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NEW BUSINESS ASSISTANCE PROGRAMS RELATED TO COVID-19

Recently there has been a flurry of new legislation related to the COVID-19 pandemic intended to limit the economic impact of the virus. Multiple assistance programs have been passed to help businesses survive the crisis. These mostly revolve around tax credits and loan programs available to assist businesses with retaining their employees, or reducing the financial impact if they cannot. As of today, March 31st, the following is a list of assistance options for businesses to help ease some of the confusion. This is just a summary (additional terms and conditions may apply).

Families First Coronavirus Response Act – this Act was signed into law in March and becomes effective April 1, 2020. It expands coverage and eligibility on a temporary basis. It includes employers with less than 500 employees. For employers with less than 50 employees, an exemption can be granted by the Secretary of Labor if compliance will jeopardize the viability of the business. There are two main parts:

1) **Emergency Paid Sick Leave Act (E-PLSA)**

- a. Reasons for Paid Sick Leave
 - i. Subject to federal or state quarantine
 - ii. Advised by health care provider to self-quarantine
 - iii. Experiencing Covid-19 symptoms
 - iv. Caring for an individual subject to quarantine
 - v. Caring for employee's child if school closed due to public health emergency
 - vi. Experiencing any other substantially similar condition
- b. Eligibility – Employers with fewer than 500 employees are **required to provide full-time employees with up to 80 hours of paid sick leave** at the employee's regular rate (Secretary of Labor may exclude certain businesses).
- c. Paid Sick Leave Wage – For first 3 reasons above, employee should be paid **100%** (limited to \$511/day or \$5,111 total). For the last 3 reasons above, employee should be paid at **2/3** their regular rate (limited to \$200/day or \$2,000 total).

2) **Emergency Family and Medical Leave Act (E-FMLA)**

- a. Reasons for Emergency Leave – any individual employed by the employer for at least 30 days may take up to **12-weeks** of job protected leave to allow an employee, who is unable to work or telework, to care for the employee's child (under 18) if the child's school or daycare is closed due to a public emergency.
- b. Paid Leave –After the first 10-day period under the Emergency Paid Sick Leave Act, the employer generally must pay at least **2/3** of the employee's regular rate (\$200/day max, \$10,000 in aggregate max).

3) Tax Credits – Employers are entitled to a refundable tax credit equal to 100% of the wages paid by the employer to comply with both of these new Acts. These will first be taken as a credit on Form 941 (quarterly payroll tax return) against payroll taxes. If the credit is more than the payroll taxes due, reduce the 941 tax due to zero. The IRS will be coming out with a rapid refund claim for the excess. Reduce your payroll tax deposits now by the amount of payroll tax credit that you expect to claim. If you use a payroll processing company, contact them regarding how to track the benefits and claim the payroll tax credits.

Coronavirus Aid, Relief and Economic Security Act (CARES Act) – this Act was just signed into law on Friday, March 27.

1) Stimulus Payments/Rebates

- a. All eligible U.S. residents with income up to \$75,000 (\$150,000 married joint) will receive a rebate payment of up to \$1,200 per individual (\$2,400 married joint) and \$500 per child (under 18). The rebate will be reduced by \$5 per \$100 of income over \$75,000 (\$150,000 married joint), until it is reduced to \$0 at \$99,000 (\$198,000 married joint) and over. If the IRS has the taxpayer's bank information, the rebate will be direct deposited. If not, expect a live check to the last reported address. Direct deposit will happen much quicker than live checks.
- b. This program will be administered by the IRS similar to prior stimulus programs in 2008 and 2009. It will be based on your 2019 income tax return reported income, if filed by April 15th. If not yet filed (due date was pushed back to July 15th for filing and payment), then it will be based on your 2018 income tax return.
- c. If you have not filed 2018 or 2019, file 2018 tax return by April 15th to get the rebate payment. If you do not receive the rebate payment, you will be able to claim the rebate on your 2020 income tax return. If you receive a reduced rebate due to income limitation from your prior tax return, you will be able to claim the rebate shortfall as an additional credit on your 2020 income tax return.
- d. If you receive too much rebate based on your prior tax return, you will not be penalized on your 2020 tax return (you will not have to pay back excess). So if you have not filed 2019 and would not be eligible (but you may be partially or fully eligible based on 2018), do not file 2019 tax return until after you receive the rebate. This possibility was factored into the rebate plan.

2) Expanded Unemployment Benefits

- a. For employees that are furloughed (temporary layoff) or permanently laid off, the federal government will provide an additional \$600/week (up to 4 months). This is in addition to State benefits. The current maximum benefit in Florida is \$275 per week for up to 12 weeks. Federal funding will pick up the tab to extend unemployment, so Florida (and other States) should extend the benefit period up to 39 weeks (through the end of 2020).
- b. Coverage expanded to independent contractors, self-employed, those with limited work history, and others

3) Employee Retention Tax Credits

- a. There is a refundable payroll tax credit for 50% of wages paid by eligible employers to employees during the crisis. The credit is available to employers whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. This credit is also available to employers that experience a greater than 50% reduction in quarterly receipts (on a year-over-year basis).
- b. Wages of employees who are furloughed or have hours reduced as a result of their employer's closure or economic hardship are eligible. For employers with 100 or fewer full-time employees, all employee wages are eligible, whether furloughed or not. The credit is limited to the first \$10,000 in wages and compensation paid by the employer to an eligible employee, for wages paid between March 12, 2020 and December 31, 2020.
- c. Wages do NOT include those taken into account under the E-PLSA or E-FMLA (above). Also, this tax credit is NOT available to employers receiving assistance through the Paycheck Protection Program (below). *(No double dipping allowed)*

4) **Deferral of Employer Payroll Tax Payments** – employers can defer paying the employer portion of payroll taxes through the end of 2020. All deferred 2020 amounts would be due in two equal installments at the end of 2021 and 2022. This deferral is NOT available to employers receiving assistance through the Paycheck Protection Program (next).

5) SBA Loans

a. Paycheck Protection Program (PPP) Loans

- i. Applied for through local SBA lender (only one PPP per business)
- ii. Up to \$10 million. Max loan is equal to 250% of your average monthly payroll costs from February 15, 2019- June 30, 2019 (yes, last year). If not in business then, dates change to January 1, 2020-February 29, 2020.
- iii. Eligible payroll costs: compensation, paid time off, payments for group health care benefits (including insurance premiums), retirement benefits, and state and local tax assessed on employee compensation.
- iv. Not eligible payroll costs: employee/owner compensation over \$100,000, payroll taxes withheld, compensation of employees whose principal place of residence is outside U.S., qualified sick and family leave for which a tax credit is allowed (no double dip on payroll tax credits).
- v. Allowed use of loan proceeds: Payroll costs, continuation of group health care benefits and insurance premiums, salaries, commissions, or similar compensation, mortgage interest paid, rent, utilities, and interest on any other debt incurred prior to the covered period.
- vi. Terms: maximum 10 years, maximum interest rate 4%, no loan fees or prepayment fees.
- vii. Debt Forgiveness: Borrower is eligible for loan forgiveness in an amount equal to the costs incurred during the eight week period following loan origination. Apply through lender for forgiveness. Must provide documentation of payroll, payroll tax filings, payments on mortgage obligations, lease obligations, and utilities. Must also provide

certification from business representative that all information is true and in accordance with debt forgiveness guidelines.

- viii. Debt not forgiven: loan payments deferred for six months.
- ix. No personal guarantees or collateral required.
- x. Lender may require 2019 tax returns to be filed prior to approval.
- xi. Loan processing time: unknown

b. Economic Injury Disaster Loans (EIDL) & Emergency Economic Injury Grants

- i. Apply directly through SBA (expedited access to funding)
- ii. Up to \$2 million. First payment due one year after loan origination. Payments can then be deferred at SBA discretion.
- iii. Must have been in business as of January 1, 2020.
- iv. May request advance up to \$10,000(distributed within 3 days). If subsequently denied loan, applicants are not required to repay the advance.
- v. Terms: up to 30 years, interest rate 3.75%
- vi. Personal guarantee for loans over \$200,000, collateral lien against business
- vii. Debt Forgiveness: none
- viii. 2019 tax returns do not have to be filed prior to application.
- ix. Loan processing time: 2-3 weeks, plus additional 5 days for funding

6) Net Operating Loss (NOL) Carryback – business net operating losses can now be carried back five years that arise from 2018, 2019, or 2020 tax years. Tax returns can be amended to claim these losses as far back as 2013.

These are the current primary new assistance programs recently made available. Additional conditions apply, so research each option carefully. State programs and other assistance programs are also available, and additional programs may arise as the situation develops.

Recommendations/Observations

For business owners, which programs are best to pursue depend on one thing: **Cash Flow**. With a huge demand expected for both unemployment claims and loan programs, businesses should decide which option(s) to pursue and move quickly.

- 1) If you have the cash flow to fund your payroll, you can choose the Payroll Tax Credits options to reimburse you for 100% of wages due to employees becoming sick or 2/3 of wages due to having to stay home with children (up to the limits above) and 50% of wages paid to employees who are not working due to employer's full or partial suspension of business.
- 2) If you want to retain your employees and don't have the cash flow to make payroll while your business is closed or limited, apply for the Paycheck Protection Program (PPP) loan through your local SBA lender. Then apply for loan forgiveness later.

- 3) If cash flow has already dried up, apply for the Economic Injury Disaster Loan (EIDL) program through the SBA (to get the rapid \$10,000). You can also apply for the PPP loan, and then use the PPP loan proceeds to pay off the EIDL. If the EIDL gets denied and they advanced the \$10,000, you get to keep it.
- 4) If you have already furloughed or laid off your employees, they will get the extra unemployment benefits for up to four months (Florida: up to \$875/week). The risk is that you may not be able to get them back later. If you get the PPP loan approved, you can bring your employees back and use the wages for the debt forgiveness.

It is impossible to predict how the situation will develop going forward. Each of the options above has risks and benefits, and there are more specifics not listed above. So dig deeper into whichever options you choose to pursue. Expect huge demand across all options, so there will be delays and difficulties.

Please let us know if we can be of any assistance. Thank you.

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