



PLATINUM GROUP
CLOUD PAYROLL | HR | ACCOUNTING

Webinar 12

Employer Updates 06-26-2020



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Webinar-June 26, 2020

WEBINAR LOGISTICS

- **All Participants are muted.**
- **We would love to hear from you! Questions bar.**
- **A recording of the webinar and presentation slides will be available this afternoon.**
- **Rapidly changing environment – What we know now.**

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Webinar-June 26, 2020

COVID-19 WEBINAR 12

PPP Loan Forgiveness | EEOC & OSHA Guidance | EIDL Update
6.26.20



The SBTDC is a business and technology extension program of the UNC System and is funded in part through a Cooperative Agreement with the U.S. Small Business Administration.



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Webinar June 26, 2020

AGENDA

- **New EEOC & OSHA Guidance. New Governor Cooper Order.**
- **EIDL Update – What can proceeds be used for & Application requirements**
- **Paycheck Protection Program Flexibility Act (PPPFA) Forgiveness Provisions**
 - **Summary of Changes**
 - **New Guidance**

COVID-19 Employment Law Update

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June 26, 2020

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McGUIRE WOOD & BISSETTE
LAW FIRM

EEOC and Wage & Hour Updates

- Cannot require an antibody test before allowing an employee to re-enter the workplace
 - Medical examination under the ADA
 - Does not meet “job related and consistent with business necessity” standard
 - Diagnostic test for COVID-19 remains permissible
- DOL issued an online tool to help determine if employees are eligible for leave under FFCRA
 - <https://www.dol.gov/agencies/whd/ffcra/benefits-eligibility-webtool>



OSHA Guidance

- Released on June 18, 2020
- Addresses reopening plans for non-essential businesses
- Reopening plans should address multiple factors:
 - Hazard assessment
 - Hygiene practices
 - Social distancing
 - Isolation of sick employees
 - Return to work post-exposure or illness
 - Engineering and administrative controls
 - Workplace flexibility
 - Anti-retaliation
 - Training

Executive Order 147

- Effective until 5:00 P.M. on July 17, 2020
- Must wear face coverings in following situations if “are or may be” within 6 feet of another person:
 - Retail businesses (employees and customers)
 - Restaurants (employees and customers when not at their table)
 - Personal care, grooming, and tattoo businesses (employees and customers)
 - Childcare facilities, day camps, and overnight camps (employees and children 11 years of age or older)
 - In transportation (employees and customers)



McGUIRE WOOD & BISSETTE
LAW FIRM

Executive Order 147

- Certain high density occupational settings must also wear a face covering when employees “are or may be” within 6 feet of another person, including:
 - Manufacturing
 - At construction sites
 - Migrant farm, other farm, and agricultural settings
- Employees in certain industries must wear “surgical masks”
 - Meat and poultry processing
 - Long term care facilities (nursing homes, family care homes, mental health group homes, intermediate care facilities for individuals with intellectual disabilities)



Executive Order 147

- Certain exceptions apply to face coverings, such as:
 - Medical or behavioral condition or disability
 - Seeking to communicate with someone who is hearing-impaired which requires the mouth to be visible
- For your customers: should not be requesting documentation or other proof of a condition
- Citation if fail to enforce face covering provisions
 - Entitled to rely on customers' statements regarding an exception
 - Cannot enforce against individual customers, patrons, or workers—but if do not allow entry because of no face covering and person refuses to leave, law enforcement may enforce trespassing laws

Questions?

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Disclaimer: This presentation is intended and made available to provide information of general interest to the public, and for educational purposes only, and is not intended to offer legal advice about specific situations or problems. No representation is made about the accuracy of the information provided herein.



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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Summary of Key Provisions:

- The Act extends the “covered period” for a borrower to spend the PPP loan from eight weeks to 24 weeks (but not beyond 12-31-20).
- Borrowers whose loans predate the Act have the **option** to keep the eight-week covered period for their loan forgiveness applications.
- Borrowers will receive forgiveness as long as **at least** 60% of the loan proceeds are used for payroll costs, and they may receive forgiveness for up to 40% of the loan spent on non-payroll costs (e.g., rent, mortgage interest, and utilities).
- The Act extends the deadline for employers to restore wage and salary reductions and rehire workers in order to qualify for the loan forgiveness “safe harbors” from June 30, 2020, to December 31, 2020.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Summary of Key Provisions:

- Borrowers now have a safe harbor from loan forgiveness reductions even if FTEs have not been restored by December 31, 2020, provided the employer can
 - (A) document “in good faith” that (i) they have been unable to rehire the FTE and (ii) have been unable to hire a similarly qualified employee for that unfilled position **or**
 - (B) document that they have been unable to return to the level of business that existed prior to February 15, 2020, due to the limitations placed on the business by [CDC](#) and [OSHA](#) pertaining to COVID-19, such as sanitation, social distancing and worker and customer safety requirements. (Note: Now includes Local & State)
- The Act extends the time before payments of interest and principal are due on a PPP loan, from six months until the date the SBA pays the borrower’s loan forgiveness amount to its lender **or** ten months in the case of borrowers that do not make an application for PPP loan forgiveness.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Summary of Key Provisions:

- The Act permits employers to delay payment of payroll taxes (social security taxes) even if they are planning to seek loan forgiveness. This means that PPP loan borrowers may defer 2020 payroll taxes in accordance with the CARES Act, repaying 50% on or before December 31, 2021, and 50% on or before December 31, 2022.
- The Act Increases to five years the maturity of PPP loans that are approved by the SBA (based on the date the SBA assigns a loan number) on or after June 5, 2020.
- For loans made before June 5, 2020, the maturity is two years; however, borrowers and lenders may mutually agree to extend the maturity of such loans to five years.
- The “covered period” still begins on the PPP funding date.
- June 30, 2020 remains the last date a PPP loan application can be approved. New PPP Application Available.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

When must a borrower apply for loan forgiveness or start making payments on a loan?

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness.

If the borrower applies for forgiveness before the end of the covered period and has reduced any employee's salaries or wages in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period. See next slide for example.

If the borrower does not apply for loan forgiveness within 10 months after the last day of the covered period, or if SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due. The lender must report that the loan is no longer deferred to SBA.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

Of course, there is a caveat, which is if a borrower has reduced salaries or wages of employees by more than the 25% allowed under PPP, they have to apply that reduction for the entire duration of the loan period, either eight weeks or 24 weeks, and not as of the date they apply for forgiveness. Here is an example provided in the IFR, which is complicated:

25% Salary Reduction Example:

“A borrower is using a 24-week covered period. This borrower reduced a full-time employee’s weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$1,200 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling \$1,200).”

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

When must payroll costs be incurred and/or paid to be eligible for forgiveness?

- Borrowers may seek forgiveness for payroll costs for the applicable covered period beginning on either:
 1. the date of disbursement of the borrower’s PPP loan proceeds from the Lender (i.e., the start of the covered period); or
 2. the first day of the first payroll cycle in the covered period (the “alternative payroll covered period”).
- Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Payroll costs incurred during the borrower’s last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance – Owner Compensation:

Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals’ own payroll compensation?

- **Yes.** For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals’ payroll compensation is capped at eight weeks’ worth (8/52) of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual, whichever is less, in total across all businesses.
- For all other borrowers, the amount of loan forgiveness requested for owner-employees and self-employed individuals’ payroll compensation is capped at 2.5 months’ worth (2.5/12) of 2019 compensation (i.e., approximately 20.83 percent of 2019 compensation) or \$20,833 per individual, whichever is less, in total across all businesses.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance – Owner Compensation (Continued):

- C-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health insurance contributions made on their behalf.
- S-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement contributions made on their behalf, but employer health insurance contributions made on their behalf cannot be separately added because those payments are already included in their employee cash compensation.
- Schedule C or F filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.
- General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance – Owner Compensation (Continued):

- For self-employed individuals, including Schedule C or F filers and general partners, retirement and health insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll.
- Again, forgiveness of owner compensation is limited to either eight weeks' worth (8/52) of their 2019 compensation (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of their 2019 compensation (up to \$20,833) for a 24-week covered period per owner in total across all businesses.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?

- A nonpayroll cost is eligible for forgiveness if it was:
 1. paid during the covered period; or
 2. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.
- The alternative covered period is not available for nonpayroll costs.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

Will a borrower’s loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer?

No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

1. The borrower made a good faith, written offer to restore the reduced hours of such employee;
2. The offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours;
3. The offer was rejected by such employee; and
4. The borrower has maintained records documenting the offer and its rejection.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

The Administrator, in consultation with the Secretary, is interpreting the above statutory exemption to include both direct and indirect compliance with COVID Requirements or Guidance, because a significant amount of the reduction in business activity stemming from COVID Requirements or Guidance is the result of state and local government shutdown orders that are based in part on guidance from the three federal agencies.

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Additional Guidance:

In addition, the SBA and the Treasury Department have **reversed course** and promised to publicly disclose information concerning PPP loan borrowers except for those with loans below \$150,000. The information that will be made publicly available will include:

- Business name
- Address
- NAICS code
- Business type
- Demographic data
- Nonprofit information (if applicable)
- Jobs supported
- Loan amount ranges as follows:
 - \$150,000-350,000
 - \$350,000-1 million
 - \$1-2 million
 - \$2-5 million
 - \$5-10 million

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FLEX ACT REVIEW

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA) – “FLEX ACT”

Links:

- Recent Guidance on Federal Register <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-13782.pdf>
- Loan Forgiveness Application Revised June 16, 2020 <https://www.sba.gov/sites/default/files/2020-06/PPP%20Loan%20Forgiveness%20Application%20%28Revised%206.16.2020%29.pdf>
- Loan Forgiveness Application Instructions <https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>
- PPP Loan Forgiveness Application Form 3508EZ <https://home.treasury.gov/system/files/136/PPP-Forgiveness-Application-3508EZ.pdf>
- PPP Loan Forgiveness Application Form 3508EZ Instructions <https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-Application-Form-EZ-Instructions.pdf>

Questions?

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Thank you!

Future Webinars will be scheduled based on new guidance

Invitations will be sent

Recordings and presentation slides will be sent out this afternoon.

**This presentation is based on information available on June 25th, 2020 and is
subject to change.**

SBTDC



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SBA ECONOMIC INJURY DISASTER LOANS (EIDL)- UPDATES

- **June 15th- EIDL Loans and EIDL Advance has opened up to qualified small businesses and U.S. agricultural business.**

RECAP:

- Eligibility: Businesses with 500 employees or Less.
- Up to \$2 million
- Interest rate 3.75% for small businesses. 2.75% for Non-Profits
- The term = up to 30 years.
- The first 12 payments deferred- Interest does accrue

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)- UPDATES

Basic filing requirements

- Tax information authorization (IRE Form 4506T) for the applicant and other business principles
- Complete copies of the most recent Federal Income Tax Return.
- Schedule of Liabilities (SBA Form 2202)
- Personal Financial Statement (SBA Form 413)
- Current year—to-date profit and loss statement
- Monthly sales figures (SBA Form 1368)
- For those businesses with multiple partners/investors- Have Schedule of Ownership available

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Use of loan funds

Used for working capital to cover necessary day-to-day expenses your business would have successfully covered before coronavirus.

EXAMPLES:

- Fixed debts (Rent or mortgage payments etc.)
- Payroll
- Accounts payable
- Providing paid sick leave to employees
- Matching increased costs to obtain materials
- Other obligatory payments that cannot be met due to revenue loss

★ **EIDL is not intended for expansion or lost revenues**

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Use of loan funds

- According to EIDL SOP: EIDLs may also be used for “extraordinary items” which are defined as “needs outside of normal operations and directly caused by the disaster.”

Extraordinary items can include:

1. Temporary rent or storage fees, additional advertising costs, etc.;
2. Accelerated debt due to the disaster;
3. Inventory replacement may be an extraordinary item. Example:
 - PPE
 - Restaurant & Retail inventory-, at time of covid(spring), a clothing store is left with an inventory of winter clothing and has no funds to order summer stock. The cost of ordering summer inventory can represent an additional need.

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Cannot Use Loan Funds For: In doubt ask SBA rep

- Dividends and bonuses
- Disbursements to owners, unless for performance of services
- Repayment of stockholder/principal loans (with exceptions)
- Expansion of facilities or acquisition of fixed assets
- Repair or replacement of physical damages
- Refinancing long-term debt
- Paying down (including regular installment payments) or paying off loans provided, or owned by another Federal agency (including SBA) or a Small Business Investment Company
- Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations
- Relocation (however, you can request written consent to relocate)

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Things to Consider:

- Keep track of how you use these loan funds: May want to establish a separate business account for operating expenses, if you don't already have one.
 - Keep good records: You will have to keep “itemized receipts (paid receipts, paid invoices or cancelled checks) and contracts for all loan funds spent.”
 - Consider using a portion of your disaster funding to pay an accountant or CPA to review your current financials. Catching issues on the front end will save headache and heartache on the back end.
 - Do vigorous cash-flow forecasting month by month for the next twelve to twenty-four months- Reach out to SBTDC to help with that if needed.
- ★ **EIDLs can help businesses stay afloat during the pandemic. But they also require the business owner to get crystal clear on the businesses finances, so they can decide if these loans work for them in the long run.**

SBA ECONOMIC INJURY DISASTER LOANS (EIDL)

Common Questions:

1. **Will EIDL loan affect my credit?** the SBA itself doesn't report to credit reporting agencies. Since these loans are made by the SBA, EIDLs should not appear on personal or business credit reports. However, for loans of \$25000 or more, the SBA files a UCC-1 filing which can appear on business credit reports and may impact your ability to get other financing.
2. **What if I get a denial letter?** "If you disagree with our decision, you may request reconsideration, subject to the availability of funds, You can submit your request to any of the following:"
 - a. Mail your request to the address at the top of this letter
 - b. Fax your request to 202-481-5931
 - c. E-mail your request to: pdcrecons@sba.gov

Your request must:

- a. Be in writing and be received no later than 6 months from the date of letter
- b. Contain all significant information that will overcome the decline/withdrawal reason(s)

Contact the North Carolina SBTDC near you for assistance in developing your overall COVID-19 Recovery plan. Our organization has been helping small and mid-size business in NC for 35 years. We have extensive experience working with businesses recovering from disasters.

Keep yourself updated on Business Resources at our Covid-19 dedicated site:

<http://www.sbt dc.org/coronavirus/>



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