

A stylized illustration of a diverse crowd of people, all wearing face masks. The people are rendered in various colors and styles, representing different ethnicities and ages. The background is a solid dark blue. The text is overlaid on the left side of the image.

CRISIS MANAGEMENT FOR COVID-19

Week 9: PPP, Healthy at Work & Legal Updates

*Presented by:
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INTRODUCTIONS



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1

PPP Questions Answered

SBA and Treasury Issue Substantial PPP Guidance

Recap:

- Substantial questions exist with regard to “good faith” applications
- Comparison of the 8 weeks to the “last fully completed quarter” led to a 9.75 vs. 8-week comparison
- The PPP monies were required to be expended during the 8-week period – which started whenever you received the monies, whether a Wednesday, Saturday, Holiday, etc.
- 75% required for “payroll,” but payroll was not well defined
- Leases was undefined, raising concern among some as to vehicles and other leases (we advised that vehicles would be included in Week 3 Webinar due to definition in the underlying statute)

After weeks of concerns over lender differentiation, confusing and conflicting guidance from the SBA, US Treasury, and threats of “audits” and “criminal sanctions” against employers who sought loans and are deemed not to have a “business necessity” for the loans, the US Treasury and Small Business Administration answered most, but not all, hanging questions in two **HUGE** Updates

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PPP Questions Answered

SBA and Treasury Issue Substantial PPP Guidance

- On May 13, the U.S. Treasury and SBA issued 2 new guidance points on PPP Loans in its FAQ
 - “Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith”
 - Still rebuttable presumption -- Businesses should be careful that the certification is still accurate, but no audit or additional scrutiny will take place absent some additional basis
 - Affiliates will still need to verify total amounts do not exceed \$2MM
 - Those entities that fall above the \$2MM threshold have a target on their back
 - Documentation of every portion of the requirements will be critical!
 - Secondly, as I promised last week when no “guidance” had been posted, the “Amnesty Deadline” was extended, once again to May 18, 2020 (from May 7 and May 14, 2020)
 - Given the May 15, 2020 Update (next slide), I believe this will be extended to May 21, 2020)

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PPP Questions Answered

SBA and Treasury Issue PPP Calculation Guidance

On Friday evening (May 15, 2020), the SBA quietly posted new PPP Calculation Guidance on its website. US Treasury updated its website on the evening of May 16, 2020

- Key take-aways from this HUGE Update:
 - The “incurred” and “paid” language in **§1106** of the CARES Act regarding expenses that count for forgiveness is clarified to allow expenses paid and expenses incurred in the 8-week period
 - New guidance providing a borrower friendly interpretation of the calculation of both the FTE Employee and wage/salary reduction provisions that reduce the amount of debt forgiven
 - A ban on using bonuses to owner employees to fill shortfalls in eligible expenses used to apply for loan forgiveness buried in the representations;
 - Covered rent obligations include leases on both real and personal property
 - The creation of a new Alternative Payroll Covered Period that allows borrowers to align the 56-day period with their own payroll period.

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PPP Calculation Guidance

Computing Payroll Costs and Forgiveness

- The Covered Period is the 8 weeks immediately following receipt, but also an “Alternative Payroll Covered Period” (Payroll Period) that allows for regular payroll processing
 - Generally, only payroll related items are allowed in the Payroll Period
 - Other expenses must fall within the Covered Period (56-day/8-week period)
- Borrowers will have to provide the following information, if seeking forgiveness:
 - Total eligible payroll costs *incurred or paid* during the Covered Period or the Payroll Period
 - The amount of pre-existing business mortgage interest payments during the Covered Period
 - The amount of pre-existing business personal or real property Covered Period lease payments
 - The amount of pre-existing business utility payments during the Covered Period
- Payroll costs compared on annualized basis, safe harbor provisions included, FTE still murky

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PPP Calculation Guidance

Eligible Payroll Costs

As reflected above, SBA has clarified and announced forgiveness for payroll paid or incurred during the Covered Period or the Payroll Period

- The subtle wording of the announcement has major implications. The CARES Act (§1106(b)) appears to refer to payroll costs being eligible for forgiveness based upon electing the incurred and paid by date.
- The SBA, however, has loosened its interpretation
 - Eligible costs paid during the period regardless of when they were incurred and
 - Eligible costs incurred during the period so long as they are paid by a standard payment date
 - The inclusion of this provision eliminates the need to schedule a special payroll to be paid on day 56 of the applicable covered period.
 - Borrowers can only count the expense once
- Owner bonuses are capped at the annualized \$100,000 rate (\$15,385 for 8 week period)

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PPP Calculation Guidance

Eligible Non-Payroll Costs

- An eligible nonpayroll cost must be paid or incurred during the Covered Period, even if billed after
 - The Alternative Payroll Period is not able to be utilized for non-payroll costs
- Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount
- The 75% payroll cost test applies only to the maximum forgiveness amounts, not to eligibility
 - Some lenders had utilized a 75% cliff rule, i.e., 75% for payroll or nothing forgiven
- The 25% nonpayroll applies to the cap on forgiveness, not on the total original loan amount
 - Some organizations (Forbes) are identifying a $33\frac{1}{3}$ factor as against payroll spend but have not yet explained how they calculated the fraction
- AICPA is coming out with a new “calculator” to explain their understanding (promised today)
- SBA and Treasury have promised “new guidance” in the coming days (don’t hold your breath)
- Problems for those that already expended monies prior to new guidance – documentation is key

PPP Questions & Answers



2 Kentucky's Healthy@Work

Kentucky's Phase 1 Business Re-Opening Continues

On May 11, 2020, Governor Beshear issued a new Emergency Order allowing businesses to open as follows:


May 11, 2020:
Order

-  Construction
-  Horse Racing (No Fans)
-  Manufacturing & Distribution
-  Office-Based Businesses (50%)
-  Pet Grooming / Boarding
-  Photography
-  Vehicle or Vessel Dealerships



May 18, 2020:

-  Government Offices / Agencies







May 20, 2020:

-  Funeral and Memorial Services
-  Retail









May 22, 2020:

-  Restaurants: 33% Capacity + Outdoor Seating
-  Groups of 10 people or fewer

May 25, 2020:

-  Cosmetology Businesses
-  Hair Salons/Barbershops
-  Massage Therapy
-  Nail Salons
-  Tanning Salons
-  Tattoo Parlors

June 1, 2020:

-  Auto/Dirt Track Racing
-  Aquatic Centers
-  Bowling Alleys
-  Fishing Tournaments
-  Fitness Centers
-  Kentucky State Park Lodges
-  Movie Theaters
-  Salato Wildlife Education Center

2 Kentucky's Healthy@Work

Re-Opening is subject to strict mandates, pursuant to Governor's Order:

All entities in the Commonwealth of Kentucky shall comply with minimum requirements attached to, and fully adopted and incorporated by reference in this Order. The minimum requirements for all entities in the Commonwealth of Kentucky can be found at: <https://govstatus.egov.com/ky-healthy-at-work>.

In addition to the minimum requirements, entities shall implement and comply with any industry- or sector-specific requirements under any Cabinet Order. Those requirements can be found at <https://govstatus.egov.com/ky-healthy-at-work>.

If any entity cannot comply with the minimum requirements or the industry- or sector-specific requirements, they must wait to reopen until they are able to do so or until some or all of these requirements are lifted.

2 Kentucky's Healthy@Work

All Businesses must comply with the following:

- | | |
|--|---|
| <ul style="list-style-type: none">• Continue Telework if Possible• Phased Return to Work• Enforce Social Distance• Limit Face-to-Face• Universal Masks and PPE• Adequate Hand Sanitizer• Restrict Common Areas | <ul style="list-style-type: none">• Proper Sanitation• Conduct Daily Temperatures/Health Checks• Create a Testing Plan• Make Special Accommodations• Designate a “Healthy at Work Officer• Educate and Train Employees• Contact Notification Responsibilities |
|--|---|

Most questions deal with two issues:

- “Healthy at Work Officer”
 - Who? What? How?
- Conducting Daily Temperatures/Health Checks
 - At work, at home, or both? What is a “health check”?

Key Provisions of Kentucky's Governor Mandate:

“Healthy at Work Officer”

- Responsible for the entity’s compliance with all governmental mandates/guidance
- No other guidance provided by the directives for training/position/liability
- Typically, HR provides identification of qualified personnel, but HR needs guidance

Conducting Daily Temperatures/Health Checks/“Testing Plan”

- Employers Must Assure Daily Temperature and Health Checks
 - Either Self-Administered or by the Employer prior to workplace entry
- Direct all employees with a fever, or symptoms to PCP for testing
 - Assure symptomatic employees are tested within 36 hours
 - Train employees on how to isolate individuals with suspected COVID-19
 - Have a proper plan in place for reporting possible cases

Healthy@Work
Questions & Answers



3 DOL Update

Ongoing Governmental Agency updates

- May 11, 2020 – DOL Issues STC Guidance (discussed last week)
- May 11, 2020 – DOL Issues Caution to States to scrutinize UI claims for fraud, warning of OIG audits, investigations, and oversight activities related to state compliance with UI laws and CARES Act
- May 14, 2020 -- DOL Issues Pandemic Emergency Unemployment Compensation Guidance:
 - PEUC provides for 13 additional weeks of benefits to those who have exhausted UI compensation
 - Cost of PEUC is 100% federally funded, so states may not charge employers for any PEUC benefits
- DOL Offering 3 Webinars on FFCRA Guidance during week of May 18, 2020
- OSHA continued its series of industry-specific guidance during week of May 11, 2020:
 - Dental Industry
 - Rideshare, Taxi, Care Service Workers
 - Retail Pharmacy Workers

Legal Update
Questions & Answers





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