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AGC
THE CONSTRUCTION
ASSOCIATION

AGC of America COVID-19 Webinar Series

April 8, 2020

Maintaining Cash Flow During the COVID-19 Crisis:

**An Overview of New Federal Support Programs & Practical
Advice for Contractors**

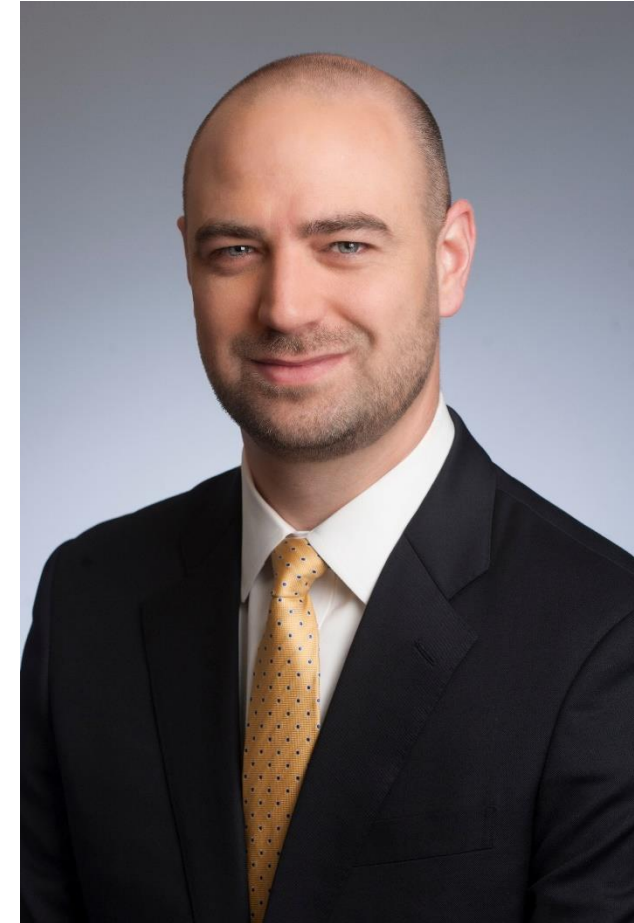
Legislative Update



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Legislative Update



Phase I

- \$8 billion package provided funding for medical treatments and testing. (3/6)

Phase II (FFCRA)

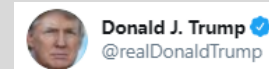
- \$104 billion response package intended to expand benefits for workers and provide assistance to families. (3/18)

Phase III (CARES Act)

- \$2 trillion economic relief package to individuals, families, small businesses, and hard-hit sectors of the economy. (3/25)

Phase IV, ???

- Expand family & medical leave?
- Health care & pension protections?
- Infrastructure?
- ????



Donald J. Trump
@realDonaldTrump

With interest rates for the United States being at ZERO, this is the time to do our decades long awaited Infrastructure Bill. It should be VERY BIG & BOLD, Two Trillion Dollars, and be focused solely on jobs and rebuilding the once great infrastructure of our Country! Phase 4

Legislative Update



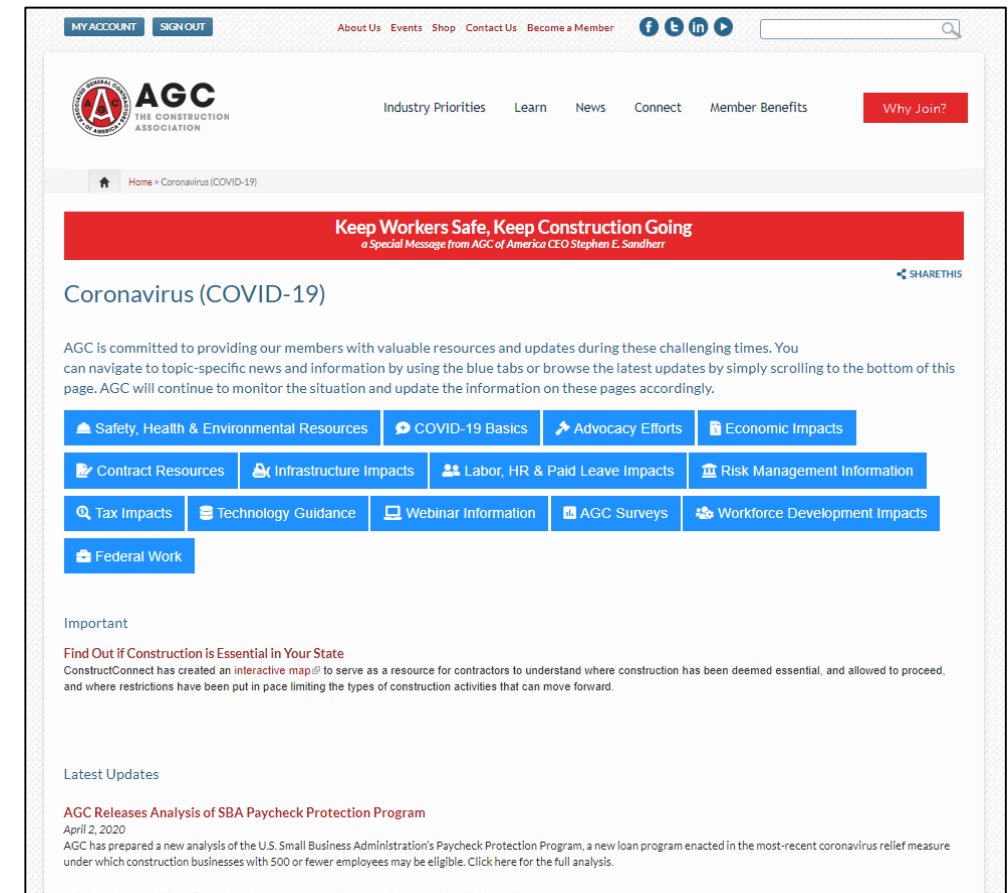
- Recent updates to the Small Business Administration (SBA) Paycheck Protection Program (PPP) loans
 - Treasury and SBA clarified that employers with fewer than 500 employees (or higher in certain industries) qualify.
 - Priority for AGC of America

Legislative Update



- Recent updates to the Small Business Administration (SBA) Paycheck Protection Program (PPP) loans
 - Trump Administration formally requested an additional \$250 billion to supplement program
 - \$70 billion already lent (as of 4/7/20)
 - Could pass as early as Thursday (4/9/20) by Unanimous Consent...assuming everyone agrees.

For more
coronavirus resources,
please visit:
www.agc.org/coronavirus





CPAs & Advisors

Cash Flow & Business Strategies for Contractors During the COVID-19 Crisis

April 8, 2020



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Agenda

› SBA

- Economic Injury Disaster Loans
- Paycheck Protection Plan Loans

› Payroll Tax Credits

- *Families First Coronavirus Response Act*
- CARES Act

› Cash Flow Strategies for Construction Companies

Economic Injury Disaster Loans (EIDL)

› Background of EIDL

- Existing program of the SBA under Section 7(b) of Small Business Act
- Available to eligible small businesses, small agricultural cooperatives, small aquacultural businesses & private nonprofit organizations
 - › Eligibility: SBA has industry-specific sizing standards – NAICS Code
- Substantial economic injury & within a federally declared disaster area
- Working capital loans up to \$2,000,000, for up to 30 years
- Fixed interest rate: 3.75% for businesses, 2.75% for nonprofits

Economic Injury Disaster Loans (EIDL)

› EIDL: COVID-19 & CARES Act

- All 50 states & U.S. territories are included
- Eligible entity definition expanded – through December 31, 2020
 - › Sole proprietors – even those without employees
 - › Independent contractors
 - › Eligible entities not greater than 500 employees (or SBA sizing standards)
 - Includes union employees
 - › Cooperatives, ESOPs, tribal small business concerns not greater than 500 employees

Economic Injury Disaster Loans (EIDL)

› EIDL: COVID-19 & CARES Act

- Other CARES Act changes – through December 31, 2020
 - › Personal guaranties not required for loans up to \$200,000
 - › Waives requirement applicants are unable to obtain credit elsewhere
 - › Waives requirement applicants must have been in business for one year before disaster
 - Must have been in business January 31, 2020
 - › For small dollar loans, SBA may approve applicants solely based on credit score without providing a tax return
 - Or use appropriate alternative methods to determine an applicant's ability to repay

Economic Injury Disaster Loans (EIDL)

› EIDL: COVID-19 & CARES Act

- Emergency grants – through December 31, 2020
 - › Not a likely strategy for construction companies
 - Could help some small specialty trade contractors
 - › Applicant may request an advance of up to \$10,000 from SBA
 - › To be funded within three days after SBA received application
 - › Applicant must self-certify they are an eligible business for EIDL
 - › Not required to be paid back – even if not eventually approved for EIDL
 - This will reduce the amount of eligible loan forgiveness should the applicant also receive a Paycheck Protection Plan loan under the SBA's 7(a) program

Economic Injury Disaster Loans (EIDL)

› EIDL: COVID-19 & CARES Act

- Emergency grants – through December 31, 2020
 - › Allowable uses include any normally eligible expenses for EIDL including
 - Providing sick leave unable to work due to direct effects of COVID-19
 - Maintaining payroll to retain employees during business disruptions or substantial slowdowns
 - Meeting increased costs to obtain materials unavailable from applicant's original source due to interrupted supply chains
 - Making rent or mortgage payments
 - Repaying obligations that cannot be met due to revenue losses

Economic Injury Disaster Loans (EIDL)

› EIDL – practical considerations

- Determine eligibility based on size standards
 - › Self-certification required
- Loan is directly through the SBA – consider applying online now
 - › You do not have to accept the loan
- Eligible for Paycheck Protection Program loan – just not for same use
- Know your numbers
 - › Gross revenues & cost of earned revenue for the trailing 12 months before disaster
 - › Lost rents (commercial & residential rental properties)
 - › Compensation from other sources received due to COVID-19, e.g., insurance proceeds

Paycheck Protection Program (PPP)

› Background of PPP

- Temporary expansion of existing program under Section 7(a) of Small Business Act
- Forgiveness eligibility
- Definitions are critically important
 - › Covered period for loan: February 15, 2020–June 30, 2020
 - › Covered period for potential debt forgiveness: eight-week period from origination
 - › Covered loan: PPP loan made during the covered period
 - › Employee: full-time, part-time or other basis

Paycheck Protection Program (PPP)

- › “Payroll costs” defined – includes
 - Employers
 - › Salary, wage, commission or similar compensation (cash tips or equivalent)
 - › Payment of vacation, parental, family, medical or sick leave
 - Union fringes that cover these types of cost are allowed
 - › Allowance for dismissal or separation
 - › Payment required for the provision of group health care benefits including insurance premiums
 - › Payment of any retirement benefit (401(k) match, profit-sharing, pension plan payments)
 - › Payment of state or local tax assessed on the compensation of employees
 - › Excludes payments to sole proprietors & independent contractors – they are eligible for their own loan
 - Sole proprietor, independent contractor
 - › Sum of payments of any compensation to (or income of) a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment or similar compensation not more than \$100,000/annually (as prorated for the covered period)

Paycheck Protection Program (PPP)

› “Payroll costs” defined – excludes

- › Annual compensation of individual employee in excess of \$100,000 (prorated for covered period)
 - Treasury regs: first \$100,000 is allowed; compensation only – not benefits
- › ~~Payroll taxes, railroad retirement tax, federal withholdings~~
 - Treasury regs April 6, 2020: do NOT exclude payroll taxes or withholding
 - › Cannot include employer’s share of payroll taxes
- › Compensation of an employee with principal place of residence outside of U.S.
- › Qualified sick leave under Families First Act
- › Qualified family leave under Families First Act

Paycheck Protection Program (PPP)

› Eligibility

- In addition to any *small business concern*, * any business, nonprofit organization, veterans organization or tribal business concern if they employ not more than the greater of 500 employees or the SBA employee size standard by industry (loans started April 3, 2020)
 - › **Small business concerns*: employee-based or revenue-based size standard
- New test from April 4, 2020, regulations: can qualify as *small business concern* if both met on March 27, 2020
 - › Max tangible net worth of the business does not exceed \$15,000,000 &
 - › Average net income after federal income taxes (excludes carry over losses) for two full fiscal years before date of application not more than \$5,000,000
- Sole proprietors, 1099 contractors & eligible self-employed (loans start April 10, 2020)
 - › Documentation required
- SBA-approved lending institution will inquire to confirm if
 - › In business on February 15, 2020, &
 - Had employees with whom applicant paid salaries & payroll taxes or paid independent contractors as reported on 1099-MISC

Paycheck Protection Program (PPP)

- › Employee count ... How do you know who is an employee?
 - 2020 CARES Act- SBA – full time, part-time, or other basis
 - › SBA Guidelines –
 - Interim Final Rule on PPP – April 2, 2020 – not just small business concerns
 - Interim Final Rule on Affiliation – April 3, 2020 – SBA Rules apply (Not DOL)
 - › U.S. Treasury FAQ's – April 6, 2020 – confirms
 - SBA Affiliation Rules Apply
 - Applicants self certify – CAVEAT EMPTOR

Paycheck Protection Program (PPP)

› Eligibility – additional information

- Less than 501 employees per location for
 - › NAICS starting with “72,” e.g., hospitality, restaurants, other
- Waiver of affiliation rules (Section 121.103 of Title 13) will only apply to
 - › Business concerns starting with NAICS of “72” of not more than 500 employees
 - › Business concerns operating as a franchise assigned a franchise ID code by SBA
 - › Business concerns that receive financial assistance from company licensed by under Section 301 of Small Business Investment Act
- Affiliation rules (Section 121.103 of Title 13) do apply to
 - › Nonprofit organizations & veterans organization. These apply in same manner as small business concerns

Paycheck Protection Program (PPP)

- 13 CFR § 121.103 – Affiliation Principals
 - › One controls (or has the power to control), or a third-party controls (or has the power to control both) – Control does not have to be exercised – just exist
 - › Ownership, management, prior relationships with ties to another concern, and contractual relationships.
 - › Affirmative control or Negative control (minority shareholder has power to authority to block action by the board of directors or shareholders), whether an individual, concern or entity exercising indirectly by a third party
 - › Totality of the Circumstances
 - › Receipts, employees, or other measures – foreign and domestic – including non-profit

Paycheck Protection Program (PPP)

- › Affiliation size standards? – 13 CFR § 121.301
 - 2 criteria
 - › (1) The size of the applicant alone (without affiliates) must not exceed the size designated for the industry in which the applicant is primarily engaged; and
 - › (2) The size of the applicant combined with its affiliates must not exceed the size standard designated for the primary applicant's industry or the affiliate's industry, whichever is higher – pursuant to 13 CFR § 121.201

Paycheck Protection Program (PPP)

› Maximum loan amount

- Lesser of \$10,000,000 or
 - › Average total monthly payments of applicant for “payroll costs” incurred during one-year period before the date on which the loan is made* multiplied by 2.5
 - Regulations April 6, 2020: choose either previous 12 months or the 2019 calendar year
 - › If not in business during February 15, 2019–June 30, 2019, then use average total monthly payments of applicant for “payroll costs” incurred during January 1, 2020–February 20, 2020, multiplied by 2.5
 - & the outstanding amount of an EIDL that was made during period starting on January 31, 2020, & ending on date covered loan is available (application indicates April 3, 2020)

**Application Form Observation: “For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee”*

Paycheck Protection Program (PPP)

› Allowable uses of PPP loan

- Payroll costs
- Costs related to the continuation of group health benefits during periods of sick, medical or family leave & insurance premiums
- Employee salaries, commissions or similar compensation
- Payments of interest on any mortgage debts (excludes – prepayment & principal)
- Rent
- Utilities
- Interest on other debt obligations that were incurred before the covered period
 - › Equipment loans

Paycheck Protection Program (PPP)

› How to obtain a PPP loan

- Applicants to make good faith certifications to SBA lender
 - › Uncertainty of current economic conditions makes necessary the loan request to support operations
 - › Does not have another application pending for PPP loan or previously received PPP loan
 - › Acknowledging that funds will be used to retain workers/maintain payroll or make mortgage payments, lease payments & utility payments
 - *Application Form Observation: “I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud”*

Paycheck Protection Program (PPP)

› Other items to note

- No application fee, personal guarantee nor collateral required
- Waive requirement that applicant be unable to obtain credit elsewhere
- Must disclose ownership & management of other companies (affiliation rules)
- Certification includes a “Buy American” clause – still unclear what this means
- Payment deferral for at least six months, not greater than one year
- Applicants are not prohibited from also obtaining an EIDL for a purpose other than PPP’s allowable uses (defined earlier)
- Loan term of two years & rate of 1%

Paycheck Protection Program (PPP)

› Potential loan forgiveness feature

- For PPP's covered costs incurred & payments made during eight-week period starting on day of loan origination to only include
 - › Payroll costs
 - › Interest on covered mortgage obligations
 - › Payments of covered rent obligation
 - › Payments on covered utility payment
- Forgiveness shall not exceed principal
- Amounts forgiven shall be considered canceled indebtedness but not taxable

Paycheck Protection Program (PPP)

› Potential loan forgiveness feature

- Limits on forgiveness: reduction based on reduced number of FTEs
 - › Average full-time equivalents per month during the eight-week covered period after loan origination as compared to the average full-time equivalents per month during the February 15, 2019–June 30, 2019, period
 - Can elect to substitute the monthly average full-time equivalent count from the 2019 period to the January 1, 2020–February 29, 2020, period
 - Calculate both ways in construction – can be seasonal!!!
 - › Calculation of average number of employees
 - Average full-time equivalent = average FTE for each pay period falling in a month
 - › “Full-time equivalent” not defined! – need regulations

Paycheck Protection Program (PPP)

› Potential loan forgiveness feature

- Limits on forgiveness: reduction related to salary & wages
 - › Loan forgiveness reduced by the amount of any reduction in total salary or wages of any employee* during the eight-week covered period that is more than 25% of the total salary or wages during the most recent full quarter before the eight-week covered period
 - *Excludes any employee who received, during any pay period in 2019, an annualized rate of pay of more than \$100,000
- An eligible recipient with tipped workers (defined by FLSA) may receive forgiveness for additional wages for those employees

Paycheck Protection Program (PPP)

› Potential loan forgiveness

- Exemption for rehires
 - › Reductions in workforce, salaries & wages that occur from February 15, 2020, to April 26, 2020 (30 days after signing into law) will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020
- Other exemptions coming?
 - › SBA & Treasury may prescribe additional regulations granting de minimis exemptions from these requirements

Paycheck Protection Program (PPP)

› Correlation with other provisions in CARES

- Acceptance & receipt of the PPP loan eliminates the applicant's eligibility to obtain employee retention credits as made available in a separate provision of the CARES Act
- In addition, should any PPP indebtedness be forgiven, the delayed payments options for the employer's share of payroll taxes will not be available to the applicant

Paycheck Protection Program (PPP)

- › PPP loan: general considerations for PPP
 - SBA has 30 days from enactment to issue guidance & regulations
 - SBA & approved lenders will need time
 - Forgiveness not automatic
 - › Requires submission of appropriate documentation to lenders
 - Other
 - › Work with an SBA-approved lender
 - › Be mindful of 500 EE & affiliate exceptions for NAICS 72
 - › Be mindful of affiliate rules for all other eligible employers less than 500
 - › Much clarity needed & regulation to come (hopefully soon)

Paycheck Protection Program (PPP)

- › PPP loan: Treasury press release, info sheets, observations
 - “First-come, first-served” approach
 - SBA Administrator Carranza: *“We remain committed to supporting our nation’s more than 30 million small businesses and their employees”*
 - › $\$349,000,000,000 / 30,000,000 \text{ SMBs} = \$11,633.33$ average per applicant
 - “High subscription” disclaimer – 75/25% payroll versus nonpayroll costs
 - EE considerations with enhanced unemployment
 - › Additional federal funds of \$600/week (states must opt in)
 - Do the analysis: EIDL + PPP versus EIDL + EE retention credit
 - › Economic & administrative burdens

Families First Coronavirus Response Act

- › Effective April 1, 2020
- › Employer paid leave provisions (less than 500 employees)
 - Emergency paid sick leave
 - Emergency family medical leave
- › Refundable employer payroll tax credit
 - Form 7200, *Advance Payment of Employer Credits Due to COVID-19*
- › See March 26 BKD COVID-19 webinar for additional details & example
 - <https://www.bkd.com/webinar/2020/03/tax-considerations-surrounding-covid-19>

Families First Coronavirus Response Act

- › Employees defined?
 - 29 C.F.R. § 825.105 (FMLA) and
 - 29 U.S.C. § 203 (FLSA)
 - Department of Labor – different Rules
 - › Fewer than 500
 - › DOL may exempt Small businesses with fewer than 50,
 - › If it would jeopardize the viability of the business

Families First Coronavirus Response Act

› EFMLEA

› Whose covered?

- Worked 30 days prior to leave
- Cannot work or telework
 - › Must provide 12 weeks of job protected leave (total, not in addition to)
 - › First (10) days of leaver are uncompensated, unless employee uses accrued PTO
 - › Thereafter, pay 2/3 of regular rate at number of hours normally worked

Families First Coronavirus Response Act

› EMFLA

- › Limit of \$200 per day and \$10,000 aggregate, per employee

› EPSLA

- No minimum time worked
- Required 10 days (80 hours) paid sick leave

Families First Coronavirus Response Act

- To qualify under EPSLA, employee must:
 1. Be under Isolation Order due to COVID-19
 2. Been advised by healthcare provider to self-quarantine
 3. Have symptoms of COVID-19 and seeking medical diagnosis
 4. Be caring for an individual who is subject to 1 or 2.
 5. Be caring for a son or daughter, due to school or place of care being unavailable due to COVID-19
 6. Be experience any other substantially similar condition

Families First Coronavirus Response Act

- › If 1, 2 or 3 - Limit of \$511.00 per day, up to \$5,110.00, per employee.
- › If 4, 5 or 6 – Limit at 2/3 of their rate, capped at \$200 per day, or \$2000 aggregate, per employee.

CARES Act/Employee Retention Credit

- › Credit against applicable employment taxes
 - 50% of qualified wages up to \$10,000 (\$5,000 maximum credit per employee)
- › Effective dates – wages paid between March 12, 2020–January 1, 2021
- › Employer eligibility (includes tax-exempt organizations)
 - Carrying on a trade or business during calendar year 2020 &
 - The operation of that trade or business is either
 - › Fully or partially suspended due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or
 - › Receiving gross receipts, for at least one calendar quarter, that are less than 50% of the gross receipts during the same calendar quarter(s) in the prior year (applicable until quarter exceeds 80% of same calendar quarter in prior year)

CARES Act/Employee Retention Credit

› Ineligible employers

- Employer's receiving Small Business Interruption loan under the CARES Act (PPP loan)
- Federal, state & local government employers

› Qualified wages

- Based on average number of full-time employees (aggregation rules under IRC §52 apply)
 - › More than 100 full-time employees – only eligible if employee is unable to provide services due to one of identified circumstances
 - › 100 or less full-time employees – eligible for credit regardless of whether employee is able to provide services (must meet one of previously identified circumstances)
- Includes
 - › Wages as defined by IRC §3121(a) & compensation as defined by IRC §3231(e)
 - › Qualified health plan expenses (IRC §5000(b)(1))

CARES Act/Employee Retention Credit

- › Qualified wage limitations
 - May not exceed \$10,000 per employee
 - May not exceed amounts that would have been paid for similar period
 - Denial of double-counting of wages
 - › Work Opportunity Tax Credit (IRC §51)
 - › Employer Credit for Paid Family and Medical Leave (IRC §45S)
- › Potential IRS deposit penalty relief
- › Additional regulations & guidance expected
 - Form 7200, *Advance Payment of Employer Credits Due to COVID-19*
 - <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Example

ABC Company is an employer with 75 average full-time employees. ABC Company is operating in 2020 & has seen their operations partially suspended due to an order from a governmental authority. ABC Company pays their employee, Mary, \$7,500 of wages for services provided & also pays \$1,500 of qualified health plan expenses on Mary's behalf between April 1, 2020 & June 30, 2020

Calculation of Employee Retention Credit

Second quarter wages paid 4/1/2020–6/30/2020		\$ 7,500.00
Employer paid qualified health plan expenses		<u>1,500.00</u>
Total second quarter qualified wages		9,000.00
Percentage of qualified wages		50.00%
Second quarter employee retention credit		<u>\$ 4,500.00</u>

Maximum credit of \$500.00 will apply to third & fourth quarters of 2020

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CARES Act/Delay of Payment of Employer Payroll Taxes

- › Delayed remittance of applicable employment taxes
 - Deferral period: enactment – January 1, 2021
 - 50% of deferral period liability due by December 31, 2021
 - 50% of deferral period liability due by December 31, 2022
- › Applicable employment taxes
 - Employer portion of Social Security tax (6.20%)
 - › Includes self-employed individuals
- › Clients of certified professional employer organizations (PEO) may be eligible
- › Ineligible if indebtedness forgiven under CARES Act provision
- › Additional regulations & guidance expected

What Should You Consider Doing Immediately?

- › Determine the cash burn rate to keep business open & break even
- › Identify variable & fixed-cost components & eliminate all nonessential expenditures
- › Realign organization & cost structure to support realistic contract revenue volumes in the foreseeable future
- › Get up to speed on employee rights that are part of the *Families First Coronavirus Response Act*
- › Talk to your bank!

What Should You Consider When Doing Cash Flow Planning?

- › Construct a 13-week cash flow projection to identify critical liquidity gaps
- › Develop a customer plan to protect & serve customers to reduce collection risks
- › Formulate a subcontractor & vendor payment plan to protect the supply chain & minimize cash outflows
- › Create an employee plan to protect critical employee resources
- › Manage work in process to identify potential opportunities in every dollar of your balance sheet

What Sources Do You Need to Construct a Cash Flow Projection Tool?

- › Collection of open accounts receivable – owner & general contractor
- › Payment of open accounts payable – vendors & subcontractors
- › Collection of future work in process on open contracts
- › Payment of future vendor invoices on materials & supplies, including subcontractors
- › Payment of payroll, payroll taxes & fringe benefits – new programs!!
- › Payment of other overhead & G&A
- › Payment of debt service

What Assumptions Do You Need to Consider with Your Source Data?

- › Owner/GC payment plan, summarizing estimated DSO by contract, reassessing credit limits & collection sensitivity – watch retainage!!
- › Subcontractor & vendor payment plan defining critical versus noncritical, alternate subs/vendors & sensitivity to DPO assumptions
- › Employee model, field & office, including sensitivity to changes in head count
- › Manage work in process to identify potential opportunities in every dollar of your balance sheet
- › Critically review needed capital expenditures
- › Forecasted income statement, monthly balance sheet & net working capital requirements

What Are Your Options for Additional Cash Infusion?

- › Talk to your lender – working capital lines
- › Consider applying for an Economic Injury Disaster Loan Program (EIDL) directly from SBA
- › Analyze & consider applying for payroll protection loans through an SBA-approved lender versus employee retention credit
- › **Your efforts should be concentrated around controlling the cash burn rate to bridge the short-term storm (< 3 months) to the long-term future steady state**

Questions?

**For more information,
please visit BKD's COVID-
19 Resource Center at**

bkd.com/covid-19-resource-center

Thank You!

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