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The Ever-Changing Guidance Regarding PPP Loan Forgiveness

They say that the only thing constant is change. This especially seems to be the case with all of the new programs enacted in response to the COVID-19 crisis, including the Paycheck Protection Program (PPP) loan program. On June 5 the Paycheck Protection Program Flexibility Act, which aims to add some flexibility to the Paycheck Protection Program, was signed into law.

To help PIASC members understand what this entails, Chris Falco, Founding Partner of CPA firm Falco Sult (www.falcosult.com), recently presented the latest webinar in our COVID-19 series, "PPP Loan Forgiveness Guidance: Part 2." In case you missed it, the following provides an overview of that webinar, the recording for which can be found at https://bit.ly/PPP-2-recording.

The following provides a summary of the key points made in this presentation…

The "covered period" has been extended from 8 weeks to 24 weeks

While you can still choose to use the 8-week period, this change gives you more time to spend the money on forgivable expenses, which can increase the amount of loan forgiveness for which you will qualify.

Loan terms have been extended

Loans for which the Small Business Administration (SBA) assigned a loan number on June 5 or later are now automatically 5-year loans. Loans made prior to that still have a 2-year maturity date, although borrowers and lenders can agree to change this to five years.

Loan deferral period has been extended

You now have 10 months (not just six) from the end of the covered period to submit your application for loan forgiveness. Your payments will be deferred until after the SBA lets the lender know what portion of your loan is being forgiven.

Amount of loan that must be used for payroll costs has been reduced

Instead of having to spend 75% of the loan on payroll costs, now you only have to spend 60% on payroll costs and up to 40% on payments for interest, rent or utilities. Plus, you can get partial forgiveness even if you spend less than 60% on payroll costs.

This, combined with the new 24-week period, will make it much easier for businesses that have seen a reduction in FTEs or wages to qualify for full loan forgiveness. If, for example, you took out a $100,000 loan, instead of having to spend $75,000 on payroll costs in eight weeks, now you need to spend $60,000 on payroll costs in 24 weeks.

More expenses now qualify as forgivable non-payroll costs

The new rules provide more flexibility. Some of the items that now appear to count as rent or utility costs include car payments for business vehicles, interest on a line of credit that was in force before February 15, 2020, business cell phones and the fuel for business vehicles.

There are new ways to be forgiven for a reduction in FTEs

PPP loans are based on your historical payroll data. All employees who work 40 hours or more per week count as 1.0

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HUMAN RESOURCES

FAQs Regarding the ADA & Your COVID-19 Prevention Measures

The Equal Employment Opportunity Commission (EEOC) has issued guidance regarding the interplay of COVID-19 and the Americans with Disabilities Act (ADA), the Rehabilitation Act, and other EEO Laws. You can find the full guidance at https://bit.ly/EEOC-guidelines.

The following provides a summary of some of the most relevant issues addressed in this guidance…

Can we exclude an employee who is at greater risk of COVID-19 from the workplace?

No. You cannot exclude someone solely because they have a medical condition (or age) identified by the CDC as placing them at "higher risk for severe illness" if they get COVID-19. You can only exclude them if you determine that the workplace poses a direct threat of a significant risk of substantial harm to that employee, and that there are no reasonable accommodations you can make that would mitigate that.

How do we accommodate an employee who, due to a documented medical issue, has requested accommodations because they are at higher risk from COVID-19?

If the job can only be performed in the workplace, follow the usual interactive ADA process to work with the employee regarding possible accommodations that you can implement on a temporary basis that would not cause undue hardship on you.

That said, if this employee does not request a reasonable accommodation, the ADA does not require you to take any.

Can we implement mandatory temperature screening protocols?

Yes. However, the EEOC points out that some people with COVID-19 do not have a fever, so this does not guarantee a "safe" workplace. Also, if you choose to maintain a log of any of this information (such as information about those who do not pass the screening), you must maintain the confidentiality of the information logged. It's also advisable to do the temperature screenings in a private area so as to maintain confidentiality of the results, and to give careful thought as to who will do the screening.

Do we have to pay employees for their waiting and temperature screening time?

Yes.

Can we ask employees if they are experiencing COVID-19 symptoms?

Yes. You can do this when screening employees who are entering the workplace, or when an employee calls in sick.

Can we require employees who have COVID-19 symptoms to stay home?

Yes. The CDC states that all employees who become ill with COVID-19 symptoms should leave the workplace.

Can we then require a doctor's note for these people to return to work?

Yes.

Can we store COVID-19 related information in our regular personnel files?

No. The ADA always requires that all medical information about a particular employee be stored in a separate medical file. The COVID-19 information can be kept in these existing medical files.

Although the following issues are not expressly addressed in the EEOC guidance, they may be on your mind as well:

Do we have to accommodate an employee who refuses to return to the workplace because they live with someone who is at greater risk from COVID-19?

The employee may qualify for FMLA leave in order to care for a family member who is ill. Eligibility for this must be done on a case-by-case basis. If you have less than 50 employees and they therefore do not qualify for FMLA, you would need to show that you cannot accommodate due to business needs/needing to fill the position immediately. Even then, we recommend telling the employee to reach out when they are ready to return to determine if a position is available.

Do we have to accommodate an employee who refuses to return to the workplace because of COVID-19-related childcare problems?

The Families First Coronavirus Response Act (FFCRA) stipulates that employers must provide up to 12 weeks of FMLA leave to covered employees who are unable to work or telework due to the need to care for a minor child because the child's school or place of care has been closed, or if that child's childcare provider is unavailable, because of the COVID-19 pandemic.

If the employee has exhausted this leave and is not eligible for any other leave, you are not required to accommodate them and theoretically can terminate their employment if they refuse to return to work. That said, it is advisable that you consult legal counsel before making a termination decision.

PAPER BY JAN

The Impact of COVID-19 on the Paper Business

Jan Gottesman, President of Spicers Paper & Kelly Paper, reports on the latest happenings in the world of paper supply and costs.

As anyone reading this knows, the impact of COVID-19 on our economy has been severe and the graphics industry is certainly no exception. While there are pockets of print that are quite active, much of the advertising and marketing that normally supports commercial printing virtually stopped during the shutdowns. This is especially true amongst many sectors that traditionally spend a great deal of their marketing budget on print, such as travel, entertainment and events. With the decline in advertising during the shutdown, print demand was estimated to be down 40 to 60%.

Demand for graphic paper, which of course is dependent on demand for print, fell off a cliff in April and stayed there in May.

Uncoated paper

Overall, demand for uncoated paper dropped 37% in April versus April last year.

In the copy paper subset of the uncoated paper market the drop was even more dramatic. Between schools being closed and most office workers working from home, demand for copy paper plummeted 55% in April 2020 versus April 2019.

As a result of this, the uncoated mills idled their machines for a period of time

to allow things to start to recover. While some are now bringing their machines back up, operating rates are still quite low.

Coated paper

It's a very similar story on the coated paper side, which saw a 32% year-over-year decline in demand in April.

Verso, one of the largest coated paper manufacturers in North America, announced in mid-June that they will be idling two of their machines at the end of July. This will take out 40% of their capacity: 810,000 tons of printing paper, packaging paper and the low-grade coated known as "super calendared." While Verso says that in the long term they'll be looking at all of their options—including restarting if markets improve, selling or permanently closing—only time will tell if that capacity ever returns to the market.

A few bright spots

With advertising demand down so significantly, many commercial printers have had to look at other markets and other uses of print in order to get through the slowdown. Certainly signage is one of them, as reopening the economy has brought a strong demand for signage. There has also been a strong demand for food packaging, pharmaceutical printing and, now that restaurants are reopening, many are using disposable paper menus to reduce the potential spread of disease.

What the future may hold

Looking ahead, we believe there will most likely be a 23% decline in demand for paper overall for the entire year, with a permanent demand decline of 15 to 20%. We're all getting used to electronic substitutions for print on paper, and many large companies have indicated they'll be making a permanent shift towards allowing employees to work from home.

Although the paper business is still a huge business, paper follows the economy. The advertising and marketing campaigns that normally support the printing business will start up again. Printers will diversify. New markets will arise.

NATIONAL NEWS

Is Your Company Prepared?

Is your state requiring your company to have a documented COVID-19 Preparedness and Response Plan for reopening? Are you ready to adequately answer questions from your staff members on each step of the re-opening phase as it pertains to recommended health and workplace safety with your own operations?

PRINTING United Alliance has developed a comprehensive "plug & play" toolkit that provides companies with policies, procedures and guidelines to implement best practices in your workplace to address COVID-19 exposure.

The COVID-19 Preparedness and Response Plan includes:

- Step-by-step company action plan
- Guides on how to sanitize, ventilate and reduce employee interaction to minimize exposure risks
- OSHA [not Cal/OSHA, which is somewhat different] recordkeeping requirements
- A complete safe operations checklist
- Templates for communicating with employees, customers and vendors
- Visitor questionnaire and privacy notice
- Guide on how to perform contact tracing, and more.

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FEATURE ARTICLE

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FTE (Full Time Equivalent), while those who work less than that either count as 0.5 FTE or are calculated as a percentage based on actual hours worked.

Loan forgiveness is based in part on your having the same FTEs, at the same wage levels, during the covered period as during the comparison period. If you choose to use the new 24-week period, this means you'll have to maintain your FTEs for a longer period of time. If you cannot, you may be better off electing to stick with the eight-week period.

The new Act provides a few ways that a reduction in workforce can be excused (i.e. not count against you in the loan forgiveness calculations):

- You make a written employment offer for rehire for the same number of hours at the same salary or wages, the person refuses, and you cannot hire similarly-qualified individuals for unfilled positions by the end of your selected covered period or no later than December 31, 2020.
- Between March 1, 2020 and December 31, 2020 you are unable to return to the same level of business activity you had as of February 15, 2020 due to OSHA, CDC or HHS requirements or guidelines. Note that state mandates are not covered here.

As before, you will also not be dinged if an employee voluntarily resigns, voluntarily requests a reduction in hours or is fired for cause. Also, as before, owner/employees do not count as part of the FTE calculation, as they are in a separate category on the loan forgiveness forms.

You may be able to use excess forgivable costs to offset an FTE shortfall

PPP loans were made based on an eight-week period of expenses. Now that the covered period has been extended to 24 weeks, if you have an FTE shortfall you may be able to make up for this because your forgivable expenses incurred over a 24-week period may add up to more than your original loan amount.

For example, say you have a $100,000 loan but, due to layoffs, your FTE quotient is only 0.5. This means that only 50% of your theoretically-forgivable costs will be forgiven. With the previous eight-week covered period, you probably would have come up short. Now, if you have $200,000 in forgivable costs in a 24-week period (with at least 60% being payroll costs), you may be able to get full loan forgiveness.

There may be tax implications of loan forgiveness

As of right now, the IRS' stance is that the expenses for which you get loan forgiveness will not count as deductible expenses. There is a bill in the House to clarify that Congress' original intent was that PPP funds would not be taxable to businesses. Hopefully this bill will get passed this summer.

Conclusion

Additional guidance is expected in the next few days. As we said, the only thing constant here seems to be change.

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This Plan is available for free for PIASC Members.

Save countless hours of researching and creating policies and procedures by downloading this easily-executed and comprehensive COVID-19 Preparedness and Response Plan today to safely get back to business! Download at https://bit.ly/preparedness-plan.

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GOVERNMENT & LEGISLATIVE

Stormwater Reports Due July 15, 2020

The California State Water Resource Board's storm water permit program is a complicated program that affects all printers in California.

As we've written about before (see https://bit.ly/NEC-article), most printers qualify for the less-onerous "No Exposure Certification" (NEC), which basically certifies that 100% of your operations are indoors and therefore will never come into contact with precipitation. However, if your facility does not qualify for an NEC you must obtain a "Notice of Intent (NOI)," which involves much more effort and cost.

If you have a Notice of Intent, the deadline to submit the Annual Report is July 15. You can find a guide for doing so at https://bit.ly/stormwater-report20. If you need assistance filing this Report, contact California stormwater consultants and PIASC partner Frog Environmental, at frogenv.com.

Wage Claim and Cal/OSHA Deadlines Extended

On May 7, 2020, Governor Newsom issued Executive Order N-63-20, which provides a 60-day extension of a variety of statutory deadlines, including:

- **Wage claims** – Extends the time employees have to file certain claims with the state labor commissioner for unpaid wages.
- **Cal/OSHA citations** – Extends the time for Cal/OSHA to issue certain workplace safety citations or notices of proposed civil penalties.
- **Cal/OSHA appeals** – Extends the time for employers to appeal Cal/OSHA citations, special orders, action orders or notices of proposed civil penalty, from 15 working days after receipt to 75 working days after receipt.

Note: These extensions only apply to situations in which the deadline would normally occur from May 7, 2020 through July 6, 2020.

On Our Radar

Recently added to the list of proposed regulations and other issues that we're following:

- New Leave Mandate for States of Emergency – AB 3216 would expand "family care and medical leave" to include caring for a family member whose school or place of care is unavailable due to a state of emergency, or for situations in which an employee is unable to work due to a variety of circumstances related to a state of emergency. Would require employers to provide at least seven days of paid sick leave (which would run concurrently with other required sick leave). Would expand the circumstances in which paid sick days may be used during a state of emergency or public health emergency. Would also create a variety of right of rehire and worker retention rules.
- Expanding Sick Pay to Cover Behavioral Health – AB 1844 would expand sick leave coverage to include the diagnosis, care or treatment of an existing behavioral health condition of, or preventative care for, an employee or an employee's family member.
- Creating Conclusive Presumption that COVID-19 is Contracted in the Workplace – AB 196 would apply to workers in most "essential" occupations or industries. For workers compensation claims it would change the current "rebuttable presumption" that COVID-19 cases are work-related into a non-rebuttable presumption.
- Cal/OSHA Wildfire Smoke Rule – Last July Cal/OSHA adopted an emergency regulation regarding protecting workers from exposure to wildfire smoke. Now the agency is working on revising the regulation, which is still in effect, and making it permanent. Unfortunately, the revised version still includes a requirement for employers to maintain a supply of N95 respirator masks, even though N95 masks are currently in short supply worldwide. The proposed rule can be reviewed at https://bit.ly/N95-rule.

Updates to proposed legislation, regulations and other issues we've been following:

- Split-Roll Property Tax Measure – This has officially qualified for the November 2020 ballot. If enacted, commercial real estate valued at over $3 million will be regularly reassessed.
- Paperless Retirement Plan Disclosures – There is now an electronic delivery option for retirement plan sponsors. Participants and beneficiaries can now be notified electronically that certain disclosures are available online, on a specified website.