



COVID-19 Actionable Insights for Businesses Series:

Business Strategies for COVID-19 Planning under
The Families First Coronavirus Response Act (FFCRA) and
The Coronavirus Aid, Relief and Economic Security (CARES) Act

March 31, 2020

energy . insight . growth

Speakers



Bert Mills, CPA | Managing Partner

Bert is the Managing Partner at Moore Colson. In his role, Bert sets the vision and mission of the Firm and works closely with the Firm's leadership to drive and implement strategies. Additionally, Bert continues to work with our clients providing succession planning advice as well as practical, tax-efficient structures and strategies to closely-held businesses, business owners and entrepreneurs, corporate executives, and private equity funds and investors.



Chris Tierney, CTP, CFE | Consulting Partner

Chris is a Partner and the Group Leader for Moore Colson's Consulting Practice. Chris has over 32 years of experience in providing financial, operational and strategic management, analysis, and advice to domestic and international companies and their stakeholders. He serves as an advisor to companies or their creditors facing complex legal disputes, operational/financial issues, workouts, turnarounds/ reorganizations, and liquidations. Chris also has 14 years in the banking industry where he managed middle-market relationships for both public and private companies.



Tyler Wright, CPAABV/CFF, CFE | Consulting Director

Tyler is a Director in the firm's Consulting Practice. Drawing on 15 years of experience as an external auditor, internal auditor, and forensic accountant, Tyler provides accounting and financial advice in forensic investigations and commercial disputes. He leads engagements focusing on determining economic damages, supporting legal disputes and conducting independent investigations into fraud or questionable financial reporting.

Goals for this webinar:

We will discuss:

- Business provisions of FFCRA and CARES that apply to employers and employees
- Expanded FMLA provisions in FFCRA that may be applicable to you
- The CARES ACT loan and forgiveness provisions that may be applicable you
- Payroll tax credit provisions in FFCRA and CARES that may be applicable to you
- Payroll tax deferral provisions in CARES that may be applicable to you
- Strategies for navigating the various provisions of FFCRA and CARES

The Families First Coronavirus Response Act (FFCRA)

Coronavirus Stimulus Package #2

- Expansion of FMLA for employer with under 500 employees – **effective date is April 1, 2020 through December 31, 2020:**
 - Must provide employees with full or 2/3 pay for the first two weeks they are unable to work (and can't work from home) for COVID-19 reasons.
 - Once two weeks is past, employees must be provided up to 10 weeks of expanded FMLA (Family and Medical Leave) at 2/3 of the employee's regular rate of pay.
 - Employers with under 50 employees may apply for exemption from the law if they can show compliance with the law jeopardizes their business.

Which employees are eligible under FFCRA for sick leave or family leave?

1. They are subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (up to 80 hours);
2. They have been advised by a health care provider to self-quarantine related to COVID-19 (up to 80 hours);
3. They are experiencing COVID-19 symptoms and is seeking a medical diagnosis (up to 80 hours);
4. They are caring for an individual subject to an order described in (1) or self-quarantine as described in (2) (up to 80 hours);
5. They are caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 (over a 12-week period – 2 weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave); or
6. They are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury (up to 80 hours).

How much do employers have to pay in leave under the FFCRA?

- For employees meeting leave reasons 1, 2 & 3 in the previous slide, they are paid at their regular rate, up to \$511 per day, capped at \$5,110 over the two-week period.
- For employees meeting leave reasons 4 & 6 in the previous slide, they are paid at $\frac{2}{3}$ of their regular rate, up to \$200 per day, capped at \$2,000 over the two-week period.
- For employees meeting leave reason 5 in the previous slide, they are paid at $\frac{2}{3}$ of their regular rate, up to \$200 per day, capped at \$12,000 over the 12-week period (2 weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).

Payroll Tax Credits!

How do employers pay for Expanded FMLA provisions under the FFCRA

- Determine which of your employees meet the FFCRA requirements for paid leave.
- Calculate the amount of compensation paid for either sick leave or family leave.
- Reduce employment tax payment, both employer and employee portions, by 100% of the calculated sick and family leave pay.
- After reducing your payroll tax to \$0, any excess sick and family leave pay is refundable.
- Intermittent leave in any time increment qualifies, provided that you and your employer agree

The Coronavirus Aid, Relief and Economic Security (CARES) Act – Business Provisions

Coronavirus Stimulus Package #3

- \$2.2 trillion package
- SBA-backed loans for small business – so called “7(a) loans” or “PPP loans”
- 7(a) loans are forgivable if used to pay payroll, health insurance, interest on debt, rent and utilities during the 8-week covered period
- 7(a) loans are non-recourse – no personal guarantees
- Payments on 7(a) loans are deferred
- Possible additional payroll tax credits
- *Possible deferral of payment of employer portion of payroll taxes*

Who is eligible for the CARES 7(a) loans?

- Small business concerns as defined by the SBA guidelines
- Companies with fewer than 500 employees
 - Exceptions to the 500 employee standard and affiliation rules:
 1. Businesses in the Accommodations and Food Services industry (NAICS code starting with 72) and with no more than 500 employees per physical location.
 2. Franchisees assigned a SBA Franchise Identifier code.
 3. Affiliated businesses owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958.
- Sole Proprietors or Independent Contractors

How to calculate the CARES 7(a) maximum loan amount under the Paycheck Protection Program

- Lesser of:
 - 2.5 times the average monthly “payroll costs” over the last 12 months, plus the outstanding balance of Economic Injury Disaster Loan (EIDL) loans made after January 31, 2020, or
 - \$10,000,000
- “Payroll costs” are defined as salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits, including insurance premiums; payment of any retirement benefit; or payment of State or local tax assessed on the compensation of employees;
- “Payroll costs” are limited to a maximum of \$100,000 annualized salary per employee;
- *“Payroll costs” will not include payroll paid on which a payroll tax credit was received under the FFCRA (no double dipping).*

Allowable uses of CARES 7(a) loans during the covered period

- For purposes of the allowable uses section, “covered period” is February 15, 2020, through June 30, 2020.
- Allowable uses of the 7(a) loan proceeds during the covered period are:
 - Payroll costs;
 - Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
 - Employee salaries, commissions, or similar compensations;
 - Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
 - Rent (including rent under a lease agreement);
 - Utilities; and
 - Interest on any other debt obligations that were incurred before the covered period

Attributes of the CARES 7(a) loans:

- The loans have no personal guarantees.
- The loans have no requirement for collateral.
- No recourse for anyone unless the loan proceeds are used for non-allowed costs.
- The loans are fully backed by the Small Business Administration (SBA).
- Some or all of the loan may be forgiven (application process).
- Non-forgiven portion of loan may be repaid over a period up to 10 years with an interest rate not exceeding 4%.
- Loan payments are deferred for a period of 6 months to one year.
- There are no prepayment penalties.
- The amount of the 7(a) loan forgiveness is not taxable at the federal level.

How to obtain CARES 7(a) loans:

- Any FDIC-approved institution should be able to make the loans, so call your banker to start the process.
- An eligible recipient applying for a 7(a) loan shall make a good faith certification —
 - that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
 - acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
 - that there are no duplicate loan applications pending for the same purpose as the 7(a) loan.

How much of the CARES 7(a) loan can be forgiven?

- Up to 100% of the principal of the loan can be forgiven (may still need to pay the interest).
- For purposes of the loan forgiveness provision, the term “covered period” is the 8-week period beginning from the date of origination of the 7(a) loan.
- An eligible recipient shall be eligible for forgiveness of indebtedness on a 7(a) loan in an amount equal to the sum of the following costs incurred and payments made during the 8-week covered period:
 - Payroll costs
 - Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation) – debt must exist before February 15, 2020 (seems to include both real and personal property)
 - Any payment on any covered rent obligation – for leases existing before February 15, 2020 (may include any lease obligation)
 - Any covered utility payment – for services existing before February 15, 2020

What causes a reduction in the amount of the CARES 7(a) loan to be forgiven?

- Amounts forgiven will be reduced proportionately for any reduction in FTEs during the 8-week period compared to, at the election of the borrower, one of the following:
 - The average monthly FTEs for the period February 15, 2019 through June 30, 2019, or
 - The average monthly FTEs for the period January 1, 2020 through February 29, 2020.
- Amounts forgiven will be reduced by an amount equal to any reduction in pay in excess of 25% of prior quarter before the 8-week period for each employee with annualized wages of less than \$100,000.
- If, by June 30, 2020, you rehire employees already laid off and restore pay to those employees that had salary reductions, you still qualify and will not be penalized for having reduced payroll.

How do I receive the CARES 7(a) loan forgiveness?

- You must submit to the lender that is servicing your 7(a) loan a loan forgiveness application.
- The application must include the following:
 - Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the 8-week period (attach federal and state payroll tax returns)
 - Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on mortgage obligations, payments on covered lease obligations, and covered utility payments;
 - A certification from a representative of the eligible recipient authorized to make such certifications that
 1. the documentation presented is true and correct; and
 2. the amount for which forgiveness is requested was used to retain employees, make interest payments on a mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
 - Any other documentation the Administrator determines necessary.

What is an EIDL?

- The SBA's Economic Injury Disaster Loan ("EIDL") program provides businesses with less than 500 employees with working capital loans up to \$2 million to help overcome the temporary loss of revenue they are experiencing under the COVID-19 crisis.
- If applying for an EIDL between January 31, 2020 and December 31, 2020, request that the SBA provide a \$10,000 advance within three days of application. An applicant shall not be required to repay any amounts of an advance, even if subsequently denied a loan.
- With respect to an EIDL loan, during the covered period, the SBA shall waive the following:
 - Any rules related to the personal guarantee on advances and loans of not more than \$200,000; and
 - The requirement that an applicant needs to be in business for the 1-year period before the disaster, except that no waiver may be made for a business that was not in operation on January 31, 2020.
- *If the CARES 7(a) loan is obtained, then an EIDL must be refinanced into the CARES 7(a) loan.*

CARES Act 50% payroll tax credit

- Businesses will receive a credit against employment taxes for each calendar quarter in an amount equal to 50 percent of the qualified wages paid to employees for such calendar quarter.
- Businesses qualify for this credit if:
 - Your business was fully or partially suspended by a governmental order, or
 - Your business experienced a 50% or more decrease in gross receipts as compared to the same calendar quarter in 2019.
- You cannot consider more than \$10,000 per employee.
- “Qualified wages” means wages paid to someone not working.
- Credits cease when your business reopens and your gross receipts for a calendar quarter reach 80% of the prior year calendar quarter.
- Credits are refundable.
- *Cannot use the same wages used for the FFCRA payroll tax credit, work opportunity credits, or prior FMLA credits (no double dipping).*

CARES Act payroll tax delayed payments

- Employers may defer payment of the employer portion of payroll taxes (50% of all payroll taxes) for the remainder of 2020.
- Deferred payroll taxes would be payable 50% on December 31, 2021, and 50% on December 31, 2022.
- *Employers receiving 7(a) loan forgiveness are not eligible for the payroll tax deferral.*

Immediate strategies for businesses

- Understand your long- and short-term cash flow needs.
- Calculate your CARES 7(a) loan maximum amount (get as much loan as you can).
- Call your banker to discuss loan applications.
- Apply for the EIDL loan to obtain the \$10,000 grant.
- Apply for the 7(a) loan (once available at your bank).
- Before and after your 8-week 7(a) loan forgiveness coverage period, take advantage of any FFCRA payroll tax credits.
- Take advantage of the CARES payroll tax credits, if applicable.

Other strategies for businesses

- Develop strategies to maximize your 7(a) forgiveness amount:
 - Determine your level of staffing needed to avoid forgiveness reductions
 - Rehire employees by June 30, if necessary
 - Restore salary reductions by June 30, if necessary
 - Bunch expenses into your 8-week forgiveness period, if applicable
- Determine if payroll tax deferrals are applicable to you (not available if you have debt forgiveness).
- Other SBA borrowing, if appropriate.
- Discuss deferring loan payments or paying interest only on existing debt with lenders (outside the 8-week 7(a) loan forgiveness period)

Other strategies for businesses (continued)

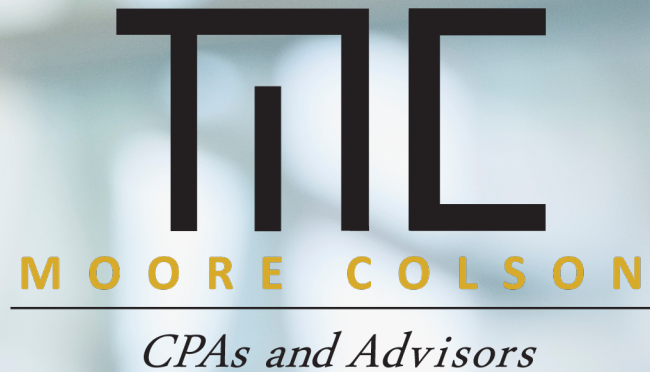
- Discuss deferring rent and lease payments (outside the 8-week 7(a) loan forgiveness period)
- Determine your workforce strategy – termination, reduced hours, salary reductions, furloughs, etc.
- Continue to maintain cash flow analysis.

Other provisions in the FFCRA and CARES Act that may apply to you:

- Individual rebates of \$1,200 (\$2,400 MFJ) and \$500 per child – phased out for higher-income individuals
- Qualified plan withdrawal penalty and required minimum distribution suspension
- Enhanced net operating loss carryback potential
- Enhanced charitable giving provisions
- Additional unemployment compensation benefits
- Requirement that employers file partial unemployment claims on-line for their employees

More to follow....

Be prepared for changes,
technical corrections and
additional stimulus.



QUESTIONS?

energy . insight . growth

Disclaimer

Information contained in this presentation should not be construed as legal advice or represent any specific or binding policy or procedure for any organization. Information provided in this presentation is for educational purposes only. These materials are written in a general format and not intended to be advice applicable to any specific circumstance. Legal opinions may vary when based on subtle factual distinctions. All rights reserved. No part of this presentation may be reproduced, published, or posted without the written permission of Moore Colson & Company, P.C.

Additionally, Genuine Parts Company is not providing financial advice.



energy . insight . growth

p 770.989.0028

f 770.989.0201

w MooreColson.com