

COVID-19 Update

Presented by

The Franklin Partnership, LLC

Policy Resolution Group at Bracewell

June 12, 2020



Your Team in Washington, D.C.



Lobbying Firm – The Franklin Partnership, LLC

- Bi-partisan Washington, D.C.-based government relations firm
- Representing manufacturing industry since 2002
- Clients include: manufacturing associations, defense contractors, hospitals, cities



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- Wash, D.C.-based public affairs & strategic communications consultants
- Promote NTMA and PMA in print, digital and other media
- Support Franklin Partnership government relations efforts by designing and implementing coordinated strategic communications strategy
- Representing metalworking industry since 2003

Nothing contained in here shall be deemed legal advice.

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Agenda

- OSHA Wants a Written Safety Plan
- OSHA Face Covering FAQ
- EEOC FAQ Updated
- Main Street Lending Facilities FAQ Issued
- EIDL Update
- PPP Status
- PPP Updated
- COVID-19 Legislation
- Questions

All information presented as of June 11, 2020

OSHA EXPECTS EVERY EMPLOYER TO HAVE A WRITTEN PLAN

- OSHA calls it an "Infectious Disease Preparedness and Response Plan"
 - OSHA instructs that the plan should include the employer's "protective actions against COVID-19"
 - You can give your plan whatever name you want, but the fact remains that every employer should have written documentation identifying all of its mitigation measures
 - All employees should receive a copy of that documentation and be trained on those mitigation steps
 - Remember, you also need to have some kind of plan of action for contractors, visitors and other third parties
 - These steps are especially important in avoiding tort litigation

New OSHA FAQ on Face Coverings (June 10)

COVID-19 Frequently Asked Questions

This page includes frequently asked questions (FAQs) and answers related to the coronavirus disease 2019 (COVID-19) pandemic.

Cloth Face Coverings

What are the key differences between cloth face coverings, surgical masks, and respirators?

Are employers required to provide cloth face coverings to workers?

Should workers wear a cloth face covering while at work, in accordance with the Centers for Disease Control and Prevention recommendation for all people to do so when in public?

If workers wear cloth face coverings, do employers still need to ensure social distancing measures in the workplace?

Yes. Cloth face coverings are not a substitute for social distancing measures.

If I wear a reusable cloth face covering, how should I keep it clean?

Are surgical masks or cloth face coverings acceptable respiratory protection in the construction industry, when respirators would be needed but are not available because of the COVID-19 pandemic?

<https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>

New OSHA FAQ on Face Coverings (June 10)

Are employers required to provide cloth face coverings to workers?

Cloth face coverings are not considered personal protective equipment (PPE) and are not intended to be used when workers need PPE for protection against exposure to occupational hazards. As such, OSHA's PPE standards do not require employers to provide them.

- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act, requires each employer to furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. Control measures may include a combination of engineering and administrative controls, safe work practices like social distancing, and PPE.
- However, employers may choose to ensure that cloth face coverings are worn as a feasible means of abatement in a control plan designed to address hazards from SARS-CoV-2, the virus that causes COVID-19. Employers may choose to use cloth face coverings as a means of source control, such as because of transmission risk that cannot be controlled through engineering or administrative controls, including social distancing.

EEOC: Fear of Family Member Exposure Accommodation

D.13. Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition?

(6/11/20)

No. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

For example, an employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

Of course, an employer is free to provide such flexibilities if it chooses to do so. An employer choosing to offer additional flexibilities beyond what the law requires should be careful not to engage in disparate treatment on a protected EEO basis.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

EEOC: Do Not Need to Accommodate over 65

H. Age

H.1. The [CDC has explained](#) that individuals age 65 and over are at higher risk for a severe case of COVID-19 if they contract the virus and therefore has encouraged employers to offer maximum flexibilities to this group. Do employees age 65 and over have protections under the federal employment discrimination laws? (6/11/20)

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against individuals age 40 and older. The ADEA would prohibit a covered employer from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee due to higher risk of severe illness from COVID-19.

Unlike the ADA, the ADEA does not include a right to reasonable accommodation for older workers due to age. However, employers are free to provide flexibility to workers age 65 and older; the ADEA does not prohibit this, even if it results in younger workers ages 40-64 being treated less favorably based on age in comparison.

Workers age 65 and older also may have medical conditions that bring them under the protection of the ADA as individuals with disabilities. As such, they may request reasonable [accommodation for their disability](#) as opposed to their age.

https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

Main Street Lending Facility More Accessible to Small Biz

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Loan Term	5 years		
Principal Payments	Principal deferred for two years, years 3-5: 15%, 15%, 70%		
Interest Payments	Deferred for one year		
Interest Rate	Adjustable rate of LIBOR (1 or 3 mo.) plus 300 basis points.		
Loan Size	\$250,000 to \$35 million	\$250,000 to \$50 million	\$10 million to \$300 million
Maximum Combined Debt to Adjusted 2019 EBITDA	4 times	6 times	6 times
Lender Participation Rate	5%		
Fed Participation Rate	95%		
Prepayment Allowed	Yes, without penalty		
Business Size Limits	15,000 employees or fewer, or 2019 revenues of \$5 billion or less		
Fees	Origination and transaction fees may apply		

June 8 change extended term from 4 years to 5 and lowered minimum loan from \$500,000 to \$250,000, while changing the deferral terms

EIDL Update for Pending Loans

SBA Disaster Assistance Update
Nationwide EIDL Loans / COVID-19

June 6, 2020

Loans Approved	1,130,731	Dollars Approved	\$ 79,983,728,633
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SBA Administrator: By June 19, all EIDL loans in portal will be in the processing stage

Still only taking agricultural loan applications

PPP Round 2 Status – Loans by Sector

NAICS Sector Description	Loan Count	Net Dollars	% of Amount
Health Care and Social Assistance	475,706	\$66,116,892,187	12.93%
Professional, Scientific, and Technical Services	589,542	\$65,242,167,416	12.76%
Construction	434,720	\$63,578,254,948	12.43%
Manufacturing	219,814	\$53,505,238,934	10.46%
Accommodation and Food Services	344,104	\$41,066,112,230	8.03%
Retail Trade	421,687	\$39,658,145,446	7.76%
Other Services (except Public Administration)	477,316	\$30,059,675,387	5.88%
Wholesale Trade	158,519	\$27,415,340,831	5.36%
Administrative and Support and Waste Management and Remediation Services	224,768	\$25,974,183,957	5.08%
Transportation and Warehousing	157,820	\$16,293,334,981	3.19%
Real Estate and Rental and Leasing	225,139	\$15,202,496,179	2.97%
Finance and Insurance	156,429	\$11,967,840,821	2.34%
Educational Services	74,230	\$11,758,914,754	2.30%
Unclassified Establishments	223,648	\$9,961,029,864	1.95%
Information	63,984	\$9,092,167,092	1.78%
Arts, Entertainment, and Recreation	106,352	\$7,677,909,825	1.50%
Agriculture, Forestry, Fishing and Hunting	129,258	\$7,635,183,929	1.49%
Mining	20,610	\$4,477,493,683	0.88%
Public Administration	12,473	\$1,697,067,492	0.33%
Management of Companies and Enterprises	8,327	\$1,557,291,638	0.30%
Utilities	7,437	\$1,445,430,383	0.28%

Avg. mfg loan:
\$243,411

PPP Changes Now Law

- House passed May 28 by a 417-1 vote
- Senate passed on June 3 under Unanimous Consent (no vote)
- President Trump signed into law June 5
- Loans already approved may elect 8-week or 24-week covered period
- 75/25 payroll/non-payroll spend requirement changed to 60% payroll cost minimum
- If spend less than 60% of PPP on payroll, amount forgiven reduced
- Deadline for SBA to approve new loans is June 30
- Deadline to rehire employees extended to December 31 for all loans from June 30
- Loans approved prior to June 5, 2020 remain at two year term unless lender extends
- Provide safe harbor if cannot return to FTE count due to CDC, HHS COVID restrictions
- Provide safe harbor for inability to fill open position with similarly qualified individual
- Permitted to defer payroll taxes if took PPP (plan ahead, you still have to pay it)

Must Submit Forgiveness Applications Within 10 Months

c. Deferral Period for PPP Loans

Section 3(c) of the Flexibility Act extended the deferral period on PPP loans. Therefore, Part III.2.n. of the First Interim Final Rule (85 FR 20811, 20813) is revised to read as follows:

n. When will I have to begin paying principal and interest on my PPP loan?

If you submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you will not have to make any payments of principal or interest on your loan before the date on which SBA remits the loan forgiveness amount on your loan to your lender (or notifies your lender that no loan forgiveness is allowed).

Next Steps on Treasury/SBA Guidance

- New simplified forgiveness application pending for under \$2 million safe harbor loans
- Updated forgiveness application for other loans
- Loans over \$2 million will go through an automated review
- Mnuchin: Once you've spent down your PPP loan, submit the forgiveness application do not wait for the end of 24 weeks
- Mnuchin: drafting guidance on the safe harbor and making application simpler
- Mnuchin: guidelines coming to permit some with criminal background to apply
- Still need clarification on whether need to retain employees until December 31
- Congressional staff say just need to return FTE count by end of 8 or 24 weeks
- Concern remains about possible revenue test for certification of need

Next Steps on COVID Legislation – PPP Changes

- Mnuchin: will need another bipartisan bill, need to see where things stand when full money goes out and need to have next bill be much more targeted to certain industries
- Congress wants names of who received loans but Mnuchin says it is proprietary and confidential but will allow GAO access for proper oversight

PPP Loan Changes

- Allow the deductibility of wages, rent, utilities as expenses under IRC 265.
- Not impose a revenue test as part of a certification of need
- Enhance the Employee Retention Credit, permit recipients of the PPP to claim the credit
- Make 501(c)(6) non-profit trade associations eligible for PPP loans

Next Steps on COVID Legislation – Phase 4 Bill

- Negotiations have yet to begin in earnest
- House already passed their bill
- Timing for final likely pushed to before Senate leaves prior to August
- Senate GOP, Treasury, White House trying to get on same page ahead of negotiations
- Jobs number likely pushes sense of urgency to July for bill to move
- How big of a price will Senate GOP pay for business liability protections
- Business tax provisions possible
- Efforts to include tax incentives for training
- Reshoring tax provisions likely

More than 91% of manufacturers utilizing Paycheck Protection Program loans

Author Cutting Tool Engineering
Published May 30, 2020 - 10:15pm

Washington, D.C. A survey of members of the National Tooling and Machining Association and Precision Metalforming Association shows the importance of the Small Business Administration's Paycheck Protection Program, with more than 91% of respondents reporting that they have applied for and received a PPP loan to retain employees they otherwise would have furloughed or terminated. However, more than 70% of respondents reported that they may need to furlough or terminate employees when their loan funding ends.

The NTMA/PMA survey showed that the top policy priorities for manufacturers are for Congress to extend the PPP term loan forgiveness from eight to 16 weeks, to allow for deductibility of business expenses paid with PPP proceeds, to extend the PPP's deadline for loan forgiveness from June 30 to September 30 to rehire employees and reaffirm Congressional intent that spending 75% on payroll costs is not a requirement in the law.

The ongoing challenges of the COVID-19 pandemic were also evident in survey responses with 65% of manufacturers reporting that they expect customer disruptions for the next two to six months, and more than half reporting that they are receiving orders well



SNIPS

U.S. Manufacturers Confront the COVID-19 Pandemic



It is incredible how quickly the world changed for U.S. manufacturers in March 2020. In the first two months of 2020, small and medium sized manufacturers were expressing confidence that despite the burdensome and unnecessary Section 232 tariffs placed on steel and aluminum imports, 2020 would be a good year. In addition to terminating these tariffs, a top concern for many small and medium manufacturers was finding workers to fill the more than half-million job openings in the sector across the United States.

What a difference a few weeks make.

March brought the COVID-19 pandemic and the resulting economic shutdown in almost every state created an entirely new world for manufacturers. Suddenly, manufacturers were forced to shut down either because of stay-at-home order or fears of COVID-19 illnesses among their workforce. Some companies deemed “essential” could not operate because their customers or suppliers in other states were closed because of the different rules enacted by states. The National Tooling & Machining Association (NTMA) and Precision Metalforming Association (PMA) [reported](#) that a number of members converted their shops to make personal protective equipment such as face shields.

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Webinars Switched to Biweekly

Next One Voice COVID-19 Webinar:

Friday, June 26, 2020

12:00 PM Eastern



Questions?

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