

EMPLOYER LAW BLOG

Key Provisions of the Paycheck Protection Program Flexibility Act

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Today President Trump signed in to law the Paycheck Protection Program Flexibility Act of 2020 (the “PPPFA”), which substantially modifies certain provisions of the CARES Act related to forgiveness of Paycheck Protection Program (“PPP”) loans for small businesses, as many recipients of the PPP funds come up on the end of their previously-determined 8-week measurement period for loan forgiveness.

Key provisions of the PPPFA which impact employers include:

- **Extended Maturity of Loans** – This change extends the two-year repayment term to five years for new loans. Employers with existing PPP loans should discuss modifying their repayment dates with their lenders if they expect a portion of their loan to not be forgiven.
- **Extension of date to use proceeds** from June 30, 2020, to December 31, 2020; however, for forgiveness, funds will need to be used within the specified “covered period.”
- **Time Period Extended For Forgiveness** – the “covered period” in which PPP loan proceeds must be used for certain purposes to be eligible for forgiveness is increased from eight weeks from origination of the loan to the earlier of: (i) 24 weeks from origination or (ii) December 31, 2020. Employers who already have their PPP loan may elect to keep their eight-week “covered period.”

- Added Employee Availability or Inability to Return to Same Level of Business to Forgiveness Considerations - Loan forgiveness can now be determined without regard to the reduction in full-time equivalent employees if: the employer in good faith is able to document an inability to rehire individuals who were employees on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; OR the employer in good faith is able to document an inability to return to the same level of business activity as the borrower's business was operating at before February 15, 2020, due to compliance with requirements or guidance issued by Health and Human Services, CDC, or OSHA during the period beginning March 1, 2020 and ending December 31, 2020 related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19.
- Payroll Cost Forgiveness Limit reduced from 75% to 60% - In order to have loan proceeds forgiven, at least 60% of the loan proceeds (rather than at least 75% of the potential forgiveness amount) ,must be used for payroll costs. Further 40% of the proceeds may be used for the other uses that are subject to forgiveness (i.e., payment of interest of any covered mortgage obligation, any covered rent obligation, or any covered utility payment).
- Payroll Tax Deferral Benefit – employers may now take advantage of the payroll tax deferral notwithstanding the forgiveness of PPP loan indebtedness. Now, PPP loan borrowers who obtain PPP loan forgiveness can also benefit from the payroll tax deferral without limitation.

Additional changes impacting forgiveness calculations were also included in the PPPFA. For additional information on these changes, please contact a member of our Labor and Employment Team or a member of our Banking Team.