



ZUMPARNO  CASTRO
ATTORNEYS AT LAW

FFCRA & PPP Loan Forgiveness Update

Presented by:

Carlos Zumpano and Joseph Ruiz

Zumpano Castro, LLC

July 9, 2020

FFCRA & PPP
Loan
Forgiveness
Update
Agenda

Part I

Expanded FMLA

Part II

Emergency Paid Sick Leave

Part III

Tax Credits

Part IV

Sample Scenarios

Part V

PPP Forgiveness Updates

Part VI

Q & A

Expanded FMLA

Covered Employer

- Covered public employers and private-sector employers with fewer than 500 employees

Covered Employee

- Has been on the payroll for 30 calendar days.

Qualifying Need

- LIMITED: Circumstances where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Expanded FMLA

First 10 Days

- Unpaid (Employee can take accrued PTO or sick leave but employer cannot require employee to take accrued paid leave.)

Remaining 10 Weeks

- Paid – 2/3 Employee's regular rate for the number of hours the employee would otherwise be scheduled to work; capped at \$200 per day & \$10,000 total

Job Protection

- Employees must be restored to prior position (or equivalent)
- Exception for employers with fewer than 25 employees if the position no longer exists due to operational changes caused by public health emergency

Expanded FMLA

Exclusions

- Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

Exemptions

- Small Businesses (fewer than 50) may be exempt if providing required leave would jeopardize viability of business
- Not automatic exclusion

Part II – Emergency Paid Sick Leave

Emergency Paid Sick Leave

Covered Employer

- Covered public employers and private employers with fewer than 500 employees

Covered Employee

- Immediate eligibility (no 30-day payroll requirement like Expanded FMLA)

Emergency Paid Sick Leave

Exclusions

Secretary of Labor
Authority

- Health Care Providers and Emergency Responders may be excluded from coverage by employer (employer may opt out)

Exemptions

Secretary of Labor
Authority

- Businesses with less than 50 employees may be exempted if viability of the business is a going concern

Emergency Paid Sick Leave

Qualifying Reasons - The employee is unable to work or telework because:

- 1.1- the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- 2.2- the employee has been advised by a health care provider to self-quarantine because of COVID-19;
- 3.3- the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- 4.4- the employee is caring for an individual subject or advised to quarantine or self-isolate;

Emergency Paid Sick Leave

Qualifying Reasons - The employee is unable to work or telework because:

- 5-the employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
- 1.6- the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretary of Labor or Treasury

How Long?

- For reasons (1)-(4) and (6): A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.
- For reason (5): A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

How Much?

- For leave reasons (1), (2), or (3): employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).
- For leave reasons (4) or (6): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).
- For leave reason (5): employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Emergency Paid Sick Leave

Other Notes

- This is in addition to any paid sick leave an employee may already have
- This paid sick leave will NOT carry over beyond December 31, 2020
- Works in conjunction with Expanded FMLA – employer is required to provide employee with paid sick leave instead of the initial unpaid 10 days of Expanded FMLA if employee is eligible for both

Calculating Rate of Pay

- Based on an average number of hours worked by the employee during the previous six months; for employees who worked less than six months, they are entitled to leave in the amount of hours they would normally be scheduled to work over a two-week period

Part III – Tax Credits

Tax Credits are against the Employer Portion of Social Security Taxes

Emergency Family and Medical Leave Expansion Act

- Tax Credit Equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act
- Capped at \$200/day; \$10,000/total per individual

Emergency Paid Sick Leave Act

- Tax Credit Equal to 100% of the qualified sick leave wages paid by employers each calendar quarter in adherence with the Emergency Paid Sick Leave Act
- Capped at \$511/day (\$200/day if caring for others) for up to 10 days

Tax Credits are ONLY for employers who are required to provide Expanded FMLA and Emergency Paid Sick Leave (ex. fewer than 500 employees)

Part IV – Scenarios

Sample Scenarios

- **What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?**

Regardless of whether you grant or deny a request for paid sick leave or expanded family and medical leave, you must document the following:

- The name of employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that he or she is unable to work because of the reason.
- For a quarantine or isolation order or to care for an individual subject to such an order, document the name of the government entity that issued the order. If self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should document the name of the health care provider who gave advice.
- If your employee requests leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, you must also document:
 - The name of the child being cared for;
 - The name of the school, place of care, or child care provider that has closed or become unavailable; and
 - A statement from the employee that no other suitable person is available to care for the child.

Sample Scenarios

- **With the school year starting soon an employee states that their child’s school or place of care has moved to online instruction or to another model in which children are expected or required to complete assignments at home. Is it “closed”?**
Yes. If the physical location where your child received instruction or care is now closed, the school or place of care is “closed” for purposes of paid sick leave and expanded family and medical leave. This is true even if some or all instruction is being provided online or whether, through another format such as “distance learning,” your child is still expected or required to complete assignments.

Sample Scenarios

- **My employee claims to have tiredness or other symptoms of COVID-19 and is taking leave to seek a medical diagnosis. What documentation may I require from the employee to document efforts to obtain a diagnosis? When can it be required?**

In order for your employee to take leave under the FFCRA, you may require the employee to identify his or her symptoms and a date for a test or doctor's appointment. You may not, however, require the employee to provide further documentation or similar certification that he or she sought a diagnosis or treatment from a health care provider in order for the employee to use paid sick leave for COVID-19 related symptoms. The minimal documentation required to take this leave is intentional so that employees with COVID-19 symptoms may take leave and slow the spread of COVID-19.

Sample Scenarios

When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?

An employer with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- Small business' expenses and financial obligations exceed available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Part V – PPP Forgiveness Updates

PPP Loan Changes

Changes to PPP Loan Forgiveness

- On June 5th, Paycheck Protection Program Flexibility Act (PPFPA) is signed into law.
- The new law amended many of the provisions of the PPP loan program.
- Subsequently, the government issued an amended “Loan Forgiveness Application” and related instructions, as well as an “EZ” application.
- On July 4th, the PPP loan application deadline was also extended to August 8th.

Forgiveness Application is Issued

The Forgiveness Application

- While some questions still remain about the loan forgiveness process, this webinar will attempt to address some of your questions from the previous webinar based on the new laws, regulations and applications.
- As always, we recommend reviewing your specific PPP Loan Forgiveness situation with CPA and Legal Counsel prior to submitting a package for loan forgiveness to the bank.

PPPFA Changes

Some of the Changes

- Extended covered period from 8 weeks to 24 weeks (loans taken before June 5th can still choose the 8 week period);
- Reduced the amount that you needed to spend on payroll from 75% to 60%;

PPPFA Changes

Changes

- For purposes of the safe harbor, extended the date to replace full-time equivalent employees (FTEs) and restore salaries from June 30, 2020 until December 31, 2020.
- Maturity of all Paycheck Protection Program loans approved on or after June 5, 2020, will be five years. Any loans that were approved or funded prior to that date may also be extended if the lender and borrower mutually agree to a five-year maturity.

PPPFA Changes

Changes

- The loan forgiveness amount for each employee is capped at the equivalent of a \$100,000 annual salary. So, for the 24-week covered period, this cap is about \$46,154 per employee. For companies that got loans before June 5, 2020, and choose an 8-week covered period, the cap is \$15,385

PPPFA Changes

Changes Related to Owners

- Owner-employee forgiveness during a 24-week testing period cannot exceed \$20,833. If an 8-week testing period is elected, the limitation is \$15,385.
- Compensation counted for owner-employees cannot exceed the pro rata (20.833%) portion of what they were paid in 2019 if lower than \$100,000.
- The group health insurance costs of an individual who is an owner is generally included in the above cap.

New Forgiveness Applications Issued

Important Points

- The government issued two new applications to replace the original application.
- One application is the regular long form application with instructions.
- The second application is an “EZ” application.
- The application changes mainly incorporate the PPPFA changes.

New Full Forgiveness Application

Important Points

- Similar to the original application.
- Also includes schedule A and tables.
- Separate instructions are also available.
- The application changes mainly incorporate the changes in amounts from the PPPFA changes.
- Costs are still eligible if paid or incurred during the covered period.

Paycheck Protection Program
Loan Forgiveness Application Revised June 16, 2020
PPP Loan Forgiveness Calculation Form



Business Legal Name ("Borrower")	DBA or Tradename, if applicable	
	Business TIN (EIN, SSN)	Business Phone
Business Address	Primary Contact	E-mail Address

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____
 PPP Loan Amount: _____ PPP Loan Disbursement Date: _____
 Employees at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____
 EIDL Advance Amount: _____ EIDL Application Number: _____

Payroll Schedule: The frequency with which payroll is paid to employees is:
 Weekly Biweekly (every other week) Twice a month Monthly Other _____
 Covered Period: _____ to _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____
 If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:

Forgiveness Amount Calculation:

- Payroll and Nonpayroll Costs
 Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10): _____
 Line 2. Business Mortgage Interest Payments: _____
 Line 3. Business Rent or Lease Payments: _____
 Line 4. Business Utility Payments: _____
Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions
 Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3): _____
 Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5: _____
 Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13): _____
Potential Forgiveness Amounts
 Line 8. Modified Total (multiply line 6 by line 7): _____
 Line 9. PPP Loan Amount: _____
 Line 10. Payroll Cost 60% Requirement (divide line 1 by 0.60): _____
Forgiveness Amount
 Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10): _____

EZ Application

Important Points on EZ App

- Only two pages & requires fewer calculations and less documentation than the revised full forgiveness application.
- To use the application, borrower must either:
 - Be self-employed and have no employees;
 - Have not reduced pay by more than 25% and not reduced employee hours or count; or
 - Experienced shutdown/reductions due to health directives related to COVID-19 & did not reduce the salaries or wages of their employees by >25%



OMB Control No. 3245-0407
Expiration date: 10/31/2020

Paycheck Protection Program PPP Loan Forgiveness Application Form 3508EZ



Business Legal Name ("Borrower")	DBA or Tradename, if applicable	
Business Address	Business TIN (EIN, SSN)	Business Phone
	Primary Contact	E-mail Address

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____
 PPP Loan Amount: _____ PPP Loan Disbursement Date: _____
 Employees at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____
 EIDL Advance Amount: _____ EIDL Application Number: _____

Payroll Schedule: The frequency with which payroll is paid to employees is:
 Weekly Biweekly (every other week) Twice a month Monthly Other _____
 Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____
 If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

- Line 1. Payroll Costs: _____
- Line 2. Business Mortgage Interest Payments: _____
- Line 3. Business Rent or Lease Payments: _____
- Line 4. Business Utility Payments: _____

Potential Forgiveness Amounts

- Line 5. Add the amounts on lines 1, 2, 3, and 4: _____
- Line 6. PPP Loan Amount: _____
- Line 7. Payroll Cost 60% Requirement (divide Line 1 by 0.60): _____
- Line 8. Forgiveness Amount (enter the smallest of Lines 5, 6, and 7): _____

Adjustments

Not many changes

- Wage reductions are still calculated on a per employee basis, including the safe harbor.
- FTE calculations have not changed.
- Still no express deadline to apply for forgiveness, the application lists an expiration date of October 31, 2020.

Part VI – Q & A



Carlos Zumpano, Partner

Carlos.Zumpano@zumpanocastro.com
(305) 503-2991



Joseph Ruiz, Partner

Joseph.Ruiz@zumpanocastro.com
(305) 704-3345

**Thank you
&
Stay Safe!**

