



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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**“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-

SENATE TO RECONVENE SESSION AND ASSEMBLY AT THE CALL OF THE SPEAKER

On May 26, 2020 the State Legislature held nearly two dozen socially distant committee meetings to consider a package of COVID-19 related bills. Yesterday, marked the first time that the State Legislature has convened since April 3, 2020 when it passed the budget.

The Senate’s reported 33 bills through its Rules Committee and may pass the bills at today’s legislative session which is scheduled for 1pm. The Assembly has not scheduled a session and remains at the Call of the Speaker.

Among the bills that was reported out of the Senate’s Rules Committee is legislation that would let New York City incur \$7 billion in debt to balance its budget. When questioned about supporting this measure, Governor Cuomo said “borrowing for operating expenses is fiscally questionable. We don’t want to create a situation where the state or any local government borrows so much money they can’t repay it, and then you have to start to cut services.” The Governor also said “I’m still banking on Washington doing the intelligent thing” and bail out local and state governments.

Another bill that is being considered is the Emergency Rent Relief Act of 2020 which would provide tenants who are unable to pay their rent due to COVID-19 with rent vouchers. The legislation would create a voucher system which would apply to renters whose rent is 30 percent of their income and who makes no more than 80 percent of the area’s median income. The program would cost around \$100 million and can be funded through the Coronavirus Aid, Relief and Economic Security (“CARES”) Act.

NEW YORK FORWARD LOAN FUND

Governor Cuomo announced the launch of the \$100 million New York Forward Loan Fund program which provides flexible and affordable loans to help small businesses, particularly minority and women owned businesses that did not receive federal COVID-19 assistance. The loans will be focused on businesses with 20 or fewer employees and less than \$3 million in gross revenues. More information on the New York Forward Loan Fund is available at: <https://esd.ny.gov/economic-recovery-covid-19-loans-small-businesses>.

SBA RELEASES NEW INTERIM RULE ON REVIEW PROCEDURES FOR PPP LOANS

The Small Business Administration (“SBA”) released a new interim rule on the SBA’s process for reviewing Paycheck Protection Program (“PPP”) loans from the previously passed CARES Act. The interim rule is available at: <https://home.treasury.gov/system/files/136/PPP-IFR-SBA-Loan-Review-Procedures-and-Related-Borrower-and-Lender-Responsibilities.pdf>.

Among the issues that the guidance provides clarity on are:

- In general, payroll costs paid or incurred during the eight week period beginning on the date of loan disbursement (the “Covered Period”) are eligible for forgiveness;
- Permits borrowers with bi-weekly or more frequent payroll cycles to seek forgiveness for payroll costs paid or incurred either during the Covered Period or during the eight week period beginning on the first day of the borrower’s first payroll cycle following loan disbursement (the “Alternative Payroll Covered Period”);
- To be eligible for forgiveness, payroll costs must be paid during the applicable eight-week period, except that payroll costs incurred during the borrower’s last pay period of the applicable eight-week period are eligible for forgiveness if paid on or before the next regular payroll date after the eight-week period;
- Payroll costs are considered incurred on the day the employee earns the pay (or, if the employee is not performing work but is still on payroll, on the schedule established by the borrower), and that payroll costs are considered paid either on the day paychecks are distributed or when the borrower originates an ACH credit transaction;
- Allows borrowers to seek forgiveness for non-payroll costs paid or incurred during the Covered Period, as long as any non-payroll costs incurred but not paid during the Covered Period are paid on or before the next regular billing date after the Covered Period (subject to the 25% cap on forgiveness of non-payroll costs);
- Defines full-time equivalent employees (“FTEs”) as those who work 40 hours or more, on average, each week;
- Grants borrowers the option to determine the full-time equivalency of part-time employees either by dividing the average number of hours each part-time employee was paid per week during the Covered Period by 40, or by assigning a full-time equivalency of 0.5 for each part-time employee;
- Clarifies that borrowers will not be doubly penalized for a reduction in FTEs and a consequent reduction in salary and wages, because the salary/wage reduction penalty applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction;
- Provides an exemption to the forgiveness reduction otherwise required due to an FTE reduction, if the borrower has made a good faith, written offer to rehire the employee or restore the employee’s hours, even if the employee has rejected such offer;
- Confirms that if a borrower restores reductions in employee salaries and wages by June 30, 2020, the borrower will be exempt from any forgiveness reduction otherwise required due to salary and wage reductions;
- Confirms that if a borrower eliminates reductions in FTE employees by June 30, 2020, the borrower will be exempt from any forgiveness reduction otherwise required due to FTE reductions.

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