COVID-19 Legislation:
What Businesses & Self-Employed Should Know

Updated April 22, 2021

These provisions of coronavirus-related legislation may be helpful for businesses, including self-employed individuals, who are navigating the global pandemic.

Paycheck Protection Program (PPP). The PPP is one of the cornerstones of the $2 trillion CARES Act, and borrowers have been provided increased flexibility in how and when they use the funds thanks to the PPP Flexibility Act. Through the PPP, small business owners can apply for loans up to $10 million ($2 million for a Second Draw PPP Loan), which can be used for eligible payroll costs, and maintain certain operating expenses. PPP loans may minimize the number of unemployed persons by helping small business owners make payroll for at least eight weeks. The PPP program is open for new loan applications until May 31, 2021.

The PPP loan may be forgiven, in whole or in part, if borrowers meet certain requirements for maintaining employment levels. To maximize the amount of loan forgiveness, no more than 40% of the loan forgiveness may be attributable to eligible non-payroll costs. Borrowers who use less than 60% of PPP funds for payroll costs will only be eligible for partial loan forgiveness. If not forgiven, the loan is payable over five years (two years for those loans made before the June 5, 2020, date the PPP Flexibility Act was passed, unless the borrower and lender agree to extend the maturity period to five years) at a 1% interest rate. Borrowers can apply for loan forgiveness once the loan proceeds have been used, and anytime up until the maturity date of the loan.

Note, PPP borrowers may engage the services of an accountant to track the use of their PPP funds. However, only the borrower or an authorized representative who is legally authorized to make certifications on the borrower's behalf may submit an application for loan forgiveness. Accountants should be aware of this limitation and ensure that an authorized representative of the borrower understands his or her obligation to complete, review, and certify to the contents of any loan forgiveness application.

Economic Injury Disaster Loan (EIDL). The CARES Act expanded the SBA's EIDL loan program to meet the financial needs of struggling small business owners and other eligible applicants affected by COVID-19. Eligible applicants whose businesses were impacted by the COVID-19 pandemic can apply for working capital loans of up to $500,000 and use funds to pay fixed debts, cover payroll, and pay other bills they could not otherwise pay due to coronavirus. The EIDL interest rate is 3.75% for small businesses and 2.75% for non-profits, to be paid back over a 30-year term. For loans made in 2020, the first loan payment due date can be deferred 24 months from the date of the loan, and for loans made in 2021, the first loan payment due date can be deferred 12 months from the date of the loan. However, because interest will continue to accrue, borrowers may choose to make voluntary payments during this period. Original EIDL Advances, which previously provided emergency capital of up to $10,000, are no longer being offered; however, two additional Targeted EIDL Advances can provide up to $15,000 to particularly hard-hit small businesses in low-income communities. EIDL Advances are grants and do not need to be repaid. .

Note that you can apply for a PPP loan as well as an EIDL loan, but you cannot use the funds from the loans for the same expenses. In particular, a PPP loan will need to be used to refinance an EIDL loan if the EIDL loan was used for payroll costs. The amount of any EIDL advance no longer needs to be deducted from a PPP borrower's loan forgiveness amount.

Restaurant revitalization grants. The American Rescue Plan Act of 2021 (ARPA) provides an additional $28.6 billion in funding for eligible small restaurants and eating establishments that experienced lost revenue in 2020. These grants are tax-free and do not need to be repaid. The amount received by each applicant will be determined by computing the loss in revenue that occurred in 2020 compared to 2019. However, the grant amount will be reduced by the amount of any PPP loans that were received. Amounts received can be used to cover a wide variety of business expenses such as payroll, rent, utilities, food and beverage expenses, maintenance, and supplies.

Employee Retention Credit (ERC). An eligible employer that continues to pay employees on the payroll during a closure is entitled to a refundable payroll tax credit for up to 50% of the qualified wages paid to eligible employees in a calendar quarter between March 13, 2020, and December 31, 2020. The credit has been extended and increases to 70% between January 1, 2021 and December 31, 2021. Eligible wages per employee maxed out at $10,000 in 2020. -The $10,000 annual wage limit in 2020 increases to $10,000 per quarter in 2021, so the maximum credit is now up to $28,000 per employee for the 2021 calendar year. This payroll credit is available to eligible businesses that face a slow-down or shut down in business due to COVID-19. Optional advance payment of any refundable credit amounts may be requested by filing Form 7200. There's no paperwork or application to file beyond the regular payroll tax filings and there's no waiting period. However, note that a business cannot double count the same wages towards both the ERC and other assistance programs, such as PPP loans, shuttered venue assistance, or restaurant revitalization grants.

Delay of Social Security payroll tax payment for employers. Employers, including the self-employed, could delay the payment of the employer portion of the 6.2% Social Security payroll tax between March 27, 2020 and December 31, 2020 and pay back the liability over the next two years – half at the end of 2021 and the remaining half at the end of 2022.

Tax credits for required paid leave. Businesses may be eligible for payroll tax credits to cover certain costs of providing employees with required paid sick leave and expanded family and medical leave for reasons related to COVID-19, or for paid time off related to the

COVID-19 immunization. After passage of ARPA, these credits have been extended through September 30, 2021. The credit may be claimed for up to $12,000 of wages per employee (increased from $10,000), and for up to a 10-day sick leave limit per employee. Self-employed individuals can claim the paid family leave credit for up to 60 days. Eligible employers will claim the credits on their federal employment tax returns.

COBRA Premium Subsidy. ARPA provides a full 100% premium subsidy for eligible former employees who elect COBRA health coverage for a reason other than voluntary termination. The eligible individual will not have to pay premiums for COBRA coverage received during the period of April 1, 2021 through September 30, 2021. The plan sponsor or employer may claim the quarterly credit on their employment tax return equivalent to the premium amounts that would have been paid to them. The credit is taken against Medicare payroll tax and is a refundable credit.

Qualified Improvement Property. The CARES Act fixed a glitch in the Tax Cuts and Jobs Act, giving Qualified Improvement Property (tenant improvements to commercial spaces) a 15-year useful life and accompanying qualification for 100% bonus depreciation and Sec. 179 expensing. This is retroactive to 2018 - 2020.

NOL modifications. Thanks to the CARES Act, losses incurred in 2018, 2019, and 2020 can be carried back up to five years, and loss carrybacks and carryovers can offset 100% of taxable income until 2021.

Reporting of Third Party Network Transactions (Form 1099-K). The threshold for reporting transactions by third party settlement organizations to payees on Form 1099-K drops from $20,000 (and at least 200 transactions) to $600 (regardless of transaction number). This change applies to calendar years beginning after December 31, 2021. Expect to see these forms begin arriving in 2022 for more small businesses that accept online payments via a third party, e.g., PayPal, but previously would not have met the transaction amount/volume requirements.