



Dear Friends,

COVID-19 has created an unprecedented event for everyone. As this event unfolds and continues to impact all facets of our lives, we wanted to provide the third in a series of e-mails answering a number of commons questions we have received from companies.

These questions touch on issues related to the impending \$2 trillion stimulus package available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). As relevant to employers, there are two important sections of the CARES Act to consider:

- Small business loans to pay employees, and
- Payroll tax deferral.

Please do not hesitate to reach out to us by telephone (954-527-1115) or e-mail (blerner@kvllaw.com). We are here to help, and wish for everyone to stay safe and be well.

Sincerely,

Brian Lerner
Chair, Labor & Employment

What companies are eligible to receive loans under the CARES Act, and how much may a company receive?

The CARES Act offers what it calls “paycheck protection loans.” These loans are available to companies with less than 500 employees. These loans also are available to individuals who operate sole proprietorships as well as independent contractors. The maximum amount of a loan is the lesser of (a) a company’s average total monthly payroll costs incurred the year before the date of the loan multiplied by 2.5 or (b) \$10,000,000.

What may the paycheck protection loan proceeds be used for?

The goal of a paycheck protection loan is to prevent layoffs. As such, the loan proceeds must be used to pay for such things as payroll costs, costs related to healthcare benefits during paid leaves of absences, employee wages, payments of interest (and only interest) on mortgages and other debt obligations, rent, and utilities.

How do companies obtain a paycheck protection loan?

Applications would be submitted through the banks, which would be providing the loan through a Small Business Administration (SBA) loan program.

What are the eligibility requirements to obtain a paycheck protection loan?

The lender will consider such facts as whether the company was in operation on February 15, 2020, and whether the company paid employee salaries and payroll taxes (based on verifying

perhaps six weeks of payroll). Companies will be required to certify that uncertainty of current economic conditions make necessary the loan to support ongoing operations and that the loan proceeds will be used to retain workers, maintain payroll, and make other permitted payments. It also appears that companies will be required to demonstrate that loan proceeds were used to pay employees for eight weeks after receiving the loan proceeds.

Besides loans, does the CARES Act provide any other form of payroll assistance to companies?

The CARES Act allows companies to defer the employer portion of payroll taxes through January 1, 2021. The premise is that by allowing companies to defer their portion of payroll taxes, this will free up cash for companies now. But companies must keep in mind that this is just a temporary deferral of payroll taxes, not tax forgiveness.

What companies are eligible to receive the payroll tax deferral?

If you are a business that continues to employ workers through the current COVID-19 pandemic, you may be eligible. Companies should consult with a tax professional for further advice.

When are deferred payroll taxes due?

The CARES Act provides that half of the payroll taxes for this year shall be paid no later than December 31, 2021. The remaining half of the payroll taxes for this year shall be paid no later than December 31, 2022. Companies should take note that if they take out a paycheck protection loan and that loan is subsequently forgiven, then these companies will no longer be eligible for the payroll tax deferral.

The answers provided above attempt to address the questions under federal law. Please be sure to check state and local laws, which may provide additional protections or restrictions. To stay up-to-date on COVID-19, including best practices, please visit <https://www.cdc.gov/>.

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