Labor and Employment Alert: PPP Relief Through the PPP Flexibility Act of 2020

June 8, 2020 – Sure, Washington D.C. can be dysfunctional but every now and again they do get it right. This time, with the passing of the PPP Flexibility Act of 2020 on June 5, 2020. Section 3 of this new law amends several sections of the PPP as follows:

- Whereas previously the covered period to spend the PPP loan proceeds was eight weeks from loan disbursement, the amendment makes the covered period the earlier of 24 weeks from loan disbursement or December 31, 2020.
- Whereas previously employers had six months from disbursement of the proceeds where the loan was deferred and to apply for forgiveness, the amendment provides borrowers deferment until the amount forgiven is remitted to the lender by the SBA, and further provides borrowers ten months from the last day of the covered period to apply for forgiveness.
- Whereas previously employers had until June 30, 2020 to eliminate the reduction in the number of FTEs that occurred from February 15 – April 26, 2020, the amendment provides employers until December 31, 2020 to eliminate the reduction in the number of FTEs.
- Whereas previously employers had until June 30, 2020 to eliminate any salary reductions that occurred from February 15 – April 26, 2020, the amendment provides employers until December 31, 2020 to eliminate the salary reductions.
- Whereas previously employers were required to spend at least 75% of the loan proceeds on "payroll costs," the amendment lowers that amount to 60%.
- Employee Availability Exception: The amendment adds two independent protections for employers relating to employees who do not return to work or who the employer cannot rehire. Now, employers shall not have their loan forgiveness reduced because of any reduction in FTEs from February 15 – December 31, 2020 where the employer documents either of:
    - Exception #1 – The inability to rehire individuals who were employees as of February 15, 2020; and the inability to hire similarly qualified employees for the unfilled positions by December 31, 2020.
    - Exception #2 – The inability to return to the same level of business activity as such business was operating at or before February 15, 2020, due to compliance with requirements relating to maintenance standards for sanitation, social distancing, or any other worker or customer safety requirement relating to COVID-19 that are established by HHS, CDC, or OSHA during the period March 1 – December 31, 2020.

As always, we are here for you. If you have any questions about this alert or if we can assist in any other way, please reach out.

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