

DISASTER LOANS, TAX CREDITS AND LOAN FORGIVENESS

CONTRA COSTA COUNTY BAR ASSOCIATION
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GOAL

- The goal of this presentation is to provide high-level information
- The goal of this presentation is NOT to provide legal or accounting advice.
- Everyone has unique circumstances that require careful/individualized analysis
- When applicable, references have been provided so you can get further information.

WORK IN PROGRESS
THINGS ARE EVOLVING
DAILY

- Three economic relief bills
 - Emergency Loans
 - Families First
 - CARES Act
- Latest one was CARES Act which was signed on March 27, 2020
- Guidance is still coming from IRS, DOL, EDD, etc, etc, etc
- Taking some provisions exclude eligibility of other provisions, so planning is essential
- Each business needs to evaluate their own circumstances:
 - Expected revenue and impact of COVID-19
 - Plans for payroll and other expenses

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- Two new emergency leave benefits for eligible employees:
 - Emergency Family Medical Leave (EFML)
 - Emergency paid sick leave (EPSL)
- Generally applies to employers with FEWER than 500 employees
- Dollar-for-dollar TAX CREDITS against social security taxes to the employer for qualifying leave payments

EMERGENCY PAID SICK LEAVE (EPSL)

[Dol.gov/agencies/whd/pandemic/ffcra-questions](https://dol.gov/agencies/whd/pandemic/ffcra-questions)

- Effective for leaves taken between April 1, 2020 to December 31, 2020
- You are sick if:
 - Federal, State, or local quarantine or isolation order related to COVID-19
 - Been advised by health care provider to self-quarantine
 - Experiencing symptoms of COVID-19 and are seeking medical diagnosis
 - Regular rate of pay subject to max of \$511/day
- You are caring if....
 - 2/3 of regular rate of pay
 - Capped at \$200 per day
- Requires paid sick leave for 80 hours over a 2 week period
- Total hours paid to the employee is capped at 80 hours

EMERGENCY FAMILY MEDICAL LEAVE (EFML)

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

- Employed a minimum of 30 days
- Unable to work due to:
 - Care for child
 - Closed school
 - Childcare provider is unavailable
- First 10 days is unpaid
- Leave can be taken intermittently
- 10 weeks at 2/3 of regular rate of pay
- CAP - \$200/day up to \$10,000

PAYMENT DEFERRALS

<https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>

<https://www.ftb.ca.gov/about-ftb/newsroom/covid-19/extensions-to-file-pay.html>

- **Federal Income Tax:**
 - July 15th is the deadline for payments and returns that were due April 15th
 - 2019 Income Tax Return (Federal)
 - 2019 Tax Payments
 - 2020 1st Estimated Tax Payment
 - Can request an extension, but interest and penalties only through July 15th
 - Applies to individuals, corporations and trusts
 - Interest and penalties waived **ONLY** during the period from April 15th to July 15th.
- **State Income Tax**
 - July 15th is the deadline for payment and returns – that applies to everyone
 - Note this is **NOT** in conformity with Federal

PAYMENT DEFERRALS (CONT)

<https://www.cdtfa.ca.gov/taxes-and-fees/sales-use-tax-returns-filing-dates.htm>

Payroll – EDD.ca.gov

- CA Sales Tax
 - Q1 2020 have until July 31, 2020 to file
 - Auto extension if “file a return less than \$1 million”
 - All others, extension on a case-by-case basis
 - Small Business Relief Payment Plans
 - Less than \$5 million in taxable
 - 12 month interest-free payment plan
 - Up to \$50k in sale and use tax liability
- CA Sales Tax on Services – side note
 - Sen. Bob Hertzberg – Proposed sales tax on business services – includes accountants and lawyers
- Payroll Tax
 - Federal Payroll Tax (Social Security Only)
 - State Payroll Tax
 - Can request 60 day extension to file and pay

PAYMENT DEFERRALS (CONT)

<https://www.cdtfa.ca.gov/taxes-and-fees/sales-use-tax-returns-filing-dates.htm>

- Property Tax
 - Contra Costa – No
 - San Mateo – Yes
 - San Francisco – Yes
- Other
 - Utilities – unable to shut down during emergency
 - Rent – unable to evict during time of emergency (get any deferral in writing)

EMPLOYEE RETENTION CREDIT

Part of the CARES Act

<https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19>

- Eligible employers can receive a retention credit for up to 50% of the first \$10,000 of qualified wages for each employee paid between:
 - March 12, 2020 and January 1, 2022
- Proceed with caution if taking PPP
- Business fully or partially suspended by govt order due to COVID-19
- Employer gross receipts < 50% of the comparable quarter in 2019
- Once gross receipts go above 80% of comparable quarter – no longer apply
- Calculation is on a quarter basis
- Tax credit is 50% of up to \$10k of wages to eligible employees

PAYROLL TAX RELIEF

Part of the CARES Act

<https://www.journalofaccountancy.com/news/2020/mar/cares-act-economic-relief-coronavirus-tax-provisions.html>

- Employers and self-employed can defer the 6.2% of Social Security payroll tax from
 - March 27 to December 31, 2020
- Repay: 50% by December 31, 2021
- Repay: Remaining 50% by December 31, 2022

NET OPERATING LOSS (NOL'S)

Part of CARES Act

<https://www.journalofaccountancy.com/news/2020/mar/cares-act-economic-relief-coronavirus-tax-provisions.html>

- Tax Reform limited NOL's to 80% of taxable income. CARES repeals this limitation temporarily
- Also reinstates carrybacks for losses the occurred in tax years after December 31, 2017.

INDIVIDUAL RELIEF

Part of the CARES Act

Senator Glazer COVID Town Hall -

<https://sd07.senate.ca.gov/covid19/telephone-town-hall>

- **STIMULUS CHECKS:**
 - \$1,200 for individuals (<\$75,000)
 - \$2,400 for filing joint (<\$150,000)
 - \$500 for each eligible dependent
 - THIS IS AN ADVANCE OF A TAX CREDIT
 - You will see this in your 2020 tax return
- **UNEMPLOYMENT:**
 - Unemployment assistance between January 27, 2020 and December 31, 2020 – total of 39 weeks
 - No waiting period
 - Pmts must be greater than Federal Pandemic Unemployment Comp
 - ** Does not apply to employees who can work remote or are receiving paid sick leave

RETIREMENT ACCOUNT CONTRIBUTION/DISBURSEMENT

Part of CARES Act

- Minimum required CONTRIBUTIONS due during 2020 are now due on January 1, 2021
- Can take up to \$100,000 out of retirement account w/o penalty
- Can take out if you are younger than 55 ½ no 10% penalty
- Period January 1, 2020 to December 31, 2020
- Must have been impacted by COVID-19
- Can make contribution back to retirement account for a three-year period from date of disbursement as long as you don't exceed the amount disbursed

STUDENT LOAN RELIEF

Part of CARES Act

- Payments due through September 30, 2020 are suspended **WITHOUT INTEREST**
- Non-payment during this period will not affect credit reports
- If students need to withdraw from courses due to COVID-19, associated federal loans will be cancelled.
- Institutions can waive “need calculation” requirement and award emergency financial aid to help with unexpected expenses
- Employers can contribute up to \$5,250 tax-free to assist employees with student loan payments.

CHARITABLE CONTRIBUTIONS

Part of CARES Act

- Donations made in cash
- To a 501(C)(3) or donor-advised fund
- \$300 “above-the-line” deduction for those who don’t itemize
- Limitation is 100% of AGI, use to be 60% of AGI
- For corporations, increase to 25% of taxable income up from 10% of taxable income

EDD – UNEMPLOYMENT (CALIF EMPLOYMENT DEVELOPMENT DEPT)

From Webcast, State Senator Steve Glazer
aired 04/08/2020

- Original unemployment benefits are \$40 - \$450/wk
- CARES Act increased weekly unemployment by \$600 to \$460 to \$1,050/wk
- Unemployment normally is for 26 weeks
- Unemployment has increased 13 weeks to a total of 39 weeks
- Reduced hours can still qualify for UI may be eligible unless you make > \$600 week
- Furloughed workers qualify for UI
- If you choose to take UI payment via debit card you will see benefits faster (checks will take longer)
- Have the right to backdate to date out of work.
- If you call EDD, they only answer the phone in the morning (before 12 noon).
- American Job Center of Calif – MAYBE make an appt to ask questions.

EDD – PANDEMIC UNEMPLOYMENT

From Webcast, State Senator Steve Glazer
aired 04/08/2020

- Pandemic Unemployment is for GIG workers and other self-employed individuals
 - Pandemic Unemployment is similar to regular unemployment insurance
 - Pandemic Unemployment is new and not set-up yet. HAVE PATIENCE (lots of patience)
 - No guidance yet as to how to prove income
 - If you are a GIG worker and apply for regular UI and get denied, you can then file for Pandemic UI
 - Completely separate application from regular UI
-
- Questions, can call Legal Aid at Work 415 404 9093 www.legalaidatwork.org

CASDI
CALIF STATE DISABILITY
INSURANCE

From Webcast, State Senator Steve Glazer
aired 04/08/2020

- Check your paystub to see if you have been paying into CASDI
- CASDI covers disability
- CASDI covers Paid Family Leave
- Benefits are 60% to 70% of normal wages. (60% for higher wage earners, 70% for lower wage earners)
- Benefit ranges are \$50 - \$1300/wk
- CASDI

CHILD SCHOOL CLOSED

California EDD

- You may be eligible for unemployment benefits. Our EDD representatives will determine eligibility on a case-by-case basis by scheduling a phone interview with you. For example, you may be eligible for unemployment benefits if your employer has temporarily allowed you to work less than full-time hours due to your child care situation. In such case, you may be eligible for reduced benefits based on the amount of your weekly earnings, as long as you meet all other eligibility requirements. The EDD will contact you and your employer for information to determine your eligibility.

LET GO OF WORKERS TEMPORARILY

California EDD

- Your workers can [file for unemployment benefits](#) as long as they are unemployed and otherwise eligible. Workers who expect to return to work for you within a few weeks are not required to actively seek work each week as long as they are able and available to return to work during their unemployment and meet all other eligibility criteria. The EDD will explain the requirements to your workers when they apply for benefits.

BANK/LENDER STATUS

Courtesy of Gusto Payroll (as of April 6, 2020 at 5:14 pm)

PAYCHECK PROTECTION
PROGRAM (PPP)

\$350 billion intended to keep businesses operating through payroll and other essential business expenses

Federally guaranteed loans to small businesses and non-profits

The loans may be forgiven if borrowers follow the guidelines for maintaining payroll and use of the funds

WHO IS ELIGIBLE?

A small business with fewer than 500 employees

A 501(c)(3) non-profit with fewer than 500 employees

An individual who operates as a sole proprietor

An individual who operates as an independent contractor

An individual who is self-employed who regularly carries on any trade or business

WHO IS NOT ELIGIBLE?

Illegal activities (cannabis...)

Household employers

Defaulted on a federal loan in the past 7 years

What about bankruptcy?

CERTIFICATION REQUIREMENT

The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations

The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage (interest, not principal), lease, and utility payments

The business was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or independent contractors

From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not and will not receive another loan under the Paycheck Protection Program

AMOUNT AND TERM OF LOAN UNDER PPP

Maximum loan amount is up to 2.5x average monthly payroll costs, not to exceed \$10 million.

Any balance not forgiven has a two-year term at 1% fixed rate interest

First payment is not due until six months after disbursement

The loan can be forgiven in whole or in part if proceeds are used according to guidelines

No collateral or personal guarantee is required

A previous Economic Injury Disaster Loan can be rolled into this loan

WHAT CAN THE LOAN
BE USED FOR?

Payroll costs

Health insurance expense

Mortgage interest (not principal)

Rent

Utilities

Interest on debt incurred before
2/15/2020

HOW IS THE MAXIMUM AMOUNT CALCULATED?

Step 1

Aggregate payroll costs for 2019 for employees whose principal place of residence is the U.S.



Step 2

Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.



Step 3

Calculate average monthly payroll costs (divide the amount from Step 2 by 12).



Step 4

Multiply the average monthly payroll costs from Step 3 by 2.5.

PAYROLL COSTS: WHAT'S
INCLUDED (ENTITY)

Salaries, wages, commissions, or similar compensation

Payment of cash tip or equivalent

Payment for vacation, parental, family, medical, or sick leave

Payment required for group health care benefits, including insurance premiums

Payment of retirement benefits

Payment of state or local tax assessed on the compensation of the employee

PAYROLL COSTS: WHAT'S INCLUDED (SOLOS)

2019 income is the sole prop's net income

Salaries, wages, compensation paid to employees

If you do not have employees, your net income is the total payroll cost you can include in the calculation

Still capped at \$100,000

Maximum sole prop with no employees is \$20,833 ($\$100,000/12$ to get monthly payroll $\times 2.5$)

EXPENSES THAT COUNT TOWARDS FORGIVENESS

- Payroll costs (75% of the loan amount for full forgiveness)
- Mortgage interest for mortgage incurred prior to 2/15/20.
- Rent for office space
- Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
- 25% or less of the loan can be used on non-payroll expenses to qualify for forgiveness

LOAN FORGIVENESS REDUCTIONS

- Forgiveness will be reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees.
- Rehiring employees prior to June 30, 2020 will restore the forgiveness ability.
- Loan proceeds used in the 8 weeks after funding are eligible for forgiveness

LOAN FORGIVENESS

Document, document, document

Proof of the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings

Proof of payments on covered mortgage obligations, lease obligations, and utilities

Certification that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use

Other documentation may be requested by the lender to support expenses submitted for forgiveness

ECONOMIC INJURY DISASTER LOAN (EIDL)

EIDL existed before the CARES Act for SBA loans

Up to \$10,000 advance available that does not have to be repaid, even if loan is ultimately denied*

Available to small businesses with a place of business in the U.S.

Advance is determined by the number of employees at \$1,000 each

Can apply for both EIDL and PPP, as long as funds are not used for the same expenses

EIDL LOAN DETAILS

- Up to \$2 million for working capital, debt payments, operation expenses
- Payment terms of up to 30 years, with payments deferred for 1 year
- Interest rate is 3.75%
- Streamlined application located at: <https://covid19relief.sba.gov/>