

Government Loans and Grants to Businesses – Beware of the “Fine Print”

Labor & Employment Law Update

By John Hayes on August 13, 2021



Starting from the early days of the COVID-19 pandemic both federal and state governments have provided assistance to businesses struggling with the economic impact of the pandemic. Specifically, federal, state, and public assistance in the form of grants and forgivable loans have proliferated to provide much needed financial support to businesses negatively affected by the pandemic. For example, on August 11, 2021 Governor Pritzker and the

Illinois Department of Commerce and Economic Opportunity (DCEO) announced the \$250 million Back to Business (B2B) grant program, its second grant program for businesses, which aims to deploy small business recovery grants for businesses hit hardest by the COVID-19 pandemic. This is just one of many grants and forgivable loan programs implemented by the government (both state and federal) to assist businesses that have been adversely impacted by the COVID-19 pandemic.

But, before jumping at that public money, businesses should be aware of the “fine print” found in government-sponsored grant or loan programs. For example, some of the stipulations required of a business accepting a B2B grant are:

- A recipient of the grant may be required to participate in an audit of the program at a future date;
- A recipient must maintain financial records required for tax and regulatory compliance;

- The grant proceeds are taxable; and
- A recipient must have complied, and will continue to comply, with all relevant laws, regulations and executive orders from the state and federal government, including the social distancing guidelines as promulgated by the Executive Orders of the Illinois Governor.

The application for the B2B grant is not available at this time (applications will open on August 18, 2021) but the previous grant program from Illinois, the Business Interruption Grant (BIG) Program provides a roadmap as to what a business must “certify” in order to receive the grant. Some of the requirements for BIG were:

- The recipient will continue to comply, as applicable, with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), the Davis-Bacon Act (40 U.S.C. 276a-276-1), the Drug-Free Workplace Act of 1988 (44 CFR, Part 17, Subpart F), the Fair Labor Standards Act (29 U.S.C. 201), and the Illinois Prevailing Wage Act (820 ILCS 130/1);
- The recipient is not presently suspended, debarred, proposed for debarment, or declared ineligible by any state or federal department or agency, and will not enter into a contract with a contractor who is on any federal or state debarred contractor list;
- The recipient will prohibit employees, contractors, and subcontractors from using their positions for a purpose that constitutes or presents an appearance of personal or organizational conflict of interests or personal gain;
- The recipient has no lawsuits, claims, suits, proceedings or investigations pending, to the knowledge of the subrecipient and its authorized representative, threatened against or affecting the recipient (or its officers and directors) in respect of the assets of the subrecipient nor, to the knowledge of the recipient and its authorized representative, is there any basis for any of the same, and there is no lawsuit, suit or proceeding pending in which the recipient is the plaintiff or claimant which relates to the recipient or its assets;
- The recipient has no action, suit or proceeding pending or, to the knowledge of the recipient or its authorized representative, threatened which questions the legality or propriety of the grant moneys to be received;
- The recipient has not received any notice of any investigation conducted or charges, complaints or actions brought by the State of Illinois or any governmental body within the State of Illinois regarding the business or its officers and directors; and
- Neither the recipient nor its officers and directors have received any notice that it is the subject of any criminal investigations or charges.

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The above is just a sampling of some of the certifications that Illinois required in order for businesses to receive the BIG funds. We would expect the B2B grant program (and other programs providing grants or forgivable loans to businesses) to have similar certifications and requirements by businesses receiving grants or loans from the state.

Another certification that has popped up – specifically in the CARES Act loan program for medium sized businesses – is that of labor neutrality. One of the certifications there requires businesses to “remain neutral in any union organizing effort for the term of the loan.” While the legality of this has yet to be challenged, and to date it is found only in the CARES Act, businesses should be on alert for similar terms in other assistance programs offered by the government.

Of course, all this is not meant to scare businesses away from the B2B grant program, or any other COVID-19 business relief program implemented by the government. Rather, businesses should be aware of the myriad requirements they are expected to adhere to in return for receiving a loan or grant, and of the “certifications” they are making as part of the agreement to accept the loan or grant. Businesses, and their legal counsel, should always read the “fine print” before accepting any governmental assistance.

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