

NFIB UPDATE

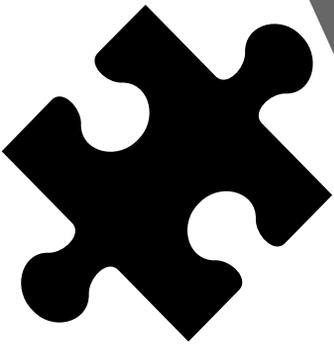
Weekly Briefing for Small Business

Beth Milito and Holly Wade

April 29, 2020



Reopening the Business



White House Guidelines Announced



GUIDELINES

OPENING UP AMERICA AGAIN

Follow Applicable Rules and Guidelines

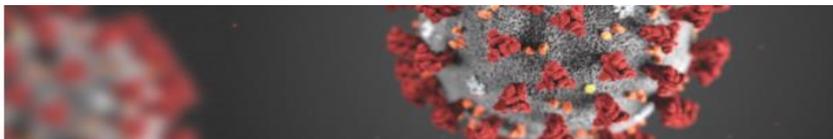
- [Occupational Health & Safety Act](#) (OSHA) imposes a general duty to maintain workplace safety.
- Best practice is to comply with [CDC](#) and state or local public health guidelines to minimizing liabilities.
- Ensure compliance with state or local rules.
 - *E.g.*, Face mask requirements.
 - *E.g.*, Mandatory social distancing restrictions, including limitations on how many customers may enter an establishment.
 - *E.g.*, Industry specific restrictions.

Minimize Health Risks

- Develop a plan for reducing workplace risks.
- Continually assess risk level and act accordingly.
- Send employees home if they are exhibiting symptoms.
- Additional practices to consider:
 - Heightened cleaning protocol
 - Discourage shared equipment
 - Social distancing / minimize interactions
 - Permanently changing operations
 - [Taking temperatures during pandemic](#)*
 - Train employees / educate customers
 - [Require face masks](#)*

** Credit to the law firm of Littler for these links.*





Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus

All workplaces can take the following infection prevention measures to protect workers:

- 1 Encourage workers to stay home if sick.
- 2 Encourage respiratory etiquette, including covering coughs and sneezes.
- 3 Provide a place to wash hands or alcohol-based hand rubs containing at least 60% alcohol.
- 4 Limit worksite access to only essential workers, if possible.
- 5 Establish flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), if feasible.
- 6 Discourage workers from using other workers' phones, desks, or other work tools and equipment.
- 7 Regularly clean and disinfect surfaces, equipment, and other elements of the work environment.
- 8 Use Environmental Protection Agency (EPA)-approved cleaning chemicals with label claims against the coronavirus.
- 9 Follow the manufacturer's instructions for use of all cleaning and disinfection products.
- 10 Encourage workers to report any safety and health concerns.

For more information, visit www.osha.gov/coronavirus or call 1-800-321-OSHA (6742).



OSHA[®] Occupational
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Administration
www.osha.gov

1-800-321-OSHA (6742)
TTY 1-877-889-5627

Plan for a Confirmed Case

- Know in advance how you will handle a confirmed or suspected case.
- At a minimum, you should have a deep-cleaning.
- State/local law may require specific protocol.
- Consider the following questions:
 - How will you communicate to your employees and or patrons?
 - What additional safe-guards will you offer employees?
 - Will you require self-isolation for employees who have been in close contact?
 - Will you temporarily close-shop?

Employee Right to Time Off for COVID-19

- [FFRCA now requires federal paid leave](#) if an employee is unable to work because:
 - They have symptoms and are seeking diagnosis;
 - Under medical or government isolation orders;
 - Providing care to someone with COVID-19; or
 - Caring for children due to school/daycare closure.
- Check state and local rules, which may impose additional paid sick leave requirements.
- The [Americans with Disabilities Act](#) may require leave of absence as a reasonable accommodation for employees with health conditions. Check EEOC guidelines.

Leave Rights vs. Layoffs

- [DOL Guidance Q: 26 and 27](#)

26. If my employer is open, but furloughs me on or after April 1, 2020 (the effective date of the FFCRA), can I receive paid sick leave or expanded family and medical leave?

No. If your employer furloughs you because it does not have enough work or business for you, you are not entitled to then take paid sick leave or expanded family and medical leave.

27. If my employer closes my worksite on or after April 1, 2020 (the effective date of the FFCRA), but tells me that it will reopen at some time in the future, can I receive paid sick leave or expanded family and medical leave?

No, not while your worksite is closed. If your employer closes your worksite, even for a short period of time, you are not entitled to take paid sick leave or expanded family and medical leave.

Expanded Unemployment Insurance

Individuals must be able and available to work unless they cannot work because of the specific circumstances that relate to COVID-19, including:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- A member of the individual's household has been diagnosed with COVID-19.
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19.
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work.
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.



Expanded Unemployment Insurance

- The individual is unable to reach the place of employment because the individual has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19.
- *The individual has to quit his or her job as a direct result of COVID-19.*
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.
- The individual meets any additional criteria established by the Secretary of the U.S. Department of Labor for unemployment assistance under the Pandemic Unemployment Assistance program.

Voluntary Quits and Expanded UI

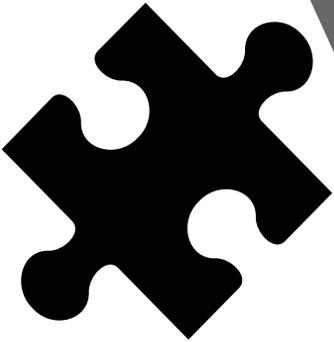
I'm afraid of getting coronavirus from customers coming to the store, so I quit and filed for unemployment. Can I obtain benefits under the CARES Act?

No. Under the CARES Act, you may be eligible for benefits if you meet one of the circumstances listed in the Act, but none include the scenario described. On these facts, you are not eligible for Pandemic Unemployment Assistance (PUA) because you do not meet any of the qualifying circumstances.... *voluntarily deciding to quit your job out of a general concern about exposure to COVID-19 does not make you eligible for PUA.* If you believe your employer's response to the possible spread of COVID-19 creates a serious safety hazard or if you think your employer is not following OSHA standards, you can [file a complaint with the Occupational Safety and Health Administration](#).

<https://www.dol.gov/coronavirus/unemployment-insurance#fact-sheets>



COVID-19 Legislative Update – Paycheck Protection Program and Health Care Enhancement Act



Phase

3.5

Paycheck Protection Program and Health Care Enhancement Act

- Additional \$310 billion for Paycheck Protection Program funding
 - \$250 billion for all financial institutions
 - \$30 billion for financial institutions with less than \$10 billion in assets
 - \$30 billion for financial institutions with \$10 – \$50 billion in assets
- Additional \$50 billion from Economic Injury Disaster Loan funding
- Additional \$10 billion for EIDL Emergency Grant funding
- Additional \$75 billion for hospitals and \$25 billion for testing

Legislative Timing

- Passed Senate by unanimous consent on Tuesday, April 21
- Passed the House on Thursday, April 23
- President sign bill into law Friday, April 24



Economic Injury Disaster Loan Update

- Program is not accepting new application.
- The processing of loan and emergency grant disbursements is slooow going.
- Emergency grant is \$1,000 per employee



Paycheck Protection Program

Update

- Program back up and running, rough start
- Publicly traded companies giving back the loan
- Audits likely for those borrowing more than \$1,000,000
- Funding will likely cover all those in the queue but not many more
- More funding? Don't know.



PPP 8-week Loan Forgiveness and the EIDL Emergency Grant

- \$50,000 PPP 8-week total of forgivable expenses
- \$10,000 EIDL Emergency Grant

\$50,000 PPP - \$10,000 EIDL grant =

\$40,000 eligible PPP forgiveness

(\$10,000 remains a 1% loan)

PPP 8-week Loan Forgiveness and the EIDL Emergency Grant

- \$8,000 PPP 8-week total of forgivable expenses
- \$10,000 EIDL Emergency Grant

\$8,000 PPP - \$10,000 EIDL grant =

\$0 eligible PPP forgiveness

(\$8,000 remains a 1% loan)

PPPL Maximum Loan Forgiveness Amount

The 8-week forgiveness period starts the day you receive the loan (or first disbursement of the loan).

Eligible forgivable expenses include:

- **Payroll costs**

(e.g., salary, wages, commissions, cash tips) up to annualized compensation of \$100,000; paid leave, payment for group health benefits, including insurance premiums; retirements benefits; and state and local payroll taxes.)

- **Interest on mortgage obligations** incurred before February 15, 2020;

- **Rent** obligations in place before February 15, 2020; and

- **Utility** payments for services that began before February 15, 2020 (electricity, gas, water, transportation, telephone and Internet access)

HOWEVER,

- Not more than 25% of the loan forgiveness amount may be used for non-payroll costs; and
- Must spend the funds you want forgiven within the 8-week period.



For more on loan forgiveness visit [NFIB.com](https://www.nfib.com).

PPP 8-week Loan Forgiveness (salaries)

Which has to be within the 8-weeks?

- Payroll
- Hours worked
- Both?

Owner Compensation Replacement

(those not on payroll)

- “Payroll cost” for self-employed is determined by your net profit, not a business draw.
- Already filed your 2019 taxes or prepared a 2019 return, this will be reported on **line 31 of the Schedule C**.
 - If you have not filed your 2019 taxes, you will still need to fill out a Schedule C in order to qualify for the PPP.
- 1099 independent contractors are by default considered to be a sole proprietor in the eyes of the IRS. Freelance income gets reported annually on a Schedule C within your personal tax return.
 - Schedule C is based on the 1099-MISC forms collected.



Owner Compensation Replacement (those not on payroll)

Maximum loan amount

2019 Schedule C, line 31 (net profits) (up to \$100,000) divide by 12 (to determine the average monthly net profit amount) and multiply that average monthly net profit amount by 2.5.

Maximum replacement

Limited to eight weeks' worth (8/52) of the 2019 Schedule C net profit amount.

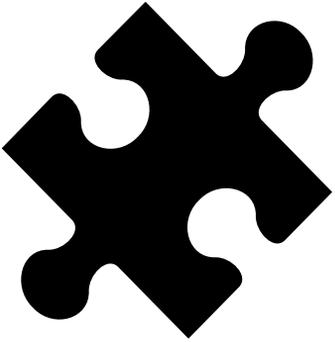
Great resource:

<https://bench.co/blog/operations/calculate-ppp-loan-amount/>



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Q&As



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