

REVISED AND CURRENT AS OF MARCH 30, 2020

To: Businesses of Hawaii

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Re: Save Hawaii Jobs and Businesses – Resources for Employers

The CARES Act provides financial relief to businesses, 501(c)(3) organizations, self-employed individuals, and independent contractors. The most prominent relief comes through a \$350B program whereby the federal government will pay for 8 weeks of essential expenses such as payroll and rent to carry businesses through this difficult period. The information below outlines the options available to businesses to obtain financial relief, manage payroll, evaluate layoffs, and manage paid sick leave.

Tools for Small Business(Under 500 Employees) to Weather the COVID-19 Storm

- What should I do with my employees?
 - **OPTION 1:** Keep Employees on Payroll or Re-Hire Them
 - SBA Paycheck Protection Program (PPP) (\$350B program)
 - WHO QUALIFIES:
 - Applicable to employers with fewer than 500 employees, 501(c)(3)s, sole proprietors, independent contractors, self-employed, and some exceptions for employers that might otherwise exceed 500 employees (e.g., accommodation and food service businesses with physical locations less than 500 employees)
 - Must be due to “uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient”
 - No fee to apply
 - Can have other sources of credit
 - No personal guarantee required
 - No collateral is required



- Long-term loan (if not forgiven) (max 10 years) with low interest (max 4%)
 - No prepayment penalty
- **INFO NEEDED FOR APPLICATION:**
 - Documentation to verify the number of full-time equivalent employees and each employee's pay rate (payroll tax filings, unemployment insurance filings)
 - Documentation to prove mortgage, lease or utility payments (cancelled checks, payment receipts, account statements)
 - Attestation of truthfulness and accuracy
 - Loans will be issued directly by SBA 7(a) lenders. Most Hawaii banks and credit unions are certified SBA 7(a) lenders.
- **TIME TO PROCESS APPLICATION:**
 - The law permits 60 days for loan approval
 - SBA is trying to expedite this process
 - We will receive daily updates
- **MAXIMUM LOAN/GRANT AMOUNT:**
 - 2.5 times average monthly "payroll costs" over previous 12-month period (eligible employee compensation capped at \$100k/per employee) up to \$10M
 - "Payroll costs" include:
 - salary, wage, commission, or similar compensation
 - tips
 - vacation, parental, family, medical, or sick leave payments
 - separation allowance
 - "payment required for the provisions of group health care benefits, including insurance premiums"
 - Payment of any retirement benefit
 - State or local tax assessed on employee compensation



- For sole proprietors or independent contractors, “payroll costs” includes wages, commissions, income, net earnings from self-employment, or similar compensation of \$100k or less in a year.
 - “Payroll costs” excludes:
 - compensation of any employees in excess of \$100k annual salary (prorated for the applicable period)
 - federal payroll taxes
 - compensation of employees with a principal place of residence outside of the U.S.
 - qualified paid sick leave or paid family leave where a tax credit is allowed
 - If business started after June 20, 2019, SBA will look at January and February 2020
- FUNDS MUST BE USED FOR:
 - Payroll and commission payments
 - Group health insurance costs
 - Mortgage interest
 - Rent (including rent under lease agreement)
 - Utilities
 - Interest on any other debt obligation incurred prior to covered period
 - MAXIMUM FORGIVENESS: Maximum forgiveness is payroll costs, mortgage interest payments, rent, and utilities (“forgivable costs”) in the 8-week period following loan initiation or June 30, 2020 (whichever is earlier) up to the amount of the loan
 - REQUIREMENTS FOR LOAN FORGIVENESS:
 - Maintain average monthly number of full-time equivalent employees in 8-week period following loan origination equal or above the previous average monthly number of full-time equivalent employees



- Many employers will need to re-hire employees who have been laid-off to get back to the previous average number of employees
- The amount of loan forgiveness will be reduced based on the proportion of employee headcount the employer has reduced from prior levels. This percentage is calculated by multiplying (1) the forgivable costs by (2) the quotient obtained by dividing (a) the average number of full-time equivalent employees per month during the covered period by (b) at the election of the borrower, (i) the average number of full-time equivalent employees per month from February 15, 2019 to June 30, 2019 or (ii) the average number of full-time equivalent employees per month from January 1, 2020 to February 29, 2020.
- Employees paid under \$100k cannot have pay reduced more than 25%
 - The amount of loan forgiveness will be reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages during the most recent full quarter during which the employee was employed before the covered period.
- If there is a remaining balance after forgiveness is calculated, maximum maturity is 10 years at max 4% interest.
- Lenders must defer payments for at least six months, and up to one year.
- Cancelled indebtedness shall be excluded from gross income for tax purposes.
- The new law was passed on Friday, March 27. Hawaii SBA is currently working to set-up the application and approval process. The current timeline for loan approval process is still unknown. We will get updates daily.
- Example:



- Employer has 5 employees at \$48k/year (\$4k/month) salaries for each employee
- Monthly payroll cost is \$20k
- Maximum loan amount is $\$20k \times 2.5 = \$50k$
- Employer obtains PPP loan, keeps all employees, but lowers pay to 75% for each employee
 - Monthly payroll expense following loan initiation drops to \$15k, so payroll costs in the 8 weeks following loan initiation is about \$30k
- Employer can then cover payroll for two months, and have an additional \$20k of forgivable loan proceeds to put toward rent and utilities
- Economic Injury Disaster Loan (EIDL Loans) may provide faster infusion of cash prior to receiving a PPP loan.
 - Narrower employer eligibility than PPP
 - Credit history reviewed for ability to repay
 - Must meet the SBA's industry-based size standard requirements for the applicable NAICS code
 - Must exhaust other sources of borrowing first
 - Up to \$2M loan amounts
 - Covers payroll, fixed debts, accounts payable
 - Low interest (3.75% small business, 2.75% non-profit)
 - Up to 30 year term
 - \$10k is forgivable as an emergency advance and does not need to be repaid even if the applicant is denied an EIDL.
 - Application is made directly to the SBA
 - SBA is working on logistics. We will get updates daily.
- Emergency EIDL Grants are an option for self-employed individuals, with or without employees, or independent contractors.
 - Up to \$10k



- To be used for:
 - Providing sick leave to employees directly affected by COVID-19
 - Payroll costs
 - Meeting increased costs due to interrupted supply chains
 - Rent or mortgage payments
 - Repaying obligations that cannot be met due to revenue losses
- No personal guarantee
- Available for any business in operation prior to January 31, 2020
- Approval may be based solely on the credit score of the applicant
- Tax return or transcript may not be required
- Express Bridge Loans can be used to cover expenses while the PPP Loan or EIDL applications are being processed
 - Issued by an SBA Express Lender to eligible small businesses with which the business had an existing banking relationship with on or before the date of the disaster
 - Up to \$25k
 - Term loan of up to 7 years
 - The Lender may charge up to 6.5% over the Prime Rate, in addition to a limited amount of loan fees
 - No collateral/unsecured
 - Subject to the Lender's typical underwriting processes
 - Proceeds must be used exclusively for working capital to support the survival and/or reopening of the small business
- Employee Retention Credit
 - Not available if the employer takes a PPP loan
 - Perhaps useful if the employer cannot keep enough employees for adequate forgiveness of PPP loan
 - Credit for 50% of qualified wages up to \$10k (*i.e.*, max \$5k/employee)
 - Credit against Social Security taxes



- Applies to employers whose operations were fully or partially suspended due to a COVID-19 government-mandated shut-down order, or gross receipts declined by greater than 50% compared to same quarter in prior year
- If under 100 full-time employees, all employee wages eligible
- If over 100 full-time employees, only employees paid and not working count
- Applicable until 12/31/2020
- **OPTION 2: Paid Leave (if qualified)**
 - Effective April 1, 2020 - December 31, 2020
 - WHICH EMPLOYERS QUALIFY/REQUIRED TO PROVIDE:
 - Under 500 full-time and part-time employees within the U.S.
 - Unless fewer than 50 employees and providing the paid leave would jeopardize the viability of the business. Regulations forthcoming will clarify this.
 - HOW MUCH REIMBURSABLE PAID LEAVE:
 - Two (2) weeks of 100% paid leave (capped at \$511/day or \$5110 total) reimbursed as tax credits. Applies to:
 - employees subject to federal, state or local quarantine or isolation order (still to be defined more specifically by the Dept. of Labor)
 - employees advised by a health care provider to self-quarantine
 - employees with symptoms seeking medical diagnosis
 - Two (2) weeks of two-thirds ($\frac{2}{3}$) paid leave (capped at \$511/day or \$5110 total) reimbursed as tax credits. Applies to:
 - employees caring for someone subject to the federal, state or local quarantine or isolation order or someone advised by a health care provider to self-quarantine due to concerns related to COVID-19
 - caring for your child whose school or place of care is closed (still to be defined more specifically by the Dept. of Labor), or child care provider is unavailable, due to COVID-19 related reasons



- employees experiencing any other substantially-similar condition that may arise, as specified by the Secretary of Health and Human Services
 - Additional 10 weeks (for total of 12 weeks) of two-thirds ($\frac{2}{3}$) paid leave (capped at \$200/day or \$12,000 total for the 12 weeks) for employees who need to care for children whose schools are closed or child care is unavailable
- **PART-TIME EMPLOYEES:**
 - Part-time employees are entitled to leave based on average number of hours worked in two-week period. Employers can use the number of hours normally scheduled.
- **OPTION 3: Unemployment Insurance Resulting from Furlough or Layoff**
 - Hawaii provides max \$648/week (about \$55k annual salary) for 26 weeks
 - Formula is wages for highest quarter of base period divided by 21
 - CARES Act will provide an additional \$600/week through July 31, 2020 (even if this takes the employee above their pre-unemployment earnings level)
 - Unemployment normally provides about a 60% wage replacement for employees. However, the additional \$600/week should provide full pay (or more) to laid-off employees
 - CARES Act extends regular unemployment benefits to 39 weeks total
 - Note: Unemployment insurance is being expanded to include self-employed individuals and independent contractors
 - [Regardless of whether employees remain employed, they may also qualify for the \$1,200 payments for individuals, and \$500 payments for children]
- Are there other tax breaks for small businesses?
 - Payroll Tax Deferral
 - Allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022
 - Payroll taxes that can be deferred include the employer portion of FICA taxes



- Taxpayers that had indebtedness forgiven under the CARES Act are excluded from this benefit
- Net Operating Loss Deduction
 - Changes to Net Operating Loss Rules to use losses today against past profits to claim refunds
 - The CARES Act temporarily reverses changes to how net operating losses can be carried back.
 - Losses from 2018, 2019 and 2020 will be permitted to be carried back for up to five years (or forego the carryback and instead carry the loss forward) for 2019 and 2020 income
 - Increases to the amount of interest expense businesses may deduct from 30% to 50% for 2019 and 2020

***This information is provided for informational purposes only and is not intended as legal or tax advice. Please consult your attorney or accountant to discuss your particular business situation.*