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Paycheck Protection Loan Program: Establishing Historical Payroll Costs will be a Key Part of the Process

The Paycheck Protection Program, which was recently established by the CARES Act, provides for emergency loans to help small businesses meet payroll and certain other current expenses. The maximum amount available under the Program is the lesser of \$10 million and 250% of the borrower's average total monthly payments for 'payroll costs' during the 1-year period prior to the date the loan is made plus (if applicable) the outstanding amount of any EIDL loan that the borrower may have received from the SBA since January 31, 2020.

Payroll costs are defined as the sum of payments of any compensation to employees fitting within the following categories:

- Salary, wage, commission or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical or sick leave;
- Allowance for dismissal or separation;
- Payment for group health care benefits including insurance premiums;
- Payment of any retirement benefit; or
- Payment of state or local taxes assessed on the compensation of employees.

Payroll costs expressly exclude the following items:

- The 'compensation of an individual employee' in excess of \$100,000;
- Federal withholding for FICA, Railroad Retirement Tax Act and Federal income tax;
- Compensation to any employee whose principal residence is outside of the US; and
- Qualified sick and family leave payments eligible for credits under the Families First Coronavirus Response Act.

The timetable for when the SBA and SBA certified lenders will begin to process applications under the Program remains uncertain – likely the end of this week or early next week. Exactly what documentation lenders will require also remains uncertain. But the backbone of the Program rests on establishing a business' monthly payroll costs for the past 12 months. Gathering written records to support your business' recent payroll cost history will save valuable time when the SBA and lenders open for business.

Contact our business legal team with your questions at 574.232.3538. We are open 8 a.m. to 5 p.m. Monday through Friday, and all our attorneys are available to assist you via phone and virtual meetings.



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