



LENDING AND HR UPDATE

APRIL 21, 2020

KELSEY CURRENCE AND GARY
BENSON, ESQ

KCURRENCE@CDAONLINE.ORG

EIDL – Economic Injury Disaster Loan

- **Slow Response/No Response**
 - SBA is processing existing applications on a first come, first served basis
 - No time frame set as to when applications will be processed
- **\$10,000 Advance Changes**
 - Recently, SBA changed the calculation for the \$10,000 Advance to 'up to \$10,000; \$1,000 per employee'
 - Processed within 3 business days of an acknowledged application – not 3 business days after receipt of application
- **Questions pertaining to applications – 800.659.2955**

EIDL – Economic Injury Disaster Loan

Notice: Lapse in Appropriations

SBA is unable to accept new applications at this time for the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding.

Applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis.

Paycheck Protection Program Loan (PPP or PPL)

- **Loans up to \$10M (see below):**
 - The average total monthly payments by the applicant for payroll by FTE, during the 1-year period before the date on which the loan is made (except in the case of an applicant that is seasonal employer), by 2.5.
- **Amortizes at 2-years, 6-month payment deferment**
- **1% APR on outstanding balance**
- **Payroll, sick leave, family leave, operating expenses (interest on business's mortgage only), rent, utilities – eligibility for forgiveness**
 - Expenses must be established prior to February 15, 2020.
 - Loan amounts based on 2.5 x's average payroll cost
 - Borrower is required to prove destination of proceeds to be eligible for forgiveness

PPP Loan Cont'd

- Banks who administer loans might have varying requirements
- 8-weeks from funding date to use approved forgiveness costs
- Only available through SBA preferred lender
 - Most major banks. <https://www.sba.gov/funding-programs/loans/lender-match>
 - Most banks require an existing deposit relationship to provide PPP loan

Through April 16, 2020, the SBA has guaranteed 1,035,086 loans under the Paycheck Protection Program.

PPP Loan – What does this mean for me?

I have NOT
received my PPP
loan – what now?

Notice: Lapse in Appropriations

The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding.

May 4th, Congress will come back in session to vote on funding an additional \$250B into PPP Fund

ADA is lobbying aggressively on your behalf

Save your application and docs

Assuming the program acquires additional funding, apply IMMEDIATELY online

Strategize learning from Round 1 participants

PPP Loan – What does this mean for me?

I have received my
PPP Loan – what
now?

- **Forgiveness**
 - The Federal Government has already backed these loans. The only stipulation once approved to ensure forgiveness is appropriate and documented utilization of funds
- **Document, Document, Document**
 - To ENSURE loan forgiveness, you will need to document how you used these funds. To ensure accurate reporting, ask your bank or read your closing documents to best understand how your bank is administering your loan
 - While credit card points are a great tool, it is not advised to pay PPP eligible expenses on a credit card – an operating checking account is best
- **Itemization of Amount Financed**
 - < 75% of loan proceeds MUST be used for payroll – ‘Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.’ - SBA
 - 25% of loan proceeds can be used for rent, utilities and mortgage interest
 - Utilities are defined as phone, internet, gas, water, electricity

PPP Loan – What does this mean for me?

I have received my
PPP Loan – what
now?

- **Paying Employees Before I'm Open/8-Week Clock**
 - Per the SBA Final Rule - 'The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan.'
 - You are required to pay your employees after loan funding, even if you are not open yet
 - This is critically important to preserve your employees' unemployment benefits as well
 - If you choose not to pay your employees, that dollar amount will accrue interest, and will amortize out as a term loan
 - You must retain/quickly hire back <75% of your FTE (you cannot increase the salary of yourself or a percentage of your team to qualify for forgiveness)
 - They will be auditing these loans

PPP Loan – What does this mean for me?

I have received my
PPP Loan – what
now?

- **Employee Pay Continued ...**
 - The clock starts when loan is funded for steady payroll – no ‘graduated’ pay. Some banks are funding the loan in 2-week increments
- **EIDL and EIDL Advance –**
 - Receipt of an Economic Injury Disaster Loan does not impact your eligibility for PPP
 - Your EIDL Advance amount will be subtracted from your forgivable amount on your PPP
- **Integrity of the Program**
 - This program is being audited
 - Forgiven loan proceeds – we don’t always get to decide how to spend free money

PAYROLL PROTECTION PROGRAM LOAN HR QUESTIONS

April 21, 2020





CONFLICT OF INTERESTS

The following information is presented by an employment attorney engaged in private practice who certifies that he has no affiliation or involvement with any organization or entity with any financial interest or non-financial interest in the subject matter or materials discussed in this webinar.



Gary Benson has been practicing human resources law for more than 20 years. He is a partner at Dworkin, Chambers, Williams, York, Benson & Evans, PC where he counsels numerous businesses on their employment practices and procedures. In addition to being an experienced litigator, he is also a frequent lecturer on issues surrounding employment law and has presented for the Colorado Bar Association.



Dworkin
Chambers
Williams
York
Benson &
Evans, PC

3900 E. Mexico Avenue
Suite 1300
Denver, CO 80210
T: (303) 584-0990
F: (303) 584-0995

COMMON HR QUESTIONS

Q: Is it possible that once the federal money comes in that my employees could make more on unemployment than what they made working for me?

A: **Yes, it is possible.** The federal money gives people collecting unemployment benefits an extra \$600/week on top of their state unemployment benefits, regardless of how much they earn.



COMMON HR QUESTIONS

Q: Once the governor lifts his mandate and we can go back to work, what do I do if my employees refuse?

A: Employees risk losing their unemployment benefits if they refuse to return to work, but employers may be able to bring back employees who want to work while ramping back up.

Before you do anything, check county-level orders and employees' eligibility to FFCRA leave to prevent potential retaliation claims.



COMMON HR QUESTIONS

Q: Legally is there a difference if my employees refuse to go to work because they are concerned about the virus or they refuse to go back because they are making more on unemployment?

A: Legally, there is not a difference because your employees don't have a legal right to refuse to work for either reason, ***so long as*** you are providing a safe work environment that complies with any state and federal requirements





COMMON HR QUESTIONS

Q: I understand an employee can only receive a finite amount in unemployment benefits. How is that calculated and how I can explain it if employees refuse to go back to work?

A: UI benefits are calculated by the amount of money paid into their unemployment account by their employer(s). Once that state account has been exhausted there are no more state benefits available. Benefits paid under the federal CARES Act are not dependent on the state account.



COMMON HR QUESTIONS

Q: I got my PPP loan this week. I am getting all my employees off furlough and am going to start paying them. I am worried especially for my hygienists that they may not be able to go back to work in 8 weeks. I am also concerned that there could be another spike in the fall, and we will have to shut down again. What do I tell my employees to do so that that if one of those things happen, they can go back to being furloughed and collecting unemployment without having to re-apply to get back into the unemployment system?



COMMON HR QUESTIONS

A: If your PPP loan has been funded you can now pay your employees for the next 8 weeks and their salaries will be forgiven, up to \$100,000.00 (annualized). If you are not able to use your hygienists during this time you are not obligated to pay them out of your PPP loan; however, if you do not use the proceeds to pay your team then the loan will not be forgiven and you will have to repay the proceeds over 18 months (beginning six months after your loan has been funded). If employees return to work and are later laid off or furloughed, they will have to reapply for unemployment at that time.



COMMON HR QUESTIONS

Q: I quit my job right before the pandemic and the shut down occurred. I have some money in savings, but it is impossible for me to go back to work right now because no one is hiring. Can and should I try to apply for unemployment? Is there any significant recourse for me if I do? If I receive unemployment and then my former employer tries to fight it in court later what consequences could I face?



COMMON HR QUESTIONS

A: Generally, unemployment benefits are not available to employees who quit. They're only available if you're unemployed through no fault of your own. There is a narrow exception if you quit your job due to domestic violence, harassment, unsafe working conditions, or a medical reason.

COMMON HR QUESTIONS

Q: After the governor's mandate is lifted, I am fearful that my boss will force me to go back to work. I believe that we do not have the proper protective equipment to do procedures that cause aerosols. What do I do if I do not trust that my employer is giving me the right tools to practice dentistry safely? Can I remain on unemployment if he offers me a job? What if he tries to challenge my unemployment claim?



COMMON HR QUESTIONS

A: Employees generally do not have the right to refuse to work unless there's a risk of imminent harm. The question that the DOL will need to decide is whether an employer is providing a safe workplace. If your practice is following all applicable protocols, then employees should not be entitled to UI benefits if they reject a return to work offer; however, this situation is so unique that it remains to be seen if the DOL agrees that employees cannot reject an offer to return to work.



COMMON HR QUESTIONS

Q: I plan to follow state and ADA guidelines on proper PPE usage and when the governor lifts his mandate, I want to start seeing patients in a responsible manner. What do I do if my employees refuse to go back to work? Can I report them so they do not get any more unemployment benefits? Is there any documentation I can provide to prove that my work environment is safe and following proper guidelines to protect my staff and patients from the virus?



COMMON HR QUESTIONS

A: Document that you are open for business and have requested that your employee return to work. Also document any response from the employee. It isn't strictly necessary to document that your workplace is safe, but it won't hurt (inventory of masks, social distancing requirements, etc.). If your employee refuses to work, you can challenge those benefits by proving that work is available that your employee has refused.





COMMON HR QUESTIONS

Q: I have a lot of employees that are afraid of coming back to work. I plan to practice safely and within CDC guidelines when I can start seeing patients. I recently got a PPP loan. If some of my employees refuse to come back to work can I hire a new employee or even a family member and have what I pay them forgiven by a PPP loan? I plan to pay them the same amount or more than what my previous employee earned.



COMMON HR QUESTIONS

A: You can hire new employees if your current employees reject an offer to return to work. The PPP will allow forgiveness so long as your “FTE’s” are restored to prior levels by June 30th, 2020. You do need to be careful about terminating groups of employees and rehiring family members in order to improve your personal situation, as this likely runs afoul of the CARES Act and would jeopardize forgiveness; however, if employees refuse to return you can hire new employees.



COMMON HR QUESTIONS

Q: I hired an employee before the crisis hit. I got a PPP loan and want to be able to pay everyone. Based on what my loan amount was calculated at, the forgiveness amount would not allow me to pay everyone at their normal pay grade. I decided to reduce the amount everyone got paid so that I can pay everyone during my loan forgiveness period. If I reduce the amount of their pay and the extra federal money gets applied, can some of my employees still get some federal unemployment money so that their pay is equal to what they got while they were working?



COMMON HR QUESTIONS

A: You can reduce your employees' wages by as much as 25% without jeopardizing forgiveness; however, I would not expect that employees would be able to recover this money as part of their UI benefits



COMMON HR QUESTIONS

Q: I recently got a PPP loan and I don't feel comfortable paying my employees when they are not working. I am shut down now but want them to come in and clean my office, reorganize my supplies, call patients etc. If they refuse to come in due to fear of getting the virus what should I tell them? What legal recourse do I have to force them to come in? If they are comfortable with their unemployment checks? How do I persuade them?



COMMON HR QUESTIONS

A: It is important to note that if you do not use the PPP loan to pay your employees over the 8 weeks following its funding that you will lose forgiveness of this loan and will have to pay it off within 2 years. You may offer your employees an opportunity to work by cleaning/organizing and preparing for the return of patients in return for restoring their compensation for the 8-week period. While you cannot literally force employees to come in, they would jeopardize their receipt of unemployment benefits if they reject your offer to return to work.



COMMON HR QUESTIONS

Q: I am mad! I am frustrated that the government allowed people to get more money on unemployment then they would if they worked! This makes no sense to me and I want to get back to work and now I'm worried that my employees are more comfortable on their couch than at my office. What should I do?!



COMMON HR QUESTIONS

A: We understand this frustration; however, remember that if your employees reject a return to work offer that they should expect that they will lose their entitlement to UI benefits, and you are allowed to notify the Department of Labor, Division of Unemployment, that the employees rejected a return to work offer and should lose their right to benefits



THANK YOU



LENDING AND HR UPDATE

APRIL 21, 2020

KELSEY CURRENCE AND GARY
BENSON, ESQ

KCURRENCE@CDAONLINE.ORG

FOR THOSE ATTENDEES LISTENING TO THE RECORDING, PLEASE
CDAONLINE.ORG EMAIL YOUR NAME AND THE CE CODE TO ALANA ENGLISH AT

MEMBERSHIP@MDDSDENTIST.COM