

Consultants Update

COVID-19

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Discussion Topics

- Extension of Validity for Expired CDLs, CLPs and Driver Medical Cards
- Revisions to SBA Paycheck Protection Program Loan Forgiveness Terms and Forms
- EEOC Guidance Update
- Litigation Against Employers by Employees Contracting COVID-19 Virus

CDLs, CLPs and Medical Cards

- CDLs, CLPs and Driver Medical Cards that were scheduled to expire on or after March 1 are now valid through September 30, 2020
- This applies in every state without any state action
- Extension does not apply if driver's privileges are suspended or withdrawn for traffic offenses
- Also does not apply if driver diagnosed with a disqualifying medical condition or one that requires an exemption or skills test, or to a driver with a medical card issued for less than 90 days

Paycheck Protection Program Revisions

- President Trump signed the PPP Flexibility Act into law on June 5
- SBA issued new interim final rule on June 16 to implement the changes to the PPP
- The new law reduces the amount that borrowers are required to use on payroll-related expenses in order to be eligible for full loan forgiveness to 60% (down from 75%); this change allows borrowers to spend up to 40% of their loan on qualified non-payroll expenses and still have loan forgiven

PPP Loan Maturity

- For PPP loans made before June 5, the maturity is 2 years
- But borrowers and lenders may agree to extend maturity to 5 years
- For PPP loans made after June 5, the maturity is 5 years
- The date the SBA assigns a loan number to the PPP loan is the date the loan is made

PPP Revisions

- Extends the covered period for loan forgiveness from 8 weeks after the date of loan disbursement to 24 weeks (borrowers who have already received PPP loans retain the option to use an 8-week covered period)
- Interest accrues during this deferment period
- If borrower uses less than 60% of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60% of the loan forgiveness amount having been used for payroll costs

Partial Loan Forgiveness

- If borrower receives \$100,000 PPP loan and during the covered period uses \$54,000 (54%) of the loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is \$90,000
- The borrower was 10% short of the 60% threshold for total loan forgiveness (54/60), so the available loan forgiveness is reduced by 10% (\$10,000)

PPP Safe Harbors

- Safe harbor from reductions in loan forgiveness based on reductions in FTE employees, to provide protections for borrowers that are both unable to rehire individuals who were employees of the borrower on February 15, 2020, and unable to hire similarly qualified employees for unfilled positions by December 31, 2020
- Safe harbor for businesses unable to return to the same level of business activity by December 31, 2020 due to compliance with COVID-19 requirements or guidance from CDC, OSHA, etc.

How May PPP Loans Be Used?

- Payroll costs and costs related the continuation of group health care benefits during periods of paid sick leave, medical leave, or family leave; and insurance premiums
- Mortgage interest payments (but not prepayments or principal payments)
- Rent payments (real or personal property)
- Utility payments
- Interest payments on any obligations incurred before February 15, 2020
- Refinancing an EIDL loan made Jan.31-April 3, 2020

New PPP Loan Forgiveness Form

- Revised by SBA as of June 16, 2020
- Uploaded to GAWDA COVID-19 web page
- Includes new terms and revised worksheets based on PPP Flexibility Act and SBA interim final rules

EEOC Guidance Update

- EEOC updated its guidance to employers on June 17
- Employers may conduct temperature checks and screen employees for COVID-19 virus, but must conduct these tests in non-discriminatory manner
- Maintain records confidentially, away from regular personnel files
- Tests for presence of Coronavirus itself is permissible under the ADA (presence of virus may indicate employee is direct threat to others)
- But may not test for COVID antibodies as a screening tool for return to work

EEOC Guidance

- Employer may not exclude older or pregnant workers from the workplace even though they might be at higher risk of serious illness from COVID-19 virus
- Employers may not postpone start date or withdraw job offer from worker who is over 65 or pregnant, even though employer might be acting in best interests of affected worker and other employees
- However, an employer may choose to allow older or pregnant workers to telework or discuss with them whether they would like to postpone the start date

Employee Litigation

- According to one national law firm, since March 17 some 231 lawsuits (including 30 class actions) have been filed against employers alleging labor violations due to coronavirus
- California has 32 cases, Florida 27, New Jersey 26, Texas 18 and New York 18 each
- Most common allegations are retaliation (69 cases); workplace safety (52 cases); wage and hour (42 cases)
- No guarantee against being sued—follow EEOC, CDC guidance as best you can to protect your companies

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