



## Avitus Group Webinar Follow-Up: HR-Related Questions from Business Owners

On Tuesday, March 31, 2020 Avitus Group conducted an online webinar for business owners featuring Natalie McGill (Senior HR Consultant) and Scott Stevenson (Director of Tax Services). Over 500 people viewed the webinar and submitted questions to our presenters at the end.

The information below includes those questions, along with the answers given during the webinar. We are providing this to you as an additional resource to assist you in navigating the complexities of COVID-19 and its impact on your business. Additional information about COVID-19 can be found on the Avitus Group COVID-19 Resources page at <https://avitusgroup.com/covid-19/>

### **1. If employees are being paid but are not able to work do they still qualify for the federal emergency money?**

If employees are not working or have a reduction in earnings (pay cut or reduced hours), they are eligible for unemployment. If they are on unemployment, the federal government will pay up to an extra \$600 per week on top of the state unemployment through July 31st. If the company is continuing to pay earnings and the employee is not working, they are not eligible for unemployment.

### **2. Do part time employees qualify for a loan to cover payroll?**

Yes

### **3. Does the CA Governor's isolation order qualify to allow employees who do not come to work to apply for the 2 weeks and additional 10 weeks of sick leave?**

For the State of California, the executive order issued by the Governor's order is a safer at home. It is not a quarantine nor an isolation order. A "safer at home" directive is not one of the 6 reasons for pay under the FFCRA. In order to qualify for the 10 weeks of expanded FMLA, you are not able to work as you have no other child care options.

### **4. Is the SBA loan application limited to companies with payroll/employees only, or would companies with only rents, utilities and interest also qualify?**

While not limited to those with payroll/employees only the calculation of the loan amount is solely from monthly average payroll costs (as defined) and so effectively reduces the potential loan amount to zero or nearly so.

### **5. Is there two different loan application processes for EIDL and for PPP? Or is it all under one?**

There two different loans and two different processes for application. EIDL is available now. It was created earlier (a 7(b) loan) but was significantly modified by the CARES Act. Many of the original provisions were waived or expanded. PPP loans are a brand new loan offering created by adding a new paragraph (36) to the existing section 7(a) of the Small Business Act.

### **6. Understanding this changes by the minute. What reports or documents should we get in order to apply for CARES Act? Will Avitus provide payroll reports?**

We are creating a list of documents and information to collect in order to be able to first apply for the loan. Then to provide amounts and support for the loan forgiveness submission(s) that will take place after the loan is funded. Two separate packages. Avitus payroll will provide data for each payroll period needed for both packages in an easy to use format for summarization and extrapolation of critical data.



**7. What is the minimum amount of hours that need to be reduced to file for partial unemployment?**

Each state has their own formula for calculating what unemployment benefits an individual would be eligible for based on their reduced earnings. They need to visit the state unemployment website to research.

**8. So to clarify, the loan is not taxable at the time of receipt, business expenses are deductible as usual and the loan when forgiven is in effect a grant and non-taxable?**

Loans are not income. There are circumstances where the balance, if not repaid, becomes characterized as income (cancellation of indebtedness income ("COD")). Business expenses paid for out of revenue or loan proceeds are deductible subject to the usual "ordinary and necessary" standard plus any specific limitations of the Internal Revenue Code (like meals for instance). As mentioned here, loans forgiven are COD income, except when there are exceptions that apply. Act Section 1106(i) specifically excludes such COD from recognition as income.

**9. My employees are working reduced hours (by 75%) and collecting unemployment as of Monday. Is it possible that with the PPP they will not be encouraged to return to work, as it will be more financially beneficial with the CARES act stimulus to remain on unemployment?**

The PPP is not a direct payment to employees. Unemployment is designed to off-set a loss in earnings, so if the company pays employees their full wages, the employee is not eligible for unemployment.

**10. My employees are currently applying for unemployment. Can I still apply for the PPP loan if my employees stop their unemployment?**

Yes – you can apply for the PPP whether you have employees on unemployment or not.

**11. If an employee was laid off and brought in for reduce hours (6-8 hours per week) exactly two weeks ago today and then they are instructed to take a COVID 19 test (today) do they qualify for sick leave?**

If they are working and on or after April 1, the employee is directed to self-quarantine related to COVID-19 or are seeking a medical diagnosis for COVID-19 they are eligible for the federal sick pay under the FFCRA. If they are now part time, you would look back at the number of hours they work per week for the past two weeks, and that average is the amount of sick pay they receive for the two weeks. Since they are now on an average weekly schedule of 7 hours per week, they would be paid for 14 hours of sick pay for their two weeks.

**12. Is it better to have employees apply for unemployment or hold out for the payroll continuance loan to get paid from company?**

If employees are not working, they are eligible to apply for unemployment. If the company receives a loan under the PPP, it is the company's discretion on how to use the funds.

**13. If we have an active Shelter in Place in our state, but we are considered an essential business and have work for our employees, does an employee qualify for the eFMLA if they choose to not work due to the Shelter in Place?**

No. Shelter in Place / Hunker down at Home / Safer at Home are not isolation nor quarantine orders. If an employee no longer has child care and the schools are closed, they can use their two weeks of emergency sick pay and their expanded FMLA for pay replacement while they are home caring for their children. If they choose not to work, they are not eligible for any pay replacement from state disability, paid family leave, nor unemployment.



**14. How are owners draw handled for 2.5 x average monthly p/r costs?**

Owner's draws are generally considered an owner's withdrawal of profits from the business. The profits of the business are taxable not the draws usually. However, the Act includes the following language in its definition of payroll costs "the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation..." (Act Section 1102(a)(A)(viii)(I)(bb)) What this means is that the owner's draw is compensation if made from net income. Therefore part of payroll costs.

**15. If there is no work needed currently at business location, due to drop in customer base, do we still make up pay to employees not needed or refer them to file for UI?**

If the company can afford to pay its employees when there is not sufficient work, it is a very generous gesture to continue their pay, but not a requirement. If the employee(s) have a reduction in pay or loss in pay, they are eligible for unemployment.

**16. Can a small business start the process of a loan application at any time? In other words, I did not shut down the plant and I do not need a loan yet. Can I prepare for a loan to use for the future time when I close the plant?**

The EIDL may be applied for through December 31, 2020. You can apply for that and hold the funds until needed. However, and EIDL is a straight loan with the exception of the emergency grant. Loans may have a term of up to 30 years (determined on a case by case basis) and an interest rate of 3.75%. A PPP loan must be applied for between February 15, 2020 and June 30, 2020. To the extent there is any remaining loan after application of the loan forgiveness provisions of the Act that remaining amount is a loan of up to 10 years, an interest rate of 4% maximum and minimum 6 month deferral of payments.

**17. Can you please go back over the 401K changes? That slide moved quickly.**

Impacted employees may now take a distribution of up to \$100,000 without any penalties from the IRS. The standard federal tax withholding of 20% is not required to be taken. Employees then have three years to make extra contributions to their 401k to pay back the distribution or can spread out the income taxes over the three year period. The only requirement to qualify is self-certification.

Once you reach the age of 72, you have required minimum distributions, RMDs to take from your retirement saving. For the calendar year 2020, you are not required to take any RMDs from your IRA, 401k, nor 403b.

For 401k loans, typically the maximum loan amount was \$50,000. This has been increased to \$100,000 and it can be for more than ½ of your balance. The increased loan amount is available for the next 180 days. Employees can then delay the start of the loan repayment for up to 12 months.

**18. If we apply for, and were granted, the \$10,000 grant would that work against us on a residential home loan application?**

This is difficult to answer. The amount of an emergency grant is not income to the recipient but may, indirectly, allow the prospective buyer to provide or increase a down payment. However, the fact that one is filing for such a loan may have a greater effect on the granting of a residential loan but you will have to check with your lender.

**19. Does Avitus have a service or a team that can help assist us with the PPP and basically all programs available by the government and assist us from start to finish?**

The Avitus Group Tax Department along with other service team members from different parts of the Group will be able to provide support services in the gathering of necessary data, completion of the required forms, and assembling the documents for submission.



**20. Do we have to bring back our employees that have laid off to apply for loan?**

No

**21. If cannabis companies don't qualify for the tax credit for paying sick/paid leave, are we required to pay for this leave? Since we are not federally recognized.**

The FFCRA applies to all private employers with 500 or fewer employees. Since cannabis is not an entity / business type that is recognized by the federal government, that industry is not eligible for the payroll tax credits but still subject to other employment laws.

**22. They have \$349 billion to cover the PPP loans. What happens after this money is used up. Will your loan still be forgiven?**

The forgiveness provision in the Act is not contingent on the commitment of the \$349B to fund loans to eligible taxpayers. The loans then funded are eligible for forgiveness. If the authorization is insufficient to fund all applications it remains to be seen if the government expands the offering further.

**23. Also, if we are not sure we are going to use the loan, do you suggest we still take out the loan in case?**

As I mentioned on the Webinar today, it may be a better choice given the current uncertainty to get the loan. You may choose to think of the funds as a low cost rainy day fund but low cost is not zero cost. However, this is a business decision. And while there may be no fees charged on the loan to you, there will be some costs associated with the application process.

**24. I'm self-employed, with various 1099 income sources. Can I apply for unemployment or is the process different?**

Under the CARES act, 1099 and self-employed individuals are now eligible for unemployment. I would apply under the regular state process and understand each state will be updating their process as time goes on.

**25. My company is an American subsidiary entity owned in fully by an International parent. Is my company still eligible for CARES relief loan?**

The general rule is that a business concern in the US must be organized for profit, with a place of business in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. It does not matter that the ownership is foreign. However, such complete ownership by another entity (domestic or foreign) creates an affiliation which may change the calculation of whether or not the business concern is "small". Thus, it is possible that under SBA rules such a domestic US concern having a parent may end up having more employees that allowed.

**26. I already applied for the EIDL, not knowing there would be a different PPEL application process. How can I find out where the EIDL is in the approval process?**

I suggest reaching out to the SBA directly. See the following link for details on how to contact them:

<https://www.sba.gov/about-sba/organization/contact-sba#section-header-0>

Note: given the situation you may be better off trying the email address rather than a phone call.



**27. Do you think the paycheck protection loan forgiveness will be first come first served?**

The Act provides language under the heading "Sense of the Senate". I won't list the entire clause (it is lengthy) but the preference is those entities who may be deemed economically disadvantaged may get a preference in processing and disbursement except for this statement in the Act I believe it will be first come first served.

**28. We purchased another company on February 1st. Can we include the payroll dollars from the past 12 months of the acquired company??**

Unfortunately, this issue will require more discussion. Depending on the nature of the acquisition the acquired company may be able to apply. However, please note that affiliation rules may cause the company to be deemed ineligible solely due to having more than 500 employees in total.

**29. Do we submit loan approval package to our payroll specialist? Where do we apply for the PPP Loan?**

No. To a certified SBA lender. The payroll specialist will take your order for a specific package of reports to be used in the application.

**30. Does health insurance portion just include company portion or 100% cost**

Based on the reading of the Act – both. Language is part of the payroll costs definition "payment required for the provisions of group health care benefits, including insurance premiums" (Act Section 1102(a)(A)(viii)(I)(aa)(EE))

**31. As an owner who has stopped paying myself, should I register for unemployment or start paying myself again counting on the PPP loan?**

If as an owner you were receiving W-2 earnings, and you have stopped receiving wages, you are eligible for unemployment. The PPP is a separate process.

**32. Our company is paying employees even though we are closed. You mentioned states may vary... will that impact "federal" unemployment?**

If you are paying employees, they are not eligible for unemployment.

**33. Can it include any other expenses? Like rent, utilities etc.**

Yes

**34. If I pay my employees for 10 hours a week, in order to keep them on the payroll, they can still collect unemployment. So, can I use the paycheck protection loan to pay them for those 10 hours per week?**

Most states have programs for partial unemployment. You can use the PPP loan for payroll expenses.

**35. What is the minimum amount of hours that need to be reduced to file for partial unemployment?**

This varies by state – in California the EDD website has the formula to calculate partial unemployment.

**36. My employees are working reduced hours (by 75%) and collecting unemployment as of Monday. Is it possible that with the PPP they will not be encouraged to return to work, as it will be more financially beneficial with the CARES act stimulus to remain on unemployment?**

The company has discretion on how to use the PPP. It is possible that with the \$600 of extra unemployment per week there will be less incentive to return to work. But, if you have work, and an employee chooses not to return, they are no longer eligible for unemployment.



**37. Where do we find the poster/notice to provide employees no later than tomorrow? I am on Avitus Group/COVID 19 web page.**

<https://www.dol.gov/agencies/whd/pandemic> - under the section on Posters. The DOL has both the English and the Spanish available

**38. Are there any protections to keep people from taking advantage of these benefits?**

The legislation was written to assist as broad as a group as possible.

**39. I use a temp firm as we have jobs that require additional personnel - this can be weekly and for extended periods. What can I offer or is it up to the Temp firms?**

Since they are not your employees, all earnings and benefits should come from the temporary staffing agency.

**40. Can you get both the Emergency low interest rate SBA loan and also the PPP loan?**

No

**41. I think I heard you say that 1099 independent contractor's payments can be included in the calculation for the loan amount. Does this mean we take the average of payroll costs plus the monthly independent contractor payments times 2.5 to determine the maximum loan amount?**

Yes

**42. I have an employee that has stayed home to take care of his girlfriend's children. They live together but are not legally married. Is he eligible for the expanded FMLA?**

No. Under the FFCRA, a "son or daughter" is your own child, which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child. For additional information about in loco parentis, see Fact Sheet #28B: Family and Medical Leave Act (FMLA) leave for birth, placement, and bonding or to care for a child with a serious health condition on the basis of an "in loco parentis" relationship.

In light of Congressional direction to interpret definitions consistently, WHD clarifies that under the FFCRA a "son or daughter" is also an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability. For additional information on requirements relating to an adult son or daughter, see Fact Sheet #28K

**43. So I have an elderly parent that I take care of at home. The adult day care closed. So they talk about kids but what about the elderly adults?**

No. Only for children.

**44. Can I bring a private funding for the coverage while we closed the business and still can ask the Government for so called Forgiveness of the principle and the interest?**

Yes

SEC. 1105. LOAN FORGIVENESS. 15 (a) DEFINITIONS.—In this section— 16 (1) the term "covered 7(a) loan" means a loan 17 guaranteed under section 7(a) of the Small Business 18 Act (15 U.S.C. 636(a)) that is made during the cov-19 covered period; 20 (2) the term "covered period" means the period 21 beginning on March 1, 2020 and ending on June 30, 22 2020;



**45. Can you have a report available for us to download (by company) that we can use to submit for the loan?**

We are working on the reports and will either e-mail them or send a link to download.

**46. Can you be denied for PPP loan by the bank or government?**

Yes.

**47. If my employees have been on unemployment for a week and we rehire everyone back using the PPP money will we still be ineligible for forgiveness because they were not paid from us for one pay period?**

No.

**48. How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?**

A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. Therefore, you calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

**49. If you file for partial unemployment, can you later file for full unemployment later if needed?**

Yes. In many states, you advise the unemployment agency you are no longer working and have zero earnings.

**50. Do both exempt and non-exempt employees fall under the PPP program qualifying payroll?**

Yes

**51. If I take the EIDL loan and pay it back in 3 months, is there a pre-payment penalty?**

No

**52. We are an essential business (automotive) we may have to cut hours but would like to keep our employees whole. We are concerned if an employee doesn't show up due to other issues not corona related; how do we handle that?**

Consult with your HR Consultant or other employment advisor and address according to your normal attendance and discipline standards.

**53. We believed that we are in the category of essential sector in industry for both medical and defense reasons. At some point of time depending on how the situation is severe, we may have to close no matter what. I like to prepare the loan process in advance if we can.**

You are eligible to start the loan process now, even if in good financial standing.



**54. I have 2 1099 truck drivers - can I add the amounts to the average monthly p/r costs**

Yes

**55. Clarification.... if we pay out for 40 hours per week, but the employee only works 10 per week, can we claim the other 30 as a tax credit under FFCRA?**

For the tax credits under the FFCRA, it is based on earnings paid under the FFCRA

**56. Can we get a copy of the slides from this session? Can we get a copy of the power point?**

Yes - <https://avitusgroup.com/expert-forum-webinar-series-library/>

**57. For the PPP loan amount calculation, are payments to independent contractors treated as part of the average monthly payroll calculation?**

Yes

**58. If an employee pays a portion of their benefits, but they are not working, but are collecting unemployment if we don't lay them off, how does the employee then pay for their portion of the benefits?**

Typically when an employee is on lay-off, their benefits end and they are offered COBRA. If an employee is not scheduled to return to work in the near future, they are on lay-off.

Check with your benefits administrator as they may have an ability to continue coverage if the company pays 100% of the premium or other ways to continue coverage without initiating COBRA that keep your plan in compliance with Section 125.

**59. Does the partial benefit eligibility requirement for an under employed claimant of earnings being less than 25% of the weekly benefit still apply?**

Check your state unemployment website for the formula

**60. If an unemployment claimant files for partial benefits, but gets denied, are they also denied the additional weekly \$600 being offered?**

The states are still waiting for direction from the DOL but it appears the \$600 additional weekly benefit is tied to receiving the state unemployment benefits

**61. When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?**

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical





leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or

3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

**62. I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?**

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- An authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

**63. We sent our employees onto unemployment right away, so most will be on furlough on 4/1. Do I understand that they are not eligible for Families First?**

Correct. If, prior to the FFCRA's effective date, you sent your employees home because you do not have work, your employees will not get paid sick leave or expanded family and medical leave. This is true whether you closed your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.

**64. For self-employed folks, I believe we are eligible to apply for unemployment? If so, what information should we know about (e.g. eligibility, eligibility amounts, etc.)? I am in CA.**

The state is still working with the DOL on the specifics, but for now apply through the regular channels.

**65. Can you confirm when we can apply for the PPP?**

Friday, April 3

**66. I have a small business with 5 employees, I suggested they file for unemployment - I would like to extend extra payroll for my employees to help offset their unemployment benefit - am I able to do so and how is best: a bonus or a payroll check?**

If an employee receives earnings in the same week and for the same pay period as they are receiving unemployment benefits, their unemployment benefits will be reduced.

**67. We just laid off more than 75% of our employees, will we still qualify for the loan?**

Yes



**68. Did I hear correctly that though a small business under 50 employees are liable for paid sick leave, they are not considered a business that gets credit for it?**

No

**69. Do we have to provide health insurance to qualify for the loan?**

No

**70. What is the maximum exposure for a small business with less than 50 employees, who applies for an exemption for the extended FMLA but doesn't get it?**

Then you would have to pay the emergency sick pay and the extended FMLA for employees that qualify.

**71. I have an on call employee. Right now she is not needed. She is on unemployment, can she be called in to work?**

Yes

**72. How long can we provide benefits for laid-off employees?**

Benefits end pursuant to your benefits – typically the end of the month but sometimes the last day worked. PEO co-employer clients under the Avitus Aetna medical do have an option to continue their employee's benefits if the company is willing to pay 100% of the premium (not charge the employees for their missed premiums). Copies of the SBA forgivable loan applications will be in your resource section along with list of required documents.

**73. If we have an operating loss, do we qualify for the loan?**

Yes

**74. Do we have to pay out current sick pay out hours that EEs has available if they didn't request yet**

No

**75. There is NO "check my status" link on the website can we choose our lender? Or are they assigned?**

You may choose your lender.

**76. On PPP Loan is it a discrimination if only the salary employees will be paid or do we have to pay everyone (hourly that are no longer working)?**

No

**77. As a business owner (only employee), will potentially receiving the \$600/wk. UE benefit in any way effect my qualification for or amount I might get on a EIDL?**

No

**78. Can employees aged 15-17 years of age apply for unemployment benefits?**

Yes



**79. What happens to employee benefits, do they need to get on cobra? What happens to their 401k account during their time of lay-off?**

Typically when an employee is on lay-off, their benefits end and they are offered COBRA. If an employee is not scheduled to return to work in the near future, they are on lay-off.

Check with your benefits administrator as you may have an ability to continue coverage if the company pays 100% of the premium or other ways to continue coverage without initiating COBRA that keep your plan in compliance with Section 125. For the 401k, work with your provider and review your adoption agreement as many adoption agreements have provisions about temp lay-offs or lay-off and rehire in a short amount of time and how to handle vesting.

*NOTE: This material is provided for information purposes only. It does not constitute legal advice. We recommend you consult with a licensed attorney before taking any actions based on the materials provided. All copyrights to the materials belong to the authors.*