



Attorneys at Law

COVID-19 UPDATE

COVID-19 Pandemic: The CARES Act – Payroll Protection Program

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In an effort to reduce the spread of the COVID-19 virus, on March 23, 2020, the Governor of the State of Hawaii issued a proclamation that requires all persons in the State to remain at home or at their place of residence starting on March 25 and continuing until April 30, 2020. Earlier proclamations by the Mayors of various counties, including Mayor Kirk Caldwell of the City and County of Honolulu, issued similar work-from-home mandates and closed restaurants, bars, and many other places of business. The resulting shut-down and closure of all but those companies conducting what is defined as Essential Business, has resulted in significant financial hardship for many (if not all) businesses in Hawaii, from retail to manufacturing, restaurants to processing, and industrial to professional services. In response, the Federal Government passed the CARES Act which includes various forms of financial relief intended to help bolster the economy and assist the American people and businesses most affected by the COVID-19 pandemic. This is a summary explanation of the Payroll Protection Plan, which is one of the forms of financial relief available under the CARES Act.

Background:

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and shortly thereafter, President Trump signed the CARES Act into law to help rescue the suffering United States economy. Among other things, the CARES Act provides for financial assistance to qualified businesses through loan programs overseen by the Small Business Administration (“SBA”). One such loan is the Paycheck Protection Program (“Program”).

The Program provides funds through government supported loans to offer a direct incentive to employers to keep their workers on payroll. Subject to Program conditions, the SBA will forgive loans if all employees are kept on payroll for eight weeks and loan proceeds are used for payroll costs and other eligible business expenses. SBA lenders will begin accepting loan applications on April 3, 2020.

Who can apply:

The Program is for small businesses with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), certain non-profit organizations, and veterans organizations affected by coronavirus/COVID-19. Other businesses in qualified industries (based on North American Industry Classification System) may be permitted notwithstanding having more than 500 employees if they meet SBA size standards for those industries. Small businesses in the hospitality and food industry with more than one location could also be eligible at the store level if such store employs less than 500 workers.

How to apply:

Loan applications are accepted through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating in the Program. Contact your local bank or credit union to see if they are participating in the Program and for more information on application requirements.

Loan Amount and Information:

The maximum loan size is 2.5 times the average monthly payroll costs for the one-year period before the loan is made (eligible employee compensation will be capped at \$100,000 per employee). If the business was not operating at this time last year, the maximum loan is equal to 2.5 times the average monthly payroll costs between January 1, 2020, and February 29, 2020. The maximum loan amount is \$10 million. No collateral requirements or personal guarantees are necessary to qualify for loans under the Program. Neither the SBA nor the lenders will charge origination or prepayment fees.

Use of Loan Funds:

Subject to Program guidelines, loan funds must be used for payroll costs, mortgage loan interest (but not payment or prepayment of principal), rent, utilities, and interest on certain debt incurred before February 15, 2020. Payroll costs include salary, wage, commission, or similar provision; payments for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payments required for the provisions of group health care benefits including insurance premiums, payment of any retirement benefit; or payment of State or local tax assessed on the compensation of employees.

Loan Forgiveness:

Borrowers can apply to their lender for loan forgiveness for loan proceeds used in accordance with Program requirements. Keeping complete and accurate records is an essential part of seeking loan forgiveness. Borrowers applying for loan forgiveness under the Program will need to provide:

- (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the applicable periods, including payroll tax filings reported to

the Internal Revenue Service; and State income, payroll, and unemployment insurance filings;

- (2) documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- (3) certification that the documentation presented is true and correct; and the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- (4) other documentation the SBA determines necessary.

Other Information:

If your business has been struggling over the past month from the multitude of negative economic impacts of the COVID-19 pandemic, do not hesitate—contact your local lender. Hawaii lenders will have online applications available for loans under the Program. Participating in the Program not only provides your business with a loan that may be partly or wholly forgiven, but it also gives Hawaii workers the chance to stay employed and continue to support themselves and their families.

The Program is just one of the many government programs available to provide assistance to Hawaii businesses impacted by the COVID-19 outbreak. For more information on the COVID-19 programs available from the SBA, including the Economic Injury Disaster Loans and Emergency Grants, visit the SBA’s website at <https://www.sba.gov/>. For more information about the CARES Act and other COVID-19 government assistance programs, visit the U.S. Department of the Treasury’s website at <https://home.treasury.gov/>.

Craig P. Wagnild is a partner at Bays Lung Rose Holma and serves as chair of the firm’s Transactional Law Department. He concentrates his practice in business entities and corporate law, real estate transactions, commercial leasing, real estate development, real estate finance, general business, and international business transactions. Mr. Wagnild also assists clients in structuring and forming limited liability companies and other business entities as well as mergers and acquisitions transactions. He was recognized in *Best Lawyers*® as the 2014 Lawyer of the Year for Business Organizations (including LLCs and Partnerships) and has been repeatedly recognized in the areas of business organizations and real estate law. He is a member of the American Bar Association, the Hawaii State Bar Association, the Japan-America Society of Hawaii, and the Washington State Bar Association. Mr. Wagnild served as the 2013 president of the Hawaii State Bar Association, and current serves as the Treasurer of the Hawaii State Bar Foundation. He regularly writes and speaks on the topics of real estate and business law.

Michael R. Kirgan is an associate attorney at Bays Lung Rose Holma. He concentrates his practice in areas of business, corporate, and real estate law. Mr. Kirgan has experience in all areas of real estate purchase and sale transactions, real estate and commercial financing, corporate governance and compliance, mergers and acquisitions, commercial and residential leases, tenant evictions, complex commercial contracts, and general business transactions. Mr. Kirgan assists clients with practical legal advice and efficient legal services to allow clients to minimize risk while engaging in productive business transactions.

Bays Lung Rose Holma is a civil litigation and commercial transactions law firm located in Honolulu, Hawaii and specializing in real estate, construction, business law, commercial financing, and employment law. As an identified Essential Business, BLRH attorneys are available to advise and assist clients, including property owners and their property managers, at any time during and throughout the COVID-19 crisis. BLRH can be reached at (808) 523-9000 with calls directed to someone who can assist you, or via e-mail at mail@legalthawaii.com. In addition, a listing of our attorneys along with their telephone numbers and email addresses is available at www.legalthawaii.com.