

# NFIB UPDATE

Weekly Briefing for Small Business

**Beth Milito and Holly Wade, NFIB**

**December 16, 2020 – COVID-19 End-of-Year Q&A**



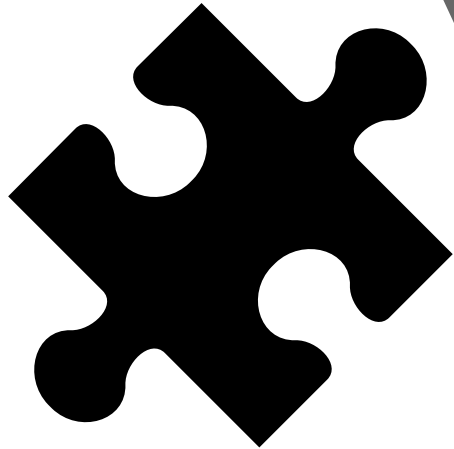
# DISCLAIMER

- The materials and information provided in this webinar and on NFIB's website are for informational purposes only and not for the purpose of providing legal or tax advice. You should contact your attorney and/or tax professional to obtain advice with respect to any particular issue or problem.
- This is based on information available by 12/15/20.

# Agenda

- 
- Covid-19 Small Business Resources
  - PPP Updates
    - PPP 2.0 and Forgiveness Roadmap
    - Picking a forgiveness form
    - Tax treatment of PPP
    - Deciding when to file for forgiveness
  - Q&A – send questions to [info@nfib.org](mailto:info@nfib.org)

# Covid -19 Small Business Resources



# COVID-19 Resources

- 
- [PPP Loan Forgiveness Form 3508S Application Instructions](#)
  - [PPP Loan Forgiveness Form 3508S Application](#)
  - [PPP Loan Forgiveness Form 3508EZ Application Instructions](#)
  - [PPP Loan Forgiveness Form 3508EZ Application](#)
  - [PPP Loan Forgiveness Form 3508 Application Instructions](#)
  - [PPP Loan Forgiveness Form 3508](#)
  - [AICPA PPP Loan Forgiveness Calculator \(updated 11/16/20\)](#)
  - [NFIB Coronavirus Resources \(including webinar recordings\)](#)
  - [NFIB FFCRA Tax Credit Tip Sheet](#)
  - [NFIB Covid-19 in the Workplace Tip Sheet](#)



# Economic Injury Disaster Loan

**\*\*SBA STILL ACCEPTING EIDL APPLICATIONS\*\***

The SBA's EIDLs provide working capital to help small businesses survive until normal operations resume after a disaster.

- Payroll costs, including benefits,
- Fixed debts (mortgage, rent, lease),
- Accounts payable,
- Other bills.

**\*\*Apply for an EIDL [here](#).\*\***



# Covid-19 in the Workplace Tip Sheet

NFIB has put together a [NEW tip sheet](#) to help employers navigate Covid-19 workplace issues:

1. Can I require employees with Covid-19 symptoms to stay home?
2. What should I do if an employee came to work and later tested positive?
3. Should I require a doctor's note or positive test result?
4. When can I allow a sick employee to return to work?
5. Can I require employees to be rested for Covid-19?



# Covid-19 Paid Leave

- The “Families First Coronavirus Response Act,” (FFCRA) requires businesses with fewer than 500 employees to provide emergency paid sick leave and family leave.
- Employers receive a dollar-for-dollar credit for wages paid. Can take the credit under the FFCRA and get a PPP loan, but cannot count the same wages for both programs.
- **FFCRA Poster (MANDATORY!!)**
- Law expires 12/31/20.



The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

**PAID LEAVE ENTITLEMENTS**

Generally, employers covered under the Act must provide employees: Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total.
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total, and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

**ELIGIBLE EMPLOYEES**

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employees, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

**QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- |                                                                                                             |                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;              | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19;                       | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.                           |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;                                    |                                                                                                                                                       |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2). |                                                                                                                                                       |

**ENFORCEMENT**

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.





# Vaccine Update

CDC: Things to Know About the COVID-19 Vaccination Program (as of 12/15/20):

- The safety of COVID-19 vaccines is a top priority.
- Two doses are needed.
- Right now, CDC recommends COVID-19 vaccine be offered to healthcare personnel and residents of long-term care facilities. Learn more about who should be vaccinated first when vaccine supplies are limited.
- There is currently a limited supply of COVID-19 vaccine in the United States, but supply will increase in the weeks and months to come.
- After COVID-19 vaccination, you may have some side effects. This is a normal sign that your body is building protection.
- Cost is not an obstacle to getting vaccinated against COVID-19.

# Vaccine Employer Considerations

- Do I need a vaccination policy?
- Can we require our employees to be vaccinated?
- How much will the COVID-19 vaccine cost and who will pay for it?
- Can businesses purchase vaccines for employees and their families?
- Can our health plan cover vaccination for employees who have waived insurance?
- Can our health plan cover vaccines for furloughed employees?

# Vaccine Employer Considerations (cont.)

Can we require a COVID-19 vaccine?

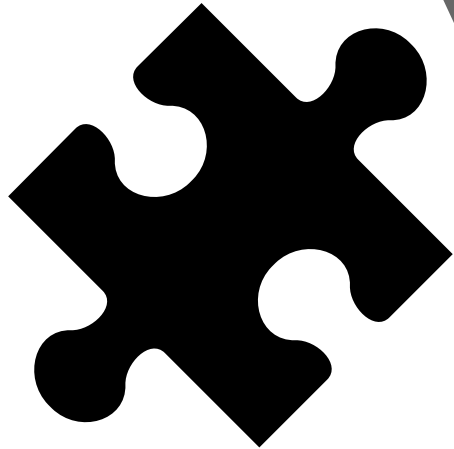
- It is unclear.
- The Equal Employment Opportunity Commission (EEOC) has not directly answered this question.
  - See [EEOC COVID-19 Q&A](#)
  - See [EEOC Pandemic Preparedness in the Workplace](#) (explaining disability & religious exemptions for mandatory job-related business necessity vaccination programs).
- Recommended approach – encourage rather than require.
  - Communicate with employees - educate on benefits of vaccine.
  - Facilitate vaccinations – offer time off to get vaccine and pay for vaccine.
- Further reading [Gibson Dunn An Employer Playbook for the COVID Vaccine](#)



**SCORE**  **Click [here](#) for Mentor Request**  
FOR THE LIFE OF YOUR BUSINESS



# PPP Updates and Reminders



## PPP 2.0 – Not Yet!

- PPP is still closed, if you missed the first round (PPP closed August 8). And, as of right now, you cannot take out a second PPP loan.
- There is broad bipartisan support for allowing struggling businesses that can prove a loss (in comparison to last year) to take out a second PPP loan.
- There is broad bipartisan support for allowing a simplified forgiveness process for borrowers with loans under \$150,000.
- There is support for changing the tax treatment of expenses paid for with PPP funds (deductibility – more on that later in our presentation!)

# TAKE ACTION!

Be the voice of small business and make your voice heard.

[Tell Congress to act now on additional COVID relief.](#)



## Small Businesses Need COVID Relief

A recent NFIB survey indicated 1 in 4 small businesses won't survive another 6 months under current economic conditions and nearly half of small business owners anticipate needing additional financial assistance within the next 12 months.

**The need for additional financial assistance, tax-deductibility of PPP forgiven expenses, simplified PPP forgiveness, and liability protections is more urgent than ever.** Small business owners must speak up and tell Congress that additional COVID relief is mandatory for the survival of countless businesses.

Join NFIB in urging Congress to set aside their partisan differences to come to an agreement on additional relief for still-struggling small businesses.

# PPP Forgiveness Roadmap



## Understand the three-step process:

1. Borrower submits forgiveness application to bank (w/in 10 months from end of covered period)
2. Bank reviews (60 days)
3. SBA reviews bank's submission (90 days)



## No forgiveness until SBA pays off the loan



## Pick the right form

Larger banks have portals  
Community banks may accept paper forms



## Decide when to file

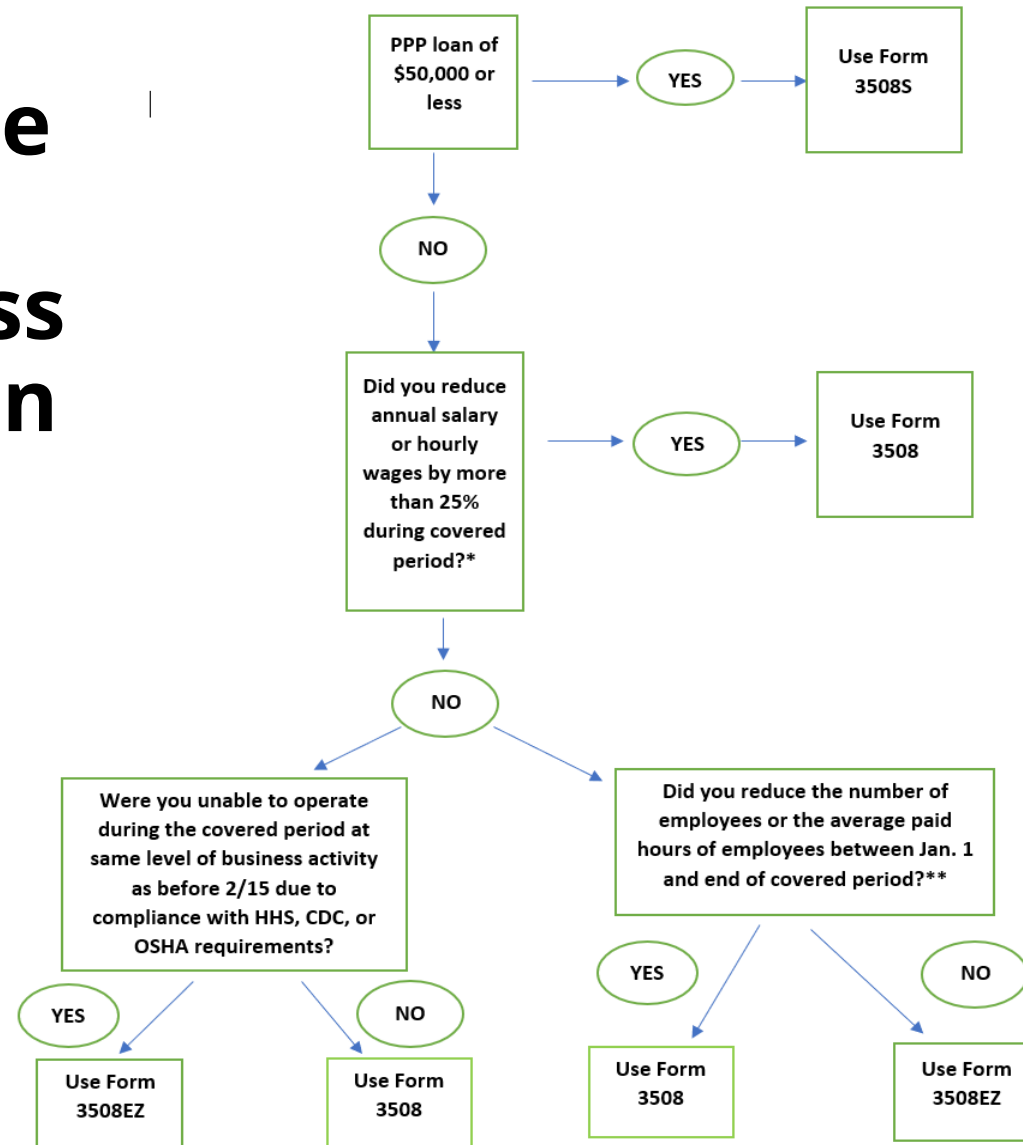


# Picking the Right Forgiveness Application Form

- **Form 3508S** - If your loan is \$50,000 or less, use form 3508S.  
No forgiveness reduction factors (i.e., no FTE calculation)
- **Form 3508EZ** – All loans sizes with eligibility criteria:
  - Government health mandates or
  - No COVID-19 layoffsNo forgiveness reduction factors (i.e., no FTE calculation)
- **Form 3508** – Long form that requires calculations of FTEs and/or salary reductions on the Schedule A Worksheet.



# Picking the Right Forgiveness Application Form



- [Form 3508S Instructions](#)

- [Form 3508S](#)

- [Form 3508EZ Instructions](#)

- [Form 3508EZ](#)

- [Form 3508 Instructions](#)

- [Form 3508](#)

**\*\*\* IGNORE** the expiration date of “10/31/2020” in the upper-right corner of forms. SBA placed the expiration date in the upper-right corner of the PPP loan forgiveness application forms to comply with the Paperwork Reduction Act. The date represents the temporary expiration date for approved use of the forms; newer forms have a 12/31/20 date but earlier versions are fine..



*\*Salary/wage reduction does not include owner-employees or employees who received, during any single period during 2019, wages or salary at an annualized rate of pay of more than \$100,000.*

*\*\*Ignore reductions if unable to rehire similarly qualified employees before 12/31 or if employee refused hours.*

*For more details on choosing a forgiveness application, see <https://www.aprio.com/which-ppp-loan-forgiveness-application-is-right-for-you/>*

# Form 3508S

- Borrowers with loan of \$50,000 or less can use the 3508S application form.
- Borrowers using the 3508S form are exempt from reductions in loan forgiveness amounts based on reductions in FTEs or reductions in salary or wage rates.
- Required documentation
  - Verifying cash and non-cash payroll payments
  - Verifying non-payroll eligibility (Feb. 15<sup>th</sup>) and payments

# Form 3508EZ

You are self-employed, an independent contractor, or the sole proprietor.

OR

You did not reduce the annual salary or hourly wages of any employee by more than 25% during the Covered Period or Alternative Covered Period compared to 1/1/2020 to March 31, 2020. No payroll was used for the forgiveness calculation with an annualized amount of more than \$100k.\*

**A**

You did not reduce the number of employees or the average paid hours of employees between 1/1/2020 and the end of the Covered Period. Ignoring the inability to rehire individuals with similar qualifications and ignoring reductions in an employee's hours that the borrower offered to restore and the employee refused.

**AND**

**OR**

**B**

The borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements or guidance issues between March 1, 2020, and December 31, 2020 by HHS, CDC, and/or OSHA (i.e., government order restricted business activity). (*a/k/a Form 3508EZ Box #3*)



# Form 3508EZ – **Box 3**

*“Borrowers that can certify that they have documented in good faith that their reduction in business activity during the Covered Period stems directly or indirectly from compliance with COVID Requirements or Guidance are exempt. . .”*

Documentation must include:

Copies of applicable COVID Requirements or Guidance for each business location;  
AND  
Relevant borrower financial records.

*SBA Interim Final Rule 6/26/20 [https://home.treasury.gov/system/files/136/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://home.treasury.gov/system/files/136/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule.pdf?utm_medium=email&utm_source=govdelivery)*



# Form 3508

- Form 3508 is five pages long and includes the following parts:
  - Calculation Form
  - Certification Form
  - Schedule A
  - Schedule A Worksheet
  - Demographic Form (optional)
- Why so long? Form 3508 requires significantly more calculations than the other forms because it has an additional calculation for borrowers who reduced their employee numbers and/or salaries.
- Borrowers who reduce their full-time equivalent (FTE) employees, employee salary or wage rate by more than 25%, or both will calculate the reduction in their PPP forgiveness amount using Schedule A and Schedule A Worksheet.
- For more information, watch NFIB's September 30<sup>th</sup> webinar "*How to Complete a PPP Forgiveness Application*" [here](#).



# PPP and Taxes

- The IRS has ruled that **PPP forgiven expenses cannot be deducted as a business expense.**
- There is, however, broad bipartisan support for allowing these expenses to be deductible in Congress. Whenever Congress finally decides to pass another COVID relief bill there will be a strong chance that language to make forgiven expenses deductible will be in the bill.
- For more on accounting for the non-deductible expenses used towards forgiveness, see AICPA's on the treatment of PPP forgiveness: <https://www.aicpa.org/content/dam/aicpa/interestareas/frc/downloadabledocuments/tqa-sections/tqa-section-3200-18.pdf>. The IRS also provides an in-depth explanation of their decision to treat expenses paid with PPP forgiven funds as non-deductible here: <https://www.irs.gov/pub/irs-drop/n-20-32.pdf>.

# Deciding When to File

Two schools of thought: apply now OR wait

Holly and Beth's thoughts:

- \$50,000 and under - **apply now**
- Self-employed with no employees - **apply now**
- Using 3508EZ box 2 and may need to layoff employees – **apply now**
- Using 3508EZ or 3508 and need last quarter 941s – wait
- Using 3508 and loan between \$50,001 and \$150,000 – wait\*
- Using 3508 larger loan – maybe wait\*

*\* may have another stimulus bill that may allow for the deductibility of PPP-funded expenses and/or simplifies process for loans under \$150,000*





Q&A – [info@nfib.org](mailto:info@nfib.org)

