

Navigating Coronavirus Legislation:

What it means for Nonprofits



Impacts & Updates



Financial
Assistance



Employer
Guidance



Corporate
Governance

The CARES Act is a \$2.2 Trillion relief package that includes several relevant provisions for nonprofit organizations and donors including:



PAYCHECK PROTECTION PROGRAM (PPP);



ECONOMIC INJURY DISASTER LOANS (EIDL);



EXPANDED UNEMPLOYMENT BENEFITS FOR EMPLOYEES WHO HAVE LOST THEIR JOBS DUE TO COVID-19;



ENHANCED CHARITABLE DEDUCTIONS ON 2020 TAXES FOR NON-ITEMIZERS, INDIVIDUALS WHO ITEMIZE THEIR DEDUCTIONS, AND CORPORATIONS;



EMPLOYMENT TAX INCENTIVES FOR EMPLOYERS TO RETAIN EMPLOYEES DURING THE PANDEMIC; AND



DEFERMENT OF CERTAIN PAYROLL TAXES FOR EMPLOYERS.



\$350 Billion, maybe another \$250 Billion



Eligibility: 500 or fewer employees*



501(a) and 501(c)(3) organizations may participate as well as 501(c)(19) veterans' organizations and tribal business concerns that employ no more than 500 employees.



For profit subsidiaries are eligible even if the nonprofit organization is itself not eligible



Amount: Lesser of \$10 M or up to 2.5 X'S Monthly Payroll



Apply through local bank



Available through June 30

Payroll Protection Plan (PPP)

Payroll Protection Plan (PPP) Uses

Payroll, benefits, group health premiums, utilities, rent/mortgage interest, state payroll taxes incurred prior to 2/15/2020.

- Payroll includes only that portion of any individual's salary/compensation up to \$100K per year per individual. Full-time, part-time and even seasonal employees may be counted in determining payroll.
- EIDL loans taken out between 2/15 and 6/30/20 may be included if the borrower wants to refinance the loan
- Sick leave or paid family medical leave for which a credit is allowed is excluded



Payroll Protection Plan (PPP) Features : Loan Forgiveness

Maintain employment for 8 weeks after loan origination or rehire employees (laid off between 2/15 and 4/26) by June 30

Must certify that no more than 25% of the forgiven loan will cover non payroll costs.

At least 75% of the loan principal must have been used for payroll.

Amount forgiven will be reduced proportionally by employee reduction year over year and reduced, dollar-for-dollar, by the reduction in pay of any employees beyond 25% of their compensation the prior year.

If borrower receives the \$10,000 EIDL emergency grant, it will be subtracted from the amount that can be forgiven.

Forgiveness by the lender will be based on documented payments by borrower.

Payroll Protection Plan (PPP) Features

Interest rate:

1.0% to non-profits for portion that is not forgiven (Act says not to exceed 4% but Interim Final Rule says 1%)

2-year maturity. First payment deferred for 6 months.

No collateral or personal guarantee required.

The SBA will have recourse against nonprofit that does not repay its loan and SBA is forced to pay the lender.

Economic Injury Disaster Loan (EIDL)

Applicable when organization suffers an “economic injury” due to a state or federally declared disaster. A loss in value of a nonprofit's endowment might count as a compensable economic loss.

Includes non-profits (definition is broader than under CARES ACT). Eligible "private nonprofit organizations" include any entity exempt under section 501(c), including the trade associations, advocacy organizations, unions, and social clubs that are excluded from the PPP.

Up to \$2 Million loan, 2.75% interest rate for nonprofits, for a term not to exceed 30 years

Economic Injury Disaster Loan (EIDL)

Apply directly through SBA-on-line application.

Use of Funds: fixed debt, payroll, accounts payable, other bills that could have been paid had the disaster not occurred. Not intended to replace lost profit or give working capital for expansion.

First payment deferred for 12 months from origination date, though interest accrues during the deferment.

No loan forgiveness for EIDL loan.

Economic Injury Disaster Loan (EIDL)

For loans greater than \$25,000, SBA will look for collateral although loans will not be denied for lack of collateral.

EIDL Emergency Grant: Under CARES Act, applicants can get *up to* \$10,000 in an emergency “grant” within 3 days of submitting an EIDL application. Even if the EIDL loan is denied, the recipient may keep the grant. (may be issues for nonprofits to access this grant)

Uses of the emergency grant include maintaining payroll, paying rent or mortgage, paying creditors, vendors or suppliers.

Eligible organizations may apply and receive both PPP and EIDL loans however, EIDL must be used for a purpose other than payroll costs.

To determine whether to apply for a PPP loan or EIDL, an organization should consider the following:



Eligibility;



Maximum Loan Amounts;



Loan Forgiveness;



Maximum Maturity; and



Interest Rates.



All employers may defer payment of employer's share of Social Security tax for the period from March 27, 2020 through December 31, 2020.



Payment of deferred payroll taxes over the following 2 years



Payroll tax deferral benefits are not available to employers that obtain PPP loans

Payroll Tax Assistance

Enhanced Charitable Giving

- A one-time, above-the-line deduction for cash contributions of up to \$300 made to charitable or religious organizations.
- The incentive does not apply to contributions to donor advised funds, private non-operating foundations, or section 509(a)(3) supporting organizations.
- Increases the limits on charitable deductions made by individuals who itemize their taxes from 60% to 100% fully deductible. 2020only.
- The corporate limit on charitable deduction on cash contributions in 2020 is similarly increased from 10% to 25%.

Other Legislation

- Mass Insurance Legislation (Pending)

Employee Retention Tax Credits



Fully refundable tax credit up to 50% of wages paid between March 12, 2020 and January 1, 2021.

- Eligibility: carry on trade/business during 2020 and:
- Fully/partially suspend operation during any quarter due to orders from appropriate government authority or Experience significant decline in gross receipts during calendar quarter.
- Employers of more than 100 employees can only claim the credit for periods when employee is providing services. Employer with fewer than 100 employees can claim the credit for any wages paid to employee.
- Employer cannot claim if they have received a PPP loan.

Families First Coronavirus Response Act

In General:

- Available from April 1, 2020 to December 31, 2020
- All private employers with fewer than 500 employees
- Employers with fewer than 50 employees may qualify for an exemption
- FT and PT employees are eligible
- Employers must notify employees, whether by posting on site or online, or sending email: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Employers can exclude employees who are Health Care Providers and Emergency Responders (definitions are broad)
- Leave does not roll over and employees do not need to be compensated for unused leave
- Intermittent Leave: if teleworking, may be taken with employer agreement. If physical worksite, need employer agreement and can only be for childcare



Available immediately

Purposes: quarantine, medically advised self-isolation, seeking a diagnosis while experiencing symptoms of COVID-19, caring for a sick family/household member or a child whose school or care provider is closed

Time: up to 80 hours (FT); PT is based on normally scheduled hours over 2 week period

Pay: Depends on purpose.

Quarantine, medically advised self-isolation, seeking diagnosis: regular pay or applicable minimum wage up to \$511/day, \$5110 total.

Caring for sick family/household member or child whose school/care provider is closed: 2/3 of regular pay or applicable minimum wage up to \$200/day, \$2000 total.

Paid Sick Leave



EMPLOYEES CANNOT BE REQUIRED TO USE OTHER LEAVE FIRST OR TO LOCATE COVERAGE



VIOLATIONS OF THE PAID LEAVE PROVISIONS WILL BE TREATED AS VIOLATIONS OF MINIMUM WAGE LAW



EMPLOYERS CANNOT DISCHARGE, DISCIPLINE OR DISCRIMINATE AGAINST AN EMPLOYEE WHO TAKES LEAVE UNDER THIS LAW OR FILES A COMPLAINT OR BEGINS A PROCEEDING UNDER THIS LAW.

Paid Sick Leave Additional Points

Paid Family Leave

Purpose: Employees who are unable to work because child's school or care provider is closed due to COVID-19.

- Note: care provider is broader than day care and includes unpaid care such as a neighbor or family member.



Time: up to 12 weeks, 10 of which are paid. Employees may use other leave available to them to cover the first two weeks. If employee has already used FMLA leave, the available time will be reduced accordingly.



Pay: None for first 2 weeks (unless using other paid leave), then 2/3 of normal pay or applicable minimum wage up to \$200 per day, \$10,000 aggregate. For part time employees, hours paid are based on normal hours worked.

Fully reimbursed
quarterly when
employers file payroll
taxes

Credits are refundable

Credits include full
amount of paid sick and
family leave, as well as
employer portion of
health insurance paid
during leave and
employer share of
Medicare tax

Employers may retain
their employment taxes
up to the amount spent
on paid family and
medical leave rather than
submitting them to the
IRS and may be entitled
to an advance from the
IRS to pay for such leave.

Tax Credits

Job Protection



- Generally same job protections as under normal FMLA
- Exception: employer with fewer than 25 employees when employees took leave to care for a child whose school or care provider was closed, employee's position no longer exists due to conditions that affect employment and are caused by a public health emergency, employer made reasonable efforts to restore the employee to equivalent position and employer makes reasonable efforts to contact the employee if equivalent position becomes available within one year.

Documentation Process for Tax Credits

Documentation:

Forms 941 (employer quarterly tax return) and 7200 (Advance of Employer Credits due to COVID-19) and:

Written statement from employee with: employee's name, date(s) for which leave is requested, a statement of the COVID-19 reason the employee is requesting such leave and written support for such reason; and a statement that the employee is unable to work or telework for such reason.

Documentation substantiating the amount of leave paid to employees, including work, telework and qualified sick and family leave;

Documentation showing how the employer determined the amount of qualified healthcare expenses allocated to wages

Employer should retain all documentation for at least 4 years and have it available in case of IRS review

The law allows the DOL to exempt employers with fewer than 50 employees when providing such leave would jeopardize the viability of the business as an ongoing concern.

DOL Guidance: exemption available if

The leave would cause the employer's expenses and financial obligations to exceed available business revenue;

Granting leave for a particular employee would pose a substantial risk to the financial health or operational capacity of the employer because of their specialized skills, knowledge, or job responsibilities; or

Employer cannot find workers who are able, willing and qualified, and available at the time and place needed to perform the labor or services the employee(s) requesting leave provide, which are necessary for the employer to operate at a minimal capacity.

If the employer has fewer than 50 employees and one of these exemptions applies, the employer should document and maintain information about the request for leave and the reason for the denial.

Exemption: Business Viability

Managing Your
Board

Unemployment Concerns

For Employees Filing for Unemployment

FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION (FPUC)

- \$600 per week added to claimants' benefit
- Retroactive to March 29, 2020
- Continues through July 31, 2020

DEFINITION OF “UNEMPLOYMENT” IS EXPANDED

- Employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
- Individual is quarantined with the expectation of returning to work;
- Individual leaves employment due to risk of exposure or infection or to care for a family member.

For Employees Filing for Unemployment

Pandemic Emergency Unemployment Compensation (PEUC)

- An additional 13 weeks added to Massachusetts' 26 weeks
- The \$600 FPUC applies during the added 13 weeks
- First week is w/e March 29, 2020
- Last week is w/e December 26, 2020

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For Employees Filing for Unemployment

Pandemic Unemployment Assistance (PUA)

- Applies to contractors and 1099 individuals
- First date w/e February 2, 2020
- Last date w/e December 26, 2020
- Not currently available – expected to be up and running by April 30
 - Will be retroactive to application date back to w/e February 2

Claims can be filed here:

- <https://uionline.detma.org/Claimant/Core/Login.ASPX>

For Employers Making Staff Reductions

CARES Act

- Self-Insuring Charities (501 (c)(3))
- Can get reimbursed from federal government for 50% of their costs owed to the state trust fund through end of 2020 due to unemployment benefits provided to laid-off employees

Massachusetts *pending* legislation (SB-2618)

- All businesses who pay contributions to unemployment insurance (not self-insured)
- State rating for unemployment insurance cannot be adjusted due to Covid-19 layoffs
- Nonprofits would get a 120 extension on their next contribution payment

April 3, 2020 - Emergency Provisions Enacted in Massachusetts to assist
Ch. 180 corporations with meetings and voting

Changes procedural
requirements for meetings and
voting

Some provisions apply to
members

Some provisions apply to
directors



Effective for the duration of Governor Baker's March 10, 2020 State of
Emergency and for 60 days thereafter



<https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter53>

Section 16

Governance

Member Provisions (if you do not have members, these provisions do not apply)

- Members may vote by proxy and voting by proxy will be considered present at the meeting for quorum requirements
- Members may meet remotely if:
 - Reasonable measures taken to verify identity as a member or proxy holder
 - Reasonable measures to allow participation, read or hear proceedings and ask questions
 - A record is kept of the actions taken by each of the members or proxy holders

The above cannot be used if the Articles of Organization expressly prohibit any of these actions

Governance

Director Provisions (these apply only to Directors; whether they serve as the only governing body of the organization or if the organization also has Members)

- Provide notice to directors only if it is practicable to reach
- May reach Directors in any practicable manner
- Cancel a meeting of Members in any practicable manner
- Allow a Director to serve whose term expires during the March 10, 2020 State of Emergency until a successor is elected and takes office
- Directors meetings may be by any remote means allowing Directors to simultaneously communicate

Governance

Director Provisions (continued)

- Appoint successors of officers, directors, employees, agents
- Relocate the principal office or designate alternative offices
- Directors who participate pursuant to these rules shall constitute a quorum

Must notify Members (if the corporation has Members) of any action taken by the Directors

- Notice required as soon as reasonably practical

Above do not apply if the Articles of Organization expressly prohibit

Governance

Guidance for actions taken pursuant to special provisions

Provide information as to proposed actions/votes

Take only necessary actions

Wait to take discretionary votes

Follow up with written confirmation of what was approved

Keep records and minutes

Governance

General Guidelines

Keep your
Board (and
Members)
informed

Let your Board
know how they
can help

Keep good
documentation
– it will be
harder to
remember than
you think

Governance

Filing Deadlines

IRS – Applies to Nonprofits and Foundations

- Tax Deadlines falling within April 1 and July 14 moved to July 15
- Extension is automatic – no paperwork or forms need to be filed
- Extensions beyond July 15 require written filing and can't extend beyond legally allowed extension periods

Mass. Attorney General – Division of Public Charities:

- Reasonable delays in submitting annual charities filings and/or initial registration materials as a result of COVID-19-related interruptions will not adversely impact whether a charity or solicitor is in good standing with registration and filing requirements

Resources

Chronicle of Philanthropy – Free Daily Updates/Articles on Covid-19

<https://www.philanthropy.com/specialreport/updated-daily-help-for-nonpro/231>

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