

The background features three stylized hands in shades of blue, green, and gold, overlapping each other. The hands are positioned as if they are holding or supporting each other, with the fingers spread. The colors are vibrant and the style is modern and graphic.

CALIFORNIA SMALL ENTERPRISE TASK FORCE

FREQUENTLY ASKED QUESTIONS



CASE TASK FORCE DESCRIPTION

The California Small Enterprise (“CASE”) Task Force is a consortium of legal, financial, and nonprofit professionals working together to connect California small businesses with the resources they need during the COVID-19 pandemic. The task force is focused on collecting local, state, federal, and private/nonprofit resources for California small businesses impacted by COVID-19 and disseminating this information in a digestible way as quickly as possible. In addition, the task force provides small businesses with weekly access to live support from lawyers and financial professionals via virtual office hours.

IMPORTANT NOTE

These FAQs were last updated on June 23, 2020 and are intended to be a resource for small businesses with fewer than 25 employees and nonprofits to learn information about various resources and legal issues. Some of the answers provided in these FAQs may not be applicable for larger businesses. For further information we invite you to join our weekly office hours, hosted every Thursday from 4-5:30 pm. **Registration:** <https://sbdc.events/office-hours>

The CASE Task Force undertakes no obligation to update the FAQs nor intends for them to serve as legal advice. For legal advice please reach out to a local legal aid organization such as: Start Small, Think Big (<https://www.startsmallthinkbig.org/>) or Legal Services for Entrepreneurs (<https://lccr.com/get-help/economic-justice-legal-servicesfor-entrepreneurs-lse/>).



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CARES ACT

Question: What are the primary federal relief funding options available for small businesses under the CARES Act?

Answer: Federal relief funding programs include:

- The Paycheck Protection Program (“PPP”) provides loans that small businesses may use to help cover payroll costs and other specified operating expenses. These loans are available until June 30, 2020. For more information, see the FAQ starting on page 4, and visit <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.
- Economic Injury Disaster Loans (“EIDL”) are low interest loans that provides small businesses with funds to help cover operating expenses that they are unable to pay due to a Declared Disaster. For more information, see the FAQ starting on page 6, and visit <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>.

Question: Are any of the programs or tax benefits “free money”?

Answer: Some of the federal programs provide for forgiveness or deferments, including:

- Forgiveness is available for PPP loans for any amount of the loan used in the 24 weeks following receipt of the loan, as long as payroll costs account for 60% of the forgiven amount (reduced from 75% by recent legislation) and the remainder of the forgiven amount is used for utilities, mortgage interest payments and rent payments under agreements entered into prior to February 15, 2020. For loans made before June 5, 2020, the borrower can choose to use the 8-week period following receipt of loan proceeds to calculate its forgivable use of loan proceeds.
- The employee retention tax credit, which encourage businesses to keep employees on their payroll, refunds 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.
- Payroll taxes may be deferred under the CARES Act and will be due in 2021 (50%) and 2022 (50%).



PAYCHECK PROTECTION PROGRAM (“PPP”)

Question: How do I apply for a PPP loan?

Answer: PPP loans are administered to small businesses by banks, not by the federal government itself. Contact your bank to see if you can apply through them. If not, you can contact a local bank and ask if they are participating in the PPP program or reach out to a local community development organization for assistance in working with a bank. The Small Business Administration (the “SBA”) oversees the PPP program and guarantees all PPP loans. You can use this website provided by the SBA to identify local banks participating in PPP: <https://www.sba.gov/paycheckprotection/find>.

Question: Can I apply for more than one PPP loan?

Answer: No, an entity is limited to one PPP loan.

Question: What are the key terms of the PPP loans?

Answer: The PPP loan bears 1% annual interest, with principal and accrued interest on the unforgiven portion of the loan due in five years (two years for loans issued before June 5, 2020 unless the borrower and lender agree to extend the maturity to five years). Forgiveness of the loan (in whole or in part) is available for amounts used by the borrower during the Covered Period for Permitted Uses (as defined below), as long as at least 60% of the loan proceeds is used for Payroll Costs, and no more than 40% is used for Non-Payroll Costs (each as defined below). The “Covered Period” is the 24-week period following the loan funding, although if the borrower receives its loan before June 5, 2020, it can alternatively choose as its “Covered Period”, the 8-week period following the loan funding (and whether it uses the 24 or 8-week Covered Period, if the borrower has a bi-weekly (or more frequent) payroll schedule, the borrower can choose to begin counting the Covered Period on the first payroll period starting after the loan funding). The borrower can apply for loan forgiveness (or partial loan forgiveness, if applicable) up to 10 months after the expiration of the Covered Period, and all principal and interest payments are deferred until either SBA remits the loan forgiveness amount to the lender, or notifies the lender that no loan forgiveness is allowed (the “Deferral Period”). Interest on the unforgiven portion of the loan accrues during Deferral Period.

Question: Does the PPP require any collateral or personal guarantees?

Answer: There is no collateral and no personal guarantee requirement.

Question: How quickly will I receive my funding?

Answer: The timing of your payment will depend on how quickly your lender processes your application. Once your loan is approved, so long as there are still funds available in the program, the first disbursement of PPP funds to you from your lender should occur within 10 business days of the SBA’s loan approval.

Question: What are the eligibility requirements for applying?

Answer: In general, businesses (including nonprofits and sole proprietorships) that were in business on February 15, 2020, and have under 500 employees can apply for a PPP loan, if they can certify that current economic conditions make the PPP loan request necessary to support the ongoing operations of the business. Additional restrictions apply to businesses owned by people that are incarcerated, on probation or parole, have certain felony convictions or have a history of nonpayment on SBA loans. If you own multiple businesses or have financial investors in the equity of your business, further eligibility rules apply.



Question: Is a sole proprietor eligible for PPP?

Answer: Yes. Sole proprietors, independent contractors, and self-employed persons are eligible to borrow a PPP loan.

Question: What can PPP funds be used for?

Answer: PPP loan funds can be used for Payroll Costs (see next FAQ) or for utilities, interest on mortgages and rent payments under agreements existing prior to February 15, 2020 (“Non-Payroll Costs” and together with Payroll Costs “Permitted Uses”), provided that at least 60% of the PPP funds must be used for Payroll Costs. Certain additional rules apply if the PPP loan is used to refinance an EIDL loan that was made between January 31, 2020 and April 3, 2020.

Question: What is included in payroll costs?

Answer: “Payroll Costs” include compensation for employees based in the United States including salaries, wages, commissions, tips, bonuses and hazard pay; payments for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; payments for the provision of group healthcare benefits, including insurance premiums; payments for retirement benefits; and payment of state and local payroll taxes. For sole proprietors, wages, commissions, income, or net earnings from self-employment qualify. Cash compensation is capped at \$100,000 annualized per employee. Note that independent contractors employed by the business do not count as employees for PPP purposes, as Independent contractors are separately eligible to apply for a PPP loan.

Question: Do headcount reductions affect the forgiven amount?

Answer: It can, depending on the nature of the dismissal. Generally, if the number of full-time equivalent employees (“FTE”) declines during the Covered Period, the amount of the PPP loan that can be forgiven will be reduced proportionately. This is measured by comparing the business’s historical average weekly FTE during a measurement period (chosen by the business to be either January 1, 2020 through February 29, 2020 or February 15, 2019 through June 30, 2019), to the average weekly FTE during the business’s Covered Period. There is also some flexibility in how the business can measure FTE, which is detailed further below.

- If the business terminated employees between February 15, 2020 and April 26, 2020 but restores its staffing levels by December 31, 2020 to the level in the borrower’s pay period that included February 15, 2020, these reductions are disregarded for the purposes of calculating any reduction of loan forgiveness. There are additional “permissible” reductions of staff that will not result in a reduction of loan forgiveness, including voluntary resignations or reduction of hours; terminations for cause; an inability to rehire individuals who were employees on February 15, 2020, or an inability to hire similarly qualified employees for unfilled positions by December 31, 2020; or an inability to return to the same level of business activity that the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued by the Secretary of Health and Human Service, the Director of the CDC, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020 and ending December 31, 2020, relating to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirements related to Covid-19. If you have any reduction of workforce due to any of the reasons specified in this paragraph, you will be asked to provide documentary evidence as part of your loan forgiveness application.

Question: Do employers have to rehire the same staff in order to obtain loan forgiveness?

Answer: No.



Question: Do pay cuts reduce the forgiven amount?

Answer: For employees earning over \$100,000 on an annualized basis during any pay period in 2019, any salary reduction will not result in a reduction of loan forgiveness. For employees earning less than \$100,000 annually, the forgiven amount of the PPP loan will be reduced by any salary reduction during the Covered Period that exceeds 25% of such employee's average annual salary or hourly wage during his or her most recent full quarter of employment before the Covered Period. However, if the employee's salary is reduced between February 15, 2020 and April 26, 2020 and restored by December 31, 2020, the amount of PPP loan forgiveness will not be reduced.

Question: How does applying for a PPP loan differ if you are a seasonal business?

Answer: A seasonal business has additional flexibility in calculating its maximum PPP loan amount. The maximum loan amount requested by a seasonal business is 2.5x its average monthly payroll costs, that may be calculated either (i) using a 12-week period beginning between either February 15, 2019 or March 1, 2019 (at the borrower's election), and ending on June 30, 2019, or (ii) using any consecutive 12-week period between May 1, 2019, and September 15, 2019. For additional information, see <https://www.federalregister.gov/documents/2020/04/30/2020-09239/small-business-administration-business-loan-program-temporary-changes-paycheck-protection>.

Question: What documentation will I need to provide to apply for the PPP loan?

Answer: First, check with the bank you are applying through. There is a universal loan application form on the Treasury website see <https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form-Revised-June-12-2020.pdf>, but some banks have their own forms. You must submit such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount. If you are a sole proprietor, you will need to provide your 2019 1099s; any other entity must provide 2019 W-2s and 2019 940 or 941. The bank you apply through likely will have other specific loan documents that they may request, such as a driver's license, tax returns, etc.

Question: What documentation will I need to provide to apply for forgiveness of my PPP loan?

Answer: Like the documentation requirements for the loan application, we suggest that you check with the bank that makes your PPP loan. To apply for forgiveness, borrowers will be required to submit a Loan Forgiveness Application along with the PPP Loan Forgiveness Calculation Form, PPP Schedule A, and supporting documentation to their lenders. The forms are available on the Treasury website (they should be updated shortly to comply with recent changes to the law). The supporting documentation will include documentation of the Permitted Uses included in the requested forgiven amount and documentation of the change in number of employees and reductions of salaries. Keep documentation relating to any employee turn-over (e.g., documentation of voluntary terminations and dismissals for cause and written offers to rehire an employee) and documentation of how PPP loan proceeds are used.

Question: For a sole proprietor, are there any stipulations/restrictions regarding 100% self-pay?

Answer: The rules provide that the amount of loan forgiveness for owner-employees and self-employed individuals can be no more than the following: (i) if the 8-week Covered Period is selected, 8 weeks (8/52) of 2019 net profit, not to exceed \$15,385 per individual, or (ii) if the 24-week Covered Period is selected, 2.5 months' worth (2.5/12) of 2019 net profit, not to exceed \$20,833 per individual. Remember to retain your paperwork to show proof that the loan proceeds were used for Payroll Costs.



Question: Where can I find out more information about the PPP?

Answer: The following two websites provide current and helpful information:

- <https://www.sba.gov/document/support--faq-lenders-borrowers>
- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>



ECONOMIC INJURY DISASTER LOAN (“EIDL”)

Question: How do I apply for EIDL?

Answer: You can apply directly at <https://www.sba.gov/page/disaster-loan-applications>.

Question: What are the terms for an EIDL loan?

Answer: Currently, the interest rate is 3.75% for small businesses and 2.75% for nonprofit organizations. Repayment terms vary based on the borrower’s ability to repay the loan with a maximum repayment term of 30 years.

Question: Are there any collateral of personal guarantees?

Answer: A personal guarantee is not required for EIDL loans up to \$200,000. Loans of \$25,000 or less require no collateral. For loans above \$25,000, general security interest in business assets can be used for collateral.

Question: What can EIDL Loan funds be used for?

Answer: Funds can be used for payroll, fixed debts, accounts payable, and other working capital expenses.

Question: What are the eligibility requirements?

Answer: Your business must have been in existence on January 31, 2020, have 500 or fewer employees, incurred an economic injury related to an emergency or disaster, and fall within the allowed industry categories. EIDL loan applications are no longer limited to agricultural businesses. On June 15, 2020, the SBA began accepting applications from qualified small businesses and agricultural businesses.

Question: What counts as an agricultural business?

Answer: Agricultural businesses includes businesses engaged in the production of food and fiber, ranching, raising of livestock, aquaculture, and all other farming and agricultural-related industries.

Question: Is a sole proprietor eligible?

Answer: Yes. A sole proprietor meeting the eligibility requirements may apply for an EIDL loan.

Question: Can you apply for an EIDL loan and a PPP loan?

Answer: Yes, as long as the loan funds are not used for the same purpose.



LABOR & EMPLOYMENT

Question: Can I require employees to continue working from home?

Answer: Yes. Employers do not have to return employees to the workplace if they are able to perform their duties from home. In fact, it is still recommended that employers allow for telecommuting as long as possible. Note that California Labor Code Section 2802 requires employers to reimburse employees for necessary and reasonable business expenses. In the work at home context, this could include cell phones, internet access, and hardware, if needed to perform the job.

Question: What if, due to the nature of their job, an employee can't work from home?

Answer: If a worker is deemed an essential employee and their duties cannot be performed from home, the employer may require them to work as long as it provides a safe workplace and complies with applicable state and local guidelines: <https://www.labor.ca.gov/coronavirus2019/>. If the worker is not in a high-risk group and refuses to work even though the employer is providing a safe workplace, the employer can place the employee on unpaid leave.

- OSHA has published a number of guidelines to help employers provide safe workspaces:
 - <https://www.dir.ca.gov/dosh/coronavirus/>
 - <https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html>

Question: What if an employee is unable to work from home because they are sick? Or their family member is? Or their child's school is closed?

Answer: Employees who cannot work because of COVID-19 are likely eligible for paid sick leave under the Family First Coronavirus Response Act. Under this program, employers must pay all employees:

- (i) two weeks (up to 80 hours) of paid sick leave where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider) and/or experiencing COVID-19 symptoms and seeking a medical diagnosis or
- (ii) two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider) or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition.

Question: What should owners do if employees choose not to return to work?

Answer: This depends on whether an employee was furloughed or terminated. If the employee was terminated, you cannot make them go back to work, but you are able to hire a different individual to replace them. If the employee was furloughed and is refusing to go back to work, you will need to look at your paid sick leave and PTO policies and see if there is a way to allow the employee to use that leave. You will also have to determine if there is a legal reason that the furloughed employee cannot come back to work (e.g., they are in a high risk group and are supposed to shelter in place, the current ordinances do not permit your business to reopen, or the individual is sick). If there is no legal reason, then you may terminate the employee and hire someone else.



Question: How should employers prepare for an eventual return to the office? What are my obligations to employees once we do return to the office? What do I do if an employee tests positive?

Answer: First, an employer should determine whether local ordinances permit the business to reopen. While the California state ordinances may permit certain businesses to reopen, it's possible that local ordinances have more stringent requirements. The employer should make sure to track updates to local ordinances and California state ordinances. Visit <https://covid19.ca.gov/roadmap-counties/#track-data>.

- Upon employees returning to the office, the employer should document all the steps that they are taking to comply with local and state ordinances. In addition to following CDC guidelines (see below), an employer should discuss worker illness concerns with its worker's compensation carrier.
- Cal-OSHA has published a guidance that sets forth the steps and safeguards employers should take to reopen. ([Cal-OSHA Industry Guidance: Office Workspaces](#).) These include:
 - Creating a worksite-specific plan;
 - Training employees regarding coronavirus awareness and the measures they should take to avoid infection and spreading the virus;
 - Implementing individual control measures and screening;
 - Cleaning and disinfection protocols; and
 - Instituting physical distancing guidelines.
- The Center for Disease Control (CDC) has published detailed guidelines on cleaning and disinfecting workspaces to reduce the risk of COVID-19 infection: <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
- If an employee tests positive, make sure to send them home and ask them to self-quarantine as recommended by the CDC. Contact your HR department if you have one, and follow any protocols already in place. You will likely have to ask the employee which coworkers they have been in close contact with over the prior two weeks. However, you should not disclose the identity of the sick employee to others, as confidentiality requirements apply. The employee is also eligible for paid sick leave. Visit <https://www.labor.ca.gov/coronavirus2019/> for more information.



UNEMPLOYMENT BENEFITS

Question: Are there resources for unemployment from the State of California for self-employed and sole proprietors?

Answer: Yes, please visit the California Employment Development Department's website for information: <https://edd.ca.gov/>.

Question: How is income calculated for the California Pandemic Unemployment Assistance ("PUA")?

Answer: Your 2019 calendar year net income is used to calculate your weekly PUA benefits. Visit https://www.edd.ca.gov/about_edd/coronavirus-2019/pandemic-unemployment-assistance.htm.

Question: How do PUA benefits work with PPP and EIDL? Are there limitations on applying for both?

Answer: You can apply for both, but you cannot use the funds from both for the same purpose. You cannot receive unemployment benefits at the same time as a PPP loan. However, you can receive unemployment benefits alongside EIDL, as long as you do not use the funds for the same purpose.

Question: As a sole proprietor, if PPP loans will only cover 24 weeks of my pay as an owner, can I use PUA after the 24 weeks (i.e., I applied both for PPP and PUA)?

Answer: Sole proprietors should be eligible to receive PUA for any weeks in which they are not paying themselves through a PPP Loan, but you cannot receive both PPP loans and unemployment benefits at the same time.

Question: Can you receive unemployment insurance (UI) in addition to PUA?

Answer: No, you cannot receive both. When applying, you will be classified as PUA eligible or UI eligible. If you already receive UI benefits and still have a balance on your UI claim, you do not qualify for PUA. Please visit the following link for instructions on continuing to receive UI: https://www.edd.ca.gov/about_edd/coronavirus-2019/unemployment-claims.htm.



REAL ESTATE

Question: Are there federal programs or local programs that can cover rent or overhead?

Answer: In addition to the PPP and EIDL discussed above, certain cities and counties have established loan and grant funds. Many of these programs are listed under county regional resources in the CASE Force resources guide. The CASE Force resources guide provides a list of financial programs that small businesses in California may take advantage of and can be found at <https://www.law.berkeley.edu/research/business/cares-act-and-small-businesses/california-small-enterprise-task-force/>.

Question: What are some other options if I'm unable to pay rent?

Answer: You can talk to your landlord and notify them of your inability to pay rent due to COVID-19 and attempt to work out a payment plan. Additionally, check your city and county websites for information regarding whether there is an eviction moratorium in your area. If there is, guidance will be provided on how to take advantage of it and how to notify your landlord. It is important to note that, even if a moratorium is in place, there are varying timelines on when the unpaid rent will need to be paid and when a tenant must notify its landlord of its financial hardship.