



FEDERAL COVID-19 LEGISLATION: PROVISIONS RELEVANT TO LABOR-MANAGEMENT APPRENTICESHIP TRAINING COMMITTEES

Congress has passed three major pieces of legislation to address the coronavirus crisis gripping our country: The Families First Coronavirus Response Act (“FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), and the Paycheck Protection Program and Health Care Enhancement Act (“Interim Relief”). These laws contain important provisions for labor-management training programs and for your employees and trainees. This document will summarize the provisions relevant to your programs.

Note: This guidance is as of May 8, 2020. Text in ***bold and italics*** is new since the last revision, and has been added to provide further clarification.

The CARES Act: Loans, Grants and Tax Relief

The CARES Act provides relief for small businesses and certain nonprofit organizations, although some of the relief depends upon whether the nonprofit is a 501(c)(3) organization. Below is a list of relief programs for which your organization may be eligible.

1. Paycheck Protection Program (“PPP”): The CARES Act creates a Small Business Administration (SBA) loan program, called the Paycheck Protection Program, for companies struggling to maintain operations and keep employees on the payroll. Under the PPP, private lenders make zero-fee loans directly to small businesses and other organizations, and SBA guarantees 100% of each loan. PPP loans have a maturity of 2 years and an interest rate of 1%. As discussed in detail below, PPP loans may be fully or partially forgiven.

Eligible borrowers include “any business concern,” 501(c)(3) nonprofit organizations, and veterans organizations with no more than 500 employees. The term “any business concern” is not defined in the Act, but existing SBA regulations define a “business concern” as a for-profit organization. 13 C.F.R. §121.105. Therefore, this program would apply to joint labor-management training committees only if they are 501(c)(3) organizations

Eligible borrowers also include certain “small business concerns” with over 500 employees. To determine whether an organization qualifies under the latter category, go to [SBA’s Size Standards](#).

Generally, the loan amount maximum is determined by taking the borrower’s average monthly payroll cost for 2019 (excluding costs over \$100,000 on an annualized basis for each employee) and multiplying that by 2.5. Loans are capped at \$10 million. For additional information on how to calculate your maximum loan amount, go to [SBA Interim Final Rule](#) (pages 8-11).



PPP loans may be used for various purposes, including payroll costs, continuation of group health care benefits, employee salaries, interest on any mortgage, rent, utilities, and interest on any other debt obligation incurred before February 15, 2020. However, not more than 25% of loan proceeds may be used for non-payroll costs (e.g., mortgage, rent, utilities).

Additional Information on PPP loans:

- All payments, including principal and interest, shall be deferred for a period of 6 months.
- No personal guarantee is required for the loan
- No collateral is required for the loan
- SBA has no recourse against any individual shareholder, member or partner for nonpayment
- Borrower need not show it is unable to secure credit elsewhere
- No prepayment penalty
- Eligible borrowers may only receive one PPP loan

On May 6, 2020, SBA updated its [PPP guidance](#). Among other things, SBA emphasized that to determine eligibility for a PPP loan, all applicants must assess their economic need at the time of the loan application. Applicants must certify in good faith that “[c]urrent economic uncertainty makes th[e] loan request necessary to support the ongoing operations of the Applicant.” In making that certification, applicants must take into account “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.” SBA’s guidance provides that any borrower who applied for a PPP loan prior to April 24, 2020, and repays the loan in full by May 14, 2020, will be deemed by SBA to have made the required certification in good faith. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020), will be eligible for an Employee Retention Tax Credit.

To ensure that PPP loans are limited to eligible borrowers in need, SBA announced that it will review all loans in excess of \$2 million, following the lender’s submission of the borrower’s loan forgiveness application.

Finally, the IRS recently issued a [notice](#) explaining that no tax deduction will be allowed for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP loan. On Wednesday, May 6, 2020, a bipartisan group of lawmakers introduced legislation to enable certain small businesses to deduct their expenses even if they have received a PPP loan that was later forgiven.

(Source: Sec. 1102 of CARES Act, amending 15 U.S.C. § 636(a))



2. PPP Loan Forgiveness: A borrower may be eligible for forgiveness of the PPP loan in an amount equal to the sum of the following costs incurred during the 8-week period beginning on the date of loan origination: (1) payroll costs, (2) interest on a mortgage obligation incurred before February 15, 2020, (3) rent under a lease in force before February 15, 2020, and (4) utilities for which service began before February 15, 2020. According to SBA's guidance, "due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll." The current guidance is not clear on whether the amount of loan forgiveness will include accrued interest. The Act reduces the amount of loan forgiveness if an employer reduces its number of employees or reduces their compensation by more than 25% eight weeks after getting the loan. The SBA may make limited exceptions to that rule.

(Source: Sec. 1106 of CARES Act, amending 15 U.S.C. § 636(a))

3. Economic Injury Disaster Loan ("EIDL") Program: The CARES Act amends the SBA's existing EIDL program by expanding the list of entities eligible for such loans and waiving certain requirements. Like PPP loans, EIDL loans are issued by private lenders and backed by the SBA. According to SBA's website, the program offers loans of up to \$2 million. EIDL loans are available to eligible entities that have "*suffered a substantial economic injury*" as a result of the COVID-19 crisis. Under existing regulations, a "substantial economic injury" means an organization is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

Eligible borrowers include private nonprofit organizations, independent contractors, sole proprietorships, and cooperatives or other businesses with no more than 500 employees. Eligible borrowers also include certain "small business concerns" with over 500 employees. To determine whether your organization qualifies under that category, go to [SBA's Size Standards](#).

According to SBA's website, EIDL loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the current crisis. The interest rate for businesses is 3.75%.

Additional Information on Expanded EIDL Loans:

- Payments of principal and interest may be deferred for up to four years
- No personal guarantee is required for loans capped at \$200,000
- The borrower may be approved for a loan solely on its credit score
- The borrower had to be in operation by at least January 31, 2020
- The borrower need not show it is unable to secure credit elsewhere
- These loans are not subject to loan forgiveness



The Interim Relief Bill added \$10 billion to the EIDL Program established in the CARES Act. The Interim Relief Bill also added agricultural enterprises with not more than 500 employees to the list of eligible borrowers. SBA recently announced that, due to limited funding, it will now only accept new EIDL applications from agricultural enterprises.

Eligible entities may apply for EIDL loans here: [EIDL Application Form](#)

(Source: Sec. 1110 of CARES Act, amending 15 U.S.C. § 636(b)(2))

4. Emergency Grants: Entities that apply for an EIDL loan may request from SBA an immediate advance of up to \$10,000 in the form of a grant. Such grants may be used for providing sick leave, payroll to retain employees, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses. Such grants will be available through December 31, 2020. EIDL grants do not need to be repaid even if the applicant is ultimately denied an EIDL loan.

(Source: Sec. 1110(e) of CARES Act)

5. Employee Retention Tax Credit: The CARES Act revives a tax credit previously used in the aftermath of natural disasters to encourage employers to retain employees. Eligible employers can take a payroll tax credit against the employer's share of Social Security payroll taxes. The credit is worth 50% of up to \$10,000 of wages paid to each eligible employee, or a maximum credit of \$5,000 per employee. "Wages," for this purpose, includes amounts the employer pays to group health plans.

Employers of all sizes – including all 501(c) tax-exempt organizations – may be eligible for these credits. For an employer to qualify, it must experience either (1) a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or (2) more than a 50% decline in gross receipts, as compared to the same quarter in the previous year.

Employers with *more than 100 full-time employees* can take these credits for wages paid to employees who are not providing services due to the COVID-19-related circumstances described above. Employers with *100 or fewer full-time employees* can take the credit for wages paid to *all* employees, regardless whether they are providing services for the employer. The credit applies to wages paid between March 12, 2020 and January 1, 2021.

The legislation provides that employers will not be penalized if they deduct the amount of the allowed credit from their otherwise-required employment tax deposits. In other words, employers opting to take these credits may simply deduct them from their payroll taxes.



Note that an employer may take *either* a PPP loan *or* the employee retention tax credit, but not both.

As discussed above, to qualify for a tax credit, an employer must experience either (1) a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or (2) more than a 50% decline in gross receipts, as compared to the same quarter in 2019.

The IRS recently issued guidance on what constitutes a “full or partial suspension of operations.”

Essential Businesses: If a governmental order requires non-essential businesses to suspend operations but allows essential businesses to remain open, an employer that operates an essential business is not considered to have a full or partial suspension of operations. There are, however, exceptions to that rule. An employer with an essential business may be considered to have a full or partial suspension of operations if:

- ***The business’s suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend its operations;***
- ***It reduces its operating hours due to a governmental order; or***
- ***It experiences a significant decline in gross receipts. For information on how to calculate a significant decline in gross receipts, go to [IRS FAQ Nos. 39-46](#).***

Closed workplaces: The IRS also provided guidance on when an employer’s workplace is closed by a governmental order. In that circumstance, if the employer is able to continue operations “comparable to its operations prior to the closure by requiring its employees to telework,” the employer’s operations are not considered to have been fully or partially suspended. The guidance does not explain what “comparable” means, but provides the following example: Employer C, a software development company maintains an office in a city where the mayor has ordered that only essential businesses may operate. Employer C’s business is not essential under the mayor’s order and must close its office. Prior to the order, all employees at the company teleworked once or twice per week, and business meetings were held at various locations. Following the order, the company ordered mandatory telework for all employees and limited client meetings to telephone or video conferences. Employer C’s business operations are not considered to be fully or partially suspended by the governmental order because its employees may continue to conduct its business operations by teleworking.

If, however, an employer’s workplace is closed by a governmental order for certain purposes, but the employer is allowed to remain open for other limited purposes, the employer’s operations would be considered to be partially suspended (e.g., a restaurant that no longer



provides in-room dining, but offers carry-out). Similarly, an employer that reduces its operating hours due to a governmental order is considered to have partially suspended its operations. Additionally, employers that operate a trade or business in multiple locations and are subject to State and local governmental orders limiting operations in some, but not all, jurisdictions are considered to have a partial suspension of operations.

For more information, go to [IRS Frequently Asked Questions](#).

(Source: Sec. 2301 of CARES Act)

6. Federal Payroll Tax Deferral: The CARES Act allows businesses and nonprofit organizations, including unions and labor-management training committees, to delay paying certain 2020 payroll taxes. Businesses and nonprofit organizations may delay paying the employer portion of the Social Security or Railroad Retirement (RRTA) payroll tax that would otherwise be due from March 27 through December 31, 2020. Employers must pay 50% of the deferred amount by December 31, 2021, and the remainder by December 31, 2022. This deferral is not available to organizations whose loan under the Paycheck Protection Program is forgiven.

A business or nonprofit wishing to take advantage of the payroll tax deferral program will still need to file the IRS Form 941 to report the amount of payroll taxes it owes and is choosing to defer. For additional information, go to [IRS Notice 2020-22](#).

(Source: Sec. 2302 of CARES Act)

7. Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations: Section 3309(a)(2) of the Internal Revenue Code, 26 U.S.C. § 3309(a)(2), permits 501(c)(3) organizations to choose to reimburse the state for any unemployment claims made by their employees, rather than making regular contributions to the state's unemployment insurance fund. For nonprofits opting to go that route, the CARES Act provides that the Federal government will pay amounts equal to one-half of the unemployment compensation the states pay to these organizations' employees between March 13 and December 31, 2020, and the states are then to use that money to reimburse the organizations.

(Source: Sec. 2103 of CARES Act)

May 8, 2020