



Boylan Code

COVID-19 Federal Legislation for Small Busienss

ATTORNEYS AT LAW

Paycheck Protection Program

- Types of businesses
 - All businesses with 500 or fewer employees
 - Self-employed individuals
 - Independent contractors
- Apply by June 30
 - Congress has reauthorized nearly \$500 billion more to the fund



Paycheck Protection Program

- Loans can be used for
 - Payroll costs, including benefits
 - Salaries are capped at \$100,000
 - Interest on mortgage obligations, incurred before 2/15/20
 - Rent for leases dated before 2/15/20
 - Utilities for service beginning before 2/15/20



Paycheck Protection Program

- Loans can be up to 2 months of average monthly payroll costs plus an additional 25%, capped at \$10 million
- Loans will be forgiven if
 - Proceeds are used anything beyond the approved uses for 8 weeks after getting the loans
 - Must maintain staff and payroll, meaning
 - Cannot decrease full-time employee headcount
 - Cannot decrease salaries by more than 25% for individuals making less than \$100,000
 - Have until 6/30 to restore full-time employment and salary levels for any changes made between 2/15 and 4/26



Paycheck Protection Program

- Interest rate is 0.5%
- Payments are deferred for 6 months
- Term of the loan is 2 years
- No prepayment penalties
- No collateral requirement
- No personal guarantee



Economic Injury Disaster Loans

- Businesses with less than 500 employees
- Used for
 - Payroll
 - Fixed debts
 - Accounts payable
 - Other bills that cannot be paid because of disaster's impact

Economic Injury Disaster Loans

- Maximum loan
 - Up to \$2 million
 - Emergency advances up to \$10,000 with 3 days of application

Economic Injury Disaster Loans

- Loan Terms
 - One-year payment deferral
 - Demonstrate ability to repay
 - Collateral required for loans over \$25,000
 - No personal guarantee on loans less than \$200,000
 - Fixed rate at 3.75% for businesses; 2.75% for non-profits
 - Maximum 30-year term
 - No prepayment penalty
 - No loan forgiveness



Coronavirus Sick Leave and Tax Credits

- The Families First Coronavirus Response Act (“FFCRA”) requires employers to provide paid leave through two separate provisions:
 - (i) the Emergency Paid Sick Leave Act (EPSLA), which entitles workers to up to 80 hours of paid sick time when they are unable to work for certain reasons related to COVID-19, and
 - the Emergency Family and Medical Leave Expansion Act (Expanded FMLA), which entitles workers to certain paid family and medical leave



Coronavirus Sick Leave and Tax Credits

- Employees of eligible employers receive up to 80 hours at 100% reimbursement for paid leave pursuant to FFCRA
 - Health insurance costs are also included in the credit
 - Employers face no payroll tax liability
 - Self-employed individuals receive an equivalent credit
- Employers may receive refundable sick leave credit for sick leave at employee's regular rate of pay, up to \$511 per day and \$5,110 total.



Coronavirus Sick Leave and Tax Credits

- Eligible employers may retain amount of payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than depositing with IRS

Coronavirus Sick Leave and Tax Credits

- Eligibility, any of the following:
 - the employee is under a Federal, State, or local quarantine or isolation order related to COVID-19;
 - the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - the employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - the employee is caring for the child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID–19 precautions;
 - the employee is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.



Employment Retention Tax Credit

- Refundable tax credit against certain employment taxes equal to 50 percent of the qualified wages an eligible employer pays to employees after March 12, 2020, and before January 1, 2021
- For each employee, wages (including certain health plan costs) up to \$10,000 can be counted to determine the amount of the 50% credit.



Employment Retention Tax Credit

- Employers, including tax-exempt organizations, are eligible for the credit if they operate a trade or business during calendar year 2020 and experience either:
 - the full or partial suspension of the operation of their trade or business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or
 - a significant decline in gross receipts.
 - on the first day of the first calendar quarter of 2020
 - for which an employer's gross receipts are less than 50% of its gross receipts
 - for the same calendar quarter in 2019.
- Businesses with less than 100 employees – all employees eligible
- Businesses with more than 100 employees – only those employees being paid but not providing service due to coronavirus cutbacks
- Receipt of PPP loan or Paid Sick Leave renders employer ineligible for tax credit



Amendment of Sec. 172(b)

- CARES Act amended § 172(b) to allow for 5-year carry back period for NOLs incurred for tax years beginning after 12/31/17 but before 1/1/21
- Allows losses incurred in 2018 through 2021 to be deducted against profits with a 5 year look back
- Potentially allows net operating losses incurred under lower tax rates to be carried back to higher tax rate years
 - E.g., 2019 LLC with member in 37% bracket generates loss that can be carried back when max bracket was 39.6%.





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