

COVID-19 Pandemic: Business Relief Options Analysis

By Nastassia Koefman, J.D., LL.M. and Shayna Byrne, J.D.

In uncertain times like now, businesses need liquidity to pay for operational expenses. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, there are a few provisions that provide employers with options to generate cash quickly. The Small Business Association (SBA) Paycheck Protection Program (PPP) loans, retention credit, payroll tax holiday and paid sick leave and family leave credits are all potential benefits, but there are limits on employers’ ability to utilize all of them at the same time. Below is a decision chart we developed on the available options to help employers navigate their way through the rules and obtain answers to questions they might have such as: *what is the amount of cash available now?, what is the amount that needs to be paid, if any, and when?, what is the maximum amount of (loan, credit or deferral)?, who qualifies?, and most importantly – what is the interaction between the options?* For a more detailed description of the Employee Retention Tax Credit and Payroll Tax Deferral, see article [SUMMARY OF EMPLOYEE RETENTION CREDIT & DEFERRAL OF PAYROLL TAXES](#).

	OPTION 1	OPTION 2	OPTION 3	OPTION 4
	PPP (Paycheck Protection Program/Small Business Loan)	(ERTC) Employee Retention Credit	Tax Holiday (Payroll Tax Deferral)	(FFCRA) Payroll Tax Credit for Paid Sick Leave and Family and Medical Leave (Families First Coronavirus Response Act)
CASH NOW?	Yes, see below for the calculation of the maximum loan amount and qualified expenses.	Yes, the employer may: <ul style="list-style-type: none"> ▪ Reduce its federal employment tax deposits to pay for qualified wages by accessing its withheld federal employment taxes before they are deposited with IRS without a failure-to-deposit penalty; ▪ Receive advance of the credit by filing Form 7200 if the employer does not have sufficient federal employment taxes set aside for deposit; and ▪ Receive a refund if the amount of the ERTC exceeds applicable payroll tax due. 	Yes, the deferral of payroll tax operates as an interest free loan from the Federal government	Yes, the employer may: <ul style="list-style-type: none"> ▪ Reduce its remaining federal employment tax deposits for wages paid in the same quarter to zero; ▪ Receive an advance of the credit by filing Form 7200 if the employer does not have sufficient federal employment taxes set aside for deposit; and ▪ Receive a refund if the amount of credit exceeds applicable payroll tax due.
PAY BACK AMOUNT, IF ANY AND WHEN	Principal and interest can be forgiven if the loan is used for qualified expenses over an 8-week period from the date of the loan. Qualified expenses are payroll costs (at least 75%), rent, utilities, and mortgage interest payments. For the definition of payroll costs see Footnote ¹ . Forgiveness is excluded from income.	None.	For 2020, 50% of the employer’s portion of each quarter’s Social Security tax payment and deposit is now due December 31, 2021. The remaining 50% of deferred Social	None.

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	If not forgiven, the loan is a 2-year loan with 1% interest. Payments of principal, and interest start 6 months after date of the loan.		Security tax is due December 31, 2022.	
MAXIMUM AMOUNT (LOAN, CREDIT OR DEFERRAL)	Average payroll costs for last 12 months with a maximum of \$10,000,000 ¹	<p>The employer portion of credit applies to the employer portion of Social Security tax (6.2% of wages).</p> <p>Maximum amount of credit for wages² paid from March 13, 2020 to December 31, 2020 is \$5,000 (wages up to \$10,000 for all calendar quarters).</p> <p>Employers with more than 100 employees are subject to an additional cap:</p> <ul style="list-style-type: none"> ▪ The amount of credit may not exceed 50% of wages. <p>For the definition of qualified wages see Section: Who Qualifies.</p>	The employer's portion of Social Security tax (6.2% of wages up to \$137,700 in 2020).	<p>For sick leave provided for reasons 1, 2 or 3 below:</p> <ul style="list-style-type: none"> ▪ The employer's share of Social Security tax (6.2% of wages² paid, up to \$137,700 in 2020) and the employer's share of Medicare tax for: <ul style="list-style-type: none"> - 100% of sick leave wages paid <p>For sick leave provided for reasons 4, 5, or 6 below:</p> <ul style="list-style-type: none"> ▪ The employer's share of Social Security tax (6.2% of wages paid, up to \$137,700 in 2020) and the employer's share of Medicare tax for: <ul style="list-style-type: none"> - Wages not exceeding \$200 per day per employee, and - \$2,000 in the aggregate <p>For family and medical leave:</p> <ul style="list-style-type: none"> ▪ Employer's share of Social Security tax (6.2% of wages paid, up to \$137,700 in 2020) and the employer's share of Medicare tax for: <ul style="list-style-type: none"> ▪ Wages not exceeding \$200 per day per employee, and \$10,000 in the aggregate

¹ Payroll costs are: compensation of employees; cash tips or equivalent; payment for vacation, parental, family, medical or sick leave; allowance for separation or dismissal; payment for employee benefits (health insurance, including premiums and retirement); payment of state and local taxes on compensation; and for independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation. There is inconsistency between the statute and IFR (interim final rule) as to the measuring period as the statute says 12 months prior to the date of the loan when IFR also uses calendar year 2019 as well as statute measuring period. See [SBA ISSUED AN INTERIM FINAL RULE RELATING TO THE PAYCHECK PROTECTION PROGRAM](#). We recommend having documentation per month per employee for both periods in case bank asks for both.

² Wages includes the employer's cost of maintaining a health insurance plan for employees.

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WHO QUALIFIES	<p>Subject to certain exceptions, a business that meets SBA industry criteria or a not-for-profit in operation on February 15, 2020 that has no more than 500 employees.³ The business needs to make "good faith certification" that it needs money for and will use money for qualified expenses.</p>	<p>Employers whose operations have been fully or partially suspended due to government order issued in response to COVID-19 and/or who have experienced a greater than 50% reduction in quarterly receipts (as compared to the same quarter in the prior calendar year).</p> <ul style="list-style-type: none"> ▪ Employers with more than 100 employees may only apply this credit to wages paid to employees who were not providing services (working). ▪ Employers with fewer than 100 employees may apply this credit to wages paid to employees who were or were not providing services (working or not). 	<p>Any business or self-employed person who has not had a PPP Loan forgiven is eligible. There is no need-based eligibility.</p>	<p>Generally, these credits are only available to employers with fewer than 500 employees.⁴</p> <p>The Paid Sick Leave Credit is applicable when employee(s) are unable to work/telework because of any of the following reasons:</p> <ol style="list-style-type: none"> 1) Federal, State, or local order related to COVID-19. 2) health care provider advised employee to self-quarantine. 3) employee has symptoms of COVID-19 and is seeking a medical diagnosis. 4) employee is caring for an individual who falls under subparagraph (1) or (2) above. 5) employee is caring for a son or daughter if school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions. 6) employee is experiencing any other substantially similar condition. <p>For a detailed description of the reasons see TAX RELIEF UNDER FAMILIES FIRST CORONAVIRUS RESPONSE ACT.</p> <p>Paid family and medical leave credit is applicable when the employee is unable to work/telework due to:</p> <ul style="list-style-type: none"> ▪ A need to care for a son or daughter under 18 years old either because: ▪ The school or place of childcare has been closed, or ▪ The childcare is unavailable due to public health emergency

³ But see [SBA ISSUED AN INTERIM FINAL RULE RELATING TO THE PAYCHECK PROTECTION PROGRAM](#), for companies with more than 500 employees or that otherwise do not qualify under PPP.

⁴ Employers with fewer than 50 employees can apply for a waiver from the family and medical paid leave if the imposition of the mandate would jeopardize the viability of the business as an ongoing concern. Employers with fewer than 25 employees are exempt from family and medical paid leave if the position held by the employee when leave commenced no longer exists due to economic or operating conditions of the employer that are caused by a public health emergency during the period of leave. Employers of 500 or more employees are not covered by the FMLA and are not obligated to provide either paid sick or paid family and medical leave. However, if the employer offers paid sick or paid family and medical leave, the employer may be eligible to claim either credit.

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Interaction Between Options	<ul style="list-style-type: none"> Cannot apply for a loan and claim ERTC (Option 2). Cannot defer payroll tax payments (Option 3) if PPP loan is forgiven. Option 4 is available with PPP loan, but payroll costs must be reduced for amounts claimed under Option 4. 	<ul style="list-style-type: none"> Cannot apply for PPP loan (Option 1) Can do Option 3 also if the business still owes payroll tax in excess of credit. Can use this option with Option 4 but not for same wages that were counted as FFCRA sick or family leave wages. 	<ul style="list-style-type: none"> Employers that applied and received PPP loan can defer deposit and payment of payroll tax without penalty and interest until lender issues a decision that PPP loan is forgiven. Amount of deferred payroll tax through the date of PPP forgiveness continues to be deferred until (Dec 31, 2021 and Dec 31, 2022). After decision of loan forgiveness is issued, deferral option is no longer available. 	<ul style="list-style-type: none"> Option 1 may be taken with either of FFCRA credits. Can do both Option 2 and Option 4 but not to count same wages under ERTC and FFCRA credits. Can do both Option 3 and 4.

Conclusion

Employers and self-employed individuals may enjoy the payroll tax deferral as there is no need-based eligibility to qualify and cash is available to use like an interest-free loan, as there is no interest charge for the deferral.

ERTC and FFCRA credits require an analysis of whether and how the business was affected by COVID-19 or how gross receipts declined (for ERTC). If gross receipts did not decline as required by the statute, it might be tough to argue that operations of the business have been partially suspended.

If employers are eligible for ERTC and/or FFCRA and they have outstanding liability of Social Security tax after applying the credits, they can also enjoy deferral of that outstanding liability until 2021 and 2022.

If employers decide to go for a PPP loan, ERTC and deferral (if the loan is forgiven) options are not available. Considering many uncertainties as to what businesses qualify for PPP, who needs to apply at what level and other questions that need clarifications (see [SBA ISSUED AN INTERIM FINAL RULE RELATING TO THE PAYCHECK PROTECTION PROGRAM](#)), refundable ERTC becomes more appealing to the employers as it is easy to calculate and can be taken now.

If you have further questions about navigating through the options detailed above, please consult your Berdon adviser and visit [Berdon’s COVID-19 Information Center](#).

