

# Sweeney Mason

LLP

## *Coronavirus (COVID-19) Update:*

### *Payroll Protection Program Flexibility Act 2020 Passed*

On June 3, 2020, Congress passed the Payroll Protection Program Flexibility Act (PPPFA), which amends the Payroll Protection Program (PPP) to address several key concerns raised by small businesses. The new legislation, signed today by President Trump, will help employers by creating more flexibility in how and when the PPP loan funds are used while still having the loan forgiven. Some key changes are:

#### **Employers Now Have 24 Weeks to Use PPP Funds.**

The PPPFA extends the time businesses have to spend funds received through the program. Instead of eight weeks, borrowers will now have 24 weeks from the disbursement of their loan to use the PPP funds, or until Dec. 31 when the program is now set to end. Businesses can still voluntarily elect to retain the original 8-week covered period applicable to their PPP Loan. This extension is particularly helpful to small businesses that have been required to close down or operate at a limited capacity under state and local shutdown orders and that may not be able to return to full operating limits within 8 weeks. This much-needed fix to the current loan program allows businesses the chance to distribute funds throughout the crisis, until they are able to fully reopen.

#### **Rehiring Deadline Extended to December 31, 2020; Requirements Eased.**

Under the original law, businesses had until June 30, 2020 to rehire workers or hire replacement workers. Many businesses were concerned they might not be open, and certainly not at full capacity, by this date. Businesses now have until December 31, 2020 to rehire workers and have their wages count towards loan forgiveness.

The PPPFA also created additional exceptions for a reduced employee headcount. Under the original PPP, to receive full loan forgiveness, a business had to rehire the same number of full-

time employees or full-time equivalents by the deadline. The only exception was if an employer could document in writing an attempt to rehire an employee who rejected this offer. Now, a business will receive forgiveness on payroll amounts if it:

- Is unable to hire a worker who was an employee prior to February 15, 2020;
- Is able to demonstrate an inability to hire a similarly qualified employee before December 31, 2020; or
- Is able to demonstrate an inability to return to the same level of business activity as it was operating at prior to February 15, 2020.

The Treasury Department has not yet issued any guidance on what documentation businesses will need to prove points 2 and 3, but we expect further clarity on these topics in the coming weeks. For now, we recommend that all businesses receiving PPP loans carefully and thoroughly document all efforts to rehire employees and return the business to pre-February 2020 operation levels.

#### **Payroll Costs Must Comprise at Least 60% of Funds Used.**

Under the terms of the original PPP, businesses had to spend at least 75% of the funds received on payroll costs in order to receive full loan forgiveness. The definition of "payroll costs" remains the same as under the original law and includes expenses such as 1) salaries, wages, commissions, and tips; 2) employee benefits; and 3) taxes, but the PPPFA reduces the percentage of the loan that must be spent on payroll costs. Employers now have to spend only 60% on payroll costs in order to be eligible for full loan forgiveness, thus increasing the amount of funds available for other expenses, leaving up to 40% of the funds received for mortgage interest, rent, utilities and other forgivable costs.

#### **Repayment Term Extended.**

The PPPFA also extends the maturity date of the PPP loans—that is, for any portion of a PPP loan that is not forgiven—from two years to five years. The first payment will be deferred for six months after the SBA makes a determination on forgiveness. This means a business potentially has until May of 2021 to make the first payment on the loan amounts that will not be forgiven (based on the current regulations which give the bank 60 days to make a forgiveness determination and an additional 90 days to the SBA to review).

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this

junction, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no “one-size-fits-all” approach to COVID-19-related legal matters. For example, several Bay Area Cities impose their own emergency orders that mirror but in many cases are more stringent than the Statewide or County orders. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason LLP.

Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason LLP is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time

*For more information, please contact our employment team at 408-356-3000 or via email: Roger Mason at [rmason@smwb.com](mailto:rmason@smwb.com) or Rachael Brown at [reb@smwb.com](mailto:reb@smwb.com).*

*The following links may assist you in evaluating some of the issues you may have. Stay safe!*

***DOL Publications:***

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

***IRS Guidelines:***

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

***SBA Guidelines:***

[PPP FAQs](#)

***CDC Guidelines:***

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)

***OSHA:***

[Preparing Your Workplace for COVID-19](#)

**California:**

Stay at Home Order

EDD COVID-19 Overview

EDD COVID-19 FAQs

**Santa Clara County:**

Updated Shelter-in-Place

Social Distancing Protocol

Public Health Department FAQs on the Shelter in Place Order

**San Jose:**

Paid Sick Leave Ordinance



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

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