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| |  | | --- | | So Many Decisions, So Little Time: Are Forgivable SBA Loans the Best Option for My Business? | |
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| |  | | --- | | “Did you hear? The SBA is giving away free money in the form of forgivable loans that small businesses don’t have to repay! This is a no-brainer, right?! What am I missing here?”   Not so fast…   Many small business owners across the country have probably heard one variation of the above quote—whether from friends, business partners or their employees. For many small business owners, the recent passage of the Paycheck Protection Program (“PPP”), which is just one component of the recent $2.2 Trillion stimulus package known as the CARES Act, is going to be just what the doctor ordered. For other small business owners, however, the PPP may not be the best option.   If you are grappling with how best to ease the financial strain that is being caused by COVID-19, you are not alone. If you are saying to yourself that the PPP sounds too good to be true, you may be right depending on your particular situation.   While the PPP will provide small business owners with much needed cash, small business owners should be aware that this much needed cash comes with some restrictions for how the money can be spent. Specifically, if you do not use the money for eligible uses, it will not be “forgiven” and will be converted to a loan that must be repaid. The good news is that the loan terms are favorable – there is a 6 month deferment on payments, and the interest rate is only .5% with a 2 year term.   So what are some of the things that business owners need to be aware of before they apply for this “free” money?    You must use 75% of the loan proceeds for payroll costs, and you must make the payments during the 8 weeks following your loan origination date.    You can only use up to 25% of the loan proceeds to pay your mortgage interest (not the principal), but only if your mortgage was in place before February 15, 2020.    You can only use up to 25% of the loan proceeds to pay your rent, but only if your lease was in place before February 15, 2020.    You can use up to 25% of the loan proceeds for utilities, but those utility payments must be made in the 8 weeks following your loan origination date.    If you laid off workers after February 15, or if you lay off workers before June 30, the amount of the loan that is subject to “forgiveness” will be proportionately reduced, and a portion of your loan will not be forgiven, i.e. you will need to pay the unforgiven portion of the loan back to the SBA. If you rehire your laid off employees, however, you will not be penalized.    If you reduced your employees’ compensation after February 15, or if you reduce employee compensation before June 30, your forgiveness eligibility will likewise be reduced, and a portion of the loan will need to be repaid to the SBA.  To summarize, the PPP is essentially an 8 week bridge loan designed to keep your employees paid and employed for 8 additional weeks, and you must adhere to the above-listed parameters. Otherwise, all you will be left with at the end of the 8 weeks is a loan with the SBA that must be repaid over the next 2 years.   As stated above, in order to maximize the benefit of the PPP, some small business owners will be required to rehire their previously laid off employees at full salary during the 8 week period following the loan origination date. What that necessarily means is that by participating in the PPP, your rehired employees are going to have mandated sick leave rights as of April 1 under the Families First Coronavirus Response Act (“FFCRA”). As previously reported, the FFCRA requires employers to provide up to 80 hours of paid sick leave for any one of the following triggering events:    Your employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;    Your employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;    Your employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;    Your employee is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;    Your employee needs to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19; or    Your employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.  In addition, the FFCRA provides for up to 10 additional weeks of paid leave for employees that need to stay at home to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19.   Bear in mind that any paid sick leave will be reimbursed to you in the form of a dollar for dollar tax credit. But for many employers the thought of having to deal with leave requests and the associated paperwork that will be required to receive the tax credits outweighs any benefit provided by the PPP. Again, each business situation is different, and there are no bright line rules as to what you should or should not do.   If you decide not to avail yourself of the PPP, Congress has taken additional measures to ensure your laid off employees get paid. Specifically, the CARES Act included millions of dollars in appropriations for State unemployment compensation funds. Those appropriated funds will provide an additional $600 per week for laid off employees, in addition to whatever benefit they would have otherwise received prior to the passage of the CARES Act.  In sum, there are many new (and older) laws and potential scenarios that employers should consider when making important decisions concerning their workforces in the days ahead. There are a myriad of employment, tax, and corporate laws that need to be considered before making informed decisions. Small business owners should consult with experienced counsel before attempting to navigate these pitfalls alone. | |