

Essential Yet Ineligible: Cannabis-Related Businesses Face Conundrum Under COVID-19

Cannabis Business Legal News

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Lending under the federal government's Payroll Protection Program (a part of the newly passed Coronavirus Aid, Relief, and Economic Security Act)(the "CARES Act") began Friday, April 3. Financial relief under the Small Business Administration's (the "SBA's") newly revamped "Disaster Loan" process has already begun. In fact, many of the provisions in the CARES Act and similar COVID-19 legislation are aimed at providing financial protections and assistance to businesses struggling during the COVID-19 pandemic. Yet, one of the nation's newest and thus most vulnerable industries remains completely ineligible for any financial assistance whatsoever under the CARES Act – the cannabis industry. This ineligibility most greatly affects the estimated 240,000 people that make up the cannabis workforce nationwide, as well as the financial bottom lines of states which rely on the industry for much needed tax revenue.

Evidencing this importance, on March 21, 2020, in the midst of the pandemic, Illinois Governor J.B. Pritzker's stay-at-home order went into effect and officially recognized cannabis-related businesses (or CRBs) as "essential" and thus authorized to remain open and operational during the shutdown. Most other states in which the cannabis industry legally operates (a majority of U.S. states) have done the same. And while, at least for the time being, the cannabis industry seems to be faring relatively well, the effects of the coronavirus slowdown are beginning to emerge in this industry too. At least one dispensary in the Chicagoland area has closed its doors temporarily and several others seem poised to do so. The reduction in foot traffic caused by the stay-at-home order combined with the meteoric rise in unemployment is certain to result in long-term decreased revenues for CRBs nationwide.

But while businesses in other industries are able to rely on the funds being offered under the CARES Act and other life line legislation, CRBs are not. Once again, the federal government's failure to address the problems created by the illegality of cannabis at the federal level is not simply a hassle to the industry, it is dangerous to it. The reason this time? The loans available to small businesses under the CARES Act are to be offered by the nation's depository institutions, credit unions, and other financial institutions which are prohibited by federal law

from providing financial services to the cannabis industry.

Additionally, CRBs will also be precluded from receiving COVID-19 related funds under the SBA's "disaster" relief program. As you probably assumed by this point, the SBA is a department of the federal government and maintains its position that it is unable to provide loans to both official CRBs and "indirect" CRBs. Of great concern to anyone in this industry, the SBA broadly defines an "indirect" CRB as a business that derived **any** of its gross revenue for the previous year...from sales of products or services to a CRB. And lest we think the COVID-19 pandemic has loosened the purse strings at the SBA, just last week, it doubled down on its prohibition by stating that CRBs "are not eligible for SBA-funded services." This harmful definition of an "indirect" CRB will in all likelihood chill other businesses' desire to work with CRBs in even the smallest capacities for fear of being labeled an "indirect" CRB and thus themselves ineligible for relief funds from the SBA. And the ability of those other businesses to continue to work with CRBs may be absolutely critical right now given the absolute exclusion from federal help CRBs are facing.

Before the COVID-19 pandemic, the cannabis industry had been projected to become one of the largest industries in the country, providing hundreds of thousands if not millions of jobs to the American workforce and millions of dollars in tax revenue to local, state and the federal government. The federal government's ongoing refusal to remedy the federal illegality of cannabis continues to threaten this beneficial industry and that refusal has once again come into crisp view given these uncertain economic times and the likely need of CRBs for financial assistance through them.

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