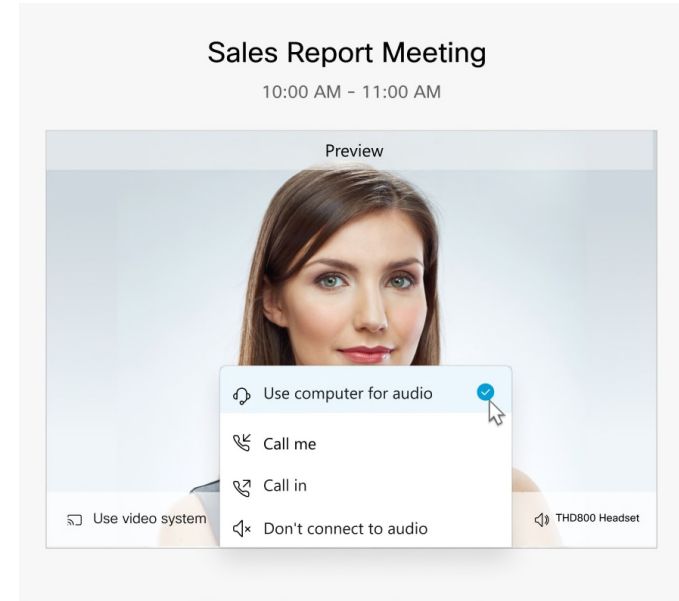
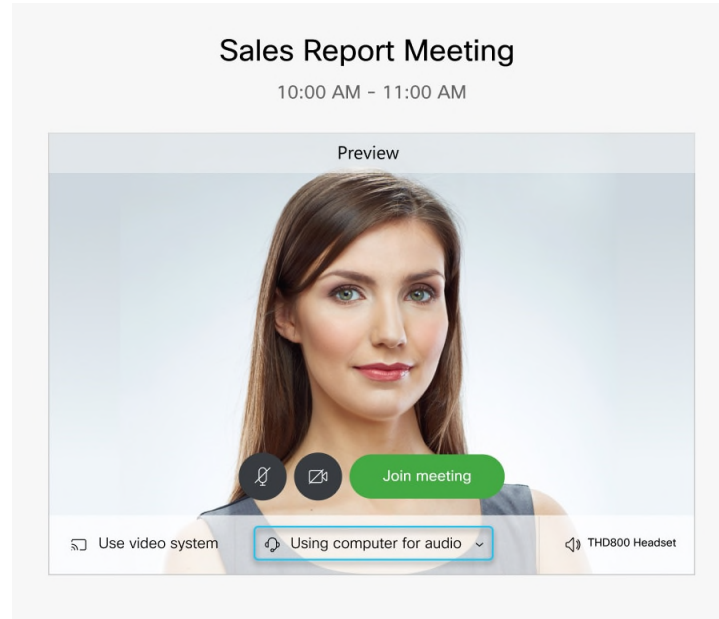


Welcome and thank you for joining us for today's presentation. Our topic is **“Guide to COVID-19 Issues and Relief for your Business.”**

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Guide to COVID-19 Issues and Relief for Your Business

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Resources and Relief Programs to Turn to:

- The CARES Act - Available Loan Program Summary
- Paycheck Protection Program
- Economic Injury Disaster Loan
- Terms, permitted uses, loan forgiveness, application process



Employment Issues

- Employment laws: Do they still apply during a pandemic?
- Special considerations for COVID-19 under the Americans with Disabilities Act
- New paid leave obligations for employers under the Families First Coronavirus Response Act
- CARES Act Paycheck Protection Loans (and loan forgiveness) for employers



CARES Act

- What is the Act?
 - The “Coronavirus Aid, Relief and Economic Security Act,” called the CARES Act (“Act”)
 - Passed by the Senate on 3/26/20
 - Passed by the House of Representatives on 3/27/20
 - Signed by the President on 3/27/20
- **\$377 Billion** allocated in the Coronavirus Aid, Relief and Economic Security Act (“**CARES Act**”) to small businesses.
 - Paycheck Protection Program / Economic Injury Disaster Loan



Key Business Provisions of CARES Act

Paycheck Protection Program

- The Paycheck Protection Program (“PPP”)
 - CARES Act allocates nearly \$350 Billion to provide American “small businesses” with 8 weeks of assistance through 100% federally guaranteed and potentially forgivable loans
 - The PPP program is an addition – an add on – to the Small Business Administration Section 7(a) lending program
 - Many provisions of the hastily written Act need guidance from the SBA (as the overseer)
 - Regulatory guidance is expected on an ongoing basis and should provide further insight into provisions that are unclear
 - The **primary goal** of the Act is to speed distribution of funds to businesses across all sectors by reducing paperwork and administrative requirements



Key Business Protections

Economic Injury Disaster Loans and Grants

- Emergency Economic Injury Disaster Loan Grants
 - Low-interest loans for working capital to small businesses
 - Borrowers seeking emergency funds can request \$10,000 payable three days after application
 - There is no debt forgiveness
 - Applicants deal exclusively with the SBA



Paycheck Protection Loans – General Terms

- Lesser of \$10 million or 2.5x monthly average payroll costs (+ balance of EID Loan)
- No collateral, no personal guarantee, no “credit elsewhere”
- Fixed interest rate of 1.00%
- Loan term of 2 years (for unforgiven portion)
- Payments of principal, interest and fees will be deferred for at least six months
- Loan forgiveness can be obtained for amounts of a covered PPP loan equal to the cost of maintaining payroll continuity during the covered period (March 1- June 30, 2020)



Paycheck Protection Loans – Eligibility

- Small businesses with fewer than 500 employees:
 - Includes certain nonprofits, 501(c)(3), veterans organizations and tribal businesses
 - “Employee” includes full-time, part-time, or other basis
- Businesses with alternative SBA size standards
- Sole proprietors, independent contractors and self-employed individuals
- Businesses that fall within NAICS Code 72 and employee not more than 500 employees per location (accommodations and food services, with 500 or less people per physical location)



Paycheck Protection Loans – Use of Proceeds

- Payroll costs
- Continuation of group health care benefits, paid sick medical or family leave, and insurance premiums
- Employee salaries, commissions, and similar compensation
- Interest on mortgage obligations
- Rent (including rent under a lease agreement) and utilities
- Any other debt obligations that were incurred before the covered period
- *Economic Injury Disaster Loan can be refinanced



Paycheck Protection Loans – Loan Amount

- Lesser of (i) \$10 million or (ii) 2.5X average monthly “payroll costs” during the 1-year period before the date of the loan + outstanding balance of EID Loan.
- “Payroll Costs” include payments of:
 - salary, wages, commission, similar compensation, and cash tips
 - medical, parental, family sick leave
 - group health care (insurance premiums) and retirement benefits
 - state and local tax assessed on employee compensation



Paycheck Protection Loans – Loan Amount (cont'd.)

- “Payroll Costs” do not include:
 - Annual compensation to an individual employee in excess of \$100,000.
 - Qualified sick or family leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act.
 - Compensation to an employee whose principal place of residence is outside of the United States.
 - Disbursements made to members of an LLC or Partnership.
 - Compensation paid to an independent contractor.



Paycheck Protection Loans – Forgiveness

- Loan forgiveness can be obtained for amounts of a covered loan equal to the cost of maintaining payroll continuity during the 8-week period following loan origination
 - May be up to 100% of loan amount
- Amount of eligible forgiveness shall be equal to the sum of (i) *payroll costs*, (ii) mortgage interest payments, (iii) rent obligations, and (iv) utility payments
 - Not more than 25% of the forgiven amount may be for non-payroll costs



Paycheck Protection Loans – Forgiveness and Reduction

- Amount of eligible forgiveness shall be reduced proportionately by
 - any reduction in full-time equivalent employees during the covered period when compared to (i) February 15, 2019 – June 30, 2019 or (ii) the period beginning Jan. 1, 2020 and ending Feb. 29, 2020; and
 - any 25% or more reduction in pay to employees earning less than \$100,000 when compared to prior year
 - Different rules of seasonal employees.
- No reduction in forgiveness amount if employees are rehired or salaries increased by June 30, 2020.



Paycheck Protection Loans – Application

- Applications can be submitted directly through existing SBA Lenders and federally insured banks as of Friday, April 3, 2020.
 - Independent contractors and self-employed individuals may apply beginning April 10
- Applicants required to:
 - Provide payroll and tax documentation
 - Answer questions regarding Applicant Ownership Information for any individual or business with a greater than 20% ownership stake
- Applicants must make a good faith certification that:
 - Current economic uncertainty makes the loan necessary to support ongoing operations
 - Funds will be used to retain workers, maintain payroll, or pay mortgage interest, lease or utility payments
 - Borrower has not and will not receive another loan under this program
 - Borrower will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments and covered utilities



Economic Injury Disaster Loan – Terms

- Amount up to \$2,000,000
- Proceeds may be used to pay fixed debts, payroll, accounts payable, rent, utilities and other bills that cannot be paid because of the disaster's impact
- Interest rate not to exceed 3.75%; 2.75% for nonprofits
- Collateral required for loans more than \$25,000
- Personal Guarantees required for loans more than \$200,000
- Term up to 30 years
- Not eligible for forgiveness (but may be refinanced with a Paycheck Protection Program)



Economic Injury Disaster Loan - General

- Covered period: January 1 - December 31, 2020
- Eligible entity:
 - Business (including private nonprofit) with not more than 500 employees
 - Business subject to SBA's alternative size standards
 - Individual operating as a sole proprietorship, with or without employees
 - Independent contractor
 - ESOP without more than 500 employees
 - Tribal small business concern
 - Suffered substantial economic injury due to COVID-19



Economic Injury Disaster Loan - Application

- Applicants deal exclusively with the SBA via online portal.
- SBA determines loan terms on a case-by-case basis after evaluating each applicant's needs. Loan terms are predicated on the economic injury sustained and an applicant's ability to payback its obligations.
 - Can be based solely on the credit score of the applicant and shall not require an applicant to submit a tax return or a tax return transcript for such approval.
 - Alternative appropriate methods to determine an applicant's ability to repay.



Economic Injury Disaster Loan – Emergency Grants

- May be requested within three days after application
- Verification that applicant is an eligible entity by having applicant submit a required self-certification under penalty of perjury
- Maximum amount up to \$10,000



Economic Injury Disaster Loan – Emergency Grants (cont'd.)

- Uses:

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



Economic Injury Disaster Loan – Emergency Grants (cont'd.)

- Repayment
 - Applicant not required to repay any amounts advanced under this subsection, even if subsequently denied a loan
- Unemployment Grant
 - If applicant transfers into, or is approved for PPL, the advance amount shall be reduced from the loan forgiveness amount



SBA's Affiliation Rules

- Applicant and each “*affiliate*” will be looked at as one business for purposes of determining the number of employees
1. Ownership:
 - Owner with more than 50% of equity interest.
 - Minority owner with substantial control may create affiliation.
 2. Stock Options, Convertible Securities, Merger Agreements
 3. Management: CEO or President of the applicant also controls the Board of Directors, or is an officer of another business.
 4. Identify of Interest: When close relatives operate businesses in the same or similar industry in the same geographic area.



COVID-19 Considerations for Employers

- Do employment laws still apply in a pandemic?
- Laws prohibiting discrimination/harassment
 - Federal, state, local
 - Race, national origin, age
 - Disability (including “regarded as” and “association with”)
- Wage and Hour Laws
 - Overtime obligations for non-exempt employees
- State and Local Paid Sick Leave Laws
 - Philadelphia – expanded



Enforcement During a Pandemic

- Americans with Disabilities Act: restrictions on medical inquiries and medical examinations of employees/applicants
- EEOC COVID-19 Guidance (3/19/20)
 - Employers can ask employees who call in sick if they are experiencing COVID-19 symptoms
 - Employers can take employee temperatures
 - Note: Consistency and asymptomatic carriers
 - Employers can require symptomatic employees to stay home
 - Employers can require return to work doctor's notes
 - Practical?
 - NOT A SILVER BULLET
- **Objective, medical evidence vs. fears/stereotypes**



Families First Coronavirus Response Act (FFCRA)

- Enacted March 18, 2020; effective April 1, 2020
- Applies to public (governmental) employers and private employers with < 500 employees
- Expands unemployment compensation; required employer notice
- Covered employers required to provide paid sick leave and paid family leave to employees
- Tax Credit
- Exemptions
 - Employees who are specifically defined health care providers or emergency responders
 - Certain (but not all) businesses under 50 employees



FFCRA Paid Sick Time – Qualifying Reasons

Employees (any duration) who are **unable to work (or telework)** because:

1. Employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. Employee is experiencing COVID-19 symptoms and is seeking a diagnosis.
4. Employee is caring for an individual who is: (a) subject to a federal, state, or local quarantine or isolation order related to COVID-19 or (b) who has been advised to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for a child whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.
6. Employee experiencing a “substantially similar condition” specified by Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury.



FFCRA Paid Sick Time – Duration/Rate of Pay

- Duration
 - Full-time employees: 80 hours
 - Part-time employees: average number of hours the employee works over a 2-week period.
- Rate of pay
 - For qualifying reasons 1, 2, and 3: employee's regular rate of pay up to \$511 per day (\$5,110 aggregate)
 - For qualifying reasons 4, 5, and 6: 2/3 the employee's regular rate of pay up to \$200 per day (\$2,000 aggregate)



FFCRA Paid Family Leave

- Available for employees who:
 - Have been employed for at least 30 calendar days
 - Are unable to work or telework due to caring for a child whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions.
- Job-protected leave
- Structure:
 - First 10 days unpaid (but FFCRA paid sick leave applies)
 - Up to 10 weeks paid at 2/3 of regular rate of pay, up to \$200 per day (\$10,000 aggregate)



FFCRA – Other Considerations

- Paid sick leave interaction with paid leave under state/local law or existing employer policy
- No carryover of paid sick leave or payout at termination
- No discrimination or retaliation
- Notice of Rights
 - Some options for electronic distribution
- Rights to leave expire December 31, 2020
 - For now!



CARES Act Paycheck Protection Loan Forgiveness

- PPP loans
 - Eligibility
 - Qualifying expenditures
 - Forgiveness
- The forgiveness calculation is a multi-step calculation that takes into account your employment decisions.
 - Think about this carefully when applying/budgeting



PPP Loan Forgiveness - Generally

- **Qualifying expenses** (payroll costs!)
- **Reduced** by two tests
 - The “headcount” test. A proportional reduction based on:
 - average FTEs employed during the 8-week period
 - average FTEs employed between February 15, 2019 and June 30, 2019
 - OR between January 1, 2020 and February 29, 2020
 - The employer gets to pick the “lookback” window
 - The “pay cut” test. Dollar-for-dollar reduction based on:
 - reduction in salary of employees during the 8-week period > 25% of their salary during the most recently preceding full quarter. (Employees earning \$100,000+ annualized basis are excluded)
- **Except**, “headcount” reductions and “pay cuts” between February 15, 2020 and April 26, 2020 will not reduce eligibility for loan forgiveness if restored by no later than June 30, 2020
- Is loan forgiveness “real”?



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