



# COVID-19 RELATED LEGISLATION OVERVIEW

*A Guide for Presbyterian Churches and Ministries*

---

**PREPARED BY**

Jean Hemphill, Legal Counsel to The Board of Pensions to the Presbyterian Church (U.S.A.)

Mike Kirk, General Counsel, Presbyterian Church (U.S.A.) A Corporation

Angela Curry, Vice President-General Counsel, Presbyterian Foundation

# Paycheck Protection Program (PPP or SBA Loan)

- \$350 Billion in Government-Backed Loans
- Lenders Which Administer SBA 7(a) Loans



Eligibility/ Application Dates	Borrowing Limits	Use of Loan	Terms	Loan Forgiveness	Caveats/Warnings	Purpose
<p>Non-profits, including churches, with 500 or fewer employees</p> <p>1. Operational on 2/15/20;</p> <p>2. Paying salaries &amp; payroll taxes on independent contractors</p> <p>The self-employed are also eligible to apply</p> <p>Starting 4/3/2020 small businesses and sole proprietorships can apply</p> <p>Starting 4/10/2020, independent contractors and self-employed individuals can apply</p>	<p>1. Maximum of \$10 million; or</p> <p>2. 2.5 times average monthly payroll costs<sup>1</sup> over the year prior to the loan (<i>excluding compensation over \$100,000</i>) pro-rated 2/15-6/30/20</p>	<p>1. 75 % of loan proceeds must be used for payroll costs</p> <p>2. Mortgage interest and rent payments</p> <p>3. Utilities</p> <p>4. Interest on debt that existed as of 2/15/20</p>	<p>Interest at 1%</p> <p>Matures at 2 years after determination of the amount of the loan, if any, to be forgiven (<i>see column to the right</i>)</p> <p>Payments are deferred 6, maybe extended to-12 months</p> <p>No collateral or personal guarantee required</p>	<p>Loans can be forgiven to the extent proceeds are used for the following payments made during the 8-week period after the loan is made:</p> <ul style="list-style-type: none"> <li>• Payroll costs (at least 75% of proceeds)</li> <li>• Mortgage interest and rent payments</li> <li>• Certain utilities</li> </ul> <p>In other words, this is an emergency loan to maintain payroll and space through June 2020</p>	<p>Amount forgiven reduced by failure to maintain average number of full-time staff 2/15/2019 to 6/30/2019 or 1/1/2020 to 2/29/2020</p> <p>To the extent pay of anyone making under \$100,000 is reduced more than 25%</p> <p>Religious borrowers may be subject to Federal financial assistance nondiscrimination and other laws, but only until loan forgiven or paid off</p> <p><b>Employers which have a PPP Loan forgiven cannot recover the same costs under the Payroll Tax Delay OR Employee Retention Credit for Employers Subject to Closure due to COVID-19</b></p>	<p>Incentivize small businesses to stay open, not lay off workers, and to rehire laid-off workers who lost jobs due to COVID-19 disruptions</p>

<sup>1</sup> Payroll costs = vacation, parental leave, family leave, medical leave, sick leave, separation packages, group health care benefits, retirement benefits, state or local tax on compensation, compensation paid to independent contractors.

# SBA Economic Injury Disaster Loan Program

Eligibility/ Application Dates	Borrowing Limits	Use of Loan	Terms	Loan Forgiveness	Caveats/Warnings	Purpose
<p>Non-profits that have experienced a substantial economic injury.</p> <p>Program open upon declaration that region is a disaster area. All employers except those who have a PPP Loan forgiven</p>	<p>Up to \$2 million for small employers that have experienced “substantial economic injury” as a result of the COVID-19 crisis.</p> <p>“Substantial economic injury” means employer is unable to meet its obligations and pay its ordinary and necessary operating expenses.</p>	<p>Operating expenses.</p>	<p>Favorable interest rate (up-to-date 2.75% for nonprofits) with up to 30-year repayment terms.</p> <p>Collateral may be required for loans in excess of \$25K</p> <p>Small businesses (including churches) can apply for an immediate advance of up to \$10,000 that does not have to be repaid</p>	<p>Not applicable.</p>	<p><b>Employers which have a PPP Loan forgiven cannot recover the same costs under the Payroll Tax Delay OR Employee Retention Credit for Employers Subject to Closure due to COVID-19</b></p>	<p>To keep businesses that have sustained revenue loss attributable to the COVID crisis open and running through the national shutdown.</p>

<sup>1</sup> Payroll costs = vacation, parental leave, family leave, medical leave, sick leave, separation packages, group health care benefits, retirement benefits, state or local tax on compensation, compensation paid to independent contractors.

# Payroll Taxes Delay

Eligibility	Benefit of PTD	Effective Date of Delay	Temporary Amount of Benefit to Employer	Caveats/Warnings
All employers except those who have a PPP Loan forgiven	Employer's share of social security tax is <i>postponed</i> (not forgiven); 50% due not later than 12/31/2021 and 50% due not later than 12/31/2022	3/27 - 12/31/2020	6.2% = social security tax per employee	<p><b>Employers receiving a PPP loan are not eligible for the Payroll Tax Delay</b></p> <p>Safest course if you are applying for PPP loan is to refrain from deferring</p>
Clergy may be eligible	Clergy can defer on the same schedule	Same	6.2% of Self Employment (SECA) only	Clergy must still pay employee portion of SECA = 6.2%

# Employee Retention Credit for Employers Subject to Closure Due to COVID-19



Eligibility	Criteria	Qualifying Wages	Wages Included	Credit	Caveats/Warnings
Employers with 100 or fewer full-time employees (avg. employment in 2019)	Employer fully or partially suspends operations due to and order from a government authority or decline in revenue for any calendar quarter of 2020 of 50% or more compared to same 2019 quarter	50% of all qualifying wages, whether employees are working or not, paid on or after 3/13/20-12/31/20 (50% of \$10,000 max = \$5,000/employee for the yr.)	Those defined in IRS Code 3121(a) and compensation defined in Code section 3231(e)	<p>Refundable credit against Social Security taxes (generally 6.2%) reduced by:</p> <ul style="list-style-type: none"> <li>• Employment of qualified veterans</li> <li>• Research expenditures</li> <li>• FFCRA paid sick leave (see far right column)</li> <li>• FFCRA paid family sick leave (see far right column)</li> </ul>	<p><b>Does not apply to payments made under the Families First Coronavirus Response Act for paid sick leave or required paid family leave</b></p> <p><b>Employers receiving a PPP loan are not eligible for this credit</b></p> <p>Service performed by ministers in exercise of ministry excluded from the definition of employment</p>
Employers with 100 or more employees (avg. employment in 2019)	Same	50% of qualifying wages paid to employees who are not working due to COVID-19-related suspension of operations or decline in revenue 3/13/20-12/31/20 (50% of \$10,000 max = \$5,000/employee for the yr.)	Those defined in IRS Code 3121(a) and compensation defined in Code section 3231(e)	<p>Refundable credit against Social Security taxes (generally 6.2%) reduced by:</p> <ul style="list-style-type: none"> <li>• Employment of qualified veterans</li> <li>• Research expenditures</li> <li>• FFCRA paid sick leave (see far right column)</li> <li>• FFCRA paid family sick leave (see far right column)</li> </ul>	<p><b>Does not apply to payments made under the Families First Coronavirus Response Act for paid sick leave or required paid family leave</b></p> <p><b>Employers receiving a PPP loan are not eligible for this credit</b></p> <p>Service performed by ministers in exercise of ministry excluded from the definition of employment</p>

# Pandemic Unemployment Assistance Program (PUAP)

Applies to all employers regardless of size

Eligible Employees		Ineligible Employees	Eligibility Period	Extended Coverage	Extended and Expanded Benefits	Qualification for Non-Profits Normally Self-Insured for UI Benefits	Purpose
<p>Employees who are unemployed or partially unemployed or unable to work because:</p> <ol style="list-style-type: none"> <li>1. they tested positive for COVID-19;</li> <li>2. a member of their household tested positive;</li> <li>3. they are providing care for a family or household member who has been diagnosed with COVID-19;</li> <li>4. they are the primary caregiver for a child or person who is unable to attend school or go to a closed facility;</li> <li>5. they cannot reach work due to a quarantine imposed due to a COVID-19 public health emergency;</li> </ol>	<ol style="list-style-type: none"> <li>6. a healthcare provider advised the employee to self-quarantine due to COVID-19;</li> <li>7. they were scheduled to start work and do not have a job or cannot reach the job due to COVID-19;</li> <li>8. they have become the breadwinner because a head of household died due to COVID-19;</li> <li>9. they had to quit their job as a direct result of COVID-19;</li> <li>10. their place of employment is closed due to COVID-19.</li> </ol>	<p>Employees who voluntarily quit</p> <p>Employees cannot simultaneously receive unemployment insurance benefits if they also:</p> <ul style="list-style-type: none"> <li>• Are able to telework with pay;</li> <li>• Are receiving paid sick leave under the FFCRA; or</li> <li>• Are receiving paid family leave under the FFCRA</li> </ul>	<p>1/27/2020 – 12/31/2020 as long as unemployment, partial unemployment or inability to work is due to COVID-19</p>	<p>PUAP expands coverage to employees who are not usually covered under state unemployment insurance laws or qualified for unemployment insurance benefit under state/federal law, including employees of religious organizations</p>	<p>Benefit amount for religious organizations that are not covered by State UEC programs is based on Federal disaster relief program amounts. In addition, the weekly amount is increased by \$600 for up to 4 months (expires 7/31/2020)</p>	<p>Non-profit responsible for 50% of unemployment insurance benefits paid to its employees; no obligation to reimburse for \$600 federal payment.</p> <p>Federal gov't will reimburse states for the other 50% of benefits</p>	<p>To provide payments to those not traditionally eligible for unemployment insurance benefits and those unable to work as a direct result of COVID-19</p> <p>To provide enhanced benefits for all workers eligible for unemployment</p>

# Retirement Plan Changes

In-service Distribution	Distribution Dates	Qualified Individuals	Certification	Tax Treatment	Repayment
<p>Coronavirus-related distribution to qualified individuals of up to \$100,000 for a taxable year from a 401(a) plan, 403(b) plan or IRA</p>	<p>1/1/2020 - 12/31/2020</p>	<ol style="list-style-type: none"> <li>1. Diagnosed with COVID-19 by CDC-approved test;</li> <li>2. Spouse or dependent diagnosed with COVID-19 by CDC-approved test;</li> <li>3. Experiences adverse financial consequences as a result of being:               <ol style="list-style-type: none"> <li>a. quarantined, furloughed, laid off, or having work hours reduced due to COVID-19;</li> <li>b. unable to work due to lack of child care due to COVID-19;</li> <li>c. unable to work due to closing/ reduced hours of a business owned or operated by individual due to COVID-19</li> </ol> </li> </ol>	<p>Plan administrator may rely on certification from individual that they are a qualified individual</p>	<p>Distribution not treated as eligible rollover distribution</p> <p>Mandatory withholding does not apply</p> <p>402(f) special tax notice is not required</p> <p>10% early distribution penalty does not apply</p> <p>Distribution included in individual's gross income ratably over 3 tax years beginning in year of distribution, unless chosen otherwise</p>	<p>In one or more distributions to eligible retirement plan to which rollover contribution can be made within 3 years of distribution</p> <p>Treated as a direct rollover made within 60 days of distribution for tax purposes</p> <p>If made to an IRA, treated as trustee-to-trustee transfer</p>

# Defined Contribution Loan Rule Changes

Types of Loans	Loan Amount	Delay of Due Date	Qualified Individual			
<p>Loans from 401(a) or 403(b) plan to a qualified individual for 180 days after 3/27/2020</p>	<p>Increase to a maximum of \$100,000, and Increase percentage of present value of participant's account from 50% to 100%</p>	<p>If due date for repayment of a loan falls between 3/27/2020 - 12/31/2020, due date is delayed for 1 year</p>	<ol style="list-style-type: none"> <li>1. Diagnosed with COVID-19 by CDC-approved test;</li> <li>2. Spouse or dependent diagnosed with COVID-19 by CDC-approved test;</li> <li>3. Experiences adverse financial consequences as a result of being:               <ol style="list-style-type: none"> <li>a. quarantined, furloughed, laid off, or having work hours reduced due to COVID-19;</li> <li>b. unable to work due to lack of child care due to COVID-19;</li> <li>c. unable to work due to closing/ reduced hours of a business owned or operated by individual due to COVID-19</li> </ol> </li> </ol>			



# Required Minimum Distribution Waiver

Waiver	Effective Date	Application	Plan Amendment			
<p>Waiver of required minimum distributions (RMD) for defined 401(a), 403(b), and IRAs for calendar year 2020</p>	<p>1/1/2020</p>	<p>RMDs required to be made in 2020; and  2019 RMDs required to be made by 4/1/2020 (if not already made)</p>	<p>Plan sponsors must amend plans for CARES Act changes by last day of the first plan year beginning on or after 1/1/2022</p>			

# Families First Coronavirus Response Act

- Emergency Family and Medical Leave Expansion Act (EFMLEA)
- See Information on Tax Credits Available for Employers Under the Next Section
- Employers Should Document and Retain Submitted Employee Information for EFMLEA



Covered Employers	Eligible Employees	New Type of FMLA Leave	Public Health Emergency	Notice & Amount of Leave	Paid or Unpaid Leave?	Job Restoration
<p>Private employers engaged in commerce with fewer than 500 employees</p> <p>Employers with 50 or more employees are assumed to be engaged in commerce</p> <p>Employers with fewer than 50 employees are able to be exempt from providing expanded family and medical leave if they are able to show that complying with the requirements would jeopardize the viability of their business as a going concern</p>	<p>Employees who have been employed for at least 30 calendar days</p> <p>This includes employees who were laid off or otherwise terminated on or after 3/1/2020, had worked for the employer for at least 30 of the prior 60 calendar days, and were subsequently rehired or otherwise reemployed by the same employer</p>	<p>Leave for an employee who is unable to work in their workplace or cannot work remotely (telework) because they have to take a leave of absence due to:</p> <ol style="list-style-type: none"> <li>1. the need to care for the employee's son or daughter (under 18 years of age) if the child's elementary or secondary school or place of care has been closed, or</li> <li>2. the childcare provider is unavailable, due to a "public health emergency."</li> </ol>	<p>An emergency with respect to coronavirus which is declared by a local, state or federal authority (presumably, for example, Mayor, Governor, President).</p>	<p>If the need for expanded family and medical leave is foreseeable, employees shall provide employers with notice of the leave as soon as practicable</p> <p>Eligible employees are entitled to up to 12 weeks of leave</p>	<p>The employer can provide the first 10 days of leave unpaid,</p> <p>The remainder of any leave time for this reason must be paid at 2/3 the employee's regular rate of pay.</p> <p>There is a cap of \$200 a day and \$10,000 over the 12 weeks allowed for FMLA leave.</p> <p>During the first 10 unpaid leave days the employee can choose to use any accrued paid personal leave such as vacation leave or medical/sick leave for those first 10 days, including the paid sick leave created by the FFCRA</p>	<p>Employers with 25 or more employees are required to make reasonable efforts to return employees to the same or equivalent position after FMLA leave ends.</p> <p>If the reasonable efforts fail, the employer must make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year of: (a) the date on which the qualifying need related to a public health emergency concludes, or (b) the date that is 12 weeks after the date the employee's leave started.</p> <p>Employers with fewer than 25 employees are not required to return employees to the same or equivalent position if:</p> <ol style="list-style-type: none"> <li>1. the employee's position no longer exists due to economic conditions or other changes in operations that affect employment and are caused by the "public health emergency" during the period of leave; and</li> <li>2. the employer makes reasonable efforts to restore the employee to an equivalent position.</li> </ol>

# Emergency Paid Sick Leave Act (EPSLA)

Employers Should Document and Retain Submitted Employee Information for EPSLA



Covered Employers	Eligible Employees and Amount of Leave	Leave Due to Employee's Health Issue	Leave to Provide Care for Another Person	Amount for Paid Sick Leave Due to Employee's Health Issue	Amount for Paid Sick Leave to Provide Care for Another Person	Employer Tax Credits for Paid Sick Leave
<p>Private employers engaged in commerce with fewer than 500 employees</p> <p>Employers with 50 or more employees are assumed to be engaged in commerce</p> <p>Small employers with fewer than 50 employees may qualify for an exemption from the requirement to provide paid leave due to school, place of care or child care provider closings or unavailability if leave payments would jeopardize the viability of their business as a going concern</p>	<p>All employees of covered employers are eligible no matter how long they have been employed</p> <p>Covered employers must immediately make available 80 hours of paid sick leave for full-time eligible employees (ex. if employee works 40 hours per week that is two (2) full workweeks of sick leave)</p> <p>Eligible part-time employees are entitled to paid sick leave based on the average number of hours the employee worked over a 2-week period prior to taking sick leave.</p>	<p>Full paid leave is available due to an employee's health issue for these reasons:</p> <ol style="list-style-type: none"> <li>The employee has been directed or ordered by Federal, State or local authorities to quarantine or isolation order related to COVID-19.</li> <li>The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.</li> <li>The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.</li> </ol>	<p>Partial paid leave is available for an employee to provide care for another person for these reasons:</p> <ol style="list-style-type: none"> <li>The employee is caring for an individual who is subject to an order by Federal, State or local authorities to quarantine or isolation order related to COVID-19 or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.</li> <li>The employee is caring for their son or daughter if their school or place of care has been closed or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.</li> <li>The employee is experiencing any other substantially similar condition (which will be specified in the future by the Secretary of HHS).</li> </ol>	<p>Paid at the employee's regular rate of pay but is capped at \$511 per day and \$5,110 in the aggregate.</p>	<p>Paid at the employee's regular rate of pay but is capped at \$200 per day and \$2,000 in the aggregate.</p>	<p>The intent of the Act is that it be revenue-neutral for employers. The federal government will reimburse small and mid-sized businesses and nonprofit organizations for the costs they incur providing EPSLA or EFMLEA to their employees.</p> <p>Employers can take a dollar for dollar credit against their payroll taxes to reimburse themselves for the cost of paying for these leaves. If the amount an employer pays out under the program exceeds its payroll tax obligation, employers can immediately file for a refund. The refunds will be expedited and processed within 2 weeks.</p> <p>The leave must be provided between 4/1/2020 – 12/31/2020, to qualify. Equivalent credits are available to self-employed individuals who become ill or need to take time away from work to care for a family member.</p>