

TO: NAW Direct Members

FROM: NAW Government Relations Team

RE: NAW Critical Update Number 45 – May 8 at 2:30 PM

1. Latest on the Main Street Lending Program

As of today – yet again – no MSLP launch date has been announced. We will continue to monitor the Federal Reserve for information and provide you with any relevant and timely updates.

2. Latest on the Paycheck Protection Program

When the federal government relaunched the Paycheck Protection Program on April 27th with an additional \$310 billion, lenders and business advocates warned the money would dry up within a few days.

The Wall Street Journal reports today that nearly two weeks later, more than 40% of the money remains available, according to figures released late yesterday by the Small Business Administration. It took less than two weeks for the initial round of roughly \$350 billion to be depleted, and that was even after an initial delay because of confusion among lenders on the loan terms.

Likely the biggest reason for the slowdown is that many business owners have concluded that the Paycheck Protection Program simply doesn't meet their needs, or they are waiting for the government to clarify the terms under which loans can be forgiven. Larger businesses are now looking at other funding sources, particularly the \$600 billion Main Street Lending Program being prepared by the Federal Reserve for larger companies.

An SBA spokesman declined to comment Thursday on cooling demand for the loans. Treasury Secretary Steven Mnuchin has defended the program, saying the primary objective was to help people employed by small businesses continue to get a paycheck and keep staff off unemployment rolls.

To read the full story, go to:

<https://www.naw.org/wp-content/uploads/2020/05/WSJ-Demand-Cools.pdf>

3. Latest on Employee Retention Tax Credit

A bi-partisan group of House members, led by Florida Democrat Stephanie Murphy, has introduced legislation to significantly expand the ERTC, and are hoping to have their proposal included in "CARES 2." Their proposal would, among other things, increase the credit percentage from 50 to 80 percent of qualified wages, increase the per-employee limit to \$15,000, change the threshold for "large employer" from 100 employees to 1,500, and allow a company to have both a PPP loan and the ERTC with guard rails to prevent "double-dipping" (likely meaning that only non-forgiven PPP loans can be coordinated with ERTC).

To see a description of and press statements about the Murphy bill, go to:
<https://murphy.house.gov/news/documentsingle.aspx?DocumentID=1368>

To see a fact sheet on the Murphy proposal, go to:
https://murphy.house.gov/uploadedfiles/fact_sheet_on_the_jobs_credit_act_of_2020.pdf

Also, the IRS has added two new questions to its FAQ on the ERTC. The new questions, numbers 64 and 65, deal with the inclusion of "health plan expenses as qualified wages" in calculating the ERTC.

To read the two new questions included below, and access the full IRS information on the ERTC, go to:
<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

64. May an Eligible Employer that averaged 100 or fewer full-time employees in 2019 treat its health plan expenses as qualified wages for purposes of the Employee Retention Credit? (updated May 7, 2020)

Yes. An Eligible Employer that averaged 100 or fewer full-time employees in 2019 may treat its health plan expenses paid or incurred, after March 12, 2020, and before January 1, 2021, during any period in a calendar quarter in which the employer's business operations are fully or partially suspended due to a governmental order or a calendar quarter in which the employer experiences a significant decline in gross receipts as qualified wages, subject to the maximum of \$10,000 per employee for all calendar quarters for all qualified wages. Eligible Employers may treat health plan expenses allocable to the applicable periods as qualified wages even if the

employees are not working and the Eligible Employer does not pay the employees any wages for the time they are not working.

Example 1: Employer Y averaged 100 or fewer employees in 2019. Employer Y is subject to a governmental order that partially suspends the operation of its trade or business. In response to the governmental order, Employer Y reduces all employees' hours by 50 percent. It pays wages to the employees only for the time the employees are providing services, but Employer Y continues to provide the employees with full health care coverage. Employer Y's health plan expenses allocable to wages paid during the period its operations were partially suspended may be treated as qualified wages for purposes of the Employee Retention Credit.

Example 2: Employer Z averaged 100 or fewer employees in 2019. Employer Z is subject to a governmental order that suspends the operation of its trade or business. In response to the governmental order, Employer Z lays off or furloughs all of its employees. It does not pay wages to its employees for the time they are laid off or furloughed and not working, but it continues the employees' health care coverage. Employer Z's health plan expenses allocable to the period its operations were partially suspended may be treated as qualified wages for purposes of the Employee Retention Credit.

65. May an Eligible Employer that averaged more than 100 full-time employees in 2019 treat its health plan expenses as qualified wages for purposes of the Employee Retention Credit? (updated May 7, 2020)

Yes. An Eligible Employer that averaged more than 100 full-time employees in 2019 may treat its health plan expenses paid or incurred, after March 12, 2020, and before January 1, 2021, allocable to the time that the employees are not providing services during any period in a calendar quarter in which the employer's business operations are fully or partially suspended due to a governmental order or a calendar quarter in which the employer experiences a significant decline in gross receipts as qualified wages, subject to the maximum of \$10,000 per employee for all calendar quarters for all qualified wages. However, an Eligible Employer may not treat health plan expenses allocable to the time for which the employees are receiving wages for providing services as qualified wages; only the portion of health plan expenses allocable to the time that the employees are not providing services are treated as qualified wages.

Example 1: Employer A averaged more than 100 full-time employees in 2019. Employer A is subject to a governmental order that partially suspends the operation

of its trade or business. In response to the governmental order, Employer A reduces all employees' hours by 50 percent and pays wages to its employees only for the time that the employees are providing services, but Employer A continues to provide the employees with full health care coverage. Employer A's health plan expenses allocable to the time that employees are not providing services may be treated as qualified wages. However, Employer A may not treat health plan expenses allocable to the time for which the employees are receiving wages for providing services as qualified wages.

Example 2: Employer B averaged more than 100 full-time employees in 2019. Employer B is subject to a governmental order that partially suspends the operations of its trade or business. In response to the governmental order, Employer B reduces its employees' hours by 50 percent, but it reduces its employees' wages by only 40 percent, so that the employees receive 60 percent of their wages for 50 percent of their normal hours. Employer B continues to cover 100 percent of the employees' health plan expenses. In this case, Employer X may treat as qualified wages: (i) the 10 percent of the wages that it pays employees for time the employees are not providing services, plus (ii) 50 percent of the health plan expenses, because the health plan expenses are allocable to the time that employees were not providing services.

Example 3: Employer C is subject to a governmental order that fully suspends the operations of its trade or business. Employer C lays off or furloughs its employees and does not pay wages to the employees but does continue to cover 100 percent of the employees' health plan expenses. In this case, Employer C may treat as qualified wages the health plan expenses that are allocable to the time that the employees are not providing services.

4. Latest Congressional Action on the Next Coronavirus Relief Package "CARES 2"

The House is still planning to return next week and may vote on its version of a new coronavirus rescue bill on Thursday. As of today, details on the Democrats' relief bill have not been released. Democratic Leaders have given their members until today to submit their views and ideas, and the earliest release of a draft bill isn't expected until Monday.

Speaker Pelosi indicated the expansive coronavirus relief plan House Democrats are drawing up could be a starting point in negotiations with Republicans whose support will

be needed to get a bill to President Trump's desk. She said her message to Republicans on the negotiations is, "Don't draw any lines in the sand. We're not."

Moderate Democrats want a smaller bill and are more sympathetic to Republican demands for liability protections for businesses and to limit unemployment insurance once state economies re-open to encourage a return to work.

The House will also likely vote next week on changing the rules to let Members cast proxy votes for absent colleagues as the coronavirus pandemic continues.

5. Latest on Liability Protections for Businesses

Next Tuesday, the Senate Judiciary Committee, led by Chairman Lindsay Graham, will be holding a hearing titled, "Examining Liability During the COVID-19 Pandemic." Details regarding the hearing have not been released as of today. We will provide you with more details when we learn more.

To view the hearing webpage for reference, go to:

<https://www.judiciary.senate.gov/meetings/examining-liability-during-the-covid-19-pandemic>

Additionally, a new Coronavirus Liability Coalition is forming, in which NAW will participate, to focus on and advocate for the various liability reform proposals coming out of Congress. We will update you with more information as this new coalition develops.

Yesterday, Marc Thiessen with the Washington Post, wrote an opinion piece regarding the need to protect re-opened businesses from a lawsuit pandemic.

Marc writes, "As we restart the economy, U.S. businesses that survive the novel coronavirus pandemic could now face a lawsuit pandemic. That is why Senate Majority Leader Mitch McConnell (R-Ky.) is insisting that any further covid-19 relief legislation include liability protections for U.S. businesses. House Speaker Nancy Pelosi (D-Calif.) calls that 'disgraceful.' No, what is disgraceful would be to leave already battered U.S. businesses exposed to legions of overzealous trial lawyers who are champing at the bit to file frivolous lawsuits."

To read the full article, go to:

<https://www.naw.org/wp-content/uploads/2020/05/WashPostMay7.pdf>

6. Latest on Re-Opening the Economy

With state and local governments gearing back up to re-open the economy, many employers are seeking answers to the challenging issues they will face as they resume their business operations amidst COVID-19.

State and Local Tax Issues:

Grant Thornton has prepared a detailed analysis of state and local tax issues in the current economic crisis. While NAW does not lobby state or local governments, we thought the Grant Thornton analysis – State and Local Tax Alert (Initial State Income Tax Responses to the CARES Act) – would be of interest to you.

To view the report, go to:

<https://www.naw.org/wp-content/uploads/2020/05/GT-Tax-Alert.pdf>

Stateside Associates publishes a daily report about State and Local Government responses to the evolving situation. Some of the new developments in today's report include:

- **California** Governor Gavin Newsom (D) has issued an order that creates a time-limited rebuttable presumption for accessing workers' compensation benefits applicable to Californians who must work outside of their homes during the stay at home order.
- **Maine** Governor Janet Mills (D) has issued an order establishing the Economic Recovery Committee.
- **South Carolina** Governor Henry McMaster (R) has issued an order removing the Stay at Home policies issued in EO 2020-21. These restrictions will become voluntary on May 4.

The *ReedSmith Law Firm* published its latest update on the evolving COVID-19 pandemic.

- **Pennsylvania's** governor issues additional requirements for businesses currently authorized to be open.

To read the full article, go to:

https://www.employmentlawwatch.com/2020/05/articles/employment-us/pennsylvanias-governor-issues-additional-requirements-for-businesses-currently-authorized-to-be-open/?utm_source=Reed+Smith+-+Employment+Law+Watch&utm_campaign=cf692700e8-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_b40554bd20-cf692700e8-78816497

We are also providing a link to a spreadsheet that includes state and local COVID-19 response information provided by *MultiState Associates*.

- COVID-19: What Will “Reopening” of State Economies Look Like?
<https://www.multistate.us/insider/2020/4/22/covid-19-what-will-reopening-of-state-economies-look-like>
- To view their spreadsheet, go to:
https://docs.google.com/spreadsheets/d/e/2PACX-1vRIJWZJ7OkGUW57_rdA2n3xBJ3qjW6u4Z9N6K9Y5L4bM_6H7-S308qdKmJfpVstYWf300nyujvZPFsy/pubhtml?urp=gmail_link

May 28 NAW Webinar on Economic Outlook:

We are partnering with NAW senior economic advisor Alan Beaulieu to produce a second critical economic forecast webinar. This webinar, “Distribution Post COVID-19 Outlook,” will run Thursday, May 28, from 3:00 to 4:30 PM EDT. Seats are limited, so if you are interested, please purchase your seat today at:
www.naw.org/distribution-post-covid-19

[Click here](#) for links to Critical Updates sent previously.

Many thanks—

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