Payroll Protection Flexibility Act

Earlier today, President Trump signed the Paycheck Protection Program Flexibility Act (PPPFA) which makes significant improvements to the Paycheck Protection Program (PPP) loans for small businesses. While the regulations for these new changes are still forthcoming, allow me to share with you the main points of the PPPFA.

PPPFA extends the eight (8) week time period to spend the funds eligible for loan forgiveness to twenty four (24) weeks. This is a major improvement. Originally, recipients of PPP loans had just 8 weeks from the time their PPP loan was funded to spend funds to be eligible for loan forgiveness under the program. The PPPFA extends this time period to 24 weeks greatly reducing the pressure to spend the funds quickly, and possibly before a business was even legally permitted to re-open. (Employers can still elect to use an eight week period, however I would suggest discussing with us prior to doing so).

PPPFA reduces the requirement that 75% of the loan be spent on payroll costs down to 60%. This permits a greater percentage of the PPP loan to be spent on non-payroll costs; rent, mortgage interest, and utilities. *(Still unclear is the treatment of companies that spend less than 60% on payroll costs and whether or not they will lose all loan forgiveness opportunities. A further clarification is expected.)*

PPPFA eases the head count requirements adding additional exceptions for reduced head count. Generally, as part of the loan forgiveness employers are required to maintain employee head count as measured in FTE's (full-time equivalents) or their loan forgiveness will be reduced. There were already several exceptions, including employees turning down an offer to return to work on comparable terms as they had previously been employed.

The PPPFA adds a couple of additional exceptions that will ease meeting the head count requirement. Specifically, head count will not be considered reduced under the PPPFA in situations where an employer is able to document one of the following:

- An employer is unable to rehire an individual who was an employee on or before February 15, 2020,
- An employer is unable to hire similarly qualified employees on or before December 31, 2020, or
- An employer is able to demonstrate an "*inability to return to the same level of business activity as such business was operating at prior to February 15, 2020*."

The last of the above exceptions is understandable vague and it is still unclear how an employer meets this condition. One example, though that seems to have general consensus, is a situation where the number of workers in a factory had to be reduced to meet social distancing requirements upon re-opening and the employer is unable to have as many workers employed as before. More uncertain is whether merely failing to have sufficient product demand is a legitimate inability to return to the same level of business. Further guidance will be needed.

PPPFA changes the Rehire Date to December 31, 2020 from June 30, 2020. In determining head counts for loan forgiveness, under the CARES act, employers had until June 30, 2020 to rehire employees and have them fully counted. The PPPFA extends this date to December 31, 2020 to rehire employees and have them counted towards the head count component of the PPP loan forgiveness.

PPPFA extends the loan period from two (2) years to five (5) years. For the amount of any PPP loan not forgiven, employers had two years to repay the loan under the original CARES act provisions. The PPPFA extends the repayment period to five years and pushes out the start date to begin payments until six months after the SBA has made a determination on loan forgiveness.

While all of this is good news for recipients of PPP loans, a number of important items are still unclear with the PPPFA modifications. One of the most important items, eligible salary for forgiveness under the PPP loan was capped at a rate of $100,000 per annum, which computed to $15,385 for an 8 week period. Will this amount now increase to $46,154 per employee for the 24 week period?

Additional regulations and guidance from the Treasury are anticipated in the coming weeks, as well as updated loan forgiveness procedures and forms.

We hope everyone continues to be safe and well.