

Forgiveness Requirements Relaxed with Passage of Paycheck Protection Program Flexibility Act

Labor & Employment Law Update

on June 5, 2020

On June 5, 2020, President Trump signed the Paycheck Protection Program Flexibility Act. Notable changes will allow businesses more time to spend loan proceeds on permitted costs. This is significant relief for those businesses that were unable to continue operations and bring employees back to work. With many of those employees being lower paid, paying them to stay at home was not well received as it interfered with the higher amounts of unemployment compensation they could otherwise receive.

The significant changes allowed by the PPP Flexibility Act are:

- The period during which borrowers have to account for payroll and non-payroll expenses has been expanded from 8 weeks to 24 weeks.
- Borrowers are only required to spend 60% on payroll costs and can spend 40% on non-payroll costs. This is revised from the previous ratio of 75/25. (Note that the definition of payroll and non-payroll costs remains unchanged). This means a borrower has 16 weeks longer than originally legislated to cover rent and other permitted non-payroll costs.
- Certain scenarios can provide for a borrower to be excused entirely from the FTE calculation. This means an employer that is unable to maintain the same employee levels during the 24-week period may not need to have the forgiveness of a loan prorated based upon a reduction in their average FTEs.
- Repayment terms are modified. Notably, the first payment will not be required to be made within 6 months of loan origination. Instead, a borrower has 10 months from either the date the covered period ends or from 12/31/20 (whichever is later) to apply for forgiveness. Initial payment is not due until forgiveness is determined.
- The previous "cure" deadline of 6/30/20 where borrowers could rehire employees and/or reinstate salary levels has been extended to 12/31/20.
- PPP borrowers are permitted to utilize the provision of the CARES Act that permits delay of payment of payroll taxes.