
We are listening

COVID-19 Relief Overview Guide for Businesses

While legislation is continually changing, below are beneficial highlights of the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief & Economic Security Act (CARES). The devil is in the detail, so be sure to speak with your BLS Team Member, attorney, human resources advocate, payroll company, and other resources before you take steps in this process.

CARES Act Relief Available to Businesses

Paycheck Protection Program (PPP)

These loans are designed to help keep employees on the payroll and provide cash-flow assistance to small businesses over the short term. The PPP has been funded to date for \$349 billion plus an additional \$321 billion. Additional appropriations are uncertain.

> **Loan eligibility**

- Those eligible for loans as a small business, 501(c)(3) nonprofit, a 501(c)(19) veterans' organization, sole proprietors, independent contractors, and other self-employed individuals, or businesses described in section 31(b)(2)(C) of the Small Business Act with no more than 500 employees, or the applicable size standard for the industry as provided by the SBA, if higher.
- Businesses with more than one physical location that employ no more than 500 employees per physical location in certain industries and are below a gross annual receipts threshold in certain industries can be eligible. Affiliation rules are waived for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.
- Self-employed individuals filing a Schedule C calculate their self-employment income and apply under their name. Partners with self-employed income use their self-employed earnings and apply at a partnership level.

> **Covered loan period**

- The covered loan period begins on February 15, 2020 and ends on June 30, 2020.

> **Maximum loan amount**

- The CARES Act sets the maximum loan amount at \$10 million and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan.

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> **Allowable uses of the loan**

- Allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, mortgage interest, rent, and utility payments.
- At least 75% of the loan funds must be used on payroll costs to qualify for loan forgiveness.

> **Limitations and requirements on the borrower**

- There is a limitation on a borrower from receiving this assistance and an Economic Injury Disaster Loan (EIDL) through SBA for the same purpose. However, it allows a borrower who has an EIDL unrelated to COVID-19 to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven under the PPP.
- Eligible borrowers are required to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicate funds for the same uses from another SBA program.

> **Loan forgiveness**

- NOTE: Loan forgiveness rules from the SBA and Treasury continue to evolve and we are waiting for further guidance related to final calculation parameters.
- The CARES Act states that the borrower will be eligible for loan forgiveness provided that at least 75% of the funds are used for payroll costs and does not reduce wages or full-time equivalent employees. The amount paid or incurred by the borrower during the 8-week period after the origination date of the loan on payroll costs (including additional wages paid to tipped employees), interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020 is eligible.
 - Amounts forgiven may not exceed the principal amount of the loan.
 - Eligible payroll costs do not include compensation above \$100,000 in wages pro rata for the 8 weeks.
 - Eligible costs include utilities, rent, and mortgage interest.
- The amount forgiven is to be reduced proportionally by any reduction in employees retained compared to the applicable period and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- At least 75% of the loan funds must be used on payroll costs to qualify for loan forgiveness.

> **Other key points**

- The CARES Act requires that the borrowers verify through documentation to lenders their payments during the period.
- Canceled indebtedness resulting from this section will not be included in the borrower's taxable income; however it is currently unclear if expenditures utilized in the loan forgiveness calculation will be deductible for income tax purposes.
- Any loan amounts not forgiven must be repaid over two years – after a six-month deferral of interest and principal payments – at an interest rate of 1%.

> **Important links:** [SBA Paycheck Protection Program](#) and the [SBA Application Form](#)

Emergency Economic Injury Disaster Loans (EIDL)

This provides small businesses, sole proprietors, independent contractors, and cooperatives up to \$2 million with a small emergency advance in order to continue operations. It does not have to be repaid, but proof of hardship is necessary.

> **EID loans may be used for**

- Paid sick leave for employees affected by COVID-19
- Payroll
- Rent/mortgage payments
- Debt obligations resulting from lost revenues
- Increased costs resulting from supply-chain disruptions and materials
- Other bills that can't be paid because of the effect of the virus

> **Loan eligibility**

- The SBA determines eligibility for EID loans. The law provides for an emergency forgivable advance of up to \$10,000 to small businesses applying for the EID loans.

> **Important link:** [EIDL application form](#)

What You Should Do Now

- > See if you qualify for these resources and apply.
- > Talk to your bank to see if they are offering these loans.
- > Talk to your CPA to ensure the application is completed correctly with the appropriate amounts.
- > See what else may be available through your state, cities, private organizations, and trade organizations.

Keeping Workers Paid and Employed

> **Employee retention credit for employers**

- Eligible employers can qualify for a refundable credit against, generally, the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax) for 50% of certain wages (below) paid to employees during the COVID-19 crisis. The credit is available to employers carrying on business during 2020, including nonprofits (but not government entities), whose operations for a calendar quarter have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings. The credit is also available to employers

who have experienced a more than 50% reduction in quarterly receipts, measured on a year-over-year basis relative to the corresponding 2019 quarter, with the eligible quarters continuing until the quarter after there is a quarter in which receipts are greater than 80% of the receipts for the corresponding 2019 quarter. The credit applies to wages paid after March 12, 2020 and before January 1, 2021.

- For employers with more than 100 employees in 2019, the eligible wages are wages of employees who aren't providing services because of the business suspension or reduction in gross receipts described above.
- For employers with 100 or fewer full-time employees in 2019, all employee wages are eligible, even if employees haven't been prevented from providing services. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in eligible wages and compensation paid by the employer to an employee. Thus, the credit is a maximum \$5,000 per employee.
- Wages don't include (1) wages taken into account for purposes of the payroll credits provided by the earlier Families First Coronavirus Response Act (FFCRA) for required paid sick leave or required paid family leave, (2) wages taken into account for the employer income tax credit for paid family and medical leave (under Code Sec. 45S), or (3) wages in a period in which an employer is allowed for an employee a work opportunity credit (under Code Sec. 51). An employer can elect to not have the credit apply on a quarter-by-quarter basis.
- The IRS has authority to advance payments to eligible employers and to waive penalties for employers who do not deposit applicable payroll taxes in reasonable anticipation of receiving the credit. The credit is not available to employers receiving Small Business Interruption Loans. The credit is provided for wages paid after March 12, 2020 through December 31, 2020.

> **Delay of payment of employer payroll taxes**

- Taxpayers (including self-employed) will be able to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Taxes that can be deferred include the 6.2% employer portion of the Social Security (OASDI) payroll tax and the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer 6.2% Social Security (OASDI) rate). The relief isn't available if the taxpayer has had debt forgiveness under the CARES Act for certain loans under the Small Business Act as modified by the CARES Act (see below). For self-employed, the deferral applies to 50% of the Self-Employment Contributions Act tax liability (including any related estimated tax liability).

> **Net operating losses modifications**

- The 2017 Tax Cuts and Jobs Act (the 2017 Tax Law) limited NOLs arising after 2017 to 80% of taxable income and eliminated the ability to carry NOLs back to prior tax years. For NOLs arising in tax years beginning after December 31, 2017 and before 2021, the CARES Act allows taxpayers to carryback 100% of NOLs to the prior five tax years, effectively delaying the 80% taxable income limitation and carryback prohibition until 2021.

- The CARES Act also temporarily liberalizes the treatment of NOL carryforwards. For tax years beginning before 2021, taxpayers can take an NOL deduction equal to 100% of taxable income (rather than the present 80% limit). For tax years beginning after 2021, taxpayers will be eligible for: (1) a 100% deduction of NOLs arising in tax years before 2018, and (2) a deduction limited to 80% of taxable income for NOLs arising in tax years after 2017.
- > **Limitation on business interest modifications**
 - Businesses subject to interest limitations will generally be allowed to increase the amount of interest deduction.
- > **Qualified improvement property amendment**
 - The CARES Act makes a technical correction to the 2017 Tax Law that retroactively treats (1) a wide variety of interior (qualified improvement property (QIP)) as eligible for bonus depreciation (and hence a 100% write-off) or for treatment as 15-year MACRS property.

Families First Coronavirus Response Act

- > **Family and medical leave**
 - The FFCRA requires employers with fewer than 500 employees to provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020. The emergency leave generally is available when an employee who has been employed for at least 30 days is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because a school or place of care has been closed, or a childcare provider is unavailable, due to an emergency with respect to COVID-19 that is declared by a federal, state, or local authority. The first 10 days of leave may be unpaid and then paid leave is required, calculated based on an amount not less than two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work, not to exceed \$200 per day and \$10,000 in the aggregate. Certain exemptions and special rules apply, and a tax credit may be available.
- > **Emergency paid sick time**
 - Under the FFCRA, private employers with fewer than 500 employees, and public employers of any size, must provide 80 hours of paid sick time to full-time employees who are unable to work (or telework) for specified virus-related reasons. Part-time employees are entitled to sick time based on their average hours worked over a 2-week period. This amount is immediately available regardless of the employee's length of employment. The maximum amounts payable vary based on the reason for absence.
 - Employees who are (1) subject to a quarantine or isolation order, (2) advised by a health provider to self-quarantine, or (3) experiencing symptoms and seeking diagnosis, must be compensated at their regular rate, up to a maximum of \$511 per day (\$5,110 total).

- Employees caring for an individual described in category (1), (2), or (3), caring for a son or daughter whose school is closed or child care provider is unavailable, or experiencing a “substantially similar condition” specified by the government must receive two-thirds of their regular rate, up to a maximum of \$200 per day (\$2,000 total).

> **Employer credits**

- A credit for each employee which is equal to the lesser of the amount of their leave pay or either (1) \$511 per day while the employee is receiving paid sick leave to care for themselves or (2) \$200 if the sick leave is to care for a family member or child whose school is closed. An additional limit applies to the number of days per employee: the excess of 10 days over the aggregate number of days is taken into account for all preceding calendar quarters.
- A credit for each employee equal to the amount of their leave pay is limited to \$200 per day with a maximum of \$10,000.
- The above credits are increased by the portion of the employer’s “qualified health plan expenses” that are properly allocable to qualified sick leave wages or qualified family and medical leave wages. Qualified health plan expenses are defined as the amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent that such amounts are excluded from the gross income of employees.
- In addition, the credits allowed to employers for wages paid under the above provisions may be eligible to be increased by the amount of the tax imposed by the 1.45% hospital insurance portion of FICA on qualified sick leave wages, or qualified family leave wages.
- The credits are refundable to the extent they exceed the employer’s payroll tax.
- Employers don’t receive the credit if they’re also receiving the credit for paid family and medical leave under Section 45S of the Internal Revenue Code.
- The above credits may also be taken against the employer’s railroad retirement tax.

> **Self-employed individuals**

- The FFCRA covers 100% of a self-employed individual’s sick-leave equivalent amount, or 67% of the individual’s sick-leave equivalent amount if they are taking care of a sick family member or taking care of a child following the child’s school closing for up to 10 days. The sick-leave equivalent amount is the lesser of average daily self-employment income or either (1) \$511/day to care for the self-employed individual or (2) \$200/day to care for a sick family member or child following a school closing, paid under the FFCRA.
- Self-employed individuals can also receive a credit for as many as 50 days multiplied by the lesser of \$200 or 67% of their average self-employment income paid under the FFCVA.

> **Employer FICA exclusion**

- Wages paid under the FFCRA are not considered wages for the employer tax – old age, survivors, and disability insurance portion of FICA (6.2%) or for employer’s Railroad Retirement tax purposes.

> **Reinstatement of position after leave**

- The same reinstatement provisions apply as under traditional FMLA. However, restoration to position does not apply to employers with fewer than 25 employees if certain conditions are met:
 - The job no longer exists because of changes affecting employment caused by an economic downturn or other operating conditions that affect employment caused by a public health emergency;
 - The employer makes reasonable efforts to return the employee to an equivalent position; and
 - The employer makes efforts to contact a displaced employee if anything comes up within a year of when they would have returned to work.

> **Notice requirements**

- Employers must post a model notice, which will be provided by the federal government.

BLS COVID-19 Resource Center



Visit our [Resource Center](#) dedicated to the rapidly changing news, regulations, and relief offerings related to COVID-19.

Our Business Advisory Team can provide business contingency planning, PPP consulting, and COVID-19 consulting services specific to your needs.
Contact BLS at 302.225.0600 or info@belfint.com.