

March 30, 2020

LEGAL ALERT

Considering Paycheck Protection Loans Under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”)

As discussed in our previous Legal Alert, the CARES Act (referred to below as the “Act”), as passed on March 27, 2020, expands the scope of the Small Business Act to provide Paycheck Protection Loans that may be extended to qualifying businesses of up to 500 employees in an amount equal to 2.5 times their monthly payroll, up to \$10,000,000. Further, such Paycheck Protection Loans can be forgiven upon certification that the funds received are used for certain qualified expenses, including payroll costs (subject to certain limitations on employees earning more than \$100,000), interest payments on secured debts, rent, and utility payments, subject to the application of a formula taking into account the number of qualifying employees remaining on the company’s payroll and the employees’ wages.

Mallor Grodner is advising all of its clients employing 500 or less, as well as sole proprietors, independent contractors, and self-employed individuals, to strongly consider how a forgivable Paycheck Protection Loan could benefit them. The Act provides that qualifying recipients must certify only “that the uncertainty of current economic conditions makes necessary the loan request to support [their] ongoing operations.” Except in uncommon circumstances where a business is poised to experience obvious growth as a result of the pandemic, businesses facing “uncertainty” should qualify for relief. The total forgiveness amount is tied to the use of the Paycheck Protection Loan for qualifying payroll costs, interest on qualifying secured debt obligations or rent obligations, and qualifying utility payments, but does not appear subject to reduction merely because a business has additional cash to use in other facets of its operations after using the Paycheck Protection Loan proceeds on qualifying expenses.

Loan forgiveness is tied to formulas related to the maintenance of certain payroll numbers when compared with prior periods, and maintenance of certain salary levels for employees. There is, however, an additional exception to this formula to reward employers that, by June 30, 2020, rehire employees let go between February 15, 2020 and April 26, 2020, and restore certain reduced wages.

While employers should review and understand these formulas and their application to their business, employers will also need to be aware of regulations and other forthcoming guidance regarding the interpretation of these formulas and other provisions of the Act. Our attorneys are available to discuss such issues with you. Mallor Grodner recommends employers consider seeking a Paycheck Protection Loan if eligible.

Please note this summary does not constitute legal or tax advice, and additional governmental regulation could significantly alter the manner in which this program is applied. If you would like to better understand how a Paycheck Protection Loan might impact your situation, we would be happy to schedule a call for further discussion.