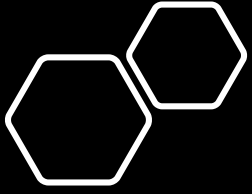


COVID-19 Adaptation, Relief Programs, and
Resources for Small & Medium Businesses,
Nonprofits, and Freelancers

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Jason Wiener p.c., a public benefit corporation



Introduction

- Boutique law and business consulting firm for mission-driven companies, social impact, and environmental enterprise
- Shared and cooperative ownership and alternative financing
- B-Corp Certified and Public Benefit Corporation
- Team of 7 attorneys with diverse backgrounds, experience and interests



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Relevant Legislation



H.R.6201 - Families First Coronavirus Response Act

- Enacted March 18, 2020
- Requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19
- Effective from April 1, 2020 through December 31, 2020

H.R.748 - Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

- Enacted March 27, 2020
- Funds various loans, grants, and other forms of assistance for businesses; provides tax rebates for individual (subject to limits based on adjusted gross income); expands unemployment benefits; tax treatment of withdrawals from retirement accounts, business income, losses, and charitable contributions; and the emergency paid sick leave program.



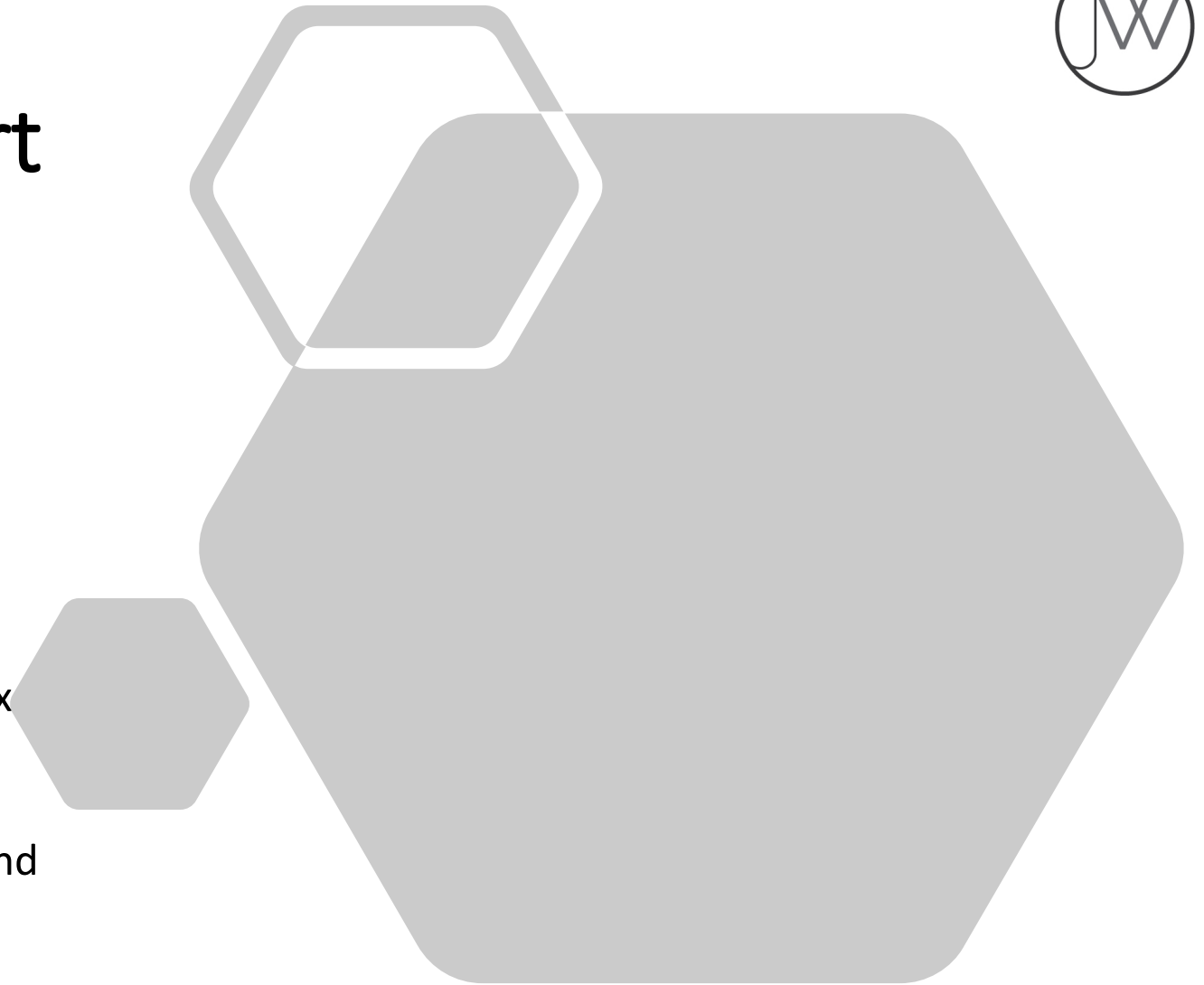
Small Business Support

Loans

- Paycheck Protection Program loan
- Economic Injury Disaster Loan + Grant
- SBA Express Bridge Loan
- SBA Additional Debt Relief

Tax Relief

- Payroll Tax Relief
- Employee Retention Refundable Payroll Tax Credit
- Net Operating Loss Modification
- Tax Credit for Emergency Paid Sick Leave and Emergency Family and Medical Leave
- Additional Tax Relief





Non-profit Support

Loans

- Paycheck Protection Program loan
- Economic Injury Disaster Loan + Grant
- SBA Additional Debt Relief

Tax Relief

- Payroll Tax Relief
- Employee Retention Refundable Payroll Tax Credit
- Tax Credit for Emergency Paid Sick Leave and Emergency Family and Medical Leave





Freelancer Support

Loans

- Paycheck Protection Program loan

Tax Relief

- Payroll Tax Relief
- Tax Credit for Emergency Paid Sick Leave and Emergency Family and Medical Leave



Paycheck Protection Program

- Loan program, with potential forgiveness, for small businesses and self-employed individuals.
- The goal is to keep workers paid and employed. The use of funds and forgiveness of the loan are therefore limited to ensure that loan funds are used for payroll.
- Administered by the Small Business Administration (SBA) and Department of Treasury



Paycheck Protection Program: Availability

- The federal government allocated \$349 billion to this program
- Loans are available through existing SBA-certified lenders and the SBA is extending the authority to make loans available to more lenders
- Loans are granted on a first-come first-serve basis
- Applications for small businesses and sole proprietorships opened on **April 3, 2020**
- Independent contractors and self-employed individuals can apply starting **April 10, 2020**
- **Certain banks were not willing to process loans on April 3rd due to a paucity of guidance from Treasury and the SBA. More guidance was published on April 4th**



Paycheck Protection Program: Eligible Borrowers

- Self-employed individuals, sole proprietors, and independent contractors with adequate documentation to prove their work-status
- A business concern (including cooperatives), nonprofit, veterans' organization, or Tribal business concern that employs not more than the greater of:
 - 500 or fewer employees (that is, individuals employed on a full-time, part-time, or other basis), or
 - if applicable, the size standard in number of employees established by the SBA for the industry in which the business concern, nonprofit organization, veterans' organization, or Tribal business concern operates.
- Number of employees of applicants are considered *together with* their affiliates. Entities are affiliates of each other when one controls the other. (Control tests look at ownership, stock options, convertible securities, management, identity of interest)*



Paycheck Protection Program: Loan Amount

The lesser of:

- the sum of
 1. average monthly **payroll costs** for the 1-year period ending on the date the loan was made (an alternative calculation is available for seasonal employers and for businesses that was not in operation before June 30, 2019) **multiplied** by 2.5; **plus**
 2. any disaster loan taken out after January 31, 2020 that has been refinanced into a paycheck protection loan; or
- \$10 million.



Paycheck Protection Program: Payroll Costs – Calculation

For Employers: The sum of –

- compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation;
- cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
- payment for vacation, parental, family, medical, or sick leave;
- allowance for separation or dismissal;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
- payment of state and local taxes assessed on compensation of employees.

For independent contractors and sole proprietors: wage, commissions, income, or net earnings from self-employment or similar compensation.



Paycheck Protection Program: Payroll Costs Exclusions

- Any compensation of an employee whose principal place of residence is outside of the U.S.
- Compensation of individual employee in excess of an annual salary of \$100,000, prorated as necessary
- Federal employment taxes imposed or withheld between Feb 15, 2020 and June 30, 2020, including employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.
- ***Important: Independent contractors can apply for a PPP loan on their own, so they do not count for purposes of an employer borrower's PPP loan calculation.***



Paycheck Protection Program: Use of Funds

- Payroll costs
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Mortgage interest payments (but not mortgage prepayments or principal payments)
- Rent payments
- Utility payments
- Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.
- **Important : at least 75% of PPP loan proceeds must be used for payroll costs.**

(For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included.)



Paycheck Protection Program: Other Terms

- Interest rate is 1% (not 4%).
- Maturity is 2 years (not 10 years).
- No collateral and no personal guarantees required.
- Principal and interest payments are deferred for six months; however, interest will accrue during this time.
- E-signatures and e-consents are allowed.
- The standard loan fees imposed by the Small Business Act are waived.
- Requirement that small business concern is unable to obtain credit elsewhere, does not apply.
- You may only apply and receive one loan, so apply for the maximum amount.

Note: we do not know whether owners of businesses with employees can apply for their business to cover payroll cost and separately as a self-employed individual to receive a loan to cover their owner's draw.



Paycheck Protection Program: Loan Forgiveness*

- A portion of the PPP loan may be forgiven upon application by a borrower to a lender.
- The amount of loan forgiveness can be up to the full principal amount of the loan *as well as* any accrued interest if the borrower uses the loan proceeds for forgivable purposes and employee and compensation levels are maintained.
- The amount to be forgiven is the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan: payroll costs, mortgage interest, rent (for obligations in terms of a lease agreement in force before February 15, 2020), utility payments (electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020).
- The forgivable amount shall be reduced based on the reduction in average number of employees in 2019 vs 2020, and/or a reduction in salary or wages based on the most recent full quarter. However, this reduction may be disregarded if the employer re-hires employees or increases their wages.
- **Not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs (mortgage interest, rent, utilities).**



Paycheck Protection Program: Tips for Applying

- Review the final application form and gather necessary materials such as payroll tax filings, proof of lease payments, proof of mortgage payments, and proof of utility payments.
- Contact accountant and/or bank that pays out payroll. Ask your lender if it is authorized to process your Paycheck Protection Program loan. If you have an existing relationship with a lender, go to that lender.
- If you are not connected to an authorized lender, search for an eligible lender on the SBA website.
- The “Applicant Ownership” section of the application asks for information about each owner of the business. The application will allow up to 2 owners (members in the case of cooperatives) to include their information. If your business has two or less owners, include each owner and provide the required information for each such owner. If more than two, add additional documentation.



Paycheck Protection Program: Tips for Loan Use

- Deposit funds into a separate business account.
- Keep meticulous records of all debits from the account.
- Store all records, documents in one folder.
- Notify payroll processor and anyone else making eligible payments under PPP to use the PPP account.
- Review the account statements each month.
- Check back with bank regarding forgiveness application process and documentation required.



Economic Injury Disaster Loan (EIDL) + Grant

- EIDL can provide up to \$2 million of financial assistance (actual loan amounts are based on amount of economic injury) to small businesses or private, non-profit organizations that suffer substantial economic injury as a result of the declared disaster, regardless of whether the applicant sustained physical damage.
- CARES Act
 - expands eligibility to include private nonprofit organizations and small agricultural cooperatives;
 - waives personal guarantees on loans under \$200,000;
 - waives the “unable to obtain credit elsewhere” provisions; and
 - **provides organizations with immediate *grant* funding of \$10,000 upon application once eligibility has been verified.**
- Not forgivable but more flexible than PPP in the types of expenses it covers.



EIDL and PPP loan interaction

- If your business received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you **may apply for a PPP loan**.
- If that EIDL loan **was not** used for payroll costs, it does not affect your eligibility for a PPP loan.
- If that EIDL loan **was** used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.



Other SBA Relief

- **Express Loan** allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 with less paperwork. These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be a term loans or used to bridge the gap while applying for a direct EIDL. SBA expanded program eligibility to include small businesses nationwide adversely impacted by COVID-19.
- **Community Advantage** loan program allows mission-based lenders to assist small businesses in underserved markets with a maximum loan size of \$250,000.
- **Microloan** program involves making loans through nonprofit lending organizations to underserved markets. Authorized use of loan proceeds includes working capital, supplies, machinery & equipment, and fixtures (does not include real estate). The maximum loan amount is \$50,000 with the average loan size of \$14,000.
- **504** loan program is designed to foster economic development and job creation and/or retention. The eligible use of proceeds is limited to the acquisition or eligible refinance of fixed assets.
- **Debt relief** The SBA will automatically pay the principal, interest, and fees of current 7(a) loans for a period of six months. The SBA will also automatically pay the principal, interest, and fees of new 7(a) loans issued prior to September 27, 2020.



Taxes: Payroll Tax Relief

- Employers may delay paying payroll taxes due from March 27, 2020 to December 31, 2020. Half of the 2020 payroll taxes will be payable on Dec 31, 2021 and the other half on Dec 31, 2022.
- Self-employed individuals may defer only 50% of payroll taxes due from March 27, 2020 to December 31, 2020. 25% of the 2020 payroll taxes will be payable in 2021, and the other 25% in 2022.
- **This deferral is *not* available to any business that receive a PPP loan that was forgiven.**



Taxes: Employee Retention Refundable Payroll Tax Credit

- Any employer, including non-profits, whose
 - business has been fully or partially closed as a result of a COVID-19 related government order, or
 - which has seen at least a 50% drop in quarterly gross receipts as compared to 2019,

is eligible to claim a **refundable payroll tax credit for up to 50% of qualified wages** paid after March 12 and before January 1, 2021.

- The wages that can be counted toward the credit depend on the size of the employer.
- Creditable wages are limited to \$10,000 per full-time employee. Wages include compensation paid to employees and health care costs paid for these workers.
- Credit is refundable to the extent it exceeds the employer portion of social security taxes reduced by the paid sick leave and paid extended FMLA
- ***Not available if business receives PPP loan.***



Taxes: Net Operating Loss Modification

- Businesses can carry back losses from 2018, 2019, and 2020 to the previous 5 years.
- This allows for an immediate claim for refund for taxpayers who had taxable income during the carryback time period.
- For tax years 2019 and 2020, businesses can utilize NOLs generated in prior years to offset 100% of taxable income.



Colorado-specific Support

- **March 20, 2020:** Executive Order D-2020-12, "Order Limiting Evictions, Foreclosures, and Public Utility Disconnections and Expediting Unemployment Insurance Claim Processing to Provide Relief to Coloradans Affected by COVID-19" and Joint Statement from Banking & Financial Services Commissioners (updated 3/25/2020)
- **March 23, 2020:** D-2020-13, "Ordering Colorado Employers To Reduce In-Person Workforce by Fifty Percent Due to the Presence of COVID-19 In the State"
 - Note: Financial institutions are exempted per CDPHE Public Health Order. Review the order for the complete list of exemptions.
- **March 27, 2020:** Guidance on Appraisals (information included below)
- **March 30, 2020:** Colorado Secretary of State's Office Enacts Remote Notarization Emergency Rules
- Colorado Assistance Fund for Non-Profits



Taxes: Credit for Sick Leave and Family and Medical Leave

- Employers who pay emergency paid sick leave or emergency family and medical leave are entitled to refundable tax credits for the qualified leave wages.
- Employers **can claim credits on their federal employment tax returns** (e.g., Form 941, Employer's Quarterly Federal Tax Return), but can benefit more quickly from the credits **by reducing their federal employment tax deposits**.
- If there are insufficient federal employment taxes to cover the amount of the credits, an Eligible Employer may request an advance payment of the credits from the IRS by submitting Form 7200.
- **Self-employed persons** are entitled to similar credits.
- CARES Act provides that these credits may be advanced to the employer in accordance with forms and instructions to be provided by the Secretary pursuant to the legislation. Any penalties for failure to deposit the tax are waived if such failure is due to the anticipation of the credits.
- Claim credits for eligible leave taken between April 1 and Dec 31, 2020.
- **Retain adequate records and documentation related to leave.**



Expanded Leave - FFCRA

	Emergency Paid Sick Leave	Emergency Family Leave
Worker Eligibility	Full-time & part-time employees, regardless of time worked for employer	Employee employed for at least 30 calendar days
Applicable Employers	Employers with fewer than 500 employees	Employers with fewer than 500 employees
Benefit to Employees	<p>Full-time salaried: 80 hours of paid leave</p> <p>Part-time/hourly: days off equal to # of hours employee works on average over 2-week period.</p>	Total of 12 workweeks in 12-month period paid leave.
Uses of Leave and Max Payment	<p>Employee is unable to work due to:</p> <ol style="list-style-type: none"> 1. Federal, State, or local quarantine/isolation COVID orders 2. advice from health care provider to self-quarantine due to COVID related concerns 3. experiencing symptoms of COVID and seeking diagnosis; 4. caring for someone subject to order (1), or received advice per (2) 5. caring for child at home since school is closed or childcare provider is unavailable due to COVID 19 precautions 6. any other substantially similar conditions. 	<p>Employee is unable to work or telework as a result of public health emergency (COVID 19), only due to need to care for child under 18 if school or place of care has been closed, or childcare provider is unavailable, due to a public health emergency.</p> <p>First ten days unpaid; then two-thirds of regular pay</p>
Regular rate of pay, up to \$511 per day / \$5,110 aggregate		
2/3 of regular rate of pay, up to \$200 per day / \$2,000 aggregate		



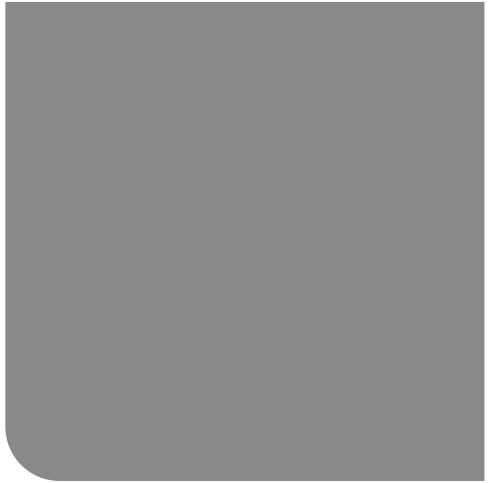
Other Tax Benefits

- Non-taxed employer payment of employee student loans
- Changes to alternative minimum tax credit refunds
- Changes to limitations on deductibility of business interest expense
- Changes to depreciation for qualified improvement property



Questions





Thank You!

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