidance on what you should pay employees who are not working, but consider that if it will cut wages (which includes tips) below the 25% threshold, then it will reduce the forgiveness amount.

Question 3

Some employees do not want to come back to work since they are making more money on unemployment. In regards to the forgiveness component of the PPP loan, should I take this as a resignation and hire someone to replace them?

There has been guidance that the regulations will address this issue by not counting against the employer any employees who have received a request to return at their full pay and hour. The guidance has not issued any details on this, but in that case there should be no need to replace them for loan forgiveness purposes, although nothing would stop you from finding a replacement from a business standpoint.

Question 4

If I received more funds than needed for the next 8 weeks:

- a) Can I pay my employees in advance to use the entire loan amount? Ex: Can I pay for July's work in June? **No**

- b) Can I issue a bonus to my employees?

Yes, assuming the bonus doesn't cause the employee's wages to exceed the \$100,000 annualized limitation, but it is recommended that any bonuses should be done as they would in the ordinary course of business.

Question 5

Should I set up a different bank account with the PPP funds?

Yes, it would be easier for record keeping purposes.

Question 6

Can you take the employee retention credit if you have submitted a PPP loan application, but have not yet been approved?

You cannot have both PPP Loan and Employee Retention Credit, however, there is some guidance that if you repay the Employee Retention Credit you may be able to get a PPP loan.

- a) What about after the covered 8 weeks?

No, you cannot take the Employee Retention Credit after taking a PPP Loan.

Question 7

Can I pay for days that were before I received the funds, if they fall into my regular scheduled pay date? Ex: Pay period is from 4/1-4/15, I receive the funds on 4/10, can I still include 4/1-4/9?

It basically boils down to a cash vs. accrual basis. No guidance has been issued on this topic. What we have recommended is that you treat payroll the same no matter which method you choose. Either use the funds to pay payrolls during the eight-week period on the day they are usually paid, or use it to pay for the days worked during those 8 weeks, but do not do both.

Question 8

If an employee can only work part-time now and was previously working full-time, will this affect the forgiveness amount?

Yes. Pending additional guidance, this could affect the computation of both FTEEs and the >25% reduction in pay compared to the prior full quarter for total forgiveness.

Question 9

If an employee resigns, do I need to replace their position?

No requirement in the Cares Act to rehire, but it could affect the computation of FTEEs, therefore reducing total forgiveness. The eventual guidance may speak to this further.

Question 10

What payroll documents will I need to provide to have my loan forgiven?

Depends on the Bank, but expect Forms 941 and State unemployment tax return that includes the 8-week covered period.

Question 11

Can I run a separate payroll for the employees that make over 100k?

If you are suggesting that you want to give two checks, one for the amount up to the \$100K annualized and another for the rest, yes. If the purpose is to try and include more than \$100k annualized, then no.

Question 12

There are so many loans talked about can you explain the difference between PPP loans, EIDL, Social Security deferrals and more. Can I apply for everything or only one?

- a) PPP – Loans to business to guarantee 8 weeks of payroll and other costs to help business remain viable. 100% of your loan could be forgiven if you follow guidelines. An EIDL loan may be rolled into a PPP Loan
- b) EIDL -Economic Injury Disaster Loan can provide you to \$2 Million of financial assistance to the small business interest 3.75% for business up to 30 year term. Cannot get a EIDL loan if you have a PPP loan.
- c) Social Security deferrals- allows all employers to defer payment of employer Social Security taxes that are otherwise owed for payments made through the end of the calendar year. The deposit due date for 50% of the taxes is deferred to December 31, 2021, with the remaining 50% deferred until December 31, 2022. You cannot use the deferral if you have a PPP loan forgiven.

Question 13

I received the funds and have 8 weeks. I will be terminating some staff that was part of the loan process and headcount. I may or may not hire for those positions but not sure. What are the risks.

The PPP loan associated risk is decreasing the number of FTEs, which could reduce the forgivable amount of the loan. You may not be able to use all the proceeds of the PPP loan either if you do not have enough eligible payroll expenses.

Question 14

I had to reduce annual salaries and pay rates before applying for the PPP loan by 15%. Now that I have the money, do I have to increase salaries by 15% or can I leave the reduction in place for the rest of 2020.

Employees' salaries/wages cannot be cut by more than 25% to achieve total forgiveness. There is no requirement to raise them back up either way.

Question 15

I am not an essential business. I received the funds. I am not able to open my business yet, should I pay staff just to be home even though they applied for unemployment?

That would be a calculation to be made based on your own business as to which option would be more beneficial (layoff, furlough (including reduction in hours) or continue to pay). Employees should be upfront as well as the company with the State of Florida on whether the employee is employed or not so as to violate the unemployment laws. You must maintain a level of full-time equivalent employees to obtain full loan forgiveness.

Question 16

If businesses are not open to max capacity in 8 weeks, and I still have funds from the loan, can I extend those monies for future wages? I imagine I will lose the forgiveness part but the loan will be paid at what % for the next two years?

No proceeds can be used for future wages at this time (although the guidance may change that). It is not clear if any unused proceeds have to be paid back, but any remaining balance on the loan will have an interest rate of 1% per year.

Question 17

If a business such as a restaurant can only open at 25% max capacity, that number may not be enough to maintain the same number of employees prior to Covid. I may still need to do layoffs after the 8 weeks of the loan. Does the govt take that into consideration for forgiveness.

No, layoffs after 8 weeks aren't taken into consideration.

Question 18

Are we penalized if a part time employee requested some time off (unpaid) back in March to finish college semester?

It may depend on how you are treating the time off. If it is paid time off, it wouldn't make a difference. However, if the employee was counted as an FTEE in the prior period and is no longer counted during the entire 8 week period (and doesn't begin again before June 30th), it would likely reduce your forgiveness amount, although the guidance is not out yet. The guidance may have some sort of exception for voluntary leaves/resignations.

Question 19

Does workers compensation payments count because it comes out per employee's payroll amount.

The general assumption is that amounts for Worker's Compensation fees are not considered payroll costs for the purposes of the Paycheck Protection Program (meaning that are not an allowable use or forgiven), however the guidance could change that.

Question 20

What is included in utilities?

Utilities are described by the SBA as phone, internet, gas, water, electricity, etc. Similar to previous qualified expenses, it is important that these service contract agreements predate February 15, 2020.

Question 21

What about marketing expenses or entertainment expenses with 1099?

Those expenses are not an allowable use of PPP loan proceeds and are not forgivable.

Question 22

What is the process for clearing the note (forgiveness) if we meet all the criteria participating in the PPP?

The lender Bank will ultimately make the decision on the forgiveness of your loan. The Banks will make the decision, however they are also waiting for guidance on how to handle the process. What we know now is only that after the 8 week period, you can submit an application for forgiveness to the Bank, which will include documentation to prove your expenses and employees. The Bank is then required to make a decision on loan forgiveness no later than 60 days after an application has been submitted. The SBA has already stated that they will audit loans over \$2,000,000.

Question 23

Our 8-week covered period ends June 17 and our payroll week closes on June 16th with payday being June 19. Would this last payroll count towards the PPP loan forgiveness or do we need to make the payroll check date June 16th?

This is one of the issues we discussed on the webinar. Although it is a common question, the Government has not given any clarity on this. It basically boils down to a cash vs. accrual basis. What we have recommended is that you treat payroll the same no matter which method you choose. For example, if the company used the PPP funds for the very first pay date during the eight week period (which included days worked before the 8 week period), then you should not try to use the proceeds for another payroll after the 8 week period. If, however, you only used the proceeds for the part of the first (or second) pay day to compensate only the days worked during the 8 week period, then it would be reasonable to do the same on the last pay date for the final days worked during the 8 week period. There would likely be guidance on this issue, and that could affirm or change this analysis.

Question 24

For a partnership LLC, owners are paid thru guaranteed payments. Should we add owners to payroll or do a distribution? And will that be forgivable?

For an LLC filing as a partnership, the guidance directs that the self-employment income of partners in a partnership may be reported as a payroll cost, up to \$100,000 annualized. According to the early guidance, that amount will be forgivable (up to the \$100,000 annualized cap).

The law and the guidance do not have any further qualification for “guaranteed payments,” as it is based on reported 1040 schedule C income, not actual distributions. There is no requirement that the amount that partners receive be converted to a salary.

Question 25

Will lower commissions paid because of lower sales result in a wage reduction to the employee for purposes of the 25%?

Yes, unless guidance comes out with a clarification, any reduction in compensation over 25% compared to the previous full quarter will affect the forgiveness formula amount.

Question 26

Can the business owner, who is also an employee, include their benefits in the forgiveness calculation? (\$100K wage cap + benefits calculation for employees)

Yes, the allowed employee benefits are on top of the \$100,000 limit. There is no additional restriction just because the owner is also an employee.