



DCBA Town Hall Virtual Meeting
Avenues for Economic Relief
4-15-2020
Summary

Note: The following information is an overview only. Information related to this subject is changing daily, and also going to be litigated.

1. Welcome by Lisa Benzie at 12 noon via Zoom.
 2. Brief introduction to Zoom and Meeting Protocols by Patrice Merzanis
 3. COVID updates – Avenues for Economic Relief featuring:
 - Scott Cooper, Esquire - Schmidt Kramer
 - Brooks Foland, Esquire - Marshall Dennehey Warner Coleman & Goggin
 - Devon DiBiase - Members 1st Federal Credit Union
 - Louis Motley - Members 1st Federal Credit
- A. Insurance Claims
- Business interruption claims are easy to file, but difficult to receive the money.
 - Any type of business may file a **Business Interruption Insurance Claim**. Commercial insurance policies would be the source of this claim. Claims include all lost profits and any additional expenses incurred during the time of the COVID-19 virus.
 - **Civil Authority Loss Claim** – losses incurred and expenses from being shut down by government action. The coverage begins 72 hours after the government order to close and applies 4 weeks after your shutdown.
 - For both types of claims, the claimant would have to show **“physical loss or damage”** which has not been defined by the Court.
 - Claimants should look at the **exclusions** in their insurance policies. For example, an exclusion was added to many policies around 2006 regarding the SARS virus.

- To avoid an exclusion claim by the insurance company, a claimant could show that the exclusion does not apply to a pandemic. Alternatively, the exclusion might apply to business interruption, but not to the civil authority claim.
 - Two pending bills:
 - House Bill 2372 proposes that all claims would be covered.
 - House Resolution 842 asks Congress to provide money to insurance companies for these claims.
 - Current theme is that government and courts may spread all the costs to insurance companies. Thus, insurance companies should be aware of denying coverage at their peril.
 - All types of business insurance policies should be looked at, as a claim could come from a variety of insurance policies.
 - Businesses filing different types of claims include: restaurants, a scuba shop whose road was closed, and a Los Angeles law firm that closed its doors completely even though not required to close. Insurance companies might argue that there was no direct physical loss or damage. Consider whether there was an occurrence or how many triggers were involved.
 - Civil Authority coverage is often an optional endorsement. Examples:
 - Movie theaters bought pandemic endorsements after the SARS epidemic, but an insurance company might argue COVID-19 is not covered because it is a new virus.
 - A customer of a grocery store might sue the store. Thus, the question of whether the insurance company had a duty to defend.
 - An employee filing a worker's compensation claim because the employee allegedly contracted the disease at work.
 - Other issues include possible extending of insurance premium payments and whether insurance coverage continues for empty buildings during the pandemic.
 - Very likely that insurance companies may be the first to come to court by asking for a declaratory judgment of what is covered by the policy.
 - Joint liability with a government is not likely due to government immunity.
- B. Loans & Grants
- New website for independent contractors and self-employed solo practitioners to apply for assistance similar to unemployment compensation. Government website should be available soon.

- Small business administration bridge loan of \$25,000 for small businesses, be cautious it has a shorter-term with a balloon payment.
- Payroll Protection Program includes up to \$350 billion to help businesses cover up to 8 weeks of payroll.

PAYROLL PROTECTION LOAN PROGRAM

Eligibility

- Small businesses with 500 or fewer employees
- Nonprofits: private and public nonprofits under all 501 (c),(d), and (e) sections and faith based organizations
- NAICS Code 72 (Hospitality & Restaurants) businesses with more than 500 may be eligible

Ineligible

- Real estate holding companies and passive real estate investments (no employees & salaries)

Terms

- 1% fixed rate
- 2 year term (This is a change from original documentation and public information)
- No collateral
- No personal guarantee
- Program is explicitly written so that borrowers will receive the same terms regardless of lender or borrower strength
- No payments for six months, but interest still accrues

Loan Amount: Average Monthly Payroll x 2.5

- Excludes payroll amounts over \$100,000 per employee
- Based on average of 2019 totals
- Owner profit and distributions not included-only payroll
- Loan Use: Payroll, benefits, taxes, interest, rent, utilities, loans

Example of a request for a payroll production program amount of \$100,000 where \$75,000 would go to payroll and the other \$25,000 could go to other benefits such as taxes, rent, and utilities.

- Eligible loan uses ≠ max loan amount

Loan Forgiveness Feature

- Borrowers need to document use of funds
- No more than 25% of the loan forgiveness can be used for interest on mortgages, rent, and utilities

- 75% or more of loan can be forgiven based on payroll costs
- Employers penalized on forgiveness rate based on a formula if employee count reduced for salary levels not maintained (no penalty for quickly rehiring furloughed staff)

Required Documentation

- Entity documents
- Payroll Protection Program Application
- Copy of Driver's License
- Electronic signatures allowed for application, but followed up by a wet signature within a few months.

List of Required Documentation for Payroll Calculations

- Completed Payroll Calculator Worksheet
- 2019 IRS Quarterly 940, 941 OR 944 Payroll Tax Reports
- 2019 Payroll Report (including payroll, taxes and number of employees) for calendar year 2019 or 2020
- Payroll taxes and number of employees) for calendar year 2019 or 2020
- 2020 Payroll Report from January 1, 2020 to February 29, 2020 (new businesses only)
- Documentation showing total of all health insurance premiums paid by the company owner(s) under a group health plan. Include all employees and the company owners.
- Document the sum of all retirement plan funding that was paid by the company owner(s) (do not include funding that came from employees out of their paycheck deferrals)
- List of all employees with annual salary or compensation in excess of \$100,000
- Schedule of any supplementary facts or answers as requested in the application

Questions & Answers

QU: Is there joint liability with a government closing down a business?

A. Not likely due to government immunity.

QU: Courts have encouraged parties to keep their cases moving and to schedule remote depositions. However, important witnesses such as truck drivers and doctors are essential workers so it would be very difficult to schedule a remote deposition during the pandemic.

A. A good procedure would be to schedule a date for a live deposition in the future (June) and be willing to reschedule as needed.

QU: Can a sole proprietor apply through the Pennsylvania Unemployment Compensation website at pa.gov?

A. Link to Federal Cares Act flyer: https://www.uc.pa.gov/COVID-19/CARES-Act/Documents/Federal%20CARES%20Act_PA%20Guidance_FINAL%204.9.20.pdf

There is a new web portal being built for self-employed and contractors which is different than the regular unemployment compensation portal. However, the details have not

yet been released by the government. Self-employed/solo practitioners are encouraged to apply for both the Payroll Protection Program and the new Unemployment Compensation Program when it is available.

There is also a section on the SBA website for independent contractors. They are accepting applications, but are not currently ready to implement.

QU: Is there unemployment coverage for an attorney sole proprietor who experiences a slowdown in work, but has some work?

A. A solo practitioner who experienced a slowdown in income should also be able to file for the new unemployment compensation when the new web portal is available.

QU: Car accidents occurring during the pandemic?

A. Some insurance companies are not excluding car accident claims, during the pandemic, for those driving for a fee such as delivery drivers.

QU: The SBA website offers application for the EIDL which is a \$10,000 grant that is separate from the Payroll Protection Program and can be used for all business expenses. Currently, it requests gross revenues and gross rent.

A. EIDL is only available through the SBA (banks not involved). The application requests the same information as the Payroll Protection Program, website says it can take 4-6 weeks. There is a section on SBA web site for Independent contractors. They take your information and also says they're not ready to implement. Note the SBA website is changing information weekly.

QU: Can health insurance premium payments be included in the payroll amount on the application form?

A. Yes.