

Webinar:

# Navigating the Crisis

*Critical Information for Businesses with 500 or Fewer Employees*

Tuesday, March 24th | 3:00 pm ET



**akerman**

**VESTAL & WILER**  
CERTIFIED PUBLIC ACCOUNTANTS

  
HARBOR VIEW

**Moderated by:**

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## The Families First Coronavirus Response Act

# The Families First Coronavirus Response Act

- Employers with fewer than 500 employees will be required to provide up to 80 hours of paid sick leave for certain employees impacted by COVID-19 and paid leave for employees to take care of their children in certain circumstances and will receive a tax credit in return.

# Division C: Emergency Family and Medical Leave Expansion Act

- Employees, including part-time, who have been on the job for at least 30 calendar days have the right take up to 12 weeks of job-protected leave from now until December 31, 2020.
  - If the employee is unable to **work or telework** due to a need for leave to care for the **son or daughter under 18** years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a COVID-19 emergency declared by a federal, state, or local authority.
- Exemption available for businesses with fewer than 50 employees if compliance would jeopardize the viability of the business, but no mechanism in place yet.

# Division C: Emergency Family and Medical Leave Expansion Act (cont.)

- How Expanded FMLA leave works:
  - First 10 days of leave is unpaid. Employees may elect to substitute other paid leave (and employer cannot prohibit such election)
    - it is unclear whether employer can require employee to substitute other available paid leave during this time
  - After first 10 days, leave is paid at 2/3 of the employee's regular rate of pay for the number of hours that the employee would otherwise have been normally scheduled to work.
    - for variable hour employees, 6 month average
    - The amount for each employee is capped at \$200 per day and \$10,000 in the aggregate.
  - Restoration rights different for small employers (<25 employees) if certain conditions are met.
  - Employers with fewer than 50 employees are exempt from private lawsuits related to this specific form of leave.

# Division E: The Emergency Paid Sick Leave Act

- Employers must provide full-time employees through December 31 with 80 hours of paid sick time paid at the employee's regular rate if unable to work or telework because:
  1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  2. The employee has been advised to self-quarantine by a health care provider due to concerns related to COVID-19; or
  3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis: to quarantine; to seek a diagnosis or preventive care for coronavirus; or to comply with a recommendation or order to quarantine due to exposure to or symptoms of COVID-19.
- The amount is capped at \$511 per day and \$5,110 in the aggregate for each employee taking leave for these reasons (1), (2), and (3).

# Division E: The Emergency Paid Sick Leave Act (cont.)

- In addition, full-time employees must be paid at 2/3 the regular rate if unable to work or telework because:
  4. The employee is caring for **an individual** who is subject to a state, local, or federal quarantine or isolation order or who has been advised by a health care provider to self-isolate
  5. The employee is caring for son or daughter of such employee if the school or place of care of the son or daughter has been closed or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
  6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.
- The amount is capped at \$200 a day and \$2,000 in the aggregate for each employee taking leave for reasons (4), (5), and (6).

# Division E: The Emergency Paid Sick Leave Act (cont.)

- The amount of paid sick time used by an employee is determined by the number of hours that the employee would otherwise be normally scheduled to work.
- Part-time employees receive pro-rated paid sick time based on normal schedule in a two-week period. (Presumably, determined in same manner as varying schedule).
- Employees are immediately eligible regardless of duration of employment.
- Employers cannot require or insist that employees use other paid leave before using paid sick leave.
- Paid sick leave is not required to be paid at termination of employment.
- Paid sick time does not diminish other rights under law, a collective bargaining agreement, or the employer's policy.



# Division E: The Emergency Paid Sick Leave Act (cont.)

- Employees may first use paid sick time, and employers may not require employees to use other paid leave before the employee uses paid sick time.
- Employer may require reasonable notice procedures after the first workday or portion thereof for which an employee receives paid sick time.
- Employers also may not require that employees find a replacement employee to cover the hours during the employee's use of emergency paid sick time.
- *Businesses with fewer than 50 employees may be exempted by Secretary of Labor.*

Violators liable for damages, an equal amount as liquidated damages, attorneys' fees, costs, and injunctive relief or reinstatement.

# Next Steps

- Count your employees
  - Consider multiple related companies
- Update policies
  - In addition to informing employees about the new types of leave, consider whether you want to modify accrual of PTO or use of existing forms of paid leave
    - beware that certain jurisdictions consider accrued leave “wages” that cannot be forfeited
      - *prospective changes*
- Issue notice of new leave provisions
  - Paid Sick Leave Act requires employers to post a notice, to be issued by the DOL
  - Existing FMLA already requires notice, DOL will likely update poster
- Consider multi-jurisdictional compliance
  - certain states and jurisdictions have paid sick leave laws that will likely run consecutively unless guidance to the contrary is issued
- Evaluate whether any exemptions apply to your business
  - Secretary of Labor has the authority to exclude health care providers and emergency responders and to exempt small business with fewer than 50 employees if such requirements would jeopardize the viability of the business
- Keep informed as guidance is issued from the DOL
- Assess how you will afford this leave and how much of your workforce may be potentially eligible for this leave



**Mitri Homsy**  
Partner

# Families First Corona Virus Response Act - Tax Credits

March 24, 2020

# Emergency Family and Medical Leave

- Requires employers with fewer than 500 employees to provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020.
- Available to employees who have been employed for at least 30 days and are unable to work or telework due to need to care for a son or daughter under the age of 18 because the school or place of care has been closed due to COVID-19 as declared by a federal, state, or local authority.
- First 10 days of leave may be unpaid and then paid leave is required.
  - Paid leave may not be less than two-thirds of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work.
  - Pay cannot exceed \$200 per day and \$10,000 in the aggregate.
- Employer can claim credit equal to the total of the following:
  - 100% of the family leave wages paid by the employer during the quarter.
  - Employer's portion of qualified health plan expenses allocable to qualified family and medical leave wages.
  - Employer's portion of Medicare tax withheld on family leave wages.

# Emergency Family and Medical Leave

- Credit can be used to offset employer's portion of Social Security tax withheld under §3111(a).
  - Credit in excess of employer's Social Security tax will be refundable.
  - Employer's do not receive the credit if they also receive the credit for paid family and medical leave under §45S.
  - Effective for wages paid starting April 2, 2020 ending December 31, 2020
- Medical leave wages are not subject to Social Security tax withholding, but are subject to Medicare tax withholding.
- Amount of credit is included in the employer's gross income. This avoids a double tax benefit.
  - Example: Assume an employer claims a credit of \$2,700 for \$2,500 of qualified family leave wages and \$200 health plan expenses paid during the quarter. Employer will include in gross income \$2,700 and may deduct \$2,500 of wages and \$200 of health plan expenses.
- Employer has the option to elect out of generating the credit.

# Emergency Family and Medical Leave

- **Self-employed individuals are also eligible for a credit.**
  - Applies to self employed individuals in situations in which a credit would be allowed if the individual were an employee of an employer subject to the same leave requirements.
- **The amount of the credit is equal to:**
  - The number of days during the taxable year that the self-employed individual cannot perform services (50 day maximum)
  - Multiplied by the lesser of:
    - \$200 or;
    - 67% of the average daily self-employment income of the individual for the taxable year.
- **Credit is applied against income tax.**
- **Eligible amount is reduced by qualified family leave received from another employer.**

# Emergency Paid Sick Leave

- Requires employers with fewer than 500 employees and public employers of any size to provide full time employees with 80 hours of paid sick time and part time employee with sick time equal to the average hours worked over a 2 week period if the employee is unable to work or telework.
  - DOL may issue regulations exempting businesses with fewer than 50 employees.
  
- Employees must be compensated at their regular rate up to a maximum of \$511 per day (\$5,110 total) if they meet any of the following:
  - Subject to Federal, State, or local quarantine or isolation order due to COVID-19;
  - Advised by health provider to self-quarantine; or
  - Experiencing symptoms and seeking medical diagnosis.
  
- Employees caring for an individual who meet any of the following must receive two-thirds of their regular compensation rate up to a maximum of \$200 per day (\$2,000 total):
  - Subject to Federal, State, or local quarantine or isolation order due to COVID-19;
  - Advised by health provider to self-quarantine;
  - Experiencing symptoms and seeking medical diagnosis.
  - Caring for a son or daughter whose school is closed or child care provider is unavailable; or
  - Experiencing a substantially similar condition specified by the government.

# Emergency Paid Sick Leave

- **Employer can claim credit equal to the total of the following:**
  - Lesser of:
    - The amount of the employee's leave pay or
    - \$511 per day while the employee is receiving paid sick leave to care for themselves or \$200 if the paid sick leave is for caring for another family member or child whose school is closed.
  - Employer's portion of qualified health plan expenses allocable to qualified family and medical leave wages.
  - Employer's portion of Medicare tax withheld on paid sick leave wages.
  - An additional limit applies to the number of days per employee which is the excess of 10 days over the aggregate number of days taken into account for all preceding quarters.
- **Credit can be used to offset employer's portion of Social Security tax withheld under §3111(a).**
  - Credit in excess of employer's Social Security tax will be refundable.
  - Employer's don't receive the credit if they also receive the credit for paid sick leave under §45S.
  - Effective for wages paid starting April 2, 2020 ending December 31, 2020
- **Paid sick leave wages are not subject to Social Security tax withholding, but are subject to Medicare tax withholding.**
- **Amount of credit is included in the employer's gross income. This avoids a double tax benefit.**
- **Employer has the option to elect out of generating the credit.**



# Emergency Paid Sick Leave

- **Self-employed individuals are also eligible for a credit.**
  - Applies to self employed individuals in situations in which a credit would be allowed if the individual were an employee of an employer subject to the same leave requirements.
  
- **The amount of the credit is equal to:**
  - The number of days during the taxable year that the self-employed individual cannot perform services (10 day maximum)
  - Multiplied by lesser of:
    - 100% of the average daily self employment income for the taxable year for self care due to COVID-19 or 67% for caring for others as previously mentioned; or
    - \$511 per day while the employee is receiving paid sick leave to care for themselves or \$200 per day if the paid sick leave is for caring for another family member or child whose school is closed.
  
- **Credit is applied against income tax.**
  
- **Eligible amount is reduced by qualified paid sick leave received from another employer.**

# Tax Deadline Extension

- The IRS and Treasury have provided relief to ALL taxpayers due to the COVID-19
  - Federal income tax returns due April 15, 2020 have been deferred.
  - Federal income tax payments due April 15, 2020 have been deferred.
  - The deadline has been postponed July 15, 2020.
  - No penalties, interest or additions to tax will be assessed for tax payments due on April 15, 2020 if paid by July 15, 2020
- Income tax extensions are still allowed and must be filed by July 15, 2020.

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**Michelle McCullough**  
**CFO**



**HARBOR VIEW**

Investment Banking

**SBA Loan Overview & Managing Cash  
Flow through Crisis**

## SBA Loan Overview



U.S. Small Business  
Administration

### ECONOMIC INJURY DISASTER LOAN (EIDL)

- This type of loan is designed to assist business owners in case of emergency now available as part of the government's response to the coronavirus
- EIDLs provide the necessary working capital to help small businesses survive while a business is unable to meet its ordinary obligations and until normal business operations resume
- **ADVANTAGE:** Low rates and longer payback
- **DISADVANTAGE:** Expected to be a slow and complex process; no buffer between you and the government

### CURRENT SBA PROGRAMS

- Government legislation is pending approval to increase the budget for standard SBA loans and increase the limit from \$5M to \$10M
- All fees are being waived for one year for lenders and borrowers
- This type of loan is processed through a bank / SBA lender
- **ADVANTAGE:** Faster processing time
- **DISADVANTAGE:** Higher interest rate and faster payback

## SBA Loan Overview

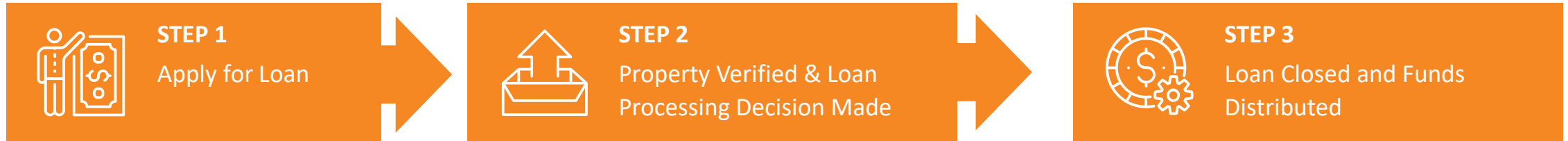


U.S. Small Business  
Administration

### ECONOMIC INJURY DISASTER LOAN

- To qualify for this emergency loan, you must show ‘substantial economic injury’, which means you’re unable to meet obligations or pay your regular expenses
- Proposed Terms:
  - Not to exceed 30 years; repayment term based on your ability to repay the loan
  - Maximum loan amount is \$2M
  - Interest rate will not exceed 3.75% per year; 2.75% for non-profits
  - Will likely require a lien on business and home
- Your loan amount will be based on your actual economic injury and financial needs and financials will be reviewed on a monthly basis
- If your business is a startup or if you have been in business less than two years, you will likely be more successful with the EIDL

## Disaster Loan Process Example



Three ways to apply:

- Online
- In-person at a disaster center
- By mail

- SBA reviews your credit before conducting an inspection / review
- An SBA verifier will estimate the total of your disaster loss
- A loan officer will determine your eligibility during processing
- Historically, SBA strived to arrive at a decision within 2 - 3 weeks of application submittal (Given current circumstance, timing of approval is unknown)
- A loan officer will contact you to discuss loan recommendation and next steps. You will also be advised in writing of all loan decisions.

- SBA will prepare and send your Loan Closing Documents for signature
- Once received, an initial disbursement will be made to you (timing unknown at this point)
- A case manager will be assigned to work with you to help you meet all loan conditions
- Your loan may be adjusted after closing due to changing business circumstances

## SBA Loan Overview



U.S. Small Business  
Administration

### CURRENT SBA PROGRAMS

- \$350K is the threshold on a regular SBA loan (7a) that determines whether the SBA requires first lien on all company assets and a lien on the owner's home
- Requirements:
  - FICO of 650 or higher
  - No Bankruptcies in last five years
  - Business has been operating for at least two years
  - Business shows positive cash flow last year
- Terms:
  - 10-year term, no prepayment
  - Interest rate of 6%
- SBA Express Line of Credit is another option that provides a revolving line of credit from \$350K to \$1M, but will also likely require a regular SBA 7a loan
- Leveraging an existing SBA lender will result in a quicker turn around time vs. EIDL



## Documents You Need to Prepare Now

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### 1 PERSONAL FINANCIALS

- **Personal Financial Statement** listing all Assets and Liabilities for all owners >20%
- PFS template download: <https://www.sba.gov/document/sba-form-413-personal-financial-statement-7a504-loans-surety-bonds>
- Most recent **W2 and Proof of Income**

### 2 TAX DOCUMENTS

- **3 Years of Business and Personal Tax Returns**
- If 2019 Returns are not yet available, provide business financial statements
- **IRS Form 4506-T**
- Your chances of securing the loan are greater with a completed 2019 tax return

### 3 BUSINESS FINANCIALS

- **Current Business Debt Schedule** including Creditor Name, Original Amount and Date, Present Balance, Maturity Date, Monthly Payment and Status (Delinquent / Current)
- **Monthly Financials** from March-September 2019
- **Operating Expenses Analysis**

## Cash Conservation Best Practices



### LINES OF CREDIT

- Utilize / Increase existing lines of credit
- Leverage existing banking relationships to establish traditional LOC
- Take advantage of historically low Interest rates



### EMPLOYEES

- Consider essential vs. non-essential personnel
- Modify work week / schedules in lieu of salary cuts (i.e. 4-day work week = 20% pay reduction)
- Evaluate Governmental Benefits associated with payment of employees unable to work for qualifying reasons



### TAX

- Postpone (as needed) Federal Tax Returns and Income Tax Liabilities to July 15, 2020 without penalties or interest
- Delay funding any discretionary retirement plans



### CAPEX / OPEX

- Evaluate CAPEX budget / plan and re-prioritize projects
- Delay essential CAPEX spend to the extent possible
- Cut discretionary spending
- Communicate with creditors. Ask for deferment of rent, other overhead or debt payments



### EVALUATE BUSINESS

- Evaluate business model and how to make it sustainable in the future
- Examine financial disciplines and how to minimize future cash flow issues with proper planning and discipline

## SBA EIDL Resources

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### ECONOMIC EMERGENCY DISASTER LOAN

- **Where to check if your area is eligible:** <https://disasterloan.sba.gov/ela/Declarations/Index>
- **Where to apply:** <https://disasterloan.sba.gov/ela/Account/Login?ReturnUrl=%2Fela%2FLoanApplication%2FStartApplication>
- **Where to submit the IRS 4506T:**  
[https://disasterloan.sba.gov/ela/Documents/Request%20for%20Transcript%20of%20Tax%20Return%20\(IRS%20Form%204506T\).aspx](https://disasterloan.sba.gov/ela/Documents/Request%20for%20Transcript%20of%20Tax%20Return%20(IRS%20Form%204506T).aspx)
- **For questions, contact:** SBA disaster assistance customer service center at 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov)



HARBOR VIEW

Investment Banking

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# Questions?

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