



**Orr & Reno**

State and Federal  
Programs to Help  
Businesses Through the  
COVID-19 Crisis

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# Welcome and Overview

- Families First Coronavirus Response Act (“FFCRA”)
- Unemployment Compensation Benefits
- Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)



# Changes in Paid Sick Leave and Family and Medical Leave Act (FMLA)

- Families First Coronavirus Response Act (FFCRA)
- Federal Law – Was effective April 1, 2020 (per USDOL)
- Two components: Emergency Paid Sick Leave; Emergency Expanded FMLA Leave

# Emergency Paid Sick Leave

- Coverage – Employers with fewer than 500 employees
- All employees, full or part-time, are potentially eligible
- This leave is in addition to other leaves available by policy or law – cannot require employee to exhaust other accrued PTO first
- Paid to employees unable to work or telework who need leave for one of six qualifying reasons
  - 1. Governmental isolation/quarantine order
  - 2. Advised by health care provider to self-quarantine
  - 3. Experiencing symptoms of COVID-19 and seeking medical diagnosis
  - 4. Caring for individual under reason 1 or 2
  - 5. Caring for child due to school/day care closure per government order
  - 6. Circumstances similar to any of above

# Emergency Paid Sick Leave (cont.)

- Amount of Leave = 80 hours, pro-rated for part-time, calculation method for variable schedule employees
- Pay Rate for Leave -- Normal Pay, subject to caps
  - If leave for reasons 1, 2, or 3 (i.e. care for self) – no more than \$511/day, \$5,110/year
  - If leave for reasons 4, 5, 6 (i.e. care for other) – no more than \$200/day, \$2,000/year
- Cost of Paid Leave is Recouped by Employer through Payroll Tax Credits
- Leave is job-protected – entitled to job back upon return

# Emergency Expanded FMLA

- Coverage – Employers with fewer than 500 employees (i.e. not limited to employers with 50 or more employees, as per “regular” FMLA)
- All employees who have worked 30 days for employer are potentially eligible
- Sole qualifying reason – unable to work or telework in order to care for child due to school/day care closure based on declared COVID-19 public health emergency

# Emergency Expanded FMLA (cont.)

- Amount of Leave – Up to 12 weeks
- First 10 days – unpaid
- Remaining period paid at 2/3 regular pay subject to cap -- not to exceed \$200/day, \$10,000 in aggregate
- Employees have option (cannot be required) to use other accrued PTO to pay for first 10 days
- Notice by employee of need as soon as practicable



# Emergency Expanded FMLA (cont.)

- Cost of paid leave recouped by Employer through payroll tax credit
- Job-protected
  - Reinstatement required for employers with 25 or more employees
  - For employers with fewer than 25 employees, reinstatement may not be required if job eliminated due to COVID-19 economic conditions and no equivalent job available
- USDOL has authority to exempt businesses with fewer than 50 employees if requirements would jeopardize viability of employer



# Enhanced State and Federal Unemployment Benefits

- Governor Sununu's Executive Order #5 (March 17, 2020)
- Federal CARES Act (March 27, 2020)

# N.H. Executive Order #5

- Total or partial loss of employment
- No waiting period; no job seeking for those intending to return to work
- Expanded to self-employed, freelancers, independent contractors, public and private school teachers and part-time workers
- 100% from the unemployment compensation trust fund (not against the most recent employer)
- Criteria:
  - Current diagnosis of COVID-19;
  - Quarantined (including self-imposed), at the instruction of a health care provider, employer, or government official, to prevent the spread of COVID-19;
  - Caring for a family member or dependent who has COVID-19 or is under a quarantine related to COVID-19; or
  - Caring for a family member or dependent who is unable to care for themselves due to the COVID-19 related closing of their school, child care facility, or other care program.

# Boost from the CARES Act

- NH prior max. weekly amount = \$427/week (for person earning over \$41,500)
- CARES Act adds \$600/week
  - 100% federal funds
  - Automatic whether COVID-19 related or not
  - Through July 31, 2020
  - NHES estimates 95% wage replacement rate
- Additional 13 weeks – total 39 weeks
  - May need to search for employment



# Available Federal Loans to Assist Small Businesses

- Paycheck Protection Program Loans (“PPP”)
- Economic Injury Disaster Loans (“EIDL”)
- EIDL Emergency Loan Advance
- Tax Credits

# Paycheck Protect Program (“PPP”)

- [Apply](#) ASAP through bank that is an SBA lender (and confirm you are using the most recent form as it continues to be updated)
  - April 3 – small businesses and sole proprietorships
  - April 10 – independent contractors and self-employed
- \$349B toward job retention and certain expenses
- U.S. businesses, nonprofits, Veterans organizations, self-employed, and independent contractors may be eligible
- <500 employees
  - Affiliation rules will not apply for hospitality or franchises (for those, <500 employees per location)
- Loan amount = average monthly “payroll costs” multiplied by 2.5 (up to \$10M)
- Forgiveness of some or all if borrower maintains its workforce
- Certification requirements
- No personal guaranty or collateral required
- 2 Year loan at 1% interest (low interest rate for portion that needs to be repaid)
- Can coordinate with EIDL loan

# PPP: Loan Amount

- Maximum loan amount = average monthly “payroll costs” during 2019 multiplied by 2.5
  - Capped at \$10M
- “Payroll costs”
  - Salary, wages, commissions, cash tips, or similar compensation
  - Vacation, parental, family, medical, or sick leave
  - Dismissal or separation allowances
  - Payments for group health care benefits, including insurance premiums
  - Retirement benefits
  - State unemployment tax
  - Compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation
- Excludes
  - Compensation amounts over \$100,000 for each employee (includes all the above things)
  - Sick and family leave for which a credit is allowed under Families First Coronavirus Response Act



# PPP: Forgiveness

- Forgiveness for certain costs incurred during 8-week “covered period” between getting loan and June 30, 2020
  - Limited to payroll costs, mortgage interest, rent, and utilities (max 25% to non-payroll)
  - Cannot exceed principal
  - Need documentation
  - Is excluded from gross income
- Forgiveness reduced if:
  - Reduction in workforce (# of heads); and/or
  - Reduction in salaries/wages over 25%
- Calculating a reduction in workforce:
  - Ave. # of FTEs per month during the 8 week “covered period,” divided by the average # of FTEs during one of 2 periods (borrower chooses)
    - Feb. 15, 2019 – June 30, 2019; or
    - Jan. 1, 2020 – Feb. 29, 2020
- Calculating a reduction in salaries or wages (25% threshold):
  - Forgiveness is reduced proportionately by any reduction in total salary or wages of any employee during the 8 week “covered period” over 25%
    - Average salary/wage during the 8 week “covered period” divided by average for most recent calendar quarter
  - Limited to employees earning \$100,000 or less
- Incentive to rehire: if rehire by June 30, 2020, forgiveness will not be reduced
- SBA anticipates that not more than 25% of the forgiven amount may be for non-payroll costs
- Any remaining balance continues



**Paycheck Protection Program  
Borrower Application Form**

OMB Control No. : 3245-0407  
Expiration Date: 09/30/2020

|  |  |   |                               |
|--|--|---|-------------------------------|
| <b>Check One:</b> <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC<br><input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual<br><input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization<br><input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other |  | <b>DBA or Tradename if Applicable</b><br><br> |                               |
| <b>Business Legal Name</b><br><br>   |  |   |                               |
| <b>Business Address</b><br><br>  |  | <b>Business TIN (EIN, SSN)</b><br><br>        | <b>Business Phone</b><br><br> |
|  |  | <b>Primary Contact</b><br><br>                | <b>Email Address</b><br><br>  |

  

|                          |    |  |    |                      |  |
|--------------------------|----|--|----|----------------------|--|
| Average Monthly Payroll: | \$ | x 2.5 + EIDL, Net of Advance (if Applicable)<br>Equals Loan Request: | \$ | Number of Employees: |  |
|--------------------------|----|--|----|----------------------|--|

  

|  |  |
|--|--|
| Purpose of the loan<br>(select more than one): | <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____ |
|--|--|

**Applicant Ownership**

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

| Owner Name | Title | Ownership % | TIN (EIN, SSN) | Address |
|------------|-------|-------------|----------------|---------|
|            |       |             |                |         |
|            |       |             |                |         |

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

| Question  | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?                     | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.  | <input type="checkbox"/> | <input type="checkbox"/> |

*If questions (5) or (6) are answered "Yes," the loan will not be approved.*

| Question  | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?<br>Initial here to confirm your response to question 5 → _____     | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?<br>Initial here to confirm your response to question 6 → _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?  | <input type="checkbox"/> | <input type="checkbox"/> |



**Paycheck Protection Program  
Borrower Application Form**

**By Signing Below, You Make the Following Representations, Authorizations, and Certifications:**

**CERTIFICATIONS AND AUTHORIZATIONS**

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(o)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

**CERTIFICATIONS**

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- \_\_\_\_\_ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- \_\_\_\_\_ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- \_\_\_\_\_ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- \_\_\_\_\_ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.
- \_\_\_\_\_ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.
- \_\_\_\_\_ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
- \_\_\_\_\_ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- \_\_\_\_\_ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

\_\_\_\_\_  
Signature of Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



# Economic Injury Disaster Loans (“EIDL”)

- Apply ASAP through SBA
- Suffered “substantial economic injury” from COVID-19
- \$2 million max
- Broader uses than PPP
  - Can coordinate with PPP
- 3.75% fixed interest rate (2.75% nonprofits)
- 30 year term and amortization
- No personal guarantees on loans \$200,000 or less
- No collateral requirements for loans \$25,000 or less
- No “unable to find credit elsewhere” requirement
- Must have been in operation on Jan. 31, 2020 (not 1 year)
- CANNOT get EIDL Loan and PPP loan for “same purpose,” but a borrower can get both, and a borrower has an option to rolling an EIDL loan into a PPP loan to the extent the EIDL loan qualifies as a PPP loan (what it will be used for)

# Emergency Loan Advance (EIDL Grant)

- \$10,000 emergency grant
- SBA pays within 3 days
- No required repayment (even if EIDL application is later denied)
- Amount will be deducted from PPP forgiveness though

# Tax Credits

- CARES Act, aside from PPP Loan program, also included various tax incentives.
  - Employee Retention Tax Credit (“ERTC”)
    - Credit for up to 50% of wages, up to \$10,000 (including health benefits) per employee against employment tax liability
    - Refundable
    - Cannot get ERTC and a PPP loan
    - If average annual employee compensation is less than \$24,000 per year, may be better off with the tax credits than the PPP loan
    - Different rules for employers with 100 or fewer employees and more than 100
    - Employer must have operations fully or partially suspended due to COVID-19, or gross receipts declined by more than 50% when compared to same quarter in 2019
  - Delay of Payment of Employment Taxes until 2021 and 2022
  - Modification of NOL Rules
  - Modification of Excess Business Limits for Passthrough Businesses



# Questions?

This Webinar is provided for general education and guidance only, and does not constitute legal advice.

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