

Taxpayers Guide to COVID-19: CARES Act Provisions and Relief

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DISCLAIMER

This presentation and our advice is based on our current interpretations and the guidance available as of today. As this situation remains rather fluid, guidance may change after the delivery of this information and advice.

We are providing advisory and taxation advice as our continual commitment to educating our community. Nothing within this presentation is to be considered as legal advice.

Should you require legal advice on any of the current and potential future COVID-19 legislation and how it impacts your business, please consult with your corporate attorney. If you do not have a corporate attorney, please feel free to reach out to our Phocus Law partners, Mick McGirr or Sam Richardson for assistance. <https://phocuscompanies.com/law/>



Outline

- ▶ Internal Revenue Service Notice 2020-18
- ▶ Stimulus Payments
- ▶ Retirement Plan Provisions
- ▶ Unemployment Benefits
- ▶ Employment Tax Payment Deferrals
- ▶ Paycheck Protection Program (PPP) Loans
- ▶ Emergency Injury Disaster Loans (EIDL)
- ▶ Families First Coronavirus Response Act (FFCRA)
- ▶ Employee Retention Credits
- ▶ Other CARES Act Provisions



INDIVIDUAL PROVISIONS

Internal Revenue Service Notice 2020-18

- ▶ All tax returns due April 15, 2020 have been extended until July 15, 2020
- ▶ This includes the filing **AND** payment of taxes due
- ▶ Does **NOT** require filing an extension to the revised due date
- ▶ This includes forms 1040, 1041, 1120, and any other return that had an original due date of April 15, 2020
- ▶ Does **NOT** include fiscal year filers (year end other than December 31st)

Internal Revenue Service Notice 2020-18

- ▶ Can file for an extension to file (but **NEVER** pay) until October 15, 2020 (only 3 months vs. 6 months)
- ▶ Funding for 2019 IRAs (Traditional **AND** Roth) and HSAs extended until July 15, 2020
- ▶ Payment of First quarter 2020 Estimated Tax Payments extended from April 15, 2020 to July 15, 2020
 - Second quarter payments still due June 15, 2020
 - **STRATEGY:** Pay First **AND** Second quarter together on July 15, 2020 and no estimated tax penalties will be assessed
- ▶ Arizona State Tax Credit submissions for 2019 **ARE NOT** extended past April 15, 2020

Stimulus Payments

- ▶ Stimulus will **ACTUALLY** be a refundable credit on your 2020 form 1040
- ▶ Checks and deposits are an advance of this credit
- ▶ **NON TAXABLE!**
- ▶ Will **TRUE UP** on your 2020 Form 1040 income tax filing
 - You may get a larger credit than advanced
 - If your credit is less than advanced, no repayment of excess
- ▶ Based from 2019 return by default, 2018 if 2019 not filed yet
- ▶ Social Security (SSA) and Railroad Retirement (RRB) recipients that do not file tax returns
 - Will get payment via direct deposit if benefits received that way
 - **NOT REQUIRED** to file a tax return for 2019 or 2020 to receive
 - If SSA, RRB or SSI Disability recipient over age 16 is claimed as a dependent on someone else's return, they **ARE NOT** going to receive their own stimulus payment.

Stimulus Payments

- ▶ **UP TO** \$1,200 per individual, \$500 per dependent under age 17
- ▶ **Non-Filers** for 2018 and 2019 that do not get SSA or RRB benefits will **NOT** receive an advance payment
- ▶ Internal Revenue Service **CANNOT** use stimulus to offset current tax liabilities outstanding from previous years
- ▶ Timing of payments
 - Direct Deposits starting within two weeks of April 1, 2020 for tax filers
 - Direct Deposits for SSA and RRB benefit recipients after filers
 - Checks to remaining taxpayers may take until September or October to complete based on most recent press release
 - Checks will be mailed to last address used to file income taxes
- ▶ **JUST ANNOUNCED!** Internal Revenue Service is developing a web-based portal for taxpayers to provide banking information so that they may receive their stimulus payment faster than waiting for a check.

Retirement Plan Provisions

- ▶ 10% premature distribution penalty (taxpayers under age 59 ½) from qualified plans is waived for distributions up to \$100,000
- ▶ **MUST** be a Coronavirus-related distribution (self-certification)
- ▶ For taxpayers diagnosed with COVID-19, their spouse, dependent, or those suffering adverse financial consequences (lost employment, reduced income, etc.)
- ▶ Can be from IRA or 401K Plan
- ▶ Distribution will be taxable over 3 subsequent years unless elected otherwise (awaiting guidance and forms for **HOW** this will be applied)
- ▶ Can be treated as an IRA Loan and can be repaid within 3 years and will be nontaxable if repaid in full or for which portion is repaid

Retirement Plan Provisions

- ▶ Penalty Free Distributions **CANNOT** be used to do a ROTH IRA Conversion as that does not indicate a legitimate financial hardship as required.
- ▶ No Required Minimum Distributions (RMD) required for 2020
- ▶ 401K Loan Provisions
 - Limit increased from lesser of \$50,000 or 50% of 401K balance limit to lesser of \$100,000 and 100% of 401K balance
 - Loan has to be initiated up to 180 days of enactment of legislation (March 23, 2020) to qualify for increased limits
 - Due date of existing loans due between March 23, 2020 and December 31, 2020 are extended for a year
- ▶ **RECOMMENDATION:** We do not recommend utilizing retirement fund premature distributions unless it is a matter of last resort. If you must, you can strategize the tax payments and if repaid can get a refund on taxes paid.



Expansion of Unemployment Benefits

- ▶ Increased by \$600 per week (Federal Benefit) for 4 months and it is unclear how and when this benefit will be available as of now.
- ▶ Arizona State Unemployment benefit is \$240 per week maximum
- ▶ 13 additional weeks of Unemployment available, for up to a total of 39 weeks
- ▶ Reduction in requirements to apply for benefits (no waiting week)
- ▶ Self Employed who utilize S Corporation and pay wages are eligible to apply for benefits from their own business
- ▶ Unemployment utilization would be expected to impact company Unemployment Insurance rates. No relief of such rate changes has been announced or is expected.
- ▶ <https://des.az.gov/services/employment/unemployment-individual/eligibility-unemployment-insurance-benefits>

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BUSINESS OWNERS

Employment Tax Payment Deferral

- ▶ Eligible for all employers **EXCEPT** those that take out a **FORGIVEN** Paycheck Protection Program (PPP) loan
- ▶ Employers share of Social Security (6.2% of salaries) can be deferred for pay periods between March 23, 2020 and December 31, 2020
- ▶ 50% of this is payable during 2021, 50% during 2022
 - HOW this will be processed is yet to be determined, just know that it will be permitted
- ▶ Applies to Schedule C filers as well as for the applicable portion of their Self Employment Tax and will be calculated as part of your 2020 Income Tax Return filing
- ▶ Payroll processing companies will be ready soon for this deferral provision. Please contact your payroll provider for their process in requesting your deferral.

Paycheck Protection Program Loans

CURRENT GUIDANCE as of April 3, 2020 SBA press release

Guidance evolving daily and business owners will need to stay vigilant on updates to guidance as it is made available

- ▶ More resources at <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- ▶ Application for Paycheck Protection (PPP) Loan is through your current bank if they are an SBA Certified Lender
- ▶ Most banks are not processing loans for new customers
- ▶ Some banks (ex: Bank of America) not processing loans for customers that are not current CREDIT customers. Wells Fargo appears to have ceased accepting any loan applications as of Monday April 6, 2020
- ▶ Other SBA Lenders available if needed



Paycheck Protection Program Loans

- ▶ All banks are producing their own processes and forms; so there is no uniformity to the process, or the information required across lenders
- ▶ Banks will ask for different things: perhaps based on their own “know your customer” internal policies
- ▶ Have 2019 payroll records and 940 filing on hand for submission
- ▶ We have seen some banks ask for 2019 payroll, others asking for 12 months rolling payroll, so it will vary. Officially, they should be asking for prior 12 month rolling payroll amounts. Clarification is said to be forthcoming this week on the exact requirements of the SBA.
- ▶ If a new business, 2020 payroll will be utilized for the first part of the year
- ▶ Some businesses are ineligible, including Real Estate Landlords and Developers

Paycheck Protection Program Loans

- ▶ Loans available for up to \$10 million with no loan fees or pre-payment penalty for unforgiven portion
- ▶ Maximum loan amount is 2.5 times your average monthly wages
- ▶ Funds to be used for an 8-week period from the time of receipt of loan proceeds
- ▶ Funds can be used to cover payroll and related expenses as well as utilities, rent, and interest on business loans obtained prior to February 15, 2020.
 - Payroll expenses include payroll taxes, payroll processing fees, medical insurance premiums, employer retirement match
 - Utilities expenses have not been clarified yet, but we assume for now that it applies to electric, water, phone, internet, etc.

Paycheck Protection Program Loans

- ▶ Must maintain pre COVID-19 employee count and with comparable salaries during the 8-week utilization period to qualify for forgiveness
- ▶ Can reduce salaries or staff count after 8-week period has passed
- ▶ If staff has reduced **VOLUNTARILY** this will **NOT** prevent you from obtaining and utilizing PPP loan proceeds. No guidance has been identified to address this specifically; however, follow the guidelines for funds utilization for forgiveness and pay wages to those who have chosen to stay working.
- ▶ Companies that have employees in one business, but those employees serve several legal entities (internal employee leasing) should apply for PPP loan funds for the business where the staff is employed.

Paycheck Protection Program Loans

- ▶ Rehire your staff upon receipt of the funds, however you cannot control if they do not elect to come back to work. No further guidance is available on this situation as of now.
- ▶ You can apply for PPP loan funds **NOW** and wait until as late as June 30, 2020 to draw the funds. You **MUST** rehire employees at that time.
- ▶ 8-week forgiveness period starts upon drawing the funds
- ▶ To apply for loan forgiveness, no less than 75% of proceeds can be utilized for payroll and related expenses. Up to 25% can be utilized for rent, utilities, and interest on qualified business debt.
- ▶ Funds utilized **OUTSIDE** this criteria will require repayment

Paycheck Protection Program Loans

- ▶ Forgiven PPP loans **ARE NOT TAXABLE INCOME** as Debt Cancellation Income
- ▶ Repayment of unforgiven debt is currently set at 1% interest over a 2-year repayment period. This has changed several times thus far.
- ▶ Repayment is delayed for 6 months, however interest will accrue as of the date of loan funding.
- ▶ Payments to Independent Contractors **ARE NOT INCLUDED** in your payroll calculation for loan amounts or for your loan forgiveness calculation. Independent Contractors must apply for their own funding.
- ▶ Owners draws **ARE NOT INCLUDED** as part of the loan calculation nor as part of the qualified expense for forgiveness, salary to owners **ONLY**.

Paycheck Protection Program Loans

- ▶ Covered compensation **CANNOT EXCEED** \$100,000 of salary per employee. Thus, the maximum amount includable is \$8,333.33 per month of salary.
 - Payroll taxes, retirement benefits, health insurance costs are on top of that maximum salary.
 - Different banks are likely to interpret this differently -- so be careful!
- ▶ Forgiveness of loan will **MOST LIKELY** be applied for directly with the SBA, however this is not 100% clear as of yet. Lenders may be involved in part or for the entire forgiveness process.
- ▶ Required documentation and format for submission of your loan forgiveness has yet to be determined. We will provide further guidance to clients as this becomes available in the coming weeks.

Paycheck Protection Program Loans

- ▶ Any funds **NOT** utilized for forgiven expenses will be included in the repayment
- ▶ No prepayment penalty to give back unused funds upon receiving forgiveness calculation
- ▶ **DO NOT** increase your own wages or staff wages simply to utilize the funds. This is likely to generate issues in your forgiveness calculation, although we cannot be certain at this time.
- ▶ You can fund your retirement that you typically fund at year-end on a monthly basis and apply against the funds received.
- ▶ **RECOMMENDATION:** Utilize a separate bank account to hold the PPP loan proceeds and transfer to operating to cover eligible expenses as incurred to track progress on proper utilization to maximize forgiveness.

Paycheck Protection Program Loans

Self Employed Schedule C Filers

- ▶ Applications accepted for these businesses starting April 10, 2020
- ▶ No application form yet available
- ▶ Most likely will be based on net business income (as this is what is considered wages), but no further clarity has been offered yet by SBA

HOME BASED BUSINESSES

- ▶ We do not recommend utilizing PPP loan proceeds to pay portions of home office expenses (home utilities, etc.), as it will be too difficult to support and **MAY NOT** be considered eligible towards forgiveness.

Paycheck Protection Program Loans

What's Next?

- ▶ Businesses have 8 weeks from the time of receipt of funds disbursed to spend in order to apply for loan forgiveness
- ▶ Must be prepared to report to the SBA (or alternatively through your lender if that occurs) on all qualified expenditures to ensure maximum loan forgiveness
- ▶ Must ensure that you have spent funds in accordance with the forgiveness guidelines

Phocus can help plan, manage, and report your PPP loan proceeds to ensure that each business has the maximum potential loan forgiveness possible and that you are following the SBA guidelines. We are preparing COVID-19 consulting packages available to current and new clients that will include a PPP Loan management option that you can choose. Please email us at **CARESact@phocuscompanies.com**

Emergency Injury Disaster Loans

- ▶ Apply directly with SBA via their website
- ▶ Loans are available up to \$2 million, no loan fees charged
- ▶ 30-year loan amortization at 3.75% interest, no prepayment penalty
- ▶ \$10,000 grant immediately available to applicants
 - Grant Does **NOT** require repayment if no PPP loan funds are forgiven
 - Grant funds will be utilized in calculation towards PPP Loan repayment if both are utilized
- ▶ EIDL Loan proceeds cannot be used for same expenditures covered under loan forgiveness in a PPP Loan – **BOTH** are permitted per SBA guidance
- ▶ **RECOMMENDATION:** Draw grant proceeds, utilize PPP funding first, and only draw remaining EIDL proceeds if necessary.

Families First Coronavirus Response Act

- ▶ Applies to companies under 500 employees
 - Companies under 50 employees may be eligible for an exemption under this act through the Department of Labor regulations under Section 5102(a)(5).
 - Not required to file any forms for the exemption but **MUST** alternatively maintain documentation to support that adherence to the Act's provisions would jeopardize the financial viability of the business.
- ▶ Full and part time employees employed for at least 30 days to qualify for family and medical leave
- ▶ No employment duration requirement for paid sick leave
- ▶ Independent Contractors **DO NOT COUNT** in this application of qualified leave and the resulting credits



Families First Coronavirus Response Act

Two types of paid leave provided by the FFCRA

Family and Medical Leave

- ▶ Care for children with school closed and/or no childcare provider available
- ▶ Up to 12 weeks of protected leave
- ▶ First 2 weeks are unpaid (or covered by paid sick leave provision, if applicable)
- ▶ Remaining 10 weeks are paid at 2/3 regular salary
- ▶ Capped at \$200 per day up to \$10k per employee
- ▶ Employees are **NOT ELIGIBLE** for paid leave if the business closes
- ▶ Paid leave **NOT** subject to employers matching 6.2% Social Security
- ▶ If under 25 employees, employer is not required to guarantee job if it no longer exists

Families First Coronavirus Response Act

SICK LEAVE

- ▶ 2 weeks paid sick leave for full-time employees
- ▶ Part time employees leave based on average hours worked in a two-week period
- ▶ An employee qualifies if unable to work or telework because they are:
 - Subject to Federal, State, or Local quarantine/isolation order
 - Been advised by health care provider to self-quarantine
 - Experiencing COVID-19 symptoms and are awaiting diagnosis
 - Caring for an individual who is subject to an order or self-quarantine
 - Caring for a child whose school or care provider is closed

Families First Coronavirus Response Act

SICK LEAVE – CONTINUED

If Employee is Sick:

- ▶ Employee is entitled for up to 2 weeks of pay up to 80 hours at 100% of salary
- ▶ Capped at \$511 per day and \$5,110 per employee
- ▶ Sick Leave **NOT** subject to employers matching 6.2% Social Security

Families First Coronavirus Response Act

SICK LEAVE – CONTINUED

If Employee is Caring for Others:

- ▶ Sick family member or child with school or care facility closed
- ▶ Employee entitled for up to 2 weeks of pay up to 80 hours at 2/3 of salary
- ▶ Capped at \$200 per day and \$2,000 per employee
- ▶ Sick Leave **NOT** subject to employers matching 6.2% Social Security

Families First Coronavirus Response Act

Tax Credits Under the ACT

Family Leave Credit

Sick Leave Credit

Employee Retention Credit

Cannot apply for credits for salaries covered by a PPP Loan

See IR 2020-57 for additional guidance: It provides for an **INSTANT REDUCTION** of the amount to pay on your payroll taxes. It allows you to get the credit in real time instead of paying and filing form 941 and waiting for a credit to be received. Form 7200 has been developed for the advanced payment of employer credits.



Families First Coronavirus Response Act

Family Leave Credit

- ▶ Employers will receive 100% reimbursement in the form of payroll tax credits
- ▶ Equal to 100% of qualified family medical leave wages paid from April 1, 2020 to December 31, 2020
- ▶ Includes all paid leave wages and certain health plan expenses
- ▶ All leave payments exempt from employer portion of Social Security
- ▶ Gross income of employer is increased by any credit allowed against payroll tax obligations in reporting 2020 business gross income

Families First Coronavirus Response Act

Family Leave Credit – Self Employed Schedule C

- ▶ Self-employed individuals are eligible if they are unable to perform services in **ANY** trade or business
- ▶ Credit for their self-employment tax will be applied as follows:
 - Number of days up to 50, giving rise to eligible sick leave **HAD** they been employed multiplied by the lesser of \$200 or 67% of taxpayers net earnings from self-employment divided by 260 (number of weekdays per year)
- ▶ Will be claimed on their individual income tax return and will reduce overall tax payment required for self employment tax

Families First Coronavirus Response Act

Sick Leave Credit

- ▶ 100% of qualified paid sick leave wages from April 1, 2020 through December 31, 2020
- ▶ Increased for Health Insurance Costs per employee
- ▶ Gross income of employer is increased by any credit allowed against payroll tax obligations in reporting 2020 business gross income

Families First Coronavirus Response Act

Sick Leave Credit – Self Employed Schedule C

- ▶ Self-employed individuals are eligible if they are unable to perform services in **ANY** trade or business
- ▶ Credit for their self employment tax will be applied as follows:
 - Number of days up to 10, giving rise to eligible sick leave HAD they been employed multiplied by the lesser of \$511 per day if taxpayer is sick or \$211 per day if caring for another or 67% of taxpayers net earnings from self-employment divided by 260 (number of weekdays per year)
- ▶ Will be claimed on their individual income tax return and will reduce overall tax payment required for self employment tax

Families First Coronavirus Response Act

Employee Retention Credit

- ▶ Credit against payroll taxes for employer's 6.2% share of social security
- ▶ Payroll taxes are first reduced by sick and family leave credits
- ▶ Equal to 50% of qualified wages on calendar quarter basis
- ▶ Applies to wages after March 12, 2020 and before January 1, 2021 for an employer that was carrying on a trade or business during 2020
- ▶ Total eligible wages for an employee is capped at \$10,000 plus health insurance costs

Families First Coronavirus Response Act

Employee Retention Credit – Continued

- ▶ Employer **MUST** satisfy one of the two following tests for any calendar quarter in 2020:
 - ▶ Furlough test – Full or partial suspension due to orders from a government authority limiting commerce, travel, or group meetings due to COVID-19
 - ▶ Drop in receipts test – Any quarter in which gross receipts is less than 50% for the same calendar quarter in prior year and continuing until gross receipts return to at least 80% for the same calendar quarter in the prior year

Other CARES Act Provisions

Disaster Relief Payments

- ▶ Employers can make tax free payments to employees to reimburse for expenses not covered by insurance including:
 - Reasonable personal, family, living, or funeral expenses
 - Reasonable and necessary expenses for the repair or rehabilitation of a personal residence or its contents, as needed, as it is attributable to the qualified disaster
 - Medical expenses not covered by health insurance related to COVID-19
 - Other health care related expenses not covered
 - Childcare when normal sources are unavailable to an employee
 - Increased telecommuting expenses incurred by the employee

Other CARES Act Provisions

Disaster Relief Payments - Continued

- ▶ Payments are tax deductible to employer and **NOT** taxable to the employee
- ▶ No formal plan is required to be eligible for the deduction
- ▶ No written regulations currently exist to interpret this Sec 139 plan
- ▶ **RECOMMENDATION:** Keep documentation for all such expenditures and their purpose should you ever need to support the deduction.

Other CARES Act Provisions

Student Loans

- ▶ Employers can pay student loan payments for an employee
- ▶ Up to \$5,250 can be paid **TAX FREE** to employee and deductible to the employer
- ▶ Includes both principal and interest on the loan

Other CARES Act Provisions

- ▶ Correction to bonus depreciation available for qualified improvement property
- ▶ Charitable contributions – new above the line deduction for 2020 for an additional \$300 of cash contributions, if the taxpayer does not itemize
- ▶ Net Operating Loss (NOL) Changes
 - Tax Cuts and Jobs Act (TCJA) of 2017 changed NOLs for 2018 forward, eliminating carryback and limiting carryforward application to offset up to 80% of taxable income.
 - NOLs now for 2018, 2019, and 2020 can be carried back for up to 5 years and if carried forward can offset 100% of taxable income until 2021.
 - In 2020, losses from before 2018 can offset up to 100% of post 2020 taxable income, but losses from 2018 forward can only offset up to 80% of post 2020 income.

Need More Help?

The Team at Phocus Accounting and Tax is available to help you through these most difficult and uncertain times.

Please contact us for any further assistance –
the entire team is here to help!

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