



PLATINUM GROUP
CLOUD PAYROLL | HR | ACCOUNTING

Webinar 15

Employer Updates 01-08-2021

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Webinar-January 8, 2021

WEBINAR LOGISTICS

- **All Participants are muted. If you are experience audio issues when calling in, please try using your computer speakers.**
- **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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COVID-19 WEBINAR 15

EEOC Vaccination Guidance | PPP: Expansion, New Requirements,
Great News for Taxes | Stimulus Bill

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COVID-19 Employment Law Update

Platinum Group
January 8, 2021

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Expiration of FFCRA

- Requirement that employers provide emergency paid sick leave and expanded Family and Medical Leave expired on December 31, 2020
- Employers may voluntarily decide to provide the leave and receive tax credit until March 31
- Reinstatement of requirement that provide FFCRA leave will require congressional act

Expiration of FFCRA

- DOL will enforce the FFCRA provisions through December 31, 2020
 - Example: used 6 weeks of EFMLA before 12/31/2020; allowed to take the leave, but did not pay for the last two—still required to pay even though FFCRA now expired
 - Statute of limitations to bring complaint is 2 years from violation of FFCRA
- Little guidance on voluntary FFCRA leave
 - If employee exhausted 80 hours of emergency sick leave prior to December 31, 2020, not entitled to anymore (so would not receive tax credit if offered more)
 - If you are subject to traditional FMLA, riskier to voluntarily provide EFMLA because very little guidance on how it interacts with traditional FMLA
 - Does it count against traditional FMLA allotment?
 - Does EFMLA reset in accordance with your traditional FMLA policy?
- Don't forget other laws! ADA, traditional FMLA leave



COVID Vaccinations

- EEOC Guidance

- Like a lot of other things we've talked about, this is what the EEOC thinks the law should be
 - It is not a guarantee that the Courts would agree and this guidance is not in line with all court decisions
 - Best we've got right now and best we are likely to have while it really matters
- Part of the Q&As the EEOC has had on its website regarding COVID beginning in March. New Section for Vaccinations added at the end of the document in late December.

Can I Require My Employees to...

- Get the COVID Vaccine?

- YES – subject to the ADA and Title VII Requirements

- ADA

- Reasonable Accommodation Requirement for employee's own health condition
 - You can require (and should require) information from employee's doctor
 - You can deny employee access to the workplace if failure to get the vaccine is a direct threat
 - Factors to consider in direct threat scenario:
 - The duration of the risk;
 - The nature and severity of the potential harm;
 - The likelihood that the potential harm will occur; and
 - The imminence of the potential harm.



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Can I Require My Employees to...

■ Get the COVID Vaccine?

- YES – subject to the ADA and Title VII Requirements
- ADA continued
 - EEOC acknowledges that as more are vaccinated the direct threat calculus may change
 - Must consider the employee's contact with vaccinated and unvaccinated people
 - Seems as though prolonged contact with individuals whose vaccination status you will not know may be
 - You may have to allow employee to work from home as a reasonable accommodation if employee can perform essential functions of job from home
 - If you have other positions open that employee can perform without a vaccine consider those
 - If “no way” you can accommodate, you can end employment – revisit the four factors before you do...



Can I Require My Employees to...

- Get the COVID Vaccine?

- Title VII Requirements

- Religious Exemption
 - If you are already aware of the employee's religious beliefs, you cannot ask for more documentation
 - If you are not aware or have reason to doubt the religious belief, you can ask for documentation
 - Court rulings have said that anti-vaxxer is not a religion
 - If employee needs an accommodation due to religious belief, you must provide it unless it would present an "undue hardship" which courts have said is more than a "de minimus" cost
 - Employee may be excluded from the workplace if failure to be vaccinated poses an undue hardship



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How Do I...

■ Get My Employees Vaccinated?

- Requiring your employees to get the vaccine from you or from someone with whom you contract is risky
- Pre-Vaccination questions may be medical exams under the ADA and open you to more scrutiny
- Guidance provides that offering the option to employees to voluntarily be vaccinated by the employer or by someone with whom the employer has contracted is OK

How Do I...

- **Know My Employee Has Been Vaccinated?**
 - Guidance provides that you can require an employee to offer proof of vaccination if the employee opts to be vaccinated by a third party not associated with the employer
 - This guidance is contrary to one federal court decision that provided under different circumstances that asking an employee if they were immune to a disease was a medical exam
 - If it is a medical exam, you have to show that the exam is job related and consistent with a business necessity
 - Given this guidance and the pandemic, unclear how a court would decide this issue

Bottom Line

■ As An Employer You Can...

- Make vaccination voluntary but engage in education (like the flu shot): this is the risk free option from an ADA and Title VII standpoint, but could pose more health risks
- Require vaccination so long as you allow employees to choose how they get the shot and consider ADA and Title VII implications
- Require vaccination as above, but offer a voluntary clinic for your employees, still allowing them to get the vaccine elsewhere
- Require vaccination as above, but require employees to get the vaccination from you or your contractor, but not without greater risk and analysis under direct threat framework



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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Webinar January 8, 2021

AGENDA

- **FFCRA Updates**
- **EEOC Vaccination Guidance related to COVID-19.**
- **Paycheck Protection Program (PPP) loans - New Round Requirements**
- **Tax deductibility of PPP loan expenses - Some great news**
- **Expansion of the PPP loan program - More entities qualify**
- **Highlight of other provisions of the Bill**

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Consolidated Appropriations Act, 2021 (“The Act” or “CAA”) - Round Two Highlights are as follows :

- The ability to obtain a second PPP loan for small businesses facing significant revenue declines in any 2020 quarter compared to the same quarter in 2019.
- Clarifications providing for the deductibility of business expenses paid with forgiven PPP loans (a material change from existing IRS guidance).
- Loan eligibility for Section 501(c)(6) not-for-profit organizations for the first time.
- \$15 billion for live venues, independent movie theaters and cultural institutions.
- \$20 million for the Economic Injury Disaster Loan Program.

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New loans are also available to first-time borrowers if they were in business on February 15, 2020 and come from the following groups:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans.
- Sole proprietors, independent contractors, and eligible self-employed individuals.
- Not-for-profits, including churches.
- Accommodation and food services operations (those with North American Industry Classification System (NAICS) codes starting with 72) with fewer than 500 employees per physical location.
- Sec. 501(c)(6) business leagues, such as chambers of commerce, visitors' bureaus, etc., and "destination marketing organizations" that have 300 or fewer employees and do not receive more than 15% of receipts from lobbying. The lobbying activities must comprise no more than 15% of the organization's total activities and have cost no more than \$1 million during the most recent tax year that ended prior to Feb. 15. 2020.

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Limited Eligibility for Second Draw Loans are as follows:

- Second round loans are available to borrowers that previously received a PPP Loan up to \$2 million.
- Second draw loans are limited to businesses that:
 - a) employ no more than 300 employees (previously 500 employees)
 - b) have used or will use the entire amount of their first PPP loan on allowable expenses, and
 - c) Had a 25% gross receipts reduction during any quarter of 2020 as compared to the same quarter in 2019

It is unclear at this point if borrowers will have to certify that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”.

The legislation also allows borrowers that returned all or part of a previous PPP loan to reapply for the maximum amount available to them.

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PPP Loan Amounts:

- In general, first and second-time PPP borrowers may receive a loan amount of up to 2.5 times their average monthly payroll costs (with a cap per employee of \$100,000 annualized) in the year prior to the loan or the calendar year. PPP borrowers with NAICS codes starting with 72 (hotels and restaurants) can receive up to 3.5 times their average monthly payroll costs on second-draw loans.
- Applicants must provide a Form 941, *Employer's Quarterly Federal Tax Return*, (or other forms with similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever is used to calculate the loan amount), or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions.
- The SBA and Treasury announced Today that the new PPP will re-open the week of Jan. 11 with community financial institutions exclusively allowed to make first-draw PPP loans on starting Jan. 11 and second-draw PPP loans starting Jan. 13. The PPP will open to all participating lenders at an unspecified date shortly thereafter and remain open through March 31.

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- **Use of PPP Funds:** Congress expanded the types of expenses for which all PPP loans can be used, which applies to existing PPP loans (except in the event forgiveness has already been obtained) and new loans. In addition to payroll, rent, covered mortgage interest and utilities, the PPP now allows proceeds to be used for:
 - a) **Covered Worker Protection Expenditures:** operating or capital expenditures that allow a business to comply with requirements or guidance issued by the CDC, HHS, OSHA or any state or local government during the period beginning March 1, 2020 and ending on the date which the national emergency declared by the president expires related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19. These expenses appear to include PPE, physical barriers that were put in place, expansion of indoor/outdoor space, ventilation or filtration systems and drive-through windows.
 - b) **Covered Supplier Costs:** expenditures to a supplier of goods that are essential to the operations of the entity at the time at which the expenditure was made and is made pursuant to a contract or order in effect at any time before the covered period or, with respect to perishable goods, in effect at any time during the covered

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Use of PPP Funds (continued):

- c) **Covered Operations Expenditures:** payments for business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment or tracking of payroll expenses, HR and billing functions, or account or tracking of supplies, inventory, records and expenses
- d) **Covered Property Damage Costs:** costs related to property damaged and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation

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Loan Forgiveness:

- Borrowers of a PPP second draw loan are eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. Borrowers are still required to use at least 60% of PPP loan proceeds on eligible payroll costs in order to receive full forgiveness.
- The Act extends existing safe harbors on restoring FTE and salaries and wages.
- The new legislation provides that PPP borrowers will be provided the option to choose between an eight-week covered period and a 24-week covered period. However, it is not clear whether this flexibility to choose a customized covered period will apply retroactively to loans made prior to the enactment of the new legislation.
- Repeals the requirement that PPP borrowers deduct the amount of any Economic Injury Disaster Loan (EIDL) advance from their PPP forgiveness amount.

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Simplified Forgiveness for Loans Less Than \$150K:

- Borrowers that receive a PPP loan of \$150,000 or less shall receive forgiveness if the borrower signs and submits to the lender a certification that is not more than one page in length, includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount. The SBA has yet to create the simplified application form but must do so by Jan. 20. The form may not require additional materials unless necessary to substantiate revenue loss requirements or satisfy relevant statutory or regulatory requirements. Borrowers are required to retain relevant records related to employment for four years and other records for three years, as the SBA may review and audit these loans to check for fraud.

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Increased Access for Minority, Underserved & Women Owned Businesses:

The SBA announced in its three-page guidance that it would take several steps to ensure increased access to the PPP for minority, underserved, veteran, and women-owned business concerns. Most notably, the SBA said it will accept PPP loan applications only from community financial institutions for at least the first two days when the PPP loan portal reopens. [Three-Page "Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns"](#)

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CONSOLIDATED APPROPRIATIONS ACT, 2021 (“THE ACT” or “CAA”)

Other Notable Provisions:

- **Deductibility of PPP Expenses:** The new law clarifies that the expenses paid with the proceeds of a forgiven PPP loan are deductible, legislatively overruling IRS Notice 2020-32, which disallowed deductions for such expenses. Note: North Carolina has not adopted this provision to date.
- **Eligibility for Employee Retention Tax Credit:** A company that receives a PPP loan is no longer prohibited from claiming the employee retention tax credit; however, a credit may not be claimed for wages paid with the proceeds of a PPP loan that have been forgiven (no double dipping). This change is retroactive to the effective date under the original law (for wages paid after March 12, 2020). The credit is only available to businesses that either
 - 1) had their business fully or partially suspended by government order during at least one quarter, or
 - 2) had a substantial decline in gross receipts during any quarter relative to the same quarter in 2019.

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CONSOLIDATED APPROPRIATIONS ACT, 2021 (“THE ACT” or “CAA”)

Other Notable Provisions:

Old: Section 2301(c)(2)(A)(ii)(II) provided that the requirement was met if during 2020, the business experienced a quarter in which gross receipts were less than 50% of the receipts in the same quarter in 2019. From that point on, every subsequent quarter was also an eligible quarter until the END of the first quarter in which gross receipts exceeded 80% of the receipts from the same quarter in 2019.

New: Section 207(d)(1) makes significant changes to the gross receipts test of Section 2301(c)(2)(A)(ii)(II). For 2021, the test is satisfied for any quarter of the first half of 2021 in which gross receipts is less than 80% of the same quarter in 2019. Thus, in the first quarter of 2021, a business would compare its receipts in that quarter to the first quarter of 2019, NOT the first quarter of 2020.

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 January 7th, 2021 and is
subject to change.**

Employee Experience: Employ, Enable, Empower

The iSolved Platform



Modern Employee Experiences



EMPLOY

Talent Management



Attract & Hire

- Recruiting
- Job postings
- Applicant tracking



Onboard & Develop

- New hire forms
- WOTC eligibility
- Compliance
- Talent identification & nurturing

ENABLE

HR & Payroll



Payroll

- Employee self-service
- Direct deposit
- Pay cards
- Tax filing & credits
- Garnishments



Human Resources

- Manager self-service
- PTO accrual
- Job history
- Salary management
- Certification tracking
- Audit & compliance
- Document management



Time & Attendance

- Time and labor
- Attendance
- Time clocks
- Scheduling



Benefits Enrollment & Services

- Benefit management
- Benefit cost analysis
- Open enrollment
- ACA compliance
- Life event management
- Carrier integrations
- FSA, HSA, HRA
- COBRA
- FMLA

EMPOWER

Engagement Management



Share & Perform

- Employee surveys
- Collaboration
- Rewards & recognition
- Goal setting
- Performance reviews
- 360 peer feedback



Learn & Grow

- LMS
- SCORM compliant
- Content marketplace
- Social learning
- Gamification
- Customizable content

Advanced Analytics & Workflow

One-touch Single Employee Record



Reactive UX

Scalable, Secure & Futureproof Platform



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