**Frequently Asked Questions for Franchise Businesses re: COVID-19**

1. **If I had to lay off or furlough my workers, can I rehire them and benefit from the loans/grants/credits provided in the CARES Act?**

Yes. The CARES Act offers a 50% tax credit for wages paid to employees affected by the Coronavirus crisis, up to the first $10,000 in wages. In particular the Act allows employers to take the credit for wages paid to an employee who is not working because the employer has been closed or partially closed because of the Coronavirus, or because the employer has experienced a significant decline in revenue (50% or more from the same period last year). You may take this credit for wages you pay to employees after March 12, 2020, and before January 1, 2021. Nothing in the Act prevents you from restoring an employee to paid status and taking advantage of this credit.

Similarly, the Act creates the Paycheck Protection Program (PPP). PPP provides forgivable loans to businesses affected by the Coronavirus. Loan forgiveness may be reduced in proportion to any reduction in headcount between February 15, 2020, and June 30, 2020. A loan recipient may, however, avoid a reduction by restoring previously laid off or furloughed employees with full pay and benefits by June 30, 2020.

1. **Why would a business choose the Employee Retention Tax Credit over the Paycheck Loan Program?**

There are at least three reasons a business might choose to take the retention credit instead of a PPP loan. First, while PPP is open only to businesses with 500 or fewer employees, the retention credit is available to businesses of all size. Second, the PPP program caps out at $10 million, while the retention credit caps out at $5,000 per employee (a 50% credit on the first $10,000 in wages). A business with enough employees could thus benefit more from the credit than from a PPP loan. Third, the retention credit offers immediate relief. Employers can immediately retain money they would otherwise deposit with the IRS in their quarterly returns. A PPP loan, by contrast, must be processed by a lender, which will inevitably cause some delay.

It is also possible that not all businesses will have a choice. PPP is subject to limited funds, and the loans will be awarded on a first-come, first-serve basis. Once the funds are exhausted, no more loans will be issued unless Congress appropriates more money.

1. **Can I apply for both the Employee Retention Tax Credit and the Paycheck Protection Loan Program?**

No. The retention credit and PPP are mutually exclusive. You cannot use both benefits.

1. **What happens if I take out a PPL and my employees quit to get expanded UI benefits?**

PPP bases loan forgiveness in part on the average number of full-time equivalents (FTEs) the borrower employs during the eight weeks following receipt of a loan. If the business’s average FTEs fall during those eight weeks, PPP reduces loan forgiveness by a proportional amount. The CARES Act makes no distinctions based on the reason for a reduction in average FTEs. Thus, if a business reduces its average FTES for any reason, including voluntary resignations, the business’s loan forgiveness may be reduced.

The Act does not, however, tie forgiveness to specific employees. So a business may avoid a reduction by hiring additional workers to replace departing employees.

1. **Do I apply for the PPL through my normal lender? How do I know if they are an SBA-approved lender?**

The CARES Act contemplates that any lender authorized to issue loans under Section 7(a) of the Small Business Act may issue loans under PPP. The SBA maintains a list of authorized lenders on its website. You may also contact your lender and ask whether the lender is participating in PPP.

1. **What is the role of commercial payroll processers in the Paycheck Protection program?**

Payroll costs play several roles under PPP. For example, PPP caps a business’s loans at 250% of average monthly payroll costs. It also bases loan forgiveness in part on how much of the loan a business spends on payroll. As a result, you may need support from your commercial payroll processor to document your payroll costs, both before and after you receive your loan.

1. **If I already applied for an Economic Injury Disaster Loan (EIDL), can I apply for a Paycheck Protection Loan?**

Yes. PPP limits borrowers to one loan under the PPP program. It does not limit their ability to borrow under other SBA loan programs, such as EIDL loans under section 7(b) of the Small Business Act.

1. **How soon could funds from an EIDL be received by the applying business? How soon could funds be received from a Paycheck Protection Loan?**

Lenders are authorized to process loan applications now. But it is not yet clear how quickly loans will be dispersed to qualified borrowers. The speed may depend in part on your lender and in part on the SBA’s ability to handle an unexpectedly large volume of loan applications.

1. **Can 1099s be included in 2.5x payroll size so the size standard can be increased?**

No. Amounts paid to independent contractors are not considered payroll costs under PPP. Independent contractors are eligible for their own PPP loans.

1. **Can you explain the loan forgiveness test and payroll headcount reference point? What if I optimized my workforce in 2020? Would I need to use 2019 tax year payroll information?**

For headcount purposes, the CARES Act allows a borrower to choose from two baselines. First, it can choose the average number of FTEs per month from February 15, 2019, to June 30, 2019. Second, it can choose the average number of FTEs from January 1, 2020, to February 29, 2020. Then the business compares the chosen baseline to its average FTEs during the eight weeks following receipt of the loan. If its average FTEs during the eight-week period at least equals its average FTEs during the chosen baseline period, it may be eligible for full loan forgiveness (assuming it meets all other criteria for loan forgiveness).

1. **Are there any disqualifying reasons why businesses wouldn’t qualify for a loan? (For instance: bankruptcies and previous loan defaults)**

Yes. There are several criteria that may disqualify an applicant. For example, an applicant is ineligible if it is “presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy.” Other disqualifying criteria are listed on the SBA’s PPP application. You can find the application [here](https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf).

1. **Can you clarify the employer size requirements for Paid Sick Leave and FMLA? How do I calculate potential sick pay and FMLA?**

Under the Families First Coronavirus Response Act (FFCRA), a private-sector employer must provide emergency paid sick leave (EPSL) and emergency family and medical leave (FMLA+) when it employs fewer than 500 employees.

For EPSL, the employer must provide two weeks’ paid leave. It must give full-time employees 80 hours of leave and part-time employees an amount of leave equal to the amount they would normally have worked over a two-week period. The rate of pay depends on the reason for leave. Three reasons qualify the employee for 100% of his or her regular rate of pay, with a maximum of $511 per day ($5,110 total). Three other reasons qualify the employee for two-thirds of his or her regular rate, with a maximum of $200 per day ($2,000 total).

For FMLA+, the employer must provide up to 12 weeks of leave. The first two weeks may be unpaid (though the employee may choose to take EPSL during this period). The final ten weeks must be paid at two-thirds the employee’s regular rate of pay (maximum $200 per day; $10,000 total).

1. **If we lay off all employees prior to April 2, 2020, are we responsible for FMLA and Paid Sick Leave?**

Only employees active on April 1, 2020, are eligible for FFCRA leave. Laid-off employees may be eligible for expanded unemployment benefits under the CARES Act.

1. **How is the 500 number arrived at which includes such issues as:  do all workers need to be in the US; are part timers counted; will the DOL adopt the test found in the FLSA or FMLA or some other test in making determinations?  What if the company fluctuates so it sometimes has more than 500 and sometimes less?  What if the company has 500 today but in two weeks due to layoffs has less?  If employees are on temporary layoff v permanent lay off do they count?**

Under the FFCRA, an employer should count all full-time and part-time employees in the United States. It should conduct this count on the day the employee’s leave would begin. If the employer falls below 500 on that day, it is subject to the FFCRA’s leave requirements. For the purposes of determining whether to count two businesses’ employees together, the Department of Labor has adopted the FLSA’s joint-employment test (for EPSL) and the FMLA’s integrated-employer test (for FMLA+). You should use the same analyses you used under those tests to determine whether you meet the 500-employee threshold.

1. **Can sick leave be taken intermittently?  Can FMLA leave be taken intermittently?  Is the leave cumulative?**

An employer may agree with its employees to use EPSL intermittently while teleworking. If the employee is working at his or her usual jobsite, he or she may not take EPSL intermittently for most covered reasons. The employer and employee may, however, agree to allow such an employee to take intermittent leave if the reason for the leave is that the employee must case for a child whose school or place of care is closed because of COVID-19. The employer and employee may also agree to allow the employee to take intermittent FMLA+ for the same reason.

1. **If companies reduce their workforces over the next few weeks, will those “let go” be entitled to leave?**

If an employer furloughs an employee because it does not have enough work or business to continue paying the employee, the employee is not entitled to EPSL or FMLA+. The employee may, however, be eligible for expanded unemployment benefits under the CARES Act.

1. **How is the sick leave and FMLA leave decided upon if a CBA is in place? What takes priority?**

EPSL and FMLA+ are in addition to any leave provided under an existing policy or CBA. If a business already provides leave under a CBA or policy, it must provide both.

1. **Will the Secretary issue formal guidance on issues such as these (and others) before the law goes into effect?**

The Secretary of Labor has issued formal regulations and an extensive FAQs document regarding FFCRA leave. You can find the FAQs [here](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#2).

1. **How will the tax “offset” work? What if the company does not have the cash flow necessary to “advance” the paid leave? Then what? Will the Treasury Secretary be issuing regulations?  Will in put be sought?  How? By when?**

Employers may take offsets for FFCRA leave by withholding amounts from the federal employment taxes they would ordinarily deposit with the IRS each quarter. They may follow the same procedure when taking employee-retention credits under the CARES Act. If an employer’s federal employment-tax liability is insufficient to cover the credits, the employer may apply for an advance refund using IRS form 7200.

The IRS recently issued FAQs on this subject. You can find the FAQs [here](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs).

1. **How will the Secretary determine exemptions for 50 or less?  What process will he follows?**

The Secretary addressed the small-business exemption in recent FAQs. You can find the FAQs [here](https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#2).

1. **Will the Secretary be issuing clarifications for WARN notices?  When?**

The Department of Labor’s guidance on WARN Act compliance can be found [here](https://www.dol.gov/agencies/eta/layoffs/warn).