

# NOZZLE & WRENCH

AN OFFICIAL PUBLICATION OF THE WASHINGTON DC, MARYLAND & DELAWARE SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION



VOLUME 19/ISSUE 6  
JUNE 2020

## KIRK'S CORNER

# Repair Facilities Convenience Stores Gas Islands



By Kirk McCauley,  
Director Of Member  
Relations &  
Government Affairs

**All three have seen a general upturn** in business since Governor Hogan implemented his phase one opening. As of May 29, at 5pm we will have full phase one opening with more outdoor activity and outdoor dining to go along with take out. As business starts to pick up and the roads become more traveled, make sure your customers look at your location as a safe stop. Anything you can do to put your customer at ease will bring enormous benefits.

As they say in real estate it all starts with curb appeal. Yes, I know I have said this before, and it makes a difference in the best of times, but it makes a huge difference with COVID 19 encompassing everything we do and how we act. Normal is gone. Businesses must think Penske Clean, whether it be pumps, nozzles, pin pads, door handles, coffee stations or seat covers for repair shops. Your efforts must be visible as in an employee constantly cleaning and supplies immediately ready.

Island gloves would be a genuinely nice touch as would a sign in all three of our member locations as to what gets cleaned on a regular basis. Repair facilities should have a sign stating what will be cleaned and sanitized before their car is returned. It goes without saying that masks are a must for customer satisfaction and the law.

**Maryland's stage 2 opening begins June 5th at 5pm:**

<https://tinyurl.com/MarylandStage2>

**District of Columbia will start reopening May**

**29th.** Link is below to that order: <https://coronavirus.dc.gov/reopencd>

**Delaware reopening starts on June 1st and link is below:**

<https://tinyurl.com/DEreopening>



*Your efforts  
must be  
visible as in  
an employee  
constantly  
cleaning  
and supplies  
immediately  
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*Continues on page 4*

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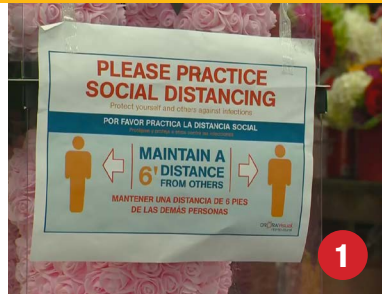
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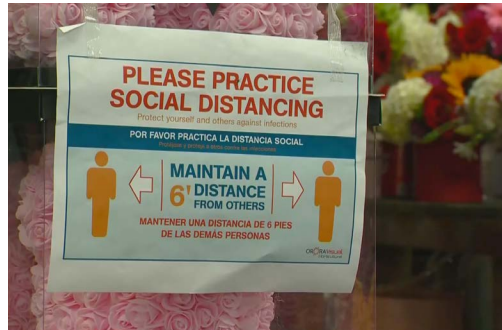
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*Policymakers should provide these businesses and their workers with temporary protections from lawsuits alleging injuries or damage because of exposure to the virus on their premises...*

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### **Bringing Clarity to the Chaos & Confusion that Surrounds our Businesses**

No essential businesses will be spared from the threat of litigation in the form of meritless lawsuits that businesses cannot protect themselves from. We have already seen this type of litigation against the mega stores and it will work its way down to small business, repair facilities, service stations and convenience stores.

Throughout the country, essential businesses, and workers in response to COVID-19 are striving to meet critical needs. Policymakers should provide these businesses and their workers with temporary protections from lawsuits alleging injuries or damage because of exposure to the virus on their premises or through their activities or products. Similar protections against COVID-related claims should be extended to all businesses and non-profit organizations that work to comply with guidance provided by government authorities as states move to restart their economies. This will give businesses and others the confidence needed to swiftly, but safely, return to serving their communities without fear of potentially devastating litigation. WMDA/CAR along with our business coalition members have asked for this protection to be put into the latest bill that was passed by house and is now in the senate. This three trillion-dollar bill called the Heroes Act will take a lot of compromising before being passed but I think it will get done.

### **EMV – VISA and Master Card**

In recognition of the costs involved with upgrading dispensers and the hardships involved with COVID 19, VISA and Master Card have extended compliance mandate from October of 2020 to April of 2021. While this is welcome news, April 2021 is not that far away, we would have liked a full year extension.

Fraud liability shift means that fuel merchants without upgraded pumps will suffer the costs associated with fraud. Fraudsters are smart and sophisticated, so it's likely that non-compliant fuel merchants will be targeted by fraudsters that know they can exploit the lack of chip acceptance to use cloned, stolen, or fake cards at that fuel station.

“Merchants that don't deploy chip acceptance will see a significant increase in the number of chargebacks they receive from banks and will in some cases absorb additional costs. Cards that are compromised at a location without chip readers could cost dealers with enormous liability exposure beyond the cost of the purchase. Think card holders account emptied in the case of debt card or major purchases.

Bottom line is, do not put chip readers on the back burner, get it done as soon as financially feasible.



### **Baltimore City – Premium Wage Bill 20-0535**

Baltimore City Council President Scott introduced a bill that would require bonus pay for essential workers. COVID-19 – Relief – Premium Pay for Essential Workers and there is a link below to the bill. Just another politician with no idea how businesses are not all the same and one size does not fit all. Reading the bill, I do not think many of our members will be affected but might affect some of the larger ones. Council president Scott is running for mayor and this looks like a reach for votes. We will oppose.

<https://tinyurl.com/BaltimoreWageBill>

### **All members that received PPP loans**

You will recall that last week, the agencies released the loan forgiveness application and announced that the regulations and guidance for borrowers and lenders in relation to the loan forgiveness





*For PPP loans to be forgiven under the rules, lenders must confirm that they received the borrower certifications in the loan forgiveness application form and the borrower documentation required by the form.*



application would be forthcoming.

For PPP loans to be forgiven under the rules, lenders must confirm that they received the borrower certifications in the loan forgiveness application form and the borrower documentation required by the form. They must also confirm the borrower's calculations on the forgiveness application. "Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness," SBA said, noting that "minimal review" of calculations based on a payroll processor's report would suffice.

Lenders must report their decisions on forgiveness applications to SBA within 60 days of

receiving a complete application and must provide supporting documentation for their decisions. The rule on the forgiveness process includes details on several technical questions related to employee status, payroll calculations and forgiveness-eligible non-payroll expenses.

Here is the link to the guidance on lenders' and borrowers' responsibilities.

<https://tinyurl.com/PPPregulations>

Here is the link to additional guidance for completing the Loan Forgiveness Application.

<https://tinyurl.com/PPPadditionalReg>

Access the Loan Forgiveness Application Form here:

<https://tinyurl.com/PPPLoanApplication>

The Small Business Administration reminds all lenders participating in the program that they are expected to be familiar with all PPP-related documents which can be accessed through the following link;

<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

Thanks to coalition member- Maryland Banker's Association for these updates.

Best to all and Stay Safe,

Kirk ■



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# 3 Time Management Tips



By Sandi Weaver  
BA Auto Care, Inc.

**For the last two months** I have avoided writing about the Coronavirus, Covid-19. With so many people sending emails, social media posts, webinars and more, I wanted to avoid adding to it. Well, I can't not talk about it this month.

Everything has changed and we have overcome many challenges. One of the hardest things for me during this time, besides figuring out how to move the business forward, has been time management. I have felt pulled in two different directions. One to be at work motivating and encouraging employees and customers. The other is being home for my kids, helping them with online school and keeping them safe. My husband and I

are pretty good at sharing responsibility of taking care of our kids but with him getting a promotion right before all this started, he hasn't been available to care for the kids during the day. They have had to entertain their selves, complete school assignments by themselves and well, have been watching a little too much tv.

Now why am I telling you all this? Well, it's because I lost track of how to manage my time. Before everything shut down, I knew what hours I had to get work done and had a quiet place to do it. I had a weekly schedule, of sorts. When the schools closed and the work slowed down, I had the time to spend with my kids and some time to spend at work. Now with things getting busier, I have less time at work and more time home with my kids. Seems backwards, doesn't it.

Yesterday I joined a webinar/discussion group on time management and what I learned or relearned was, organization and planning go a long way. After the "call" was over, I sat down and made a list of what needed to be done at work and what needed to be done at home. The lists are long, but the most important things were given a specific time each week to get them done and a plan for what my kids can do while I'm working. I put things I could delegate on one list and the least important were moved to another list. By breaking down what needed to be done, I can now focus on what's important and I don't feel so overwhelmed.

If you are like me, with 101+ things pulling you in different directions, don't forget, like I did, to get reorganized and create a plan. Take it one step at a time, one thing at a time and know you are doing a great job.

1. Make a list or more than one
2. Set time aside for each task
3. Get organized ■



*If you are like me, with 101+ things pulling you in different directions, don't forget, like I did, to get reorganized and create a plan.*





# WMDA/CAR Golf Outing & Fundraiser

Tuesday, June 16, 2020

Renditions Golf Course  
1380 Central Ave., Davidsonville, MD

\$169 per golfer

Includes Continental Breakfast, Dinner, and Refreshments

1:00 p.m. Registration & Continental breakfast  
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Picnic Lunch & Awards Ceremony

**EVENT TO BE DECIDED**

Team and individual golf awards. Refreshments will be available on the course. WMDA/CAR will assist in pairing individual registered golfers to make a foursome if requested.



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# Answering the Eight-Trillion-Dollar Question: How Accessible is Your Website?

*The ongoing rise of online shopping and the recent spike in No Touch Retail caused by the COVID-19 crisis makes it easier to reach out to this huge – and growing – market. But only if your website is fully accessible.*

**More than 1 billion people worldwide** live with some form of disability.

Together, they have an annual disposable income of \$1.2 trillion. When you factor in their family and friends, that figure rises to a staggering \$8 trillion.

The ongoing rise of online shopping and the recent spike in No Touch Retail caused by the COVID-19 crisis makes it easier to reach out to this huge – and growing – market. But only if your website is fully accessible. You wouldn't install a wide and obstructive obstacle course in front of your shop (even if it weren't illegal to do so). So why have barriers to your online presence?

## Beyond Bricks And Mortar

The Americans with Disabilities Act (ADA) was enacted in 1990 to guarantee that people with disabilities aren't excluded from participating in everyday activities. Title III of the ADA states that any business that provides commercial goods or services to the public cannot discriminate against customers based on a disability.

Businesses who think that priority parking bays, elevators, and ramps in their physical locations are enough to meet the needs of disabled shoppers should think again. You may even think that website accessibility isn't an issue for tire dealers or auto repair shops. Think again. Courts have ruled time and time again that Title III of the ADA applies to websites as well as physical locations.

Until recently, most businesses have prioritized making their brick-and-mortar stores accessible to people with disabilities, such as people who use wheelchairs and other mobility aids or who rely on a guide dog or a white cane. But what about when those customers go online?

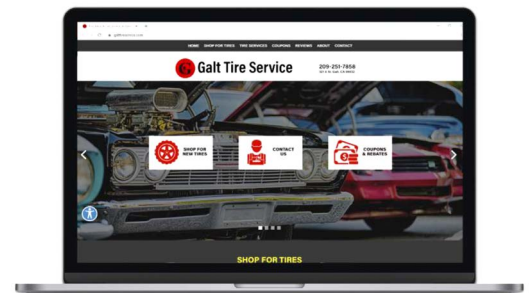
All too often, businesses overlook the accessibility of their websites. This is no longer an option – not only because of the widespread shutdown of physical stores in the wake of the coronavirus. Today, if a website is not accessible to people with disabilities, it is in violation of the ADA and a litigation risk.

The number of website accessibility lawsuits filed in federal courts almost tripled from 815 in 2017 to more than 2,200 in 2019 – a trend that only looks set to continue.

## Win Customers Through Inclusivity

Perhaps most striking of all is the fact that businesses without an accessible website are effectively shutting their doors to millions of potential customers. A potential customer base with trillions of dollars' worth of spending power.

What's more, [Forrester](#) found that people – with or without disabilities – increasingly want to support brands that promote values







that align with their own. 52% of consumers actively consider company values when making a purchase, and 20% prioritize company values over competing factors like price and convenience. Businesses that demonstrate they actively support people with disabilities will earn the patronage of these value-driven shoppers.

Digital accessibility is an opportunity not to be missed: good for your bottom line and your brand.

### Get Help From The Experts

To ensure compliance with the requirements of Title III of the ADA, you must align your website with accepted accessibility standards, such as the [Web Content Accessibility Guidelines](#) (WCAG).

WCAG states that websites must accommodate screen readers, provide alternative text for images, make all functionality available via a keyboard, support

assistive technologies such as speech input, and provide text transcripts of audio files.

If that seems daunting, don't worry! Net Driven is here to help. Through our partnership with [AudioEye](#), we can help you achieve digital accessibility and compliance quickly and easily. ■

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# Getting Your Estate Planning House in Order

By James L. Parsons, Jr., Lynott, Lynott & Parsons, P.A.

**If you are like many people**, you may have been putting off the implementation of even a basic estate plan. Depending upon the size of your estate, the number of beneficiaries involved, their relationship to you, and other factors, the creation of an estate plan may seem like a complicated and overwhelming task. However, by reviewing some basic concepts, you will hopefully have a better understanding of what is typically involved in estate planning process, and be in a better position to implement the plan that is right for you.

## How Property Passes Upon Death

Preliminarily, it is helpful to understand how your property passes when you die. For purposes of understanding this concept, there are three general categories of assets. The first category of assets relates to your accounts that have a beneficiary designation. This includes retirement accounts (such as 401(k), IRA, SEP, KEOGH, etc. ), or accounts that have a TOD (transfer on death) provision. These accounts would be transferred upon your death to the beneficiary that you designated for the account. Other assets that have named beneficiaries include life insurance contracts and annuity contracts. Therefore, it is very important that you carefully consider your beneficiary designation. In the absence of a named beneficiary, these assets are often distributed as part of the probate estate in accordance with the will. This can result in delay and additional costs before the assets are distributed to the beneficiary.

The second category involves assets that are jointly owned. If you have assets that you own with other person(s) that are titled as joint tenants (with right of survivorship), then you have effectively made a beneficiary designation as to these assets. Jointly titled bank accounts and homes owned by married couples as tenants by the entirety are also in this category. Upon your death, the property will transfer to your surviving joint tenant(s).

The third category involves individually owned property, i.e., assets titled in your

individual name. These assets will be transferred according to your will if you have one, otherwise they will transfer in accordance with your state's laws of intestacy.

## Wills and Intestacy Laws

If you die without a will (i.e., intestate), then assets that are in your individual name will be transferred in accordance with your state's laws of intestacy. As an example, in Maryland, if you die without a will and are survived by a spouse and descendants, but no children who are minors, then your spouse will inherit the first \$40,000.00 of your estate and one half of the rest, and your descendants will inherit the rest. Without a will, the intestate laws of your state will also direct the order of priority for who will serve as personal representative of your estate; what heirs are entitled to receive the assets of your estate; and in some situations the Orphans' Court may make the appointment of a guardian for your minor children. Therefore, to avoid unintended consequences and to make sure that your wishes are carried out, it is important that you have a will. In your will, you can specify how you want your property distributed after your death; you can name a personal representative who has the responsibility to collect your assets, pay bills and distribute your estate according to the terms of your will; you can make charitable bequests; and you can nominate someone that you trust to be a guardian of your minor children. Your will must be witnessed by two or more credible witnesses.

## Estate and Inheritance Taxes

One of the matters taken into consideration in preparing your will is whether your probate estate will be subject to estate and/or inheritance taxes. For 2020, the threshold for the imposition of federal estate taxes is \$11.58 million (or a combined \$23.16 million for married couples), so most people are not subject to the federal estate tax. Maryland has its own estate tax, separate from the federal

*...to avoid unintended consequences and to make sure that your wishes are carried out, it is important that you have a will.*



*With a Financial Power of Attorney, you can appoint a person (and successor(s)) that you trust as your attorney-in-fact to handle your personal financial matters, either immediately or in the event of your future disability.*



estate tax, and the threshold for that tax for deaths in 2020 is \$5 million (or a combined \$10 million for married couples). The Maryland estate tax rate varies up to a maximum of 16 percent. The Maryland inheritance tax (as opposed to the Maryland estate tax) is only imposed if the recipient of the inheritance is unrelated or distantly related to the decedent. It is not applicable if the inheritance is payable to a spouse, child or other descendants or a sibling, but is applicable if the recipient is a niece, nephew or other more distant relative. If imposed, the Maryland inheritance tax rate is 10%. There are provisions that can be included in your will (and outside your will, such as revocable and irrevocable trusts) that are designed to minimize the impact of estate and inheritance taxes, but it would be impossible in the space of this article to describe all of them.

### **Disability and Medical Care**

Your will addresses what happens with your property after you die. But what happens if you become disabled or otherwise unable to make decisions regarding your finances and medical care while you are still alive? Two common documents that are included in an estate plan are a Financial Power of Attorney and an Advanced

Medical Directive. In fact, these documents are so common that the State of Maryland has created an optional form for each of them. With a Financial Power of Attorney, you can appoint a person (and successor(s)) that you trust as your attorney-in-fact to handle your personal financial matters, either immediately or in the event of your future disability. Your power of attorney may be revoked by you at any time, but if you specify that the power of attorney will be effective upon your disability and it is not revoked, your power of attorney will remain effective after your disability (i.e., “durable”).

In an Advance Medical Directive, you can select a health care agent (and successor(s)) to make decisions regarding your medical care in the event that you become incapacitated, and you can specify how much power your agent will have to make those decisions. You can also decide when the power will become effective either right away, or only after a doctor says that you are not able to decide for yourself. You should choose the person best qualified to be your health care agent, and consider picking one or two back-up agents, in case your first choice isn’t available when needed. Be sure to inform the person(s) you select and make

sure that he or she understands your wishes. The Advance Medical Directive also contains provisions that let you decide about life-sustaining procedures in the event that you are in an end-stage condition or vegetative state. As with the will, this document requires two witnesses.

### **Conclusion**

The foregoing is intended to provide basic information about the estate planning process and the documents that you may wish to use in connection with your estate planning needs. In order to prepare estate planning documents that are specific to your needs, your attorney and/or tax advisor will require specific information regarding your financial situation and your wishes with respect to the transfer of your property upon your death. Your estate planning needs may change over time, so your plan should be flexible, and may require modifications as times and circumstances change. But it is important to have a plan in place to make sure that if something happens to you, your family and loved ones have a “road map” to use and are protected from unintended consequences that could arise if you die or become disabled without such a plan in place. ■



# COVID-19 Federal Update



By Roy Littlefield IV

**In May, our government affairs efforts** on the national level through SSDA-AT were once again in full swing as we continue to manage the COVID-19 pandemic and look toward the recovery and reopening of the economy. SSDA-AT remains active in a variety of coalitions dealing with recovery response and we signed onto close to a dozen industry letters in the month of May as we actively seek solutions and help for our industry.

The outbreak of the COVID19 virus is widespread and has impacted automotive repairers nationwide. Our members were declared “essential services”, however, it has come to the association’s attention that as automotive repairers are suffering economically, at least two auto manufacturers have floated the idea of including a Cash for Clunkers program in the next COVID-19 stimulus legislation in order to boost vehicle sales.

The Cash for Clunkers program was initially established under the Car Allowance Rebate System (CARS) Act during the Obama Administration. The program paid the owners of older vehicles as much as \$4,500 to help stimulate the economy and reduce emissions in the summer of 2009. During this short period of time, approximately 700,000 post-warranty vehicles were taken off U.S. highways and out of independent repair shops.

SSDA-AT has discussed the issue we have decided to oppose a potential Cash for Clunkers program 2.0.

During the month, SSDA-AT signed onto a group credit sales letter. As Congress continues to consider legislation in response to the crisis, we wrote to respectfully encourage you to prioritize legislation that would take into account the suddenly high volume of customer defaults on credit sales. Numerous industries often extend significant inventory sales or manufacturing inputs to customers on credit by convention, custom, and sometimes even regulation. SSDA-AT respectfully request that Congress pass a temporary legislative modification to account for this unforeseen event by loosening the facts-and-circumstances test on bad debt business deductions and accelerating these deductions into the present taxable.

Another letter we signed onto was the USPS letter. SSDA-AT and other trade associations and consumer advocacy organizations believe it is imperative to save the United States Postal Service.

Postal Service delivery is essential. And it is of particularly acute need in rural areas of the country, where there are no alternatives, and often not even broadband. USPS is a lifeline there and elsewhere throughout the country during these challenging times. SSDA-AT strongly urges Congress to save the Postal Service and preserve a fundamental lifeline to millions of Americans.

In May, WMDA/CAR being represented through SSDA-AT also took part in several virtual government affairs meetings. This included an OSHA Small Business roundtable; which discussed the status of various pending regulations. We also participated in a Small Business Legislative Council meeting to discuss pending COVID-19 response legislation in Congress and steps businesses must undergo to re-open. In addition, we took part in a Highway Users Committee meeting to discuss pending infrastructure proposals.

We will continue to update members in these difficult times. Please reach out to us with any questions you may have. ■

*The outbreak of the COVID19 virus is widespread and has impacted automotive repairers nationwide. Our members were declared “essential services”, however... automotive repairers are suffering economically...*



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# SBA Releases PPP Loan Forgiveness Application



By Roy Littlefield

**On May 15th**, the Small Business Administration (SBA) released that application that businesses will submit to their lender to apply to have their Paycheck Protection Program (PPP) loans forgiven. The application, which is accompanied by a number of worksheets and instructional pages, provides clarity on a number of critical questions that were facing PPP loan recipients.

There are still some open questions and we anticipate that, in addition to the application document, the SBA will be releasing interim rules relating to the loan forgiveness provisions. In the meantime, businesses that received a PPP loan, are well advised to review the application and accompanying guidance as soon as possible, rather than waiting until the end of their loan period, in order to identify and take any necessary steps to ensure and maximize loan forgiveness.

The biggest new takeaways from the application are as follows:

## The Covered Loan Period

Pursuant to the CARES Act, which established the PPP loan program, the relevant period for the purposes of calculating loan forgiveness is the 8 week (56 day) period after the loan proceeds are received by the company – referred to as the “Cover Period.” To simplify the loan forgiveness calculations, the application provides businesses that pay employees on a biweekly or more frequent basis the option to elect an “Alternative Payroll Covered Period” to better track with their pay periods. Specifically, instead of calculating the eight week period as beginning on the date the loan proceeds are received, such businesses can instead elect to calculate the eight week period starting on the first day of the first payroll following that date (this alternative eight weeks is referred to as the “Alternative Payroll Covered Period”). This will allow businesses to line up the eight week period with their normal payroll schedule rather than having the eight week period cover multiple partial pay periods.

Businesses that may be interested in utilizing the Alternative Covered Payroll Period for the purposes of their loan forgiveness calculations and application should be aware of two important things:

1) This option is only available to businesses that pay employees in a biweekly or more frequent basis. Therefore, businesses that pay employees twice per month (or less frequently than biweekly) are not eligible to use the Alternative Cover Payroll Period.

2) If a business elects to use the Alternative Payroll Covered Period, this is the eight week period that will apply for the purposes of assessing and calculating loan forgiveness – including with respect to non-payroll expenses. Thus, businesses should assess the impact that electing the standard Covered Period versus the Alternative Payroll Covered Period, or vice versa, will have on the ability to include other eligible costs in the forgiveness calculation.



*...the relevant period for the purposes of calculating loan forgiveness is the 8 week (56 day) period after the loan proceeds are received by the company – referred to as the “Cover Period.”*





*Per the CARES Act, payroll costs are included in, and are, in fact, intended to be a central part of, the forgivable loan amount. Payroll costs include compensation to employees of up to \$15,385 per employee during the 8 week loan period...*

### **Calculation of Forgivable Expenses**

One of the big open questions left by the CARES Act was what would happen to payment obligations that were incurred but not paid within the eight week loan period or, on the flip side, payments that were made on obligations that weren't incurred during the eight week loan period. The new application provides clarity on these questions as to both payroll and non-payroll expenditures.

### **Payroll Costs**

Per the CARES Act, payroll costs are included in, and are, in fact, intended to be a central part of, the forgivable loan amount. Payroll costs include compensation to employees of up to \$15,385 per employee during the 8 week loan period (which would annualize to \$100k), plus employer contributions towards group health insurance, retirement plans or employer-state and local taxes on employee compensation. For loan forgiveness related to payments to business owners, the application specifies that businesses may only include payments to owner up to \$15,385 OR the eight-week equivalent of the owner's average compensation in 2019, whichever is lower. It is unclear whether amounts paid for a business owner's health insurance or retirement plan contributions are included in, or can counted in addition to, those limits.

The application provides that, in calculating payroll costs, in addition to counting payroll costs actually paid during the eight

week loan period, businesses may also include payroll costs incurred during the loan period but not paid during the loan period, as long as the costs are paid on or before the next regular payroll date after the end of the loan period. Thus, for example, if the last day of a company's eight week loan period is June 10, but the company's pay period runs from June 1 through June 15, with payday on the 16th, the company would be able to count amounts earned by employees from June 1 through June 10, even though the employees would not actually be paid until June 16 (six days after the end of the loan period). Of course, amounts earned and paid to employees can only be counted once, so the focus would be on amounts paid during the loan period, with amounts earned only being included if they will not be paid until after the end of the loan period. Among the unanswered questions generated by the application's provisions are how certain types of employer retirement plan contributions, beyond the standard matching contribution, would be treated for the purpose of being included or excluded from the forgivable amount. We anticipate additional guidance in the retirement plan area.

### **Non-Payroll Costs**

Similar to payroll costs, the loan application provides businesses with the opportunity to include covered mortgage, rent and utility payments that are either (1) paid during the eight week period or (2) incurred during the eight week period and paid on the next regular billing date (if such billing date

falls outside the eight week loan period). Again, these costs can only be counted once. Regardless of the amount of other costs incurred or paid during the eight week period, covered non-payroll costs may only comprise 25% of the total forgiveness amount.

### **Reductions to Forgiveness**

The CARES Act provided that borrowers are eligible to have up to the principal amount of the PPP loan forgiven BUT that the eligible loan forgiveness amount would be reduced if the borrower made certain reductions the employees' salaries or hourly rates or its total number of full time employees. The application materials provides additional insight and information on how these reductions will be assessed and calculated.

### **Reduction in Number of Full Time and Full Time Equivalent Employees**

Under the terms of the CARES Act, a business' eligible forgiveness amount will be reduced if the average number of full-time equivalent employees employed by the business during the eight week loan period was less than either the average number of full time employees employed by the business either (1) between January 1 and February 29, 2020 or (2) between February 15 and June 30, 2019. The business gets to pick which of the two comparison periods it will use and special rules apply to businesses with seasonal workforces. What the CARES Act didn't do is explain how businesses will calculate how many full-time equivalent employees they have. The application materials shed light on this question.

*For a business to qualify for the safe harbor (1) the reduction in employees must have occurred between February 15 and April 26, 2020 and (2) the business must be back to having the same number of full time and full time equivalent employees as it did during the pay period...*

For the purpose of determining loan forgiveness, a full time employee is an employee who typically works at least 40 hours per week. As to employees who work less than 40 hours per week, the employer may choose to either count all of these employees as .5 full-time employees OR do a full time equivalency calculation for each employee by dividing their regular weekly hours of work by 40. For example, for an employee who typically works 30 hours per week, the business could either elect to count him as a .75 full-time employee (30/40) or, to avoid doing individually specific calculations and count him, and any other employee working less than 40 hours per week, as a .5 full-time employee. The business will need to use the same calculation method for calculating full time equivalencies for the eight week loan period and the comparison period. Businesses that have the capacity to do so, may want to run the calculations using both approaches and both comparison periods to determine which is more favorable for them.

To the extent that the average number of full time and full-time equivalent employees during the 8 week loan period is lower than the selected comparison period, the loan forgiveness amount will be proportionately reduced (for example, if the business has 15 full time and full time equivalent employees during the loan period but had 20 full time and full time employees during the comparison period, i.e. had a 25% reduction in headcount, the loan forgiveness will be reduced by 25%).

However, there are two instances where an employer in this situation may not be subject to a reduction in forgiveness, or the reduction may be reduced:

- First, as set forth in the

CARES Act and explained in more detail on the forgiveness application, there is a safe harbor for businesses that restore their prior level of full time and full time equivalent employees by June 30, 2020. For a business to qualify for the safe harbor (1) the reduction in employees must have occurred between February 15 and April 26, 2020 and (2) the business must be back to having the same number of full time and full time equivalent employees as it did during the pay period that included February 15, 2020, by June 30, 2020. For the purposes of considering the employee headcount, the focus is simply on the number of employees that the business has at the relevant periods of time. So a business that reduced its workforce between February 15 and April 26, need only bring on the same number of employees that it previously had and need not rehire the exact same individual employees.

- Additionally, the loan application makes it clear that businesses can exclude, and will not be penalized for employees that leave and are not replaced where: (1) the employer made a written offer to rehire the employee during the loan period that was rejected by the employee, (2) an employee is terminated for cause during the loan period, (3) an employee voluntarily resigns during the loan period, or (4) an employee voluntarily requested, and received, a reduction in his/her regular scheduled hours during the loan period.

### **Reduction in Employee Compensation**

In addition to any reduction resulting from a reduction in the number of full time and full time equivalents, the loan forgiveness amount will also be reduced if

the business reduces the salaries or hourly rates of employees making equal to or less than \$100k annually by more than 25%. This analysis is conducted as to each employee making \$100k or less. The process for making these calculations is explained for the first time in the application materials.

First the employee's average salary during the eight week loan period is compared against the employee's average salary from January 1, 2020 through March 31, 2020. This is an important clarification, as the CARES Act was not entirely clear about how businesses would be expected to compare the eight week period against the longer full-quarter period referenced in the law. As was largely anticipated, the application clarifies that the focus will be on the average compensation. If the employee's average salary or average hourly rate during the eight week loan period was at least 75% of the average during the first quarter of the year – the inquiry stops there.

If the employee's average salary or hourly rate during the eight week loan period was less than 75% the average during the first quarter – the business may still qualify for a safe harbor and avoid any reduction in forgiveness. To determine whether the safe harbor applies, the business must first compare the employee's average salary or hourly rate for the year as of February 15 against the employee's average salary or hourly rate from February 15 through April 26, 2020. If the average salary or hourly rate between February 15 and April 26 was less than the average as of February 15 (i.e., a reduction occurred during the Feb. 15-April 26 period), the business can move on to the next step in the



*For businesses that did not qualify for the safe harbor... the resulting reduction in the eligible loan forgiveness amount will be calculated depending on whether the employee is paid on an hourly or salaried basis...*

safe harbor test. If, the reduction in compensation did not occur between February 15 and April 16 (i.e., the average from that period was the same or greater than the average as of February 15), the safe harbor will not apply and there will be a reduction in the loan forgiveness amount.

For the business that satisfies the first step of the safe harbor analysis, the next step will be to calculate the employee's average salary or hourly rate for the year as of June 30, 2020. If, as of June 30, 2020, the average is at least equal to what it was as of February 15, the employer will be considered to have "restored" the employee's rate of pay and will not be subject to any reduction in forgiveness related to this employee. If the average as of June 30, 2020 is less than the average as of February 15, the safe harbor will not apply and there will be a reduction in the loan forgiveness amount.

For businesses that did not qualify for the safe harbor, as to employees that experienced a reduction in compensation rates greater than 25%, the resulting reduction in the eligible loan forgiveness amount will be calculated depending on whether the employee is paid on an hourly or salaried basis as follows:

**Salaried employees**  
– First, the business will calculate the difference between

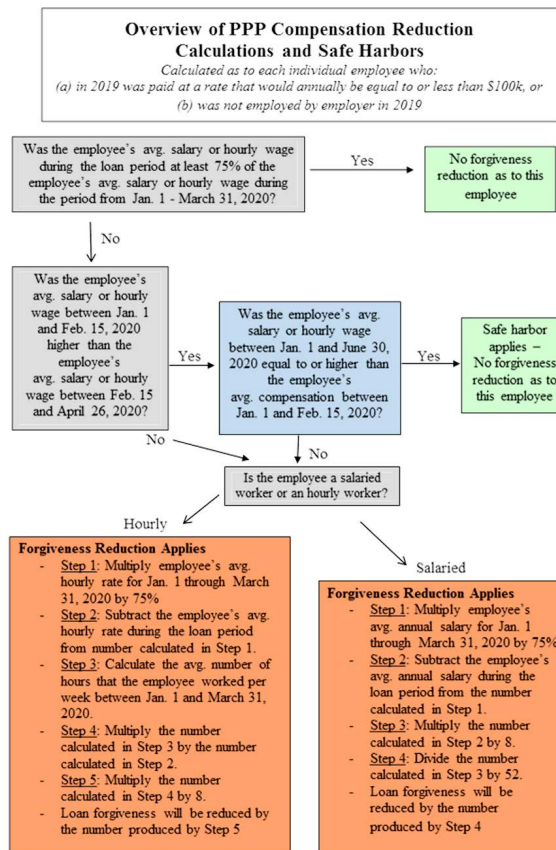
75% of the employee's average annual salary for Jan. 1 through March 31, 2020 (i.e., what the employee would need to receive not to trigger a reduction) and the employee's actual average annual salary during the loan period. For example, if an employee's average annual salary during Q1 was \$100k and the average annual salary during the loan period was \$50k, the difference would be \$25k  $((\$100k \times 75\%) - \$50k)$ . The difference is first multiplied by 8 and the product is then divided by 52 to calculate the reduction in the amount to be forgiven. Continuing with the example, the reduction in the eligible forgiveness amount related to this hypothetical employee would be

\$3,846.15  $((\$25k \times 8) \div 52)$ .

**Hourly employees** – First, the business will calculate the difference between 75% of the employee's average hourly rate for Jan. 1 through March 31, 2020 and the employee's actual average hourly rate during the loan period. For example, if an employee's average hourly rate during Q1 was \$40 and the average hourly during the loan period was \$20, the difference would be \$10  $(\$40 \times 75\%) - \$20$ . The business would then multiply this difference by the average number of hours that the employee worked per week between Jan. 1 and March 30, 2020 and multiply that number to arrive at final reduction in forgiveness. If the hypothetical employee worked an average of 40 hours per week, the reduction would be \$3,200  $(\$10 \times 40 \text{ hours} \times 8 \text{ weeks})$ .

In sum, while there may still be more for the SBA, and in turn, PPP loan recipients to determine before the loan forgiveness applications are submitted, the application and accompanying documents go a long way to providing clarity on some of the most pressing outstanding questions.

WMDA/CAR will continue to advocate for further clarity on the loan forgiveness provisions and support legislative measures to increase the period or flexibility of the PPP loans. ■







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