

NFIB UPDATE

COVID-19 WEBINAR SERIES FOR SMALL BUSINESS

with Beth Milito and Holly Wade, NFIB



October 6, 2021

Special Guest – Cliff Ennico, Esq.

Topic – Getting What You are Owed: Collections 101



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 10/05/21.

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Agenda



- COVID-19 Resources
- Collections 101 with Cliff Ennico, Esq.
- Q&A
- Send questions to info@nfib.org

Upcoming Webinars

Small Business Economic Relief Programs: SBA and IRS Updates for Q4 2021

Wednesday, October 20th - 12 PM EST

This informative webinar will cover the latest updates on SBA emergency loans available for small businesses and the latest guidance on applying for the Employee Retention Credit (ERC).

The ERC, equal to 70% of the first \$10,000 of “qualified wages” paid by an “eligible employer” per quarter in 2021, could be a valuable alternative for small employers still experiencing financial uncertainty. The webinar will focus on who is eligible for the ERC, how to compute the amount of the credit, how to claim the credit, and how it interacts with other CARES Act benefits.

Upcoming Webinars

NFIB's *Special Fall Webinar Series*

Small Business Reset and Recovery

First Wednesdays - 12 PM EST

**Episode 3 - Why Every Small Business Owner Needs an
Exit Strategy and How to Create One**
Presented by Marty Abo, CPA

Wednesday, November 3rd

**Episode 4 - Digital Marketing Boot Camp for Small
Business**
Presented by Donna Botti

Wednesday, December 1st

COVID-19 Resources

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- Paycheck Protection Program (forgiveness)
 - Economic Injury Disaster Loan - ***still open!***
 - Employee Retention Credit - ***still open!***
 - SBA Updates – [sba.gov/updates](https://www.sba.gov/updates)
 - NFIB Coronavirus Resources (including past webinars)

Economic Injury Disaster Loan (EIDL)

LOAN AMOUNT

Maximum loan amount of \$2 million

TERMS

30-year loan, no penalties for early payments

3.75% for businesses (fixed), 2.75% for nonprofits (fixed)

USE OF PROCEEDS

Working capital and normal operating expenses (health insurance, payroll, rent, supplies, utilities). EIDL proceeds can also be used to prepay commercial debt and make payments on federal business debt.

LOAN DEFERMENT

Deferment Period for all COVID-19 EIDLs until 2022

Existing EIDL Borrowers may request an increase. Log in to the online portal for businesses that the SBA created for those requesting EIDLs. (Same portal for all EIDLs.) Once you do, you will see either a button that says "Request an Increase" or a "quote" displayed with your eligible amount. The "Request an Increase" button takes applicants to the EIDL application for up to \$2 million. If you don't see that button, it means you are not currently eligible for an increase. If you see a quote displayed, click on "Review and Accept Amount" and use the slider tool to confirm your requested amount. The maximum loan amount for which you're eligible is a product of your 2019 revenue subtracted by your cost of goods sold times two. If you have no COGS, subtract 0. Note that if you've already applied for an EIDL loan or increase, and it has not yet fully funded, you will not see the "Request an Increase" button on your portal yet, even if you are eligible.



APPLY for EIDL [HERE](#) (directly through the SBA)

Dealing with Deadbeats: Collecting Bad Debts, and Getting the Money You Are Owed Fast and Legally

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When Good Clients Go Bad

- Sooner or later, it happens . . . and few things “eat at your insides” worse than when a client stops paying you
- You have three goals when it comes to problem clients:
 - Keep them at an absolute minimum
 - Keep small “receivables” from becoming bigger ones
 - Treat problem clients ruthlessly



Dealing With “Pandemic” Debtors

- Patience is called for
 - Don’t wait for them to call; take the initiative
 - They must understand you are in the same boat as they are
 - Try for a “global” approach with all your debtors (most will accept w/o question)
- Impact of the Small Business Reorganization Act of 2019 (eff. 02/2020)
 - Many small businesses will consider “Title V reorganizations”
- Have “proof of claim” documents prepared now



The Four Types of Creditor

- People who are “essential to the operation of the business” (almost always get paid)
- People who make such a nuisance of themselves that debtors pay them just to get them off their backs (most get paid)
- “Friends and Family” (sometimes get paid)
- Everyone else (they have to wait . . .)
- Your goal is to be in category #1 or #2



How to Avoid Bad Debts

- Get money up front – the client should “pay early, pay often”
- Get an airtight contract that leaves the client with no “wiggle room”
- Stop working or hold back product the MINUTE bills become overdue
- Don’t do business with crazy people!
 - For significant amounts, do credit checks



Making Sure Your Contract is “Airtight”

- Without a good contract, you have no hope of being paid
- Your contract should be clear about:
 - How much you are to be paid
 - When payment is due
 - Interest will be charged on overdue payments
 - Whether business owners will be “personally liable” if their companies don’t pay
- Mediation or arbitration of disputes



The Four Steps of Collecting an Overdue Debt

- Step 1: Make a Demand for Payment
- Step 2: Try to Negotiate a Solution
- Step 3: Mediate/Arbitrate If You Can
- Step 4: Sue in Small Claims Court



Step 1: Make a Demand for Payment

- You cannot legally enforce a debt unless you first make a “formal demand” for payment
- Have your attorney draft and send this – it has more impact (most attorneys will do this for a 1 hour fee)
- “Interest shall accrue from the date of this letter at 12% per annum or the highest rate allowed by law if less”



Step 2: Negotiate a Solution

- “Compromise” – offer to forgive part of the debt if the client pays the rest quickly
- “Extension” – offer to a payment schedule (many small claims courts will rule against you if you haven’t at least offered this)
 - ask for a “UCC lien” on debtor’s assets
- If the client agrees to a compromise or extension, **GET IT IN WRITING!**
- Stop working/deny service until the problem is resolved to your satisfaction



Step 3: Mediate/Arbitrate If You Can

- Mediation: a “brokered agreement”
- Arbitration: a “mini-court case”
- Online mediation and arbitration services
 - www.adr.org (sponsored by AAA)
 - eBay, PayPal and SquareTrade mediation
 - National Franchise Mediation Program (www.franchisemediation.org)
- Only works if both parties agree to mandatory mediation/arbitration
- Can cost as much as litigation, especially for smaller claims



Step 4: Surviving Small Claims Court [Part 1]

- Where do you sue?
 - Always where the client is located, not where you are located
 - Courts are required to enforce judgments from other states, but not “default” judgments
- “Do I Really Have to Go Through That?”
 - It sends the client a signal that “you really mean business”
 - The travel and lodging expenses are 100% tax-deductible!



Step 4: Surviving Small Claims Court [Part 2]

- Get the Forms
 - www.uslegalforms.com/smallclaims
 - Search for “[your state] small claims”
- Watch Lots of Television 😊
 - https://en.wikipedia.org/wiki/List_of_court_shows
- “Prepare, Prepare, Prepare”
- Surviving “Your Day in Court”
 - Be on time
 - Keep it simple (“just the facts, ma’am”)
 - Stay away from lawyers



Enforcing Your Small Claims Judgment

- Apply to the court clerk's office for an "execution" to be issued against the party's wages, property, or bank account
- Bad news: you will have to do the "legwork" to enforce your judgment 😞
- You might – MIGHT – be able to sell your judgment online (for example, see <http://judgmentmarketplace.com>)



Going Medieval/Postal

- Better Business Bureau
- “Flaming” debtor on websites, blogs, etc.
- Press releases to local newspapers where the client conducts its business
- But . . .
 - Everything you say has to be 100% factually accurate
 - Best to wait until small claims judgment issues
- “Debt Forgiveness” = “Income” to Debtor



Using a Collection Agency: Pros and Cons

- Pro: They are unemotional, and know the rules a lot better than you do
- Pro: They are usually more (ahem) aggressive than you might want to be
- Con: They cost money
- Con: The minute the client says they “dispute” the debt, the collection agency ceases their efforts and tells you that you need an attorney



Things You CAN'T Do to Collect Overdue Consumer Debts

- Fair Debt Collection Practices Act (FDCPA)
 - Can't call before 7 am or after 10 pm
 - Can't say you are a government employee
 - Can't say you are a lawyer (unless you are)
 - Can't threaten client with jail or criminal penalty if he only owes you money
 - Basically, you can't misrepresent or embellish the facts



If the Debtor Files Bankruptcy

- “Automatic stay” – all debt collection activities must stop!
- You will need to file a claim in bankruptcy court
 - Will cost about \$1,000 to \$3,000
- And wait . . .
- If debtor reorganizes, you will be asked to restructure the debt
- If debtor liquidates, you will receive X cents on the dollar



Knowing When to “Cut Your Losses”

- Managing your emotions is the key to successful debt collection (“revenge is a dish best served cold”)
- Sometimes pursuing small debts at a loss gives you the reputation as a “mean motor scooter and a bad go-getter”
- But most small debts aren’t worth the effort – remember that “time is money”
- And . . . you can write worthless debts off on your taxes, as long as you’ve made a reasonable effort to collect them.



Suggestions for Further Reading

- “The eBay Seller’s Tax and Legal Answer Book” by (ahem) Cliff Ennico (AMACOM, \$19.95)
- Several good books by Nolo Press (www.nolo.com) – they even have forms!
- “Small Claims Court: Step by Step” by Ted Rothstein and Isaac Druker (Barron’s, \$21.95)
- “Become the Squeaky Wheel: A Credit and Collections Guide for Everyone” by Michelle Dunn (Self-Published, \$29.99)



Thank You!

Clifford R. Ennico
Author

Like



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Questions and Answers



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