



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
July 9, 2020 Edition



“Every record has been destroyed or falsified, every book rewritten, every picture has been repainted, every statue and street building has been renamed, every date has been altered.

And the process is continuing day by day and minute by minute. History has stopped. Nothing exists except an endless present in which the Party is always right.”

-George Orwell, 1984-

SBA ISSUES GUIDANCE FOR PPP LOAN FORGIVENESS

The Small Business Administration has issued guidance for the Payment Protection Program (“PPP”) loan forgiveness program. Businesses that received funds under the Coronavirus Aid, Relief and Economic Security (“CARES”) Act PPP program are eligible to receive loan forgiveness if the borrowers meet certain criteria for the use of the PPP loan proceeds and maintenance of employee headcount and compensation levels.

The SBA warns borrowers that simply meeting the eligibility requirements for PPP loans and using the proceeds of the loans for permitted uses does not automatically make the funds forgivable. PPP funds used for permitted uses that are not forgivable must be repaid. For PPP funds to be forgivable, the expenses must, depending on the category of forgivable expenses, consist of either costs incurred and paid, or costs incurred during the covered period.

The covered period is the period from the date that the PPP loan was originated to the earlier of: (1) 24 weeks following the PPP loan disbursement date and (2) December 31, 2020. If a borrower received a PPP loan prior to June 5, the borrower can elect to have its covered period be the initial eight-week period set forth in the CARES Act.

Below are the four categories of forgivable expenses:

1. Payroll Costs

Payroll costs consist of the following types of compensation payable to U.S.-based employees:

- Salary, wages, commission and tips;
- Vacation, parental, family, medical or sick leave;

- Severance-type payments;
- Payments required for provision of group health insurance, including insurance premiums;
- Retirement benefits, including employer contributions to defined benefit or defined contribution plans;
- The employee portion of Federal Insurance Contributions Act and income tax;
- Payment of state and local taxes on employee compensation; and
- Bonuses and hazard pay.

The calculation of payroll costs is reduced by the amount of compensation of an employee exceeding a prorated annual salary, excluding noncash benefits, of \$100,000 and certain wages that are eligible for tax credits under the Families First Coronavirus Response Act.

2. Interest on Certain Mortgage Obligations

Payments of interest incurred and paid with respect to a mortgage that is a liability of the borrower and secured by real or personal property, which mortgage was incurred in the ordinary course of business prior to Feb. 15, are forgivable expenses. Payments with respect to principal and any prepayments have been specifically identified as unforgivable.

3. Certain Rent Payments

The payments of rent under a lease that was entered into before Feb. 15, that are paid during the covered period or incurred during the covered period and paid on or before the next regular billing date, even if that billing date falls after the covered period, are forgivable expenses.

4. Certain Utility Payments

The payments for a service for the distribution of electricity, gas, water, transportation, telephone or internet access service, which service began prior to Feb. 15, and are incurred or paid during the covered period, or incurred during the covered period and paid on the next regular billing date after the covered period are forgivable expenses.

This is a link to SBA guidance on PPP: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

[Attached to this article is a PowerPoint presentation from the SBA](#) with guidance on the process to apply for loan forgiveness for PPP loans.

**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**
-Mario M. Cuomo-

Legal Advice Disclaimer: The materials in this **Client Alert** report are provided for informational purposes only and are not intended to be a comprehensive review of legal developments, to create a client–attorney relationship, to provide legal advice, or to render a legal opinion. Readers are cautioned not to attempt to solve specific legal problems on the basis of information contained in this **Client Alert**. If legal advice is required, please consult an attorney. The information contained herein, does not necessarily reflect the opinions of Pitta LLP, or any of its attorneys or clients. Neither Pitta LLP, nor its employees make any warranty, expressed or implied, and assume no legal liability with respect to the information in this report, and do not guarantee that the information is accurate, complete, useful or current. Accordingly, Pitta LLP is not responsible for any claimed damages resulting from any alleged error, inaccuracy, or omission. This communication may be considered an advertisement or solicitation.

To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

To Our Clients and Friends: To request that copies of this publication be sent to a new address or fax number, to unsubscribe, or to comment on its contents, please contact Aseneth Wheeler-Russell at arusell@pittalaw.com or (212) 652-3797.