

# NFIB COVID-19 Webinar Part III: Financial Resources & Updates for Small Businesses

March 30, 2020



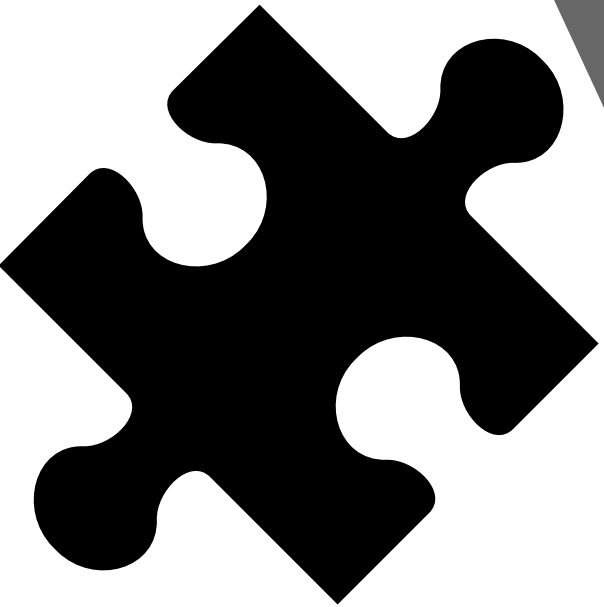
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# Agenda

1. Review of COVID-19 Legislation (Kevin Kuhlman)
2. Financial Support for Small Businesses (Holly Wade)
3. Paid Leave Implementation Update (Beth Milito)

# Overview of COVID-19 Legislation



# COVID-19 Legislation

1. COVID-I – Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020
  - Enacted on March 6, 2020; Public Law 116-123 / H.R. 6074
  - SBA Economic Injury Disaster Loans (EIDL)
2. COVID-II – Families First Coronavirus Response Act (FFCRA)
  - Enacted on March 18, 2020; Public Law 116-127 / H.R. 6201
  - Paid sick leave and family and medical leave mandates, payroll tax credits, unemployment insurance assistance
3. COVID-III – Coronavirus Aid, Relief, and Economic Security (CARES) Act
  - Enacted on March 27, 2020; Public Law 116-128 / H.R. 748
  - Paycheck Protection Program forgivable loans, tax relief, unemployment insurance expansion



# COVID-1 – Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020

- Provided \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak.
- Authorized up to \$7 billion for SBA Economic Injury Disaster Loans.
- EIDLs are provided through SBA.
- EIDLs require states to apply for disaster declaration.
- EIDLs restrict eligibility to small businesses that cannot access credit elsewhere.

# COVID-II – Families First Coronavirus Response Act (FFCRA)

- Applies to businesses with fewer than 500 employees.
- Mandates small businesses to provide paid sick leave and paid family and medical leave beginning April 1.
- Provides payroll tax credits available beginning April 1.
- Allows small business exemption process for businesses with fewer than 50 employees.

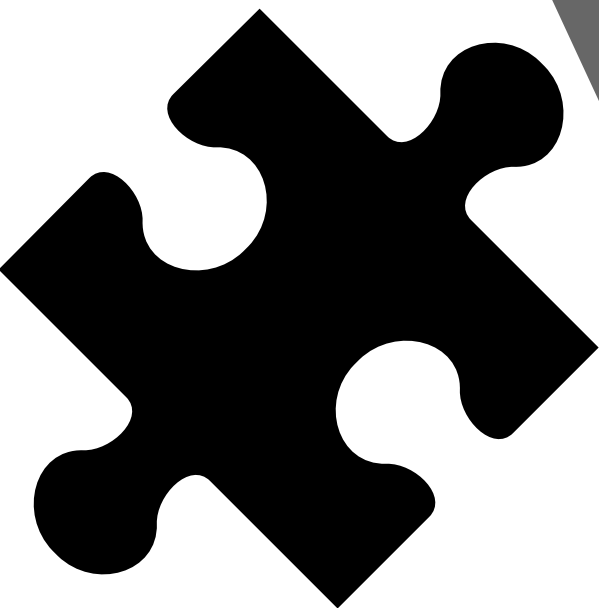
# COVID-III – Coronavirus Aid, Relief, and Economic Security (CARES) Act

- Creates Paycheck Protection Program forgivable loans (PPPLs)
- Allows other loans and grants to be converted into PPPLs
- Provides “2020 Recovery Rebates” to certain individuals
  - \$1,200 to individuals; \$2,400 to couples; \$500 per child
  - Eligibility completely phases out at \$99,000
- Extends business tax deadlines and provides tax relief
  - Delays payment of payroll taxes
  - Creates employee retention credit (for non-PPPL recipients)
  - Restores net operating loss carryback
  - Fixes “retail glitch”
- Expands Unemployment Insurance eligibility and compensation
  - Includes small business owners and self-employed individuals





# Financial Support for Small Businesses



1. Economic Injury Disaster Loan (EIDL)
2. Emergency EIDL Grant
3. Paycheck Protection Program Loan (PPPL)

# Economic Injury Disaster Loan program

- Provides small businesses with working capital loans of up to \$2 million
- 3.75% interest rate (nonprofits 2.75% interest rate)
- SBA loan approved based solely on an applicant's credit score.
- Loans smaller than \$200,000 can be approved without a personal guarantee.
- No early payment penalties
- 30-year loan



# Emergency EIDL Grant

- All those applying for an EIDL loan will be eligible for up to a **\$10,000 emergency grant** to be issued within 3 days of the application being received.
- Applicants must certify under threat of perjury that they believe they are eligible for the EIDL loan.
- The up to \$10,000 grant is forgivable.



# Qualified Expenses for Emergency EIDL Grant

- Providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
- Making rent or mortgage payments; and
- Repaying obligations that cannot be met due to revenue losses.



# Who qualifies for a PPPL?

- Businesses with less than 500 employees
- Independently owned franchises with less than 500 employees
- “Accommodation and Food Services,” if each location has less than 500 employees
- Sole proprietors, independent contractors, self-employed individuals
- 501(c)(3) nonprofits

## **AND**

- Been in business since 2/15/2020 and paid taxes on your employees or independent contractors.



## How much can I borrow?

- 2.5x average monthly payroll for previous year, up to \$10 million
- For seasonal employers, the average total employees shall be calculated for the period between 2/15/19 and 6/30/19.

# What are the terms of the loan?

- Loan payments (including interest) will be deferred for at least 6 months and up to one year starting at the origination of the loan.
- Interest rate shall not exceed 4%
- Loan maturity is 10 years.
- SBA guarantees 100% of the loan. No collateral is required.
- There is no prepayment penalty.



# What can I use the loan on?

- Funds can be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.
- You must certify that the loan will support the ongoing operations of the business due to current economic conditions.
- The loan can only be used for expenses incurred between 2/15/2020 and 6/30/2020.

# What expenses are covered by loan forgiveness?

- The covered period during which expenses can be forgiven extends from February 15, 2020 to June 30, 2020.
- Borrowers can choose which 8 weeks they want to count towards the covered period, which can start as early as February 15, 2020:
- Payroll costs (including everything listed above)
- Payments on interest of any mortgage obligation
- Rent
- Utilities

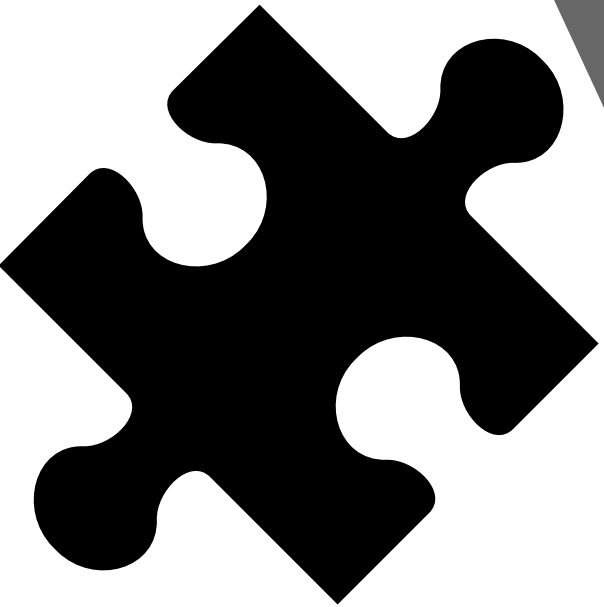
**\*\*\*Keep all paperwork on qualifying expenses\*\*\***



# Where can I apply for the loan?

- Any lending institution that is approved to participate in the program through the existing SBA 7(a) lending program
- Additional lenders approved by the Department of Treasury

# Paid Leave Implementation Updates



# FFCRA – Paid Leave Requirements

	What employers does this apply to?	What is the required duration of leave?	What are qualifying reasons for taking leave?	What is the required wage replacement?*
<p><b>Paid sick leave (PSL)</b></p> <p><b>Takes effect:</b> April 1, 2020</p> <p><b>Expires:</b> December 31, 2020</p>	<ul style="list-style-type: none"> <li>Private sector employers that have fewer than 500 employees</li> <li>An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee</li> <li><i>Small businesses with less than 50 employees may be exempted from providing paid leave for child care, if leave requirements would burden the business too much*</i></li> </ul>	<ul style="list-style-type: none"> <li>Two weeks of paid sick leave for full-time employees that meet leave eligibility requirements</li> <li>Part-time employee leave is based on the average hours they work</li> </ul>	<ol style="list-style-type: none"> <li>Government mandated COVID-19 quarantine or isolation order</li> <li>Health care provider advised self quarantine</li> <li>Experiencing symptoms &amp; seeking diagnosis</li> <li>Caring for quarantined individuals</li> <li>Caring for children who are at home due to COVID-19*</li> <li>Experiencing a similar condition as defined by HHS</li> </ol>	<ul style="list-style-type: none"> <li><b>If home due to reasons 1-3:</b> Regular rate of pay, capped at \$511 daily and \$5,110 in the aggregate</li> <li><b>If home due to reasons 4-6:</b> 2/3 of regular rate of pay, capped at \$200 daily and \$2,000 in the aggregate per employee</li> </ul>
<p><b>Emergency Family and medical leave (EFML)</b></p> <p><b>Takes effect:</b> April 1, 2020</p> <p><b>Expires:</b> December 31, 2020</p>	<ul style="list-style-type: none"> <li>Private sector employers that have fewer than 500 employees</li> <li>An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee</li> <li><i>Small businesses with less than 50 employees may be exempted if leave requirements would burden the business too much</i></li> </ul>	<ul style="list-style-type: none"> <li>Ten weeks of paid family and medical leave for full-time employees that have been with the company for at least a month</li> <li>Part-time employees are “eligible for leave for the number of hours that the employee is normally scheduled to work over that period”</li> </ul>	<ul style="list-style-type: none"> <li>Unable to work or telework because caring for child under 18 at home due to COVID-19 school/child-care closure</li> </ul>	<ul style="list-style-type: none"> <li>At least 2/3 of regular rate of pay, capped at \$200 daily and \$10,000 in the aggregate per employee</li> </ul>



*\*Private sector employers that have less than 500 employees are eligible for a 100% payroll tax credit to cover required leave wages and certain medical expenses*

Sources: Department of Labor

# Employer Notice Requirements

- Take effect on April 1, 2020, and expire on December 31, 2020.
- Each employer is required to post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, the notice approved by the Secretary of Labor.
- Email to employees if they are remote or teleworking.
- The DOL has posted notice here:  
[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

# Small Business Exemption

An employer, including a nonprofit organization, with fewer than 50 employees is exempt from providing PSL #5 (school or place of child care closed/unavailable due to COVID-19) and EFML when doing **so would jeopardize the viability of the small business as a going concern**. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

- (If not offering leave, be prepared to document why.)



# Reasons for PSL

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19

*Does a general shelter-in-place order or business shutdown order qualify? No. From DOL guidance it appears the order must be a quarantine or isolation order specific to the individual.*

2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.



## Reasons for PSL (continued)

4. The employee is caring for an individual who is subject to a quarantine or isolation order or who has been advised to self quarantine.
5. The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. Other substantially similar conditions specified by HHS in consultation with IRS and DOL.

# Reasons for EFML

Can only be taken because the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of the employee if (i) the school or place of care has been closed, or (ii) the child care provider of such son or daughter is unavailable, due to an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

# Employer Reimbursement

- Employers can take a refundable tax credit equal to 100% of qualified paid leave
  - Employers will recoup these payments immediately by keeping a portion of the deposit they otherwise would pay as part of their employees' federal, Social Security, and Medicare taxes.
  - Employers can retain and will not be required to deposit these funds.
  - Some states also will offer tax relief for compliance – check with your state revenue agency or accountant/CPA/payroll provider.

# FAQs Answered

- DOL will observe a temporary 30-day non-enforcement period after April 1, so long as the employer has acted reasonably and in good faith to comply with the Act.
- What if the employee can work remotely (from home)?
  - No PSL or EFML to extent the employee can work from home.
- Is intermittent leave allowed?
  - Appears to be permitted.
  - Example: employee can work from home half day, but cannot work the rest of day because of child care.

# FAQs Answered

- What happens if an employer/business closes due to a shutdown order or because there is no business?
  - No PSL or EFML required. Employees can apply for unemployment.
- What if an employer has already implemented a furlough or layoff (before April 1, 2020), do they need to allow employees to have access to this program?
  - No. But the employer could rehire employees and provide leave if one of the exemptions does not apply to the business.

# A few notes on unemployment

- Emergency grants made to the states' unemployment accounts require **employers to provide notification to employees at the time of separation** of the right to unemployment benefits (many state unemployment agencies will provide model notices for employers to distribute to laid off/furloughed employees)
- States will ease application requirements for employees.
- States may modify their eligibility requirements on a temporary basis and eliminate work search, waiting week, what "good cause" means. Check your state's website for more information.

# Additional Information

**NFIB:**

<https://www.nfib.com/content/analysis/coronaviruss/latest-on-coronavirus-from-nfib/>

**Small Business Administration (SBA):**

<https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

**Department of Labor (DOL):**

<https://www.dol.gov/agencies/whd/pandemic>

**Centers for Disease Control (CDC):**

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>



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