

COVID-19 and Your Business: Issues to be Aware of During the Pandemic

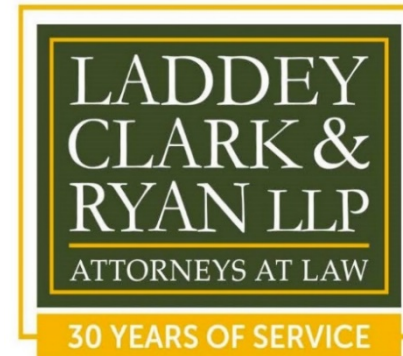
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NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("NJEDA") SUPPORT PROGRAMS

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1. Small Business Emergency Assistance Grant Program (4/3/2020 **Applications are oversubscribed**)
2. Small Business Emergency Assistance Loan Program (4/16/2020 **Applications are currently closed**)
3. NJ Entrepreneur Support Program
4. Small Business Emergency Assistance Guarantee Program
5. Community Development Finance Institution (CDFI) Emergency Loan Loss Reserve Fund
6. CDFI Emergency Assistance Grant Program

NJEDA SUPPORT PROGRAMS

- Non-Eligible:
 - Related to gambling or gaming activities
 - Related to the purveyance of “adult” activities, services, products or materials.
 - Auction or bankruptcy or fire or “lost-our-lease” or “going-out-of-business” or similar sale
 - Traveling merchant
 - Christmas tree sales or other outdoor storage
 - Any other activity constituting a nuisance
 - Illegal under the laws of the State of New Jersey

Small Business Emergency Assistance Grant Program

- **Purpose:** \$5,000 to small businesses that have between 1-10 full time equivalent employees (“FTE”) to stabilize operations and reduce layoffs or furloughs
- **Terms:**
 - Grant values are calculated at \$1,000 per FTEs reported on business’ most recent WR-30 filed within the New Jersey Department of Labor and Workforce Development
 - \$3 million of the program funds will be set aside for small to mid-sized enterprises (SMEs) with 5 or fewer FTEs
 - Loan can be used for payroll and working capital support
- **Eligibility:**
 - Retail, arts, entertainment, recreation, accommodation, food service, and other services such as repair, maintenance, personal, and laundry services
 - Launched on April 3, 2020
 - **Applications for this program are currently closed**

Small Business Emergency Assistance Grant Program (cont.)

- The NJEDA has created a process for corporate and philanthropic partners to make donations to the Program
 - Gifts to support the Small Business Emergency Assistance Grant Program must be at least \$100,000 and without conditions
 - Donors must have no existing contracts with the NJEDA and may not enter into such a contract for at least six months
 - Individuals and companies interested in donating to support the Small Business Emergency Assistance Grant Program should contact donation@njeda.com

Small Business Emergency Assistance Loan Program

- **Purpose:** A \$10 million program that will provide working capital loans for up to \$100,000 to small businesses and non-profit organizations with less than \$5 million in revenues
- **Terms:**
 - 10-year term and amortization
 - 0% interest rate (years 1-5), NJEDA's prevailing interest rate floor (capped at 3.0% years 6-10)
 - Deferred repayments for 12 months
 - There are no fees associated with the Small Business Emergency Loan Program for the first five years of the loan, including application fees, and then standard modification fees will apply
- **Eligibility:**
 - Small businesses and non-profit organizations with less than \$5 million in revenues
 - Physical commercial location in NJ, existing for at least 1 year and registered to do business in NJ
 - Global debt service coverage ratio 1.00 as of Dec 31, 2019
 - Certify good standing with State, Dept. of labor and workforce development
 - CEO certify that firm will make best efforts to not lay-off employees or rehire ASAP
 - Able to demonstrate negative impact related to COVID-19 on or after March 9, 2019
 - **Applications for this program are currently closed April 16, 2020**

NJ Entrepreneur Guarantee Program

- **Purpose:** \$5 million program that guarantees additional working capital loans provided by private sector investors to NJ-based entrepreneurial businesses
- **Terms:**
 - NJEDA will guarantee up to 80% of the total investment amount, not to exceed \$200,000 per NJ entrepreneurial company.
- **Eligibility:**
 - The entrepreneurial business must:
 - Have a minimum of 50% of employees in NJ
 - Have less than 25 total employees at the time of application
 - Have under \$5 million in revenues
 - Have corporate headquarters in New Jersey (including at least one C suite member with a principal office in New Jersey)
 - Fall under one of the eight sectors outlined in Governor Murphy's economic plan (advanced manufacturing, information/technology, life sciences, finance and insurance, clean energy, food and beverage, advanced transportation, film and digital media)
 - Be registered to do business in NJ and must certify that the company is in good tax standing with the State
 - Be in good standing with the Department of Labor and Workforce Development
 - **Applications will be accepted in the coming weeks**

NJ Entrepreneur Guarantee Program (cont.)

- Investors:

- **The investor must already be an equity holder in the entrepreneurial business**
- Investors can include, but are not limited to, individuals, trusts, and corporations
- Investors must already have equity interest and equity position in the company
- Investors must have supported the company in the form of a convertible note, SAFE, or equity investment prior to March 9, 2020
- Qualified investors are not required to be New Jersey residents

Small Business Emergency Assistance Guarantee Program

- **Purpose:** A \$10 million pilot program for small businesses and non-profit organizations that makes available one-year first loss guarantees of permanent working capital loans and lines of credit originated by Premier Lender banks
- **Terms:**
 - Must cover operating expenses
 - The program provides a 50% guarantee, not to exceed a total NJEDA exposure of \$100,000 to Premier Lenders that will issue working capital loans or lines of credit to support business continuity for a range of COVID-19 related impacts to businesses (reduced revenue, employee shortage, supply chain impact, etc.)
 - There are no NJEDA fees associated with applying for this program

Small Business Emergency Assistance Guarantee Program (cont.)

- **Eligibility:**

- Have a physical commercial location in the State of New Jersey
- Home-based businesses are not eligible for this round of grant funding. A home-based business is a business operated out of a residential property where commercial activity is not zoned to take place.
- Have been in existence for at least one full year
- Have \$5 million or less in annual revenue
- Can demonstrate a negative impact on your business due to the COVID-19 outbreak
- Can provide CEO certification that you are making a best-effort to not lay off employees or will re-hire employees as soon as possible
- Are registered to do business in NJ and must certify that the company is in good tax standing with the State
- Are in good standing with the New Jersey Department of Labor and Workforce Development

Small Business Emergency Assistance Guarantee Program (cont.)

List of Premier Lenders:

- BB&T
- Bank of America
- Columbia Bank
- ConnectOne Bank
- Cross River Bank
- Fulton Bank of New Jersey
- Investor Bank
- JPMorgan Chase
- Lakeland Bank
- M&T Bank
- Newfield National Bank
- OceanFirst Bank
- Peapack-Gladstone Bank
- PNC
- Republic Bank
- Santander Bank
- Sterling National Bank
- TD Bank
- The Bank of Princeton
- Provident Bank
- TriState Capital Bank
- Valley Bank
- Wells Fargo

Community Development Finance Institution (CDFI) Emergency Loan Loss Reserve Fund

- **Purpose:** A \$10 million capital reserve fund to take a first loss position on CDFI loans that provide low interest working capital to micro businesses to withstand loan defaults and increase the availability of low-interest loans
- **Terms:**
 - The NJEDA will back these loans up to 50% if they default in the future
- **Eligibility:**
 - Loans must be made to a company that certifies it has been adversely impacted by the emergency (e.g., closed, reduced hours, 20% reduction in revenue, 25% reduction in staff availability, material disruptions to its supply chain)
 - Loans must be focused on working capital needs of a micro or small business
 - Each loan cannot exceed \$75,000
 - Interest rates on all loans must be lower than 3.75%
 - Loans must provide flexible loan structures (e.g. deferred payments, moratoriums or interest only for up to 6 months)
 - Loans cannot exceed a term of five years

CDFI Emergency Loan Loss Reserve Fund (cont.)

- Eligible NJ-based CDFIs

- New Jersey Community Capital (NJCC)
- UCEDC
- Regional Business Assistance Corporate (RBAC)
- Cooperative Business Assistance Corporation (CBAC)
- Greater Newark Enterprise Corporation
- 1st Bergen Federal Credit Union

CDFI Emergency Assistance Grant Program

- **Purpose:** A \$1.25 million pilot program to make grants up to \$250,000 to CDFIs to support an increase in assistance to micro and small businesses. The grant funds can be used to offset operating costs and increase loan offering by lowering interest rates on business loans.
- **Terms:**
 - Support the scale-up of the origination, technical support, and underwriting capacity of eligible CDFIs including hiring staff
 - Allow the CDFIs to buy down interest rates on any COVID-19 related emergency working capital loan
- **Eligible NJ-based CDFIs:**
 - New Jersey Community Capital (NJCC)
 - UCEDC
 - Regional Business Assistance Corporate (RBAC)
 - Cooperative Business Assistance Corporation (CBAC)
 - Greater Newark Enterprise Corporation

CDFI Emergency Assistance Grant Program (cont.)

- **Eligibility:**

- Be a NJ-based Community Development Finance Institution (CDFI) that has been in existence for at least 10 years
- Demonstrate it is a current CDFI through documentation provided by the U.S. Department of Treasury
- Complete a simplified debarment legal questionnaire
- Produce a current NJ Tax Clearance Certificate and be verified in good standing with Department of Labor
- Demonstrate the following key factors:
 - Significant experience working with underserved small business segments (additional consideration will be given for experience working on emergency assistance programs)
 - Available capital that could be leveraged in COVID-19 related emergency low-cost and low-interest working capital loans
 - Significant experience working in communities and business segments underserved by the banking sector and other financial institutions
 - Quality of a plan that outlines the intended uses of the grant funding that include offsetting an increase in operating expenses associated with the COVID-19 emergency or buying down the cost of funding to allow lower cost loans for COVID-19 emergency loan programs
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 - Deep experience and focus on small business lending, as evidenced by having a significant portion of the CDFI's lending portfolio be with small businesses (additional consideration will be given for having a portion of its lending portfolio with emergency assistance programs)

Helpful Resources NJEDA Support Programs

- **Emergency Assistance Eligibility Wizard:** <https://assistance.business.nj.gov/>
- **Coronavirus (COVID-19) Small Business Guidance & Loan Resources:**
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- **NJEDA Initiatives to Support Businesses Impacted by COVID-19:**
<https://www.njeda.com/Press-Room/News-Articles/Press-Releases/NJEDA-Announces-New-Initiatives-to-Support-Busines>
- **COVID-19/Novel Coronavirus Information for New Jersey Businesses:**
<https://faq.business.nj.gov/en/>

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U.S. SMALL BUSINESS ADMINISTRATION (SBA) SUPPORT PROGRAMS

FEDERAL SBA RELIEF PROGRAMS

1. Paycheck Protection Program (4/16/20 Applications are oversubscribed)
2. Economic Injury Disaster Loan (EIDL, SBA is unable to accept new applications at this time)
3. SBA Express Bridge Loan (EBL)
4. SBA Debt Relief

Paycheck Protection Program

- **Purpose:** An amendment to the Small Business Act, 15 U.S.C. 636(a), that provides up to \$349 billion in forgivable loans to eligible businesses and individuals to cover payroll and other business-related costs incurred from February 15, 2020 through June 30, 2020
- **Terms:**
 - Maximum loan amount is \$10 million
 - Interest rate is 1%
 - First payment deferred for 6 months
 - Loan maturity is 2 years
 - No collateral requirements
 - No personal guarantees required
 - No borrower or lender fees payable to SBA
 - Program originally projected to be available through June 30, 2020
- **Eligibility:**
 - Small businesses, nonprofit organizations, veterans organization, tribal business, sole proprietors, independent contractors, and self-employed individuals
 - Less than 500 employees
 - Employers with more than 500 employees that meet the SBA size standards
 - **4/16/2020: The program was deemed to be underfunded and oversubscribed**
 - **Discussions on adding \$310 billion to the PPP**

Paycheck Protection Program (cont.)

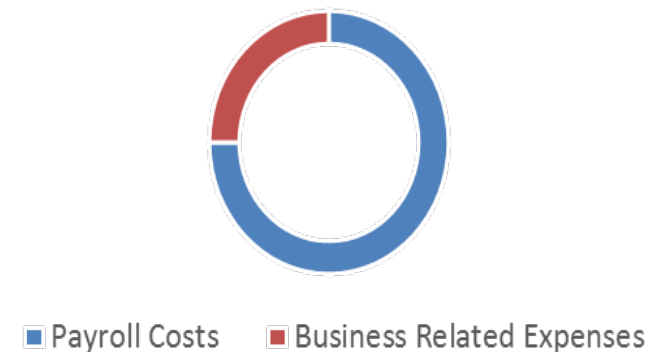
- **Forgiveness:**

- The paycheck protection program provides coverage for payroll costs and other business-related costs
- The maximum loan granted from PPP will be equal to 2.5 times the average monthly payroll costs for the previous calendar year, up to \$10 million

- **75/25 proportion:**

- Fully forgiven when at least 75% of the funds are used for payroll
- Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels

PPP Loan Proportion



Paycheck Protection Program (cont.)

Payroll Costs 75%

- Under, 15 U.S.C.A. 636(a)(36)(A)(viii), **payroll costs** include:
 - (AA) salary, wage, commission, or similar compensation, up to \$100,000;
 - (BB) payment of cash tip or equivalent;
 - (CC) payment for vacation, parental, family, medical, or sick leave;
 - (DD) allowance for dismissal or separation;
 - (EE) payment required for the provisions of group health care benefits, including insurance premiums;
 - (FF) payment of any retirement benefit;
 - (GG) payment of State or local tax assessed on the compensation of employees.

Business Related Costs 25%

- Under 15 U.S.C.A. 636(a)(36)(F), **allowable uses of covered loans** includes:
 - (I) payroll costs;
 - **(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;**
 - **(III) employee salaries, commissions, or similar compensations;**
 - (IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
 - (V) rent (including rent under a lease agreement);
 - (VI) utilities; and
 - (VII) interest on any other debt obligations that were incurred before the covered period.

Economic Injury Disaster Loan (EIDL)

- **Purpose:** \$2 million working capital loan that enables applicants to receive a \$10,000 emergency grant
- **Terms:**
 - EIDL loans may be used to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the disaster not occurred
 - These loans are not intended to replace lost sales or profits or for expansion.
 - Eligible entities may qualify for loans up to \$2 million
 - The interest rates for the disaster are 3.75% for small businesses and 2.75% for nonprofit organizations with terms up to 30 years
 - Eligibility for these EIDL working capital loans are based on size (must be a small business) and eligible nonprofit organization
 - Applicants may request an advance of up to \$10,000 immediately

EIDL (cont.)

- **Eligibility:**

- EIDL loans are available for any eligible business with less than 500 employees
 - Small business
 - sole proprietorships
 - independent contractors and self-employed persons
 - private non-profits organization
 - 501(c)(19) veterans organizations
- Businesses in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries
- Collateral is required for loans over \$25,000
- There is no real estate collateral required. A blanket UCC-1 will be filed against all of the business collateral
- Personal guarantees are required for loans greater than \$200,000
- Applicants can have an existing SBA Disaster Loan and still qualify for an EIDL for this disaster, but the loans cannot be consolidated
- **SBA is unable to accept new applications at this time based on available appropriations funding**
- **Discussions on adding \$60 billion to EIDL**

SBA Express Bridge Loan (EBL)

- **Purpose:** Allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly. These loans can be used to cover working capital and operational expenses.
- **Terms:**
 - Up to \$25,000
 - interest rate cannot exceed 6.5%
 - Up to a 7-year loan term
 - May be repaid in full or in part by proceeds from the EIDL Loan
 - Funds disbursed 45 days from application
 - EBL Pilot Program cannot make up more than ten percent of the total number of 7(a) loans guaranteed by SBA in any fiscal year
- **Eligibility:**
 - Business must have been in operations as of March 13, 2020
 - Have been adversely impacted by COVID-19
 - Have a pre-existing relationship with a lender that offers EBL loans as of March 13, 2020
 - Have 500 or fewer employees, this number may be higher for different industries

SBA Debt Relief

- **Purpose:**

- The SBA will automatically pay the principal, interest, and fees of current 7(a), 504, and microloans for a period of six months
- The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloan issued prior to September 27, 2020
- For current SBA Serviced Disaster Loans: If your disaster loan was in “regular servicing” status on March 1, 2020, the SBA is providing automatic deferments through December 31, 2020
 - Interest will continue to accrue on the loan
 - 1201 monthly payment notices will continue to be mailed out which will reflect the loan is deferred and no payment is due
 - The deferment will not cancel any established Preauthorized Debt (PAD) or recurring payments on your loan
 - Borrowers preferring to continue making regular payments during the deferment period may continue remitting payments during the deferment period
 - After this automatic deferment period, borrowers will be required to resume making regular principal and interest payments

Helpful Resources SBA Support Programs

- **Emergency Assistance Eligibility Wizard:** <https://assistance.business.nj.gov/>
- **COVID-19/Novel Coronavirus Information for New Jersey Businesses:**
<https://faq.business.nj.gov/en/>
- **Paycheck Protection Program Borrower Application Form:**
<https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>
- **EIDL Application:** <https://disasterloan.sba.gov/ela>
- **Express Bridge Loan Pilot Program Guide:**
<https://www.sba.gov/sites/default/files/2020-03/Express-Bridge-Loan-Pilot-Program-Guide-FINAL-3.25.20.pdf>

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FEDERAL RESERVE SUPPORT PROGRAMS

FEDERAL RESERVE SUPPORT PROGRAMS

Main Street Lending Program: the federal government will make capital available to lenders to make loans to small and medium-size businesses, by means of a Special Purpose Vehicle (SPV) to purchase a 95% participation interest in eligible new and existing loans from eligible lenders. Lenders will retain 5% of the loan. Through this program, the Federal Reserve will purchase up to \$600 billion of eligible loans. The Treasury will place \$75 billion of funds allocated in the CARES Act into the SPV.

- Eligible lenders include U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies

The Program will operate through two facilities:

1. The Main Street New Loan Facility (MSNLF)
2. The Main Street Expanded Loan Facility (MSELF)

New Main Street Lending Program v. PPP

New Main Street Lending	PPP
2.5-4% Variable Interest Rate	1% Fixed Interest Rate
Four Year Maturity	Two Year Maturity
Minimum \$1 Million	No Minimum
No Forgiveness	Full or Partial Forgiveness

New Main Street Lending Program

- **Eligibility:**

- Businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues which require financing due to the exigent circumstances present by the COVID-19 pandemic
- Must be a business that is created or organized in the United State or under the laws of the United States with significant operations in and a majority of its employees based in the United States
- May not also participate in the Primary Market Corporate Credit Facility
- Firms seeking Main Street loans must commit to make reasonable efforts to maintain payroll and retain workers

The Main Street New Loan Facility (MSNLF)

- Terms:

- 4-year maturity
- Amortization of principal and interest deferred for one year
- Adjustable rate of SOFR + 250-400 basis points
- Minimum loan size of \$1 million
- The available loan amount will be from \$1 million up to the lesser of (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed by undrawn debt, does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortizations. The loans will be unsecured.
- Prepayment permitted without penalty

The Main Street Expanded Loan Facility (MSELF)

- Terms:

- 4-year maturity
- Amortization of principal and interest deferred for one year
- Adjustable rate of SOFR + 250-400 basis points
- Minimum loan size of \$1 million
- Maximum loan size that is the lesser of (i) \$150 million, (ii) 30% of the Eligible Borrower's existing outstanding and committed by undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization. If the existing loan being upsized is secured, the new loan must be secured by the same collateral with the same priority.
- Prepayment permitted without penalty

Helpful Resources for Federal Reserve Support Programs

- **Main Street Lending Program Policy Tools:**

<https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>

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U.S. DEPARTMENT OF AGRICULTURE (“USDA”) SUPPORT PROGRAM

USDA SUPPORT PROGRAMS

Rural Development Guaranteed Loan Programs

- Effective March 31, 2020 until September 30, 2020, lenders may offer 180-day loan payment deferrals without prior agency approval for Business and Industry Loan Guarantees, Rural Energy for America Program Loan Guarantees, Community Facilities Loan Guarantees, and Water and Waste Disposal Loan Guarantees
- On April 8, 2020, USDA announced that guaranteed lenders may also approve and make covered loans under the Paycheck Protection Program
- **List of Guaranteed Lenders:**
<https://www.rd.usda.gov/files/SFHGLDApprovedLenders.pdf>

Business and Industry Loan Guarantees

- **Purpose:** To provides loan guarantees to rural for-profit businesses, nonprofits, cooperatives, federally-recognized Tribes, and Public bodies
- **Terms:**
 - Collateral must have documented value sufficient to protect the interest of the lender and Agency
 - Loan Guarantees – 80% up to \$5 million; 70% between \$5 and \$10 million; 60% between \$10 million to \$25 million
 - Loan Maturity
 - Maximum term on real estate is 30 years
 - Maximum term on machinery and equipment is the lesser of its useful life or 15 years
 - Maximum term on working capital is not to exceed 7 years
 - Interest rates are negotiable between the lender and borrower, subject to Agency review. Interest-only payments may be scheduled in the first 3 years
 - Guarantee fee is 3% of the guaranteed amount
 - The annual renewal fee is .5% of outstanding principle
 - The proposed operation must have a realistic repayment ability

Business and Industry Loan Guarantees (cont.)

- **Eligible Uses:**

- Business conversion, enlargement, repair, modernization or development
- The purchase and development of land, easement, rights-of-way, buildings or facilities
- The purchase of equipment, leasehold improvements, machinery, supplies or inventory
- Debt refinancing when refinancing improves cash flow and creates jobs
- Business and industrial acquisitions when the loan will maintain business operations and create and save jobs.

- **Eligibility:**

- Rural areas outside a city or town with a population of fewer than 50,000 people
- The borrower's headquarters may be based within a larger city as long as the project is located in a eligible rural area
- The lender may be located anywhere in the United States

Helpful Resource for Business and Industry Loan Guarantees:

<https://www.rd.usda.gov/programs-services/business-industry-loan-guarantees>

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PROPOSED NEW JERSEY LEGISLATION

Proposed New Jersey Legislation

- **A-3844**: Compels insurance companies to cover claims by New Jersey small business owners for damages resulting from interruption of their operations due to the COVID-19 state-of-emergency declaration by Gov. Phil Murphy, and executive orders that forced them to shut down temporarily.
- **S-2348**: Allows qualified taxpayers to claim a credit equal to 20 percent of the credit they receive under the Employee Retention Credit of the federal “CARES Act.”
- **S-2347**: Establishes the Employment and Business-Related Tax Deferral Assistance Program which allows small businesses to defer payments and remittances including those regularly collected pursuant to the state and use tax, the motor fuels tax, the petroleum products gross receipt tax, the gross income tax, workers’ compensation contributions, unemployment compensation contributions, temporary disability leave benefits contributions, and family temporary disability leave contributions.

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COVID GRANTS AND LOANS- LESSONS LEARNED AND NEXT STEPS

NEXT STEPS

IF THE PROGRAM FUNDS RAN OUT BEFORE YOUR LOAN OR GRANT WAS CONSIDERED, OR YOU DID NOT APPLY YET:

- Federal government held up on additional \$310 billion for PPP
- Be prepared-Check with you lender and prepare application and necessary documents-and confirm your loan package is complete in order that your bank is ready to submit if and when additional funds become available
- Speak with another bank?
- Review the other loan and grant programs that may be available to you- such as programs offered by the Federal Reserve and USDA
- Speak with your bank about other possible options

NEXT STEPS

IF YOU RECEIVED A PPP LOAN

- Loan proceeds must be used within 8 weeks from the date funds received
- Consider depositing the funds into a separate account
- Determine if loan disbursement can be delayed, SBA requires funding within 10 days of approval
- Plan for loan forgiveness
- Things that can negatively effect forgiveness
 - Spend less than 75% on payroll costs
 - Reduction in full time employees from base period
 - Reduction of salary or wages to less than 75% of base salary or wages from base period

NEXT STEPS

- Spend the loan proceeds on allowable expenses during the 8 week loan period
- Spend at least 75% of the loan proceeds on payroll costs
- Remaining 25% can be used for rent, mortgage interest or utilities
- Do not use loan proceeds for paying paid leave under the Families First Coronavirus Response Act
- Be aware of and do not go below the full time employee number that you need to maintain during the loan period (you determined this during the application stage)
- Review employee compensation to make sure that you do not reduce it below 25% of the base period (determined during the application process)
- PPP funds may be used for severance-but consider how this will affect your required employee count

NEXT STEPS

- Keep detailed records of how the loan proceeds were spent
- Check with Lender to obtain forgiveness application and any program updates
- Check SBA's website for additional guidance and to determine if new programs become available
- If full loan is not forgiven, decide whether to pay off loan or pay it off over its 2 year term

LESSONS LEARNED

- When applying for loans and grants closely follow application requirements
- Make sure that you or your financial team or professionals have the information required to determine the salary and wages, employee census...for the base period
- Missing or incorrect applications delayed submissions or worse resulted in loan rejections or being shut out
- Some people lost out by shopping banks
- Do not submit multiple applications for the same program to different banks
- Consult your banker, financial professionals and legal counsel
- Determine which program(s) best suit your situation prior to applying
- Some businesses may have a difficult time bringing back employees in order to meet base period wages/salary

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CONTRACT CONCERNS

CONTRACTS

- Businesses are facing competing pressures-vendors looking to get paid, customers seeking to defer payment...
- Some businesses are taking a “we’re in this together” approach
- Others are strictly following the terms of their contracts
- Most contracts and agreements probably do not contemplate pandemics, stay at home orders...
- First step-review your contracts
- Legal theories that may apply:
 - Force Majeure-often referred to as the “act of god” clause-addresses risk for events beyond the control of the parties-i.e. national disaster, wars, fires...

CONTRACTS-FORCE MAJEURE

- If in the contract or implied, may excuse or delay performance by a party
- If applies does it contain limitations, specific period of time, exception for payment obligations...?
- Does it spell out specific acts that constitute force majeure events, if so does it list pandemics, epidemics, viruses, states of emergency...?
- Does the contract require notice prior to claiming force majeure?
- Have to drill down to see if the performance in question is effected by COVID-19; when and where is the performance required; phase of the pandemic; is there an alternate means of performance.

CONTRACTS-FORCE MAJEURE

- In order to have a force majeure event there must be:
 - An unforeseen event-unless the contract lists specific force majeure events, in which case the contract should address how the risk is allocated
 - Caused by an outside source or third party
 - Is unavoidable

CONTRACTS-IMPRACTICABILITY AND IMPOSSIBILITY

- Impracticability of performance-equitable principal-requires the party claiming impracticability to prove that performance is more difficult or burdensome than anticipated when the contract was entered into
- Impossibility of performance-equitable principal-a party's performance is impossible by an outside event.
- Both require
 - Unforeseen event
 - Risk not allocated between the parties in the contract
 - Event sought to be excused was a basic condition of the contract
 - Event resulted in one party's performance becoming impractical or impossible
 - For example-Business A is hired to perform construction work at an out of state business and due to travel restrictions and the project not being essential construction they cannot perform the work by the date required in the contract

CONTRACTS-FRUSTRATION OF PURPOSE

- Equitable concept in which a situation arises where a change in circumstances, such as an emergency makes performance by a party worthless to the other party
- In order to assert frustration of purpose a party must show:
- The reason the party entered into the contract was completely frustrated by an outside event beyond the party's control that occurred after the contract was signed and the occurrence of the contracted for event was a reasonable and basic presumption for making the contract
- Look at timing of contract
- For example, Business A contracts to lease a private jet to transport their employees and key customers to the 2020 Olympics, and due to the pandemic the Olympics were cancelled this year, Business A may assert frustration of purpose involving the jet lease contract

CONTRACTS-ILLEGALITY

- Requiring a party to perform an illegal act is void and unenforceable as a matter of law
- A contract that in normal circumstances would be routine and legal may be rendered illegal during COVID-19
- For example, Business X contracts with Business Y to cater and supply entertainment... for a customer appreciation party for 200 people at a New Jersey State Park. Since Executive Orders signed by Governor Murphy ban large gatherings and all State Parks have been ordered closed, either party may assert illegality as a basis for terminating the contract.

8

REVIEW YOUR INSURANCE

INSURANCE

- Bring your insurance agent into the discussion
- Get an overview of your business insurance coverage
- Be aware that your business insurance is likely to include coverage exclusions for violations of law
- If your non-essential business is operating on site without following the Executive Order requirements, i.e. social distancing, masks...and a claim is made will you be denied coverage?
- If your work force is working from home do you have cyber liability insurance, and does it protect you from cyber attacks...involving company and customer information...? Review coverage with your agent
- Put in place policies for use of personal devices, security protocols, make employees aware of cyber attacks and phishing scams-i.e. emails appearing to schedule virtual meetings

INSURANCE: BUSINESS INTERRUPTION

- Determine if you have business interruption coverage, usually included in property insurance policy, or may be a stand alone policy
- Don't be relieved if you have coverage-COVID-19 may not be a covered event
- Business interruption insurance addresses loss of income when the business cannot operate due to occurrence of an insured event (think fire, flood...)
- Most policies require a “physical” event to trigger coverage.
- Is business closure due to government order or pandemic sufficient to trigger coverage?
- Need to review policy-+ do you have non-damage business interruption insurance (some carriers offered this after events like SARS...)

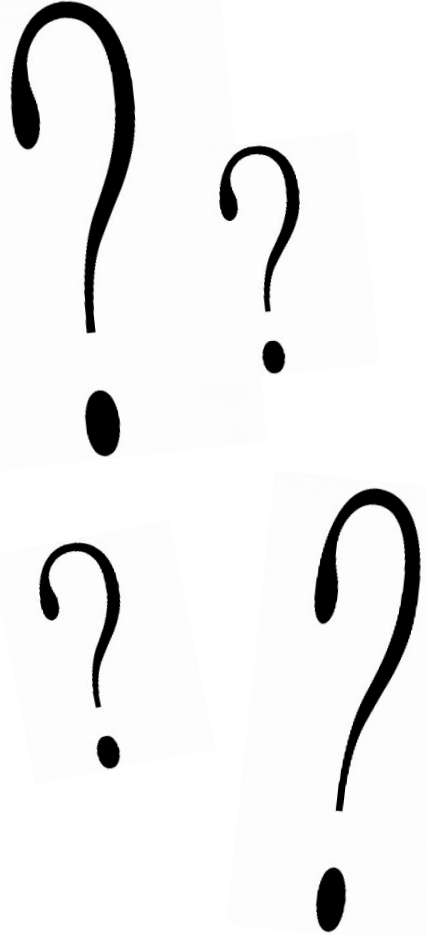
INSURANCE: BUSINESS INTERRUPTION

- If covered (and this is a big “IF”), the coverage may include:
 - Contingent income and extra expense-includes losses from interruption of insured business and extra expense due to property damage suffered by key suppliers or customers
 - Extra expense-costs for arranging, equipping and operating out of temporary location due to property damage at insured’s premises
 - Civil authority-covers losses from business interruption by government authority in response to damage to property other than the insured’s property prohibits access to the insured’s property
 - Ingress/egress-when physical access to insured premises is impacted by property damage from a covered loss

INSURANCE: BUSINESS INTERRUPTION

- Suits already filed in New Orleans, California...by restaurants, casinos
- Legislation-New Jersey a3844
- Insurance industry has requested federal government create a fund to assist businesses
- What to do
 - Document onsite exposure to COVID-19
 - Keep track of all expenses, lost income...involving your business operations that are impacted
 - Review policies with your broker and attorney and determine if a claim or at least notice of a potential claim should be filed

Questions?



***If you have any questions
please email them to
Kelly Eckert at
keckert@lcrlaw.com***

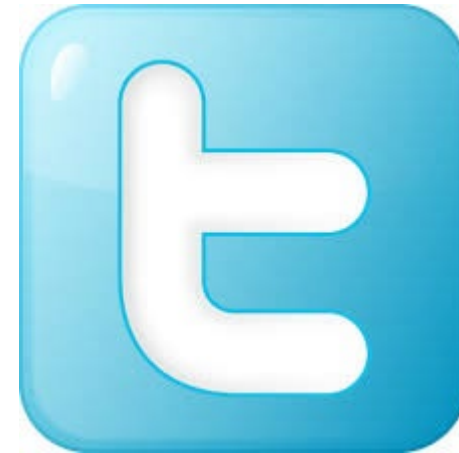
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