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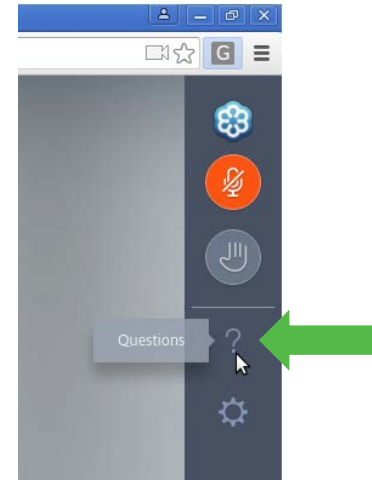


Answering Your Legal, Tax, and Accounting Questions as Ohio Goes Back to Work

PRESENTED BY APPLE GROWTH PARTNERS AND MEYERS ROMAN

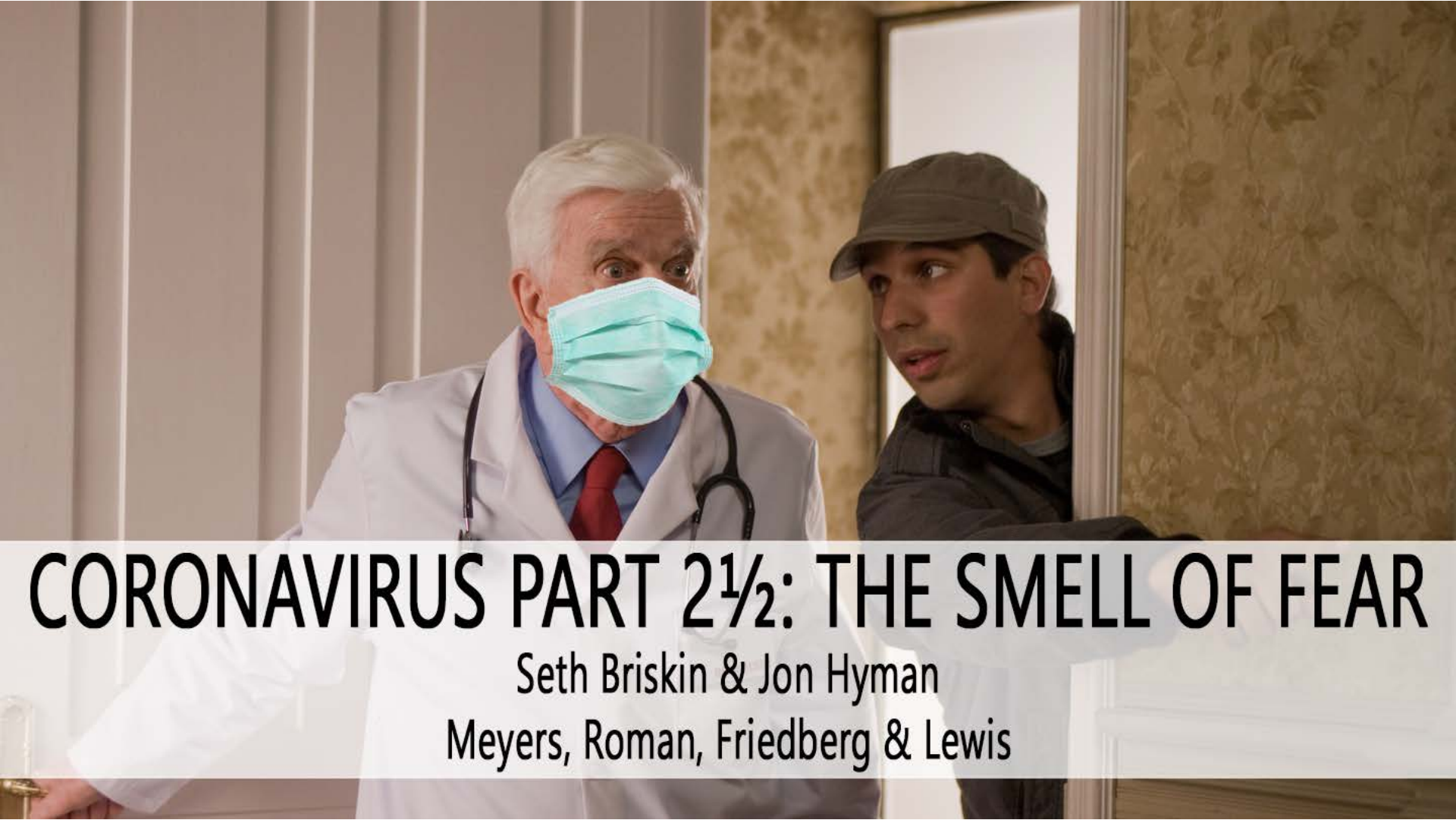
Welcome

- + All attendees are placed on listen-only mode
- + Submit a confidential question at any time
- + Questions will be reviewed by our team and followed up after the webinar
- + Contact information will be provided
- + Today's webinar recording will be sent via email within 2 hours



Disclaimer

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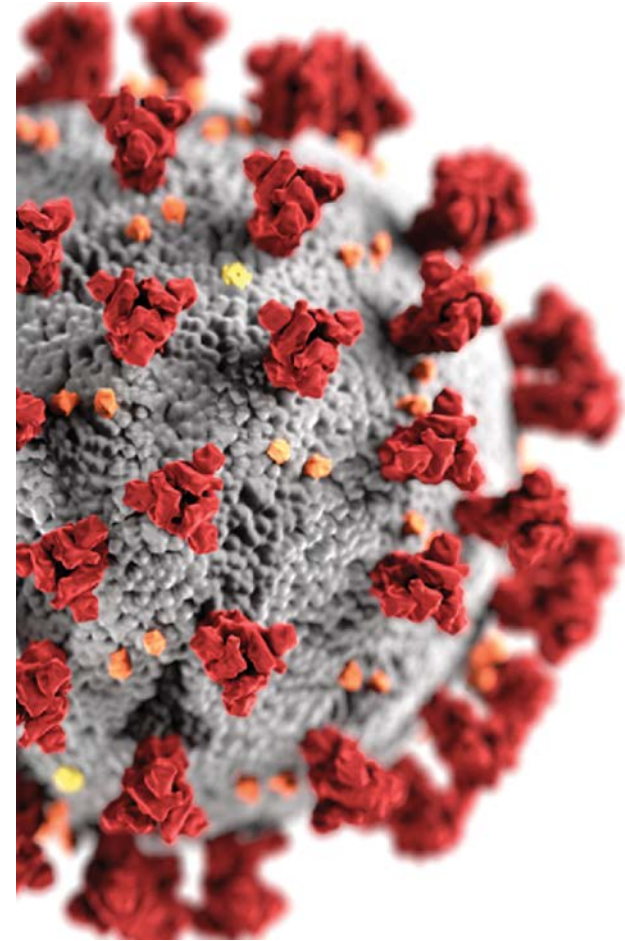
CORONAVIRUS PART 2½: THE SMELL OF FEAR

Seth Briskin & Jon Hyman

Meyers, Roman, Friedberg & Lewis

What We Will Be Covering

- Administering Paid Sick Leave and Family Leave Under the Families First Coronavirus Response Act
- Unemployment Compensation Impact
- Preparing Your Business for a Safe Return to Work



A yellow silhouette of a family (two adults and two children) is painted on a dark asphalt surface. The silhouette is composed of simple, rounded shapes. The text is overlaid on the center of the image, partially covering the family silhouette.

Paid Sick Leave and Paid FMLA: The Families First Coronavirus Response Act

Categories of Leave

- The employee is under a government quarantine or self-isolation order (PSL only @ 100%)
- The employee is quarantined or self-isolating because of coronavirus concerns (PSL only @ 100%)
- The employee is experiencing symptoms of coronavirus and seeking a medical diagnosis (PSL only @ 100%)
- The employee is caring for an individual who is quarantined or self-isolating because of coronavirus concerns (PSL only @ 2/3rds)
- The employee is caring for a child whose school or place of care has been closed, or the care provider is unavailable due to coronavirus precautions (PSL *and* eFMLA @ 2/3rds)

PTO vs. EPSL / EFMLA

- An employer can never require an employee to substitute PTO for EPSL.
- If an employee qualifies for both EPSL and EFMLA, it is the employee's sole choice whether to use EPSL during the initial two unpaid weeks of EFMLA, or save the EPSL for later use.
- An employer can require an employee to use available PTO during the unpaid portion of an EFMLA leave, to run concurrently.
- An employer and employee can agree to "top-off" EPSL or EFMLA (that is, true up the employee's pay through the substitution of PTO so that the employee earns his or her full pay). But the employer cannot require it.

Notice and Documentation

No written notice required.

Oral notice suffices.

For *All* Leaves:

1. Employee's name;
2. Date(s) for which leave is requested;
3. Qualifying reason for the leave; and
4. Oral or written statement that the employee is unable to work because of the qualified reason for leave.

Notice and Documentation

For *Specific* Leaves:

5. For paid sick leave relating to a government quarantine or isolation order, the name of the government entity that issued the order.
6. For paid sick leave based on the advice of a health care provider to self-quarantine due to concerns related to coronavirus, the name of the advising health care provider.
7. For paid sick leave relating to the care of an individual who is subject to governmental or quarantine order, the name of the government entity that issued the order or the name of the advising health care provider.
8. For paid sick leave relating to the care of the employee's child because the child's school or child-care provider is closed: (i) the name of the child being cared for; (ii) the name of the school, place of care, or child care provider that has closed or become unavailable; and (iii) a representation that no other suitable person will be caring for the child during the leave.

A person wearing a grey long-sleeved shirt and dark pants is holding a large, rectangular piece of cardboard. The cardboard has the words "LOOKING FOR A JOB" written on it in large, black, hand-painted capital letters. The person is standing in front of a dark, textured wall with horizontal concrete or stone bands. A semi-transparent blue horizontal band is overlaid across the middle of the image, containing the text "Unemployment Compensation Impact" in white. The person's right hand is visible holding the left side of the sign, and their left hand is holding the right side, showing a ring on the ring finger.

Unemployment Compensation Impact

Unemployment Compensation Impact

- + An additional emergency increase of \$600 per week payment—termed by the CARES Act as “Federal Pandemic Unemployment Compensation.”
- + An additional 13 weeks of unemployment benefits through December 31, 2020.
- + 100% federal funding of “short-time compensation” programs through December 31, 2020, for furloughed employees who receive partial unemployment benefit.
- + A temporary Pandemic Unemployment Assistance program through December 31, 2020, to provide UI payments to the self-employed, independent contractors, and gig economy workers.
- + The ODJFS has waived the waiting period, requirement to seek work, and streamlined the application process. That said, there have been a lot of reported problems with the unemployment system to date.

A close-up photograph of a pink, fluffy teddy bear's head. The bear is wearing a light blue, three-ply surgical mask that covers its eyes and nose. The bear's dark eyes are visible above the mask. The background is a textured, light-colored wall. The text "Preparing Your Business for a Safe Return to Work" is overlaid in white, sans-serif font across the middle of the image.

Preparing Your Business for a Safe Return to Work

Preparing Your Business for a Safe Return to Work

- + Establishing a COVID-19 Response Plan/Team
- + Implement Infection Prevention Measures
 - + Handwashing stations and disinfecting wipes
 - + Regular workplace sanitation
 - + Social distancing
 - + Split shifts
 - + Mandatory masks, and other PPE/gloves
 - + Taking temperatures/asking about COVID-19 symptoms
 - + Required testing of employees
- + Engineering controls vs. Administrative controls



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Update Based on FAQs

PRESENTED BY ROBERT JACKSON, ASHIRA NELSON, ROBERT NEIDES, SUSAN PEIRCE

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Business Planning

AGP Cash Management Tool applegrowth.com/COVID19



APPLE GROW+H PARTNERS
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AGP Cash Management Tool

1. How would you grade your total cash position today compared to same date, last year?
0 ☐ STRONG (3) ☐ ADEQUATE (2) ☐ AT-RISK (1) ☐ SEVERE (0)
2. How would you classify your cash 'burn rate' today compared to same date, last year?
(Burn rate defined as the amount of money you're spending every month in order to pay for overhead before you can generate positive cash flow from your operations)
0 ☐ DOWN (3) ☐ SLIGHTLY DOWN (2) ☐ SLIGHTLY UP (1) ☐ UP (0)
3. In assessing receivables, cash collection from customers today compared to one year ago are:
0 ☐ UP (3) ☐ SLIGHTLY UP (2) ☐ SLIGHTLY DOWN (1) ☐ DOWN (0)
4. In assessing inventory, your days' sales in inventory (DSI) today compared to one year ago is:
0 ☐ DOWN (3) ☐ SLIGHTLY DOWN (2) ☐ SLIGHTLY UP (1) ☐ UP (0)
5. In assessing the strength and continuity of your operations, how has the pandemic and related shutdowns affected your supply chain?
0 ☐ LITTLE to NONE (3) ☐ MODERATE (2) ☐ AT-RISK (1) ☐ SEVERE (0)
6. In assessing the strength and continuity of your operations, how has the pandemic and related shutdowns affected your customer base and demand side?
0 ☐ LITTLE to NONE (3) ☐ MODERATE (2) ☐ AT-RISK (1) ☐ SEVERE (0)

For existing 7a loans, SBA will make P&I payments for 6 months

- + The deferment will NOT cancel any established Preauthorized Debit (PAD) or recurring payments on your loan.
- + Borrowers that have established a PAD through Pay.Gov or an Online Bill Pay Service are responsible for canceling these recurring payments.
- + Borrowers that had SBA establish a PAD through Pay.gov will have to contact their SBA servicing office to cancel the PAD.

+ Tax Planning

- + Net Operating Loss carryback
- + Qualified Improvement Property / Bonus Depreciation

+ Prior to COVID-19

- + Employee may generally perform services on temporary basis up to 20 days per year before triggering city income tax withholding rules

+ Changes under House Bill 197 enacted March 27, 2020

- + Treats employees who report to a temporary worksite during the COVID-19 emergency period as working at their principal place of work.
- + Employees working from home during the pandemic (or within 30 days after the emergency is lifted) are considered to be working in the location where they would typically be reporting on a regular and ordinary basis (*i.e.*, their principal place of work).

Student Loan Relief

- + The government has announced that it will give almost all federal student-loan borrowers the option to suspend payments for at least two months.
- + The repayment and interest suspensions apply to most of 43 million Americans who owe \$1.5 trillion in federal student debt.
- + If you are not sure if your loans qualify, contact your service provider.

- + Programs may now include repayment of a qualified education loan incurred by the employee for the employee's own education, provided the employer's payment is made after March 27, 2020, and before January 1, 2021.
- + Payment may be made to the lender or directly to the employee
- + Excludable from the employee's gross income to the extent the payment doesn't exceed the annual maximum of \$5,250.

- + Changes may be permitted due to life events
 - + Includes dependent care
- + Prescription requirement is removed
 - + Can purchase OTC
 - + Menstrual care products are qualified medical expenses

Employer Social Security Tax

- + The CARES Act provides that employers may defer the deposit and payment of the employer's portion of Social Security taxes.
- + However, Employers that received a PPP loan may not defer the deposit and payment of the employer's share of Social Security tax after the employer receives a decision from the lender that the loan was forgiven.
- + The deferral applies to deposits and payments of the employer's share of Social Security tax beginning on March 27, 2020 and ending December 31, 2020.

+ Employee retention credit

Elective (by quarter) refundable payroll tax credit per employee (50% of qualified wages; annual max credit of \$5,000) for qualified wages paid during the governmental order period or the receipts decline period

No credit for the same wages used for work opportunity credit or the FFCRA credits (new sick and family medical leave credits), or for RELATED PARTY WAGES

Credit computations differ depending on small (average of 100 or less FTEs (under Sec. 4980H) for 2019) or large employer (greater than 100 FTEs for 2019)

- All qualified wages for eligible days/quarter for small employers qualify; for large employers only qualified wages paid for time that the employee is not providing services are eligible. Aggregation rules apply in determining size of the employer.

No credit at all if employer (or if aggregated, any one of the employers) received a PPP Loan

Must choose between PPP loan (as well as loan forgiveness net of lost tax deductions) vs. Employee Retention Credit (net of lost deduction for wages)

- + Help me understand the IRS position that the forgiven expenses aren't deductible

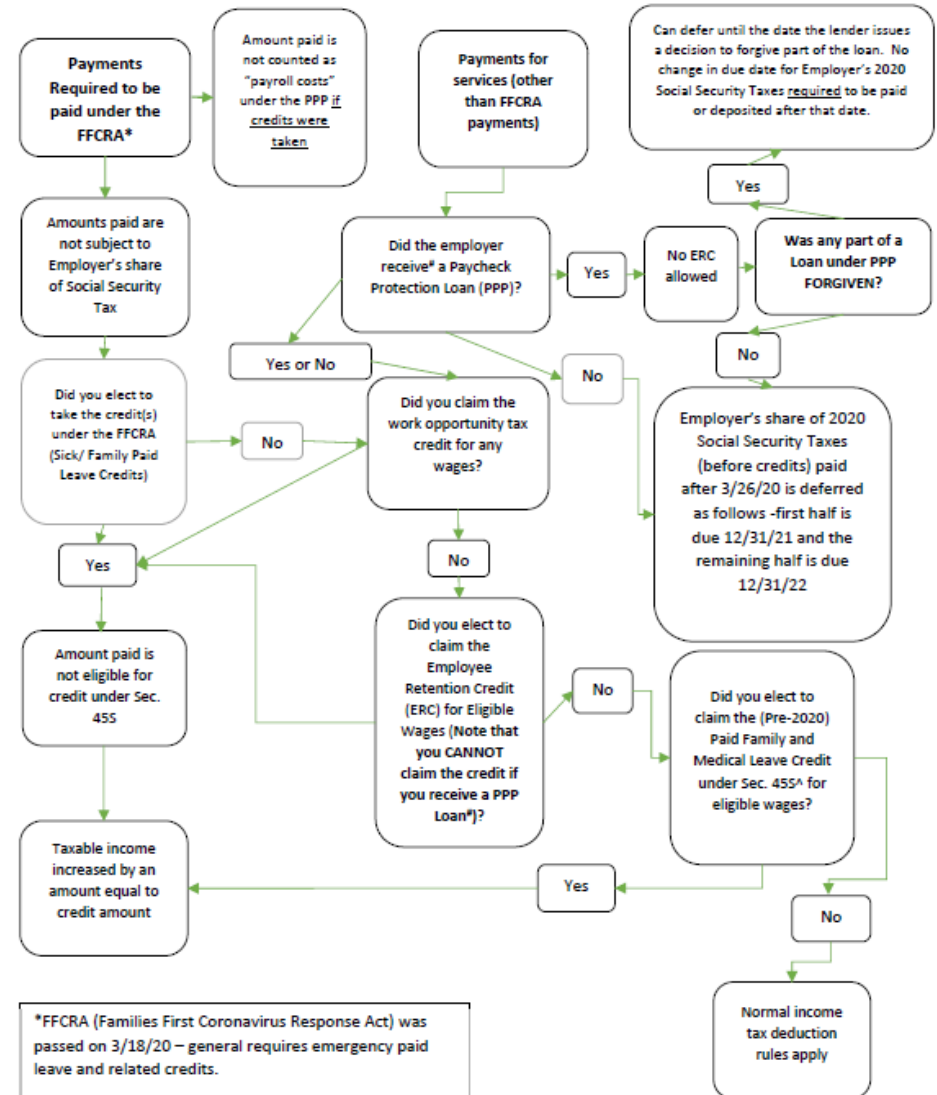
FAQs Directly from IRS:

The screenshot shows the IRS website interface. At the top is a dark blue header with the IRS logo on the left and navigation links for Help, News, English (with a dropdown arrow), Charities & Nonprofits, and Tax Pros on the right. Below the header is a lighter blue navigation bar with links for File, Pay, Refunds, Credits & Deductions, and Forms & Instructions, along with a search bar on the right. The main content area has a breadcrumb trail: Home / News / Topics in the News / Coronavirus Tax Relief / COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs. The title of the page is 'COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs'. On the left side, there is a sidebar with a 'Topics in the News' section where 'Coronavirus Tax Relief' is selected, and other links like 'Economic Impact Payments', 'News Releases', 'Multimedia Center', 'Tax Relief in Disaster Situations', 'Tax Reform', and 'Taxpayer First Act'. The main content area features a 'Frequently Asked Questions' section with a list of links: General Information, Determining the Amount of the Tax Credit for Qualified Sick Leave Wages, Determining the Amount of the Tax Credit for Qualified Family Leave Wages, Determining the Amount of Allocable Qualified Health Plan Expenses, How to Claim the Credits, How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?, Periods of Time for Which Credits are Available, Special Issues for Employers: Taxation and Deductibility of Tax Credits, Special Issues for Employers: Interaction of FFCRA Tax Credits with Other Tax Credits, Special Issues for Employers: Use of Third-Party Payers, Special Issues for Employers: Other Issues, Special Issues for Employees, and Specific Provisions Related to Self-Employed Individuals.

Payroll Flow Chart

RELATIONSHIP BETWEEN PAID LEAVE CREDITS AND THE CARES ACT

Download at
applegrowth.com/covid19



*FFCRA (Families First Coronavirus Response Act) was passed on 3/18/20 – general requires emergency paid leave and related credits.

^Pre-2020 Family & Medical Leave Credit under Sec. 455 – This credit still applies for 2020 and was in existence before the FFCRA.

*Repayment of the entire loan by the safe harbor deadline (currently May 14, 2020) will be treated as if the employer never received a PPP loan for ERC purposes.

Other Definitions:

PPP: Paycheck Protection Program
CARES Act: Coronavirus Aid, Relief, and Economic Security Act
ERC: Employee Retention Credit

- + Documents vary by bank
- + Make certain you have copy of all the loan documents
 - + SBA note
 - + Bank's loan agreement
 - + Acknowledgement of receipt
 - + Certification
 - + Errors and omissions agreement
 - + Notice of forgiveness documentation
 - + Notice of PPP forgiveness
 - + Agreement to provide additional documentation post closing
 - + Loan forgiveness affidavit

- + The lender in its sole and absolute discretion will determine the amount of forgiveness based on the attestations of the Borrower and the truth and accuracy of the documentation provided by the Borrower.
- + Awaiting further SBA guidance
- + Document, document, document!!!

Items to Consider for Documentation

Payroll tax reports

- IRS Forms 941 for the 1st and 2nd quarter of 2019 and 2020
- OH Form JFS-20125 for the 1st and 2nd quarter of 2019 and 2020

Compensation

- Gross wages for each employee for the following:
 - During the 8-week covered period
 - During the most recent full quarter before the 8-week covered period

Identify employees who during any period in 2019, received annualized pay of > \$100,000

Identify employees whose principal place of residence is outside the United States

Identify employees who are electing to utilize the qualified sick or FMLA option under the Families First Coronavirus Response Act

State and local employer taxes

- Determine state unemployment tax (SUTA) assessed on employee's comp during the 8-week period
- Document payment (canceled checks, bank statements supporting electronic payments)
- Document confirmation of payment

Group health benefits

- Document (canceled checks, bank statements supporting electronic payments) total costs paid for all health care benefits including insurance premiums paid by the employer
- Prepare reconciliation schedule showing
 - Total amount paid for all employees including owners
 - Employee withholdings for their portion of plan(s)

Retirement plan benefits

- Document (canceled checks, bank statements supporting electronic payments) all retirement plan funding costs remitted by the employer
- Document confirmation of deposits by investment custodian/trustee
- Prepare reconciliation showing
 - Total amount paid for all employees including owners
 - Employee withholdings/deferrals for their contribution to the plan

Full-time Equivalents (FTEs)

- The average number of FTEs per month for the following periods
 - During the 8-week covered period
 - February 15, 2019 through June 30, 2019 - **THIS PERIOD TO BE USED BY SEASONAL EMPLOYERS**
 - January 1, 2020 through February 29, 2020

Other expenses

- Mortgage interest, lease payments, utility payments including electricity, gas, water, transportation, telephone, or internet access for which service began before 2/15/2020. Sewerage is not specifically mentioned but is generally considered a utility.
 - Invoices/bills
 - Canceled checks
 - Bank statements supporting electronic payments
 - Credit card statements supporting payment by CC
 - Account statements
 - Lease agreements

Documentation List and
Calculator Available on
applegrowth.com/COVID19

Understanding the Time Periods

ILLUSTRATION:

| Period 1 | Period 2 (aka Covered Period) Forgivable Period | Period 3 | Post 6/30 |
|--|--|---|------------------------------------|
| Reimburse business for expenses already incurred and paid following 2/15 and prior to receipt of funds using PPP funds | 8-week period eligible for forgiveness | Allowed to spend any remaining PPP funds on allowable expenses until 6/30 | Awaiting further guidance from SBA |

2/15

6/30

Allowable Uses Forgivable Expenses

Allowable uses (Section 1102)

Time period for allowable uses - February 15, 2020 through June 30, 2020

Must be paid between February 15, 2020 and June 30, 2020

(There is no reference to costs being incurred when determining Allowable Uses)

payroll cost -see below

costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums

employee salaries, commissions, or similar compensations (note the statute does not limit this category to \$100,000)

payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)

rent (including rent under a lease agreement)

utilities

interest on any other debt obligations that were incurred before the covered period

Forgivable expenses (Section 1106)

Time period for forgivable expenses - 8 week period [56 days] from date of loan disbursement

Must be incurred and paid during the 56 day period

payroll cost - see below

payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation in existence prior to February 15, 2020)

payments on any covered rent obligation in existence prior to February 15, 2020

covered utility payments

Grid Available on
applegrowth.com/COVID19

Added May 6, 2020

45. Question: Is an employer that repays its PPP loan by the safe harbor deadline (May 14, 2020) eligible for the Employee Retention Credit?

Answer: Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

Excerpt from Question 31:

Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

- + **40. Question:** Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?
- + **Answer:** No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

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Thank You

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