# UPDATE: The CARES Act – What Restaurant and Hotel Operators Need to Know

Apr 06, 2020

**Categories:**

Coronavirus Response Team

**Authors:**

Jason C. Williams
Samuel G. Graber
Nick Jones

**Note:** ***This post has been updated to reflect new guidance from the Small Business Administration regarding the details of the Paycheck Protection Program.***

***The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a sweeping third-wave relief package in response to the COVID-19 pandemic, became law March 27. To read the full overview of the bill, click here.***

This update highlights the key CARES Act programs and provisions supporting restaurant and hotel operators.

**Paycheck Protection Program**

The CARES Act appropriates almost $350 billion for loans, 100% guaranteed by the government and administered by the Small Business Administration ("SBA"), to help businesses cover payroll costs, mortgage interest, rent, and utilities. The loans will cover essential short-term operating costs and incentivize businesses to retain workers. **Loans issued under the Paycheck Protection Program will be issued on a "first-come, first-served" basis.**

Eligibility – Special Rules Benefit Restaurant and Hotel Operators

Generally, only businesses with fewer than 500 employees (whose principal place of residence is in the United States) that were in operation as of February 15, 2020 are eligible for the Paycheck Protection Program. However, restaurants and hotels and any other business operating under NAICS codes beginning with 72 (Accommodation and Food Services), are eligible for the program if they have **fewer than 500 employees per physical location** of the business. The term "employee" includes individuals employed on a "full-time, part-time, or other basis."

The affiliation rules for determining the size of a business (which would limit eligibility for SBA loans) under 13 CFR 121.103 are also


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

waived for (i) businesses using NAICS codes beginning with 72, (ii) businesses operating a franchise that has been assigned a franchise identifier code by the SBA, and (iii) small businesses that receive financing through the Small Business Investment Company (SIBC) program. For more information on the affiliation rules, see "The CARES Act: The Affiliation Rules and How They Impact Eligibility Under the Paycheck Protection Program."

If a business has previously received a loan through the SBA's Economic Injury Disaster Loan ("EIDL") program to use for the same purposes as a loan under the Paycheck Protection Program, the business would not be eligible to receive a Paycheck Protection Program loan for the same purpose (i.e., no "double-dipping"). However, the business may be able to refinance their existing EIDL loan through a Paycheck Protection Program loan if they otherwise meet the PPP loan requirements. This is worth considering, because unlike PPP program loans, EIDL loans are not forgivable.

Certification

To obtain loans, businesses must self-certify that (i) the loans are necessary to support ongoing operations due to the uncertain economic conditions, (ii) the proceeds will be used to retain employees and/or make mortgage interest (but not principal payments or prepayments), rent, or utility payments, and payments of interest on other debt incurred by the borrower prior to the covered period (described below) and the borrower understands that it can be held personally liable (including for fraud) if the funds are knowingly used for unauthorized purposes, (iii) the business has not applied for or received a similar loan from the SBA for the same purpose or duplicative amounts, and (iv) the borrower will provide documentation to the lender verifying the borrower's payroll costs and other authorized use costs for the applicable period.

Maximum Loan Amount: $10 Million or 2.5 Months of Payroll Costs

Eligible businesses can receive loans to cover payroll costs (including salaries, commissions, group health care benefits, and state and local taxes assessed on compensation), mortgage interest, rent, and utilities during the "covered period" which is defined as February 15, 2020, to June 30, 2020. The loans can also


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

be used to pay interest (but not principal or prepayments) on debt incurred by the business prior to the covered period. **However, per SBA regulations issued on April 2, 2020, at least 75% of the loan proceeds must be used for payroll costs. If a borrower uses loan funds for unauthorized purposes, they will be directed to repay those funds. If the loan funds are knowingly used for unauthorized purposes, the borrower and its shareholders, members, or partners could be subject to fraud liability.**

Unlike other SBA loans (i) no personal guarantee or collateral is required, (ii) the "no credit elsewhere" test is waived, (iii) and fees, principal, and interest are deferred for 6 months.

The maximum loan amount available to a business is the lesser of (i) $10,000,000 or (ii) (A) two and a half months payroll, based on the business's average monthly payroll costs during the one year preceding the date of the loan, plus (B) the outstanding amount of any EIDL made to the borrower between January 31, 2020, and April 3, 2020 (less the amount of any "advance" under the EIDL loan, which does not have to be repaid).

For this purpose, payroll does not include the compensation of an individual employee in excess of an annual salary of $100,000 as prorated for the covered period. In other words, salaried employees making more than $100,000 per year can still be included in the payroll calculation for the maximum loan amount, but their compensation should be prorated as if they were only making $100,000. Other notable costs that cannot be included in payroll are federal payroll taxes imposed or withheld between February 15, 2020, and June 30, 2020, and federal income taxes, compensation for employees with a principal residence outside the U.S., and sick and family leave wages for which the business receives credit under the Families First Coronavirus Response Act.

If a business is a seasonal employer (as determined by the SBA), then the payroll calculation is based on either (i) the 12-week period beginning February 15, 2019, and ending on May 10, 2019, or (ii) the period beginning on March 1, 2019, and ending on June 30, 2019. If a business was not in operation during the period of February 15, 2019, to June 30, 2019, then the payroll calculation is based on the average total payroll costs for the first two months of 2020.


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

Loan Forgiveness

The most unique aspect of these SBA loans is that a portion of the loans are forgivable if the recipient meets certain criteria. The maximum loan forgiveness available is calculated based on the allowable costs during the "covered period," which is the 8-week period beginning on the date the loan is originated. **The 8-week covered period for determining the maximum loan forgiveness amount is notably different from the covered period used to determine the maximum loan amount.** Businesses should be careful not to confuse the two definitions for "covered period" when calculating their expected loan forgiveness amount.

The maximum loan forgiveness amount is equal to the following costs during the 8-week covered period: (i) payroll costs, (ii) interest on real or personal property mortgages incurred in the ordinary course of business and existing before February 15, 2020, (iii) rent due under leases existing before February 15, 2020, and (iv) utility payments for services that began prior to February 15, 2020. **However, not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.** Businesses with tipped employees described in Section 3(m)(2)(a) of the Fair Labor Standards Act can receive forgiveness for additional wages paid to those employees.

Businesses are incentivized to use these loans to retain employees because failure to do so will result in a reduction of the maximum loan forgiveness amount. The first way loan forgiveness can be reduced is by reducing the number of employees. If a business has fewer full-time equivalent employees during the 8-week covered period as compared to either (i) February 15, 2019, to June 30, 2019, or (ii) January 1, 2020, to February 29, 2020, then the maximum loan forgiveness amount will be reduced proportionally. For example, if a business averages 80 full-time equivalent employees during the 8-week covered period and averaged 100 full-time equivalent employees from February 15, 2019, to June 30, 2019, then the maximum loan forgiveness amount would be limited to the product of (i) the loan amount multiplied by (ii) 80%. **Businesses should assess whether the average number of full-time equivalent employees was higher during the period from February 15, 2019,**


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

**to June 30, 2019, or during the period from January 1, 2020, to February 29, 2020, as the business can choose which period it uses for this calculation.**

The maximum amount of loan forgiveness will also be reduced if a business decreases salary or wages by more than 25% for any employee that made less than $100,000 annualized in 2019.

Employees that received wages or salary at an annualized rate of $100,000 or more during any single pay period in 2019 are excluded from the total salary calculations, meaning a reduction of such an employee's salary beyond the threshold described above would not reduce the maximum loan forgiveness amount.

While the CARES Act states that any portion of a loan under this program that does not qualify for forgiveness will have a maximum interest rate of 4% and a maximum term of 10 years, SBA regulations issued on April 2, 2020, provide that the interest rate will be one percent and the loans will have a two-year maturity. **Repayment of non-forgiven loan amounts will be deferred for six months from the date of disbursement of the loan, though interest will accrue during the deferment period.** Any portion of the loan that is forgiven will not be included in the business's taxable income.

**Businesses will be able to apply starting April 3rd. The current application is available here. Note: the current application has been updated since the sample application was made available on March 31, 2020.**

For more information about the Paycheck Protection Program, see the Paycheck Protection Program Interim Final Rule issued by the SBA on April 2, 2020.

**Tax Provisions for Businesses**

There are a number of provisions in the CARES Act that provide tax relief for businesses, including (i) a payroll tax credit, (ii) deferral of the business's social security portion of payroll tax, (iii) modifications to the carry-back rules and limitations on net operating losses, (iv) changes to the limits on business interest; (v) an extension of tax filing deadlines; and (vi) accelerated depreciation for qualified improvement property.


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Please keep in mind that the payroll tax credit referenced above is not available to any business receiving loans under the Paycheck Protection Program.

One of the tax benefits particularly applicable to restaurant and hotel operators is the fix regarding qualified improvement property. An unintended consequence of the 2017 Tax Cuts and Jobs Act was that certain improvements to real property (generally improvements to interiors of nonresidential buildings) known as "qualified improvement property" were not eligible for accelerated depreciation. The CARES Act corrects that error and now permits taxpayers to immediately write off costs associated with qualified improvement property rather than depreciating the costs over a 39-year period. The change is retroactive to January 1, 2018, potentially permitting taxpayers to recover lost bonus depreciation and deductions for the 2018 tax year.

For more information on the tax provisions listed above, see "Tax Provisions Related to Business."

**Employee Benefit Provisions in the Families First Coronavirus Response Act**

Although not part of the CARES Act, hotel and restaurant businesses should also be aware of their obligations under the Families First Coronavirus Response Act (the "FFCRA"), signed into law on March 18, 2020 which requires that employers with fewer than 500 employees provide emergency paid sick leave and emergency paid Family Medical Leave Act ("FMLA") leave. The FFCRA goes into effect on April 1, 2020. In determining the 500 employee limit, employees are counted under the Department of Labor rules including whether multiple businesses must be treated as one employer under either an integrated employer test or a joint employer test.

Under the FFCRA, eligible employees are able to receive paid emergency sick leave for up to 80 hours (full-time employees) or the average hours of a 2-week period (part-time employees). The CARES Act revised the FFCRA to limit the amount of paid sick leave employers are required to pay. Employers are required to pay a maximum of $511 per day and $5,100 in aggregate to employees


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

that are subject to quarantine orders, have been advised to self-quarantine, or are experiencing COVID-19 symptoms and are seeking a diagnosis. Employees are eligible for a reduced sick leave benefit if they are caring for an individual subject to quarantine or isolation orders or are caring for a child whose school or daycare has been closed due to the COVID-19 virus. The CARES Act caps the amount of the reduced sick leave benefit at $200 per day and $2,000 in aggregate.

Employees are eligible for 12 weeks of coverage under the emergency FMLA rules if they are caring for a child whose school or daycare has been closed. Employees are eligible to receive at minimum two-thirds of their normal pay (up to $200 per day and $10,000 in aggregate).

To soften the economic impact of these new employer obligations, the FFRCA provides refundable tax credits for employers who are required to provide paid sick leave and emergency paid family and medical leave.

For more information on the technical requirements of the emergency sick leave or emergency FMLA benefits, see Frost Brown Todd's "Employer Update: Amended "Families First Coronavirus Response Act" Signed into Law."

**Individual Assistance**

Restaurant and hotel businesses should also be aware of the various issues their employees are facing and the benefits that may be available to them under the CARES Act. The following bullet points summarize some of the benefits individuals are eligible to receive:

- Individual Tax Rebate: Tax rebate of up to $1,200 per individual and $500 for each child under the age of 17, subject to certain exceptions and phased out for individuals making more than $75,000 AGI ($150,000 for joint filers).
- Unemployment Insurance: Expanded unemployment benefits are available.
- Student Loans: All principal and interest for certain federal loans are suspended.


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

- Retirement plans: Individuals may be eligible to make withdrawals without facing the 10% early withdrawal penalty.
- Mortgage Relief: Borrowers with federally backed mortgages can apply for forbearance if they are facing a hardship due to the Covid-19 crisis.

**Next Steps**

We expect further details to come from the SBA in the near future explaining how to apply for the new Paycheck Protection Program loans and the proper documentation and recordkeeping requirements for loan recipients. While time is undoubtedly of the essence for every business across the United States, ensuring proper compliance with the CARES Act is fundamental to short- and long-term business planning and success. For more information on the CARES Act or other legal issues impacting your business during the Covid-19 crisis, stay tuned for future updates from the Frost Brown Todd Coronavirus Response Team.

If you have any questions about the CARES Act, its implementation, or any other legal issues affecting your business as a result of the Covid-19 crisis, you can contact Jason Williams, Sam Graber, David Payne or any member of Frost Brown Todd's Franchise & Hospitality Industry Team.

---

***To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.***

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons