

April 2020 – Printer Friendly



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What We Know Today About Loan Forgiveness Under the Paycheck Protection Program

Within the past week, many small businesses (including MHA members) have received proceeds through the Paycheck Protection Program (PPP) which was part of the comprehensive Coronavirus Aid, Relief, and Economic Security (CARES) Act.

One of the most appealing aspects of the PPP program is the possibility of loan forgiveness. Keep in mind, borrowers may not apply for loan forgiveness through their lender until at least eight weeks after receiving their loan proceeds. How the PPP funds are used during the eight-week measurement period will have a big impact in determining if the loan qualifies for full, partial, or no forgiveness.

While there are still a lot of questions being sorted out surrounding PPP loan forgiveness, here are some FAQ’s outlining what we think we know today.

When does the eight-week measurement period of qualifying costs begin?

The eight-week period begins on the date the lender makes the first disbursement of the loan.

What are acceptable uses of the PPP funds for business other than self-employed individuals?

Acceptable uses of PPP funds include:

1. Payroll costs, which include salary, wages, commissions, tips, vacation pay, parental leave, family leave, or sick leave (capped at \$100,000 on an annualized basis for each employee). Payroll costs also include payments made to allow for the separation or dismissal of an employee, payments required for the provision of group health care benefits (including insurance premiums) and payment of any retirement benefits. They also include state and local taxes levied on compensation paid to employees.
2. Interest on mortgage obligations incurred before February 15, 2020.
3. Rent, under lease arrangements in force before February 15, 2020.
4. Utilities for which service began before February 20, 2020.

Do the wages being paid to employees receiving paid sick leave under the conditions outlined in the Families First Coronavirus Response Act (FFCRA) count towards PPP qualified payroll costs?

No. The CARES act expressly excludes qualified sick leave and family leave wages for which an employer may receive an employment tax credit under FFCRA.

Are rent payments made to related-parties included in the amount eligible to be used to determine loan forgiveness?

At this time, more guidance is still being sought in this area.

How much of the loan will be forgiven?

Money will still be owed when the loan is due if the loan proceeds are used for anything other than the qualifying costs and expenses previously discussed.

Also, at least 75% of the loan proceeds need to be used on qualified payroll costs.

Inversely, no more than 25% of the loan proceeds may be used on other qualifying items such as mortgage interest, rent and utilities.

Loan forgiveness will be reduced if the average number of full-time equivalents (FTE's) during the eight-week measuring period is less than the average number of FTE's in one of two periods, February 15 - June 30, 2019 or January 1, 2020 - February 29, 2020. The borrower gets to choose the FTE period to use in the denominator. Also, employers will have until June 30, 2020, to restore their full-time equivalents and salary levels for any changes which were made between February 15, and April 26, 2020.

Loan forgiveness will also be reduced if the borrower decreases salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.

During the eight-week period used for determining loan forgiveness, will expenses be measured using a cash or accrual basis?

More guidance is needed on this issue. The terms “payments made” (which implies cash basis) and “costs incurred” (which leaves open the possibility of the accrual basis) are both found in the CARES Act.

When is the loan due?

Two years from the date of disbursement.

What is the interest rate?

1.00% fixed rate.

When are loan payments due?

All loan payments are deferred for the first 6 months. However, interest will still accrue over this period.

Can the loan be repaid prior to the 2-year due date?

Yes. There are no prepayment penalties or fees.

Can a business who receives a PPP loan still elect to defer payment of the employer's share of Social Security tax?

Yes. Employers who have received a PPP loan may defer deposit and payment of the employer's share of Social Security tax that otherwise would have been required. This deferral is allowed to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the PPP loan in accordance with the CARES Act. Such deferrals will not incur failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposits and payments of the employer's share of Social Security tax after that date.

Businesses Now Have the Option to Defer Payment of Certain Payroll Taxes

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides virtually all employers the option to defer the employer contribution of Federal Insurance Contributions Act ("FICA") taxes. Typically, the employer must remit its share (6.2%) of Social Security taxes for each employee's covered wages on a semi-weekly or monthly basis.

However, the employer payroll tax deferral found in the CARES Act allows employers to defer these taxes incurred between March 27, 2020 (date of enactment) and December 31, 2020. Employers can defer their 6.2% share of the Social Security tax which are owed on each employee's covered wages for the rest of 2020.

There is no special paperwork or election which needs to be filed in order to start this tax deferral. The decision to defer is completely optional. Each business must make its own determination on whether to defer, or not defer, the payment of these taxes.

Keep in mind, that while payment of the taxes may be put off, they are still owed and have to be paid. 50% of any deferred employer Social Security taxes from 2020 will be due by December 31, 2021. The remaining 50% will be due by December 31, 2022. Any business unable to make the necessary payment by those dates will be subject to interest and late payment fines or penalties. In most cases, these would more than offset any benefits gained by choosing to defer the tax payments initially.

Businesses receiving a loan through the Paycheck Protection Program remain eligible to defer. However, once all or part of the PPP loan is forgiven, that business is no longer eligible to continue deferring the payment of employer Social Security taxes. Any employer Social Security taxes which had been deferred prior to loan forgiveness continue to be eligible for deferral without exposure to late payment or late deposit penalties. These deferred taxes will need to be paid by the due dates of December 31, 2021 and December 31, 2022.

True Value CEO to Step Down

True Value Company has announced leadership changes at its executive level. John Hartmann, who has served as CEO since 2013, will step down in May. A former Grainger executive, Chris Kempa has been promoted to CEO. Kempa joined True

Value in December 2019. Current CFO Deb O'Connor, who has been with the company for five years, will become president and CFO.

Hartmann oversaw True Value's sale to private equity firm ACON Investments in early 2018, a move that transformed the company from a hardware co-operative to a privately held distributor. The move was often touted by True Value as a growth-focused transaction that unlocked a quarter of a billion dollars in trapped equity for True Value members.

In a letter to current True Value stores, Hartmann said he will remain at True Value until May in order to aid with the transition. He also said he was asked, and has agreed to continue serving as a member of the board.

"Over the last seven years, John's leadership has shaped the company, including the last two with us, where he was the visionary behind the transaction unlocking over \$250 million of retailers' equity," said Aron Schwartz, chairman of True Value Company. "He was the leading advocate of investments the company has made in supply chain, technology, as well as a number of merchandising and marketing initiatives, to better serve True Value's customers. As the company moves into this next phase of growth, we have a deep leadership bench, with Chris and Deb at the helm, to continue the important investments being made to support the growth and profitability of our retailers."

Legal Battle Brewing Over Wisconsin's Safer-At-Home Extension

By Misha Lee, MHA Wisconsin Lobbyist

In direct response to the COVID-19 coronavirus pandemic, Wisconsin Governor Tony Evers signed on March 12, 2020, Executive Order #72 declaring a public health state of emergency and designating the state Department of Health Services (DHS) as the lead state agency in responding to the crisis.

On March 24, the Secretary-designee of DHS, Andrea Palm, at the direction of Governor Evers, issued the *Safer-At-Home* Emergency Order #12. This order effectively closed down all schools, churches and many businesses in the state deemed as non-essential. The closures were initially to remain in effect until April 24, 2020.

In the days leading up to that Order #12, MHA had lobbied the Evers' administration to include hardware stores as Essential Business Operations. When the order was issued, hardware stores were declared essential and as a result, were allowed to stay open.

Subsequent to that order being released, MHA received further clarification that hardware stores with temporary or permanent garden centers or greenhouses that include essential landscaping needs and food or beverage production and also agriculture products were also deemed Essential Business Operations and could operate so long as they:

- Complied with all Department of Health Services guidelines for businesses; and
- Followed Social Distancing Requirements between all individuals on the premises to the maximum extent possible.

This past Thursday, Evers signed Executive Order #28, which effectively extends the state's *Safer-At-Home* mandates through May 25, 2020.

Several questions have since emerged about the process, the Governor's authority to declare a public health emergency, and what it might mean for individuals and businesses, especially with the numerous subsequent emergency orders from DHS since the Governor's emergency declaration.

Below is a brief analysis from the non-partisan Wisconsin Legislative Council outlining the Governor's authority, and limits, when declaring a public health emergency.

STATUTORY AUTHORITY TO DECLARE A PUBLIC HEALTH EMERGENCY

If the Governor determines that a public health emergency exists, he or she may issue an executive order declaring a state of emergency related to public health for the State of Wisconsin or any portion of the state and may designate DHS as the lead state agency to respond to that emergency. A state of emergency declared by the Governor may not exceed 60 days, except that it may be extended by joint resolution of the Legislature. The executive order may also be revoked at any time by the Governor by executive order or by the Legislature by joint resolution.

With last week's DHS order extending for the *Safer-At-Home* requirements through May 25, some feel the DHS, and the Governor, have overstepped their boundaries.

On Tuesday, Republican leaders in the state's legislature asked the Wisconsin Supreme Court to block the most recent extension. Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald asked the Supreme Court to take the case directly, skipping lower courts and hoping for a quicker ruling. They argue that a non-confirmed Secretary-designee of the Department of Health Services is exceeding her authority with the latest order. They point out that Evers' initial public health state of emergency order expires 60 days after being declared, and it would take legislative approval to extend it. Without an extension, that initial order is set to expire on May 11, after which the DHS would have no authority to extend the *Safer-At-Home* mandates.

Late Tuesday, the Court announced that DHS has until 4 p.m. on April 28 to respond to the lawsuit.

With this lawsuit now in play, and the Supreme Court's apparent willingness to hear the case, the latest *Safer-At-Home* extension appears to be in doubt. Stay tuned as Wisconsin, along with the rest of the country, determines a path forward for re-starting the state's economy while protecting the public's health and safety.

Illinois Expands Workers' Compensation Rules to Presume Exposure to COVID-19 Occurred While Working

By Alec Laird, MHA Illinois Lobbyist & Vice President, Government Relations for Illinois Retail Merchants Association

On April 13, 2020, the Illinois Workers' Compensation Commission passed an **Emergency Amendment** to the Commission's Rules of Evidence, which was published April 16, 2020. The new rule provides that, whenever the employee claiming workers' compensation coverage is a COVID-19 "First Responder or Front-Line Worker," and the employee's injury, occupational disease, or incapacity resulted from exposure to the COVID-19 virus during the COVID-19 state of emergency, there will be a rebuttable presumption that the condition was causally connected to the hazards or exposures of the employee's employment. This means that, should an employee covered by the Emergency Amendment become ill with COVID-19 and file a workers' compensation claim, there is a significant likelihood that the condition will be covered by workers' compensation.

While this is not surprising for first responders and front-line workers such as EMTs, health care workers, law enforcement, firefighters, corrections officers, and similar workers, the emergency rule goes a step further and appears to include all employees employed by businesses that were deemed "essential businesses" by Governor Pritzker's **Executive Order** issued on March 20, 2020 (**EO 2020-10**). This includes retail workers. In fact, the emergency rule included every category defined in the Governor's Executive Order as "essential" except the media.

A group of nine Illinois employer organizations opposed the Commission's Emergency Rule, including the Illinois Manufacturers' Association, the Illinois Retail Merchants Association, Illinois Petroleum Marketers, and the Associated Beer Distributors of Illinois.

"Manufacturers, retailers, grocers, pharmacies, food banks, convenience stores and countless essential businesses across Illinois are doing all they can to protect workers while also meeting unprecedented demand for food, medical supplies, protective equipment and other important services needed during this pandemic. At the same time, many industries are suffering from unprecedented losses and

closures including the hotel, hospitality and tourism industry. Yet, this commission chose to suddenly impose a drastic policy change that will significantly increase costs and require employers to pay for medical expenses and salary benefits if an employee is diagnosed with COVID-19 without proof the illness was contracted at the workplace. Many of these industries are waiting for relief from the federal and state government in an attempt to make payroll and retain workers, but will now be on the hook for additional costs if they're lucky enough to re-open when the governor's Stay at Home order is lifted. At a time when the state is discussing how to provide relief for employers trying to maintain jobs, this move runs contrary in every way."

This Emergency Rule means that any employee working in any of the essential businesses who becomes ill with COVID-19 during the "state of emergency" will be much more likely to successfully recover workers' compensation benefits, ultimately resulting in significantly increased future worker's compensation costs for many Illinois employers.



Human Resources and Employment Law Assistance

MHA Members receive Human Resources and Employment Law Assistance at no cost. With complicated laws constantly changing, we are here to answer your questions on topics such as:

- Child Labor
- Disciplines
- Hiring and Terminating
- OSHA
- Unemployment

Human Resources and Employment Law Assistance is also available on our Members Only website. Go to www.midwesthardware.com and log into "My MHA." Discover a variety of Employment Law resources under the following categories:

- HR Assistance
- OSHA

- Hiring Guide
- Business Forms, Templates, and Signs

Testimonial

"While at our informal OSHA conference, I was told that 40 Minnesota hardware stores and lumber yards were targeted for OSHA inspections. Once MHA became aware of these inspections, they sent out warning notifications and immediately went to work creating AWAIR and Right-to-Know templates, which are now available to MHA Members. I realized I was not alone in becoming OSHA compliant and that MHA, through their Human Resources and Employment Law Assistance service, was an email or phone call away, ready to assist me. Thank you for your help and quick response to all my questions!"

Joy Holen

*St. Francis Mercantile Co.
St. Francis, MN*

Contact Andrea Ramage at andrear@midwesthardware.com or 800-888-1817 ext. 365 for your Human Resources and Employment Law questions.

Sales Trends (February 2020)

Here are the most recent Illinois, Minnesota-Dakotas, and Wisconsin hardware store sales trends, gathered from association members using the MHA's monthly accounting service. The figures derived for each region includes sales data from the following number of stores:

Illinois - 23 stores

Minnesota-Dakotas - 12 stores

Wisconsin – 77 stores

	Month	YTD
Illinois	-3.25%	-12.99%
MN-Dakotas	-0.47%	-4.52%
Wisconsin	-16.25%	-9.36%
