FINANCIAL RESOURCES FOR U.S. BUSINESSES FROM THE CARES ACT

BODMAN PLC

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Welcome

COVID-19 Response Team Introduction


Bodman is endeavoring to stay on top of the fast moving developments associated with the COVID-19 pandemic, related government action and the impacts on our clients.
AGENDA

- Be Resourceful
- Culture
- Manage your burn rate
- Ask for help

No Q&A during the Webinar but please reach out to us with questions by emailing info@BodmanLaw.com and we will connect you with an attorney that can assist.

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BE RESOURCEFUL

- Grants

- SBA Loans
  - 7(a) Payroll Protection Program
  - 7(b)(2) economic injury
RESOURCES FOR BUSINESSES: FEDERAL LOAN PROGRAMS -- PPP

- SBA 7(a) Loans – Paycheck Protection Program
  - Bank originated loans backed by SBA guarantees
  - For small businesses (up to 500 employees)
  - Loan amount up to 2.5 months of payroll up to $10M
  - Low interest rate (.5%) with 6 month payment deferral
  - Loan term of 2 years
  - Eligibility concern: aggregation of affiliates (investors)
RESOURCES FOR BUSINESSES: FEDERAL LOAN PROGRAMS -- PPP

- SBA 7(a) Loans – Paycheck Protection Program Questions
  - How to you calculate “payroll”
  - What can you use the funds for?
    - Payroll and certain types of rent, mortgage interest, and utilities
  - **Forgiveness**?
    - YES but pro rated for the number of employees retained between February 15 and June 30, 2020 and certain wage cuts
    - Up to entire loan amount but must be spent in 8 weeks before June 30
  - No need to show this is your only source of credit
RESOURCES FOR MICHIGAN BUSINESS: WHAT IS THE DISASTER LOAN PROGRAM?

- COVID-19 determined to be a qualifying event for Economic Injury Disaster Loans (EIDL) for businesses and private non-profits in declared zones.
- Michigan small businesses were approved for SBA loans under the EIDL declaration on March 19, 2020.
- Loan Application: https://disasterloan.sba.gov/ela/
EIDL ELIGIBILITY CRITERIA

- The EIDL will provide up to $2 million in financial assistance if a small business suffers substantial economic injury as a direct result of the declared disaster.

- **Substantial Economic Injury/Direct Result:**
  - The business is unable to meet its obligations and to pay its ordinary and necessary operating expenses as a direct result of COVID-19.

- Loan amount limited to the amount of economic injury (less business interruption insurance) from COVID-19.
EIDL ELIGIBILITY CRITERIA

Are you considered a small business?

- Employee amount can range from 250 to 1,500 employees
- Size standards vary based on North American Industry Classification System (NAICS) Code or the annual revenue
  - To determine eligibility based on employee and revenue metrics, use: https://www.sba.gov/document/support--table-size-standards

Other criteria

- May not be eligible if you have other available funds (cash flow or reserves available)
- Religious and charitable organization, casinos, racetracks and other businesses that receive more than 1/3 of their annual gross revenue from gambling activities are not eligible
EIDL ELIGIBILITY CRITERIA

- **Waived Requirements**
  - No requirement that business unable to obtain other credit
  - No requirement that loans/advances less than $200k have a PG
  - No requirement that entity be in business for at least 1 year prior to disaster

- **Credit History**
  - Applicant must have a credit history acceptable to the SBA-determined on a case-by-case basis – approval based solely on the applicant’s credit score without requiring a tax return
WHAT CAN THE FUNDS BE USED FOR?

- **Working capital loans** can be used for:
  - fixed debts, payroll, accounts payable, employee sick leave, and other bills that cannot be paid because of the disaster’s impact

- **Working capital loans** cannot be used for:
  - refinancing, expansion, payment of dividend or other disbursements to owners (except as related to their performance of services for the business) or infrastructure improvements
WHAT ARE THE TERMS OF THE LOAN?

**Interest rate:**
- Fixed 3.75% for small businesses; 2.75% for nonprofits

**Repayment:**
- Long-term repayment available for up to 30 years – determined based on ability to repay
- Repayment is deferred for the first 12 months, but interest does accrue during the deferral time; payments on existing EIDLs have automatically been deferred through December 31, 2020
- There is no penalty for prepayment

**Loan Timeline:**
- Must apply within 9 months after the date of declaration – APPLY NOW
- ~3 weeks for the SBA to make its decision (current major delays)

**Insurance:** The SBA may require the application to obtain or maintain insurance to protect both the SBA and applicant
**ADDITIONAL INFORMATION**

- **Reconsideration if loan is denied:** Yes, applications will be reconsidered if additional information is provided – for example if the loan is turned down because of insufficient income, the applicant owner can add a co-borrower.

- **Withdrawn application:** If your loan is approved, but you withdraw your application, you have six (6) months to reactivate your approved loan.
MANAGE YOUR BURN RATE

- Contract concerns
  - Suppliers
  - Customer
  - Force majeure
CULTURE, FFCRA MANDATES AND UNEMPLOYMENT OPTIONS

- Temporary Leave
- Termination
- Work Share
- Obligations to comply with mandate to date
  - Employee designation letters
  - Paid leave
FAMILIES FIRST CORONAVIRUS RESPONSE ACT ("FFCRA")

- Emergency Paid Sick Leave Act
- Emergency Family and Medical Leave Expansion Act
- Tax Benefits for Employers Providing Paid Leave
EMERGENCY PAID SICK LEAVE ACT

Provides **80 hours** of paid sick leave at either 100% or 2/3 of employee’s regular rate of pay for those **who are unable to work or telework** because the employee is:

1. subject to a federal, state or local quarantine or isolate order related to COVID-19;
2. advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
4. caring for someone subject to a quarantine or isolation order or has been advised to self-quarantine;
5. caring for a son or daughter whose school or daycare is closed because of COVID-19; or
6. experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

- Allows employees to take FMLA-protected leave to care for a **son or daughter** whose school or childcare provider has closed as a result of COVID-19
- First 2 weeks may be unpaid; remaining 10 weeks paid at 2/3 regular pay
- May take FMLA leave for childcare reasons from April 1, 2020 through December 31, 2020
Emergency Paid Sick Leave
- For reasons 1-3 (related to employee): maximum of $511/day or $5,110 total over the entire paid sick leave period
- For reasons 4-6: maximum of $200/day or $2,000 over the entire 2-week period

Expanded Family and Medical Leave
- No more than $200/day or $12,000 for the 12 weeks that includes both paid sick leave and expanded family and medical leave
REFUNDABLE PAYROLL TAX CREDITS

- Dollar for dollar reimbursement from payroll taxes
- Apply for accelerated reimbursement – 2 weeks
- IRS Guidance
  - Limited documentation required:
    - Substantiate need for leave
    - Forms 941, Employer's Quarterly Federal Tax Return
    - 7200, Advance of Employer Credits Due To COVID-19
    - Any other applicable filings made to the IRS requesting the credit.
“Federal Pandemic Unemployment Compensation”

- Employees receive $600 per week for four months through December 31, 2020 in addition to what they receive through the state unemployment program.
- Can only receive additional assistance for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19.
- Consequences for misrepresenting need for additional $600 may lead to ineligibility for future unemployment benefits and prosecution.
“Federal Pandemic Unemployment Compensation”

- Independent contractors, low-wage workers, and those with a limited work history will also receive the $600/week
- Benefits expanded to 39 weeks
MICHIGAN EXECUTIVE ORDER 2020-24: TEMPORARY EXPANSIONS TO UNEMPLOYMENT ELIGIBILITY

Allows an employee to receive unemployment benefits if the employee:

❖ leaves work involuntarily for medical reasons if they leave to self-isolate or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised, displaying the symptoms of COVID-19, having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19;

❖ needs to care for someone with a confirmed diagnosis of COVID-19; or

❖ has a family care responsibility as a result of a government directive.
Q&A

- Q: How does FFCRA leave interact with unemployment?

- A: It is unlikely there will be a situation where an employee is eligible for both. If there is, the employer must pay FFCRA leave benefits. The employee must report these benefits to the UIA.
Q: What if my employee already took 12 weeks of FMLA leave? Is he eligible for more FMLA under the expanded family and medical provisions of the FFRCA?

A: No, the total FMLA entitlement remains 12 weeks/year.
Q: Isn’t there a small business exemption to the FFCRA?

A: Yes, but it is limited. Employers with under 50 employees may self-elect this exemption but only for leave related to an employee’s need to care for a child whose school or care center is closed due to COVID-19.
Q&A

Q: Since the FFCRA provides for paid sick leave if employees are subject to a State quarantine or isolation order, does the Governor’s Stay Home, Stay Safe Order qualify?

A: Likely yes. However, the FFCRA is not retroactive. If employees were laid off prior to the FFCRA’s effective date, they are not eligible for leave.
Q&A

- **Q:** What if my business is not covered by the FFCRA? Can I still provide paid sick leave?

- **A:** Of course! Unfortunately, you just can’t get the tax credit.
Q&A

- Q: I applied for a loan under the CARES Act. Does this affect my employees’ eligibility for FFCRA leave?
- A: No.
ASK FOR HELP

- Lawyers
- Accountants
- Bankers
- Insurance Providers
- Advisors
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