Below is a compilation of frequent questions about the government programs offering financial support to nonprofits, as created by the Coronavirus Assistance Relief and Economic Security (CARES) Act and the Families First Coronavirus Response Act (FFCRA). We will update them as we receive new guidance and see issues of concern. Check back often.

EMPLOYMENT ISSUES
Responses prepared by Sarah Kissel, Scholz Nonprofit Law

1. Question: What is the difference between laying off employees and furloughing them?

   Answer: Before COVID-19, these terms were often used interchangeably. How these terms are being used during this pandemic are described as follows:

   A **Lay off** equates to a final/permanent termination. This may trigger paying out PTO and/or severance depending on the organization’s policies (assuming the organization is still following their policies on such matters) and would discontinue any employee benefits (such as health care insurance coverage). The organization would remove the individual from the payroll, give the employee a termination letter, and advise on COBRA for continuity of insurance coverage.

   A **Furlough** (sometimes referred to as a “temporary layoff”) generally refers to a period of time in which the employee’s hours and wage are reduced (possibly to zero), with the intention to reinstate to full employment after the period passes. The employee remains on the payroll and may remain eligible for benefits.

   If the hope is to rehire the employee at a later time, it is recommended to furlough your employees. This will not impact their eligibility for unemployment insurance benefits. Further it communicates the employer’s intention to reinstate and reduces hiring costs or retraining when rehire become possible. Should the employer later discover it cannot reinstate furloughed employees, the employer can then communicate the change from furlough to termination and take all necessary steps for a termination at that time.

   The employer should communicate clearly with the employee about the status and how it impacts the employee. Advise on application for UI benefits and health care coverage if the employer is not providing during a furlough.
2. **Question:** If we laid off individuals temporarily, then we apply for a PPP loan, we just need to hire back our employees by June 20th for forgiveness?

**Answer:** Borrower must apply for PPP before June 30, 2020. PPP proceeds may be used for (i) “Payroll Costs,” (same definition as used for eligibility), (ii) mortgage interest payments, (iii) rent, (iv) utilities, (v) interest on debt incurred before February 20 and/or (vi) refinancing a recent EIDL loan ... **but** ... if Borrower wants the PPP loan to be forgiven, then 75% of loan proceeds must be used on “Payroll Costs” (presumably to rehire or retain workers) within 8 weeks after the date the loan is funded.

3. **Question:** Any guidance for self-employed people as to when they can receive unemployment benefits from WI would be helpful.

**Answer:** Self-employed people may receive unemployment benefits under the Pandemic Unemployment Assistance (PUA) created by §2102 of the CARES Act. While it is federally funded, application is through the state. For those working in Wisconsin, this is through the Unemployment Insurance division of the Department of Workforce Development (DWD). The DWD has announced that they will begin taking applications for PUA on April 21, 2020. Apply as soon as you are eligible, or on April 21, on their website.

For those receiving any UI benefits (PUA or other), you are also eligible for the Federal Pandemic Unemployment Compensation (FPUC) which should begin in Wisconsin on April 26, 2020. You do not need to apply for this, you will be automatically enrolled if you are receiving UI benefits. (See Questions 9 & 10 below for more on FPUC.)

4. **Question:** How do you track staff reduced hours to report to DWD for Unemployment Insurance (UI) benefit applications?

**Answer:** To clarify, if you are a **Covered Employer** for UI purposes and a partially or fully unemployed individual who has worked for you files an application for UI, the UI division will request information about the change to the wages and hours of the individual applying for UI benefits. You must respond to that Separation Notice or UCB-16.

Additionally, any decrease in wages must be reported in your Organization’s quarterly wage report to the DWD or in a Wage Record Correction or Wage Adjustment Report.

5. **Question:** Can we redefine full time to be 32 hours a week to keep everyone whole financially but free up some of their time to deal with the challenges at home?

**Answer:** Yes, absolutely. You will want to make a temporary policy change as to how you define full time. Also, review your policies/handbook so that there is no confusion on how benefits are received (e.g., accrual of PTO during this time). Explain the impact of this change in the written notice of this temporary policy and invite questions as they arise.

When making temporary deviations to regular policies, here are some recommendations:
Implement evenly among the staff when possible. It eases explanation and eliminates any concern of discrimination or favoritism.
(b) Consult your Board to the greatest extent possible.
(c) Share the new/temporary policy in writing as soon as is practicable.
(d) Note that the change is in response to COVID-19 and will be subject to future change as well.

6. **Question**: Is there any way to reduce exempt (salaried) employees’ salaries without violating state or federal laws?

**Answer**: Yes (more below), however, as an alternative, consider mandatory use of PTO, reducing the accrued leave or running a negative leave balance.

An employer can reduce an exempt employee’s salary if it is consistent with the Fair Labor Standards Act (FLSA) and certain requirements are met:

(a) Reduction is on a prospective basis;
(b) Notice is communicated to affected staff prior to implementation;
(c) The reduction does not equate to less than $684/week in salary (the minimum for exempt employees); and
(d) The changes do not impact the employee’s job duties in such a way that they no longer meet the criteria required for exempt employees.

For further guidance on the reduction in salary for an exempt employee due to economic conditions, please consult the Wage and Hour Division’s Fact Sheet #70.

An exception to this is employers who have an approved Work-Share Plan. See more in Question 7 below.

7. **Question**: Is there a “partial unemployment” benefit where an employee can get a partial salary and partial unemployment benefits?

**Answer**: Yes, Wisconsin allows for partial unemployment insurance if the employee meets the eligibility criteria. If your organization cuts the hours of a nonexempt employee and pays them less, please advise your affected staff to file for UI with the state. Here is a calculator for partial UI to factor the amount of UI they may receive.

Should your organization need to reduce all staff levels 10-5060%, please review the criteria for Wisconsin’s Work-Share Plan. This is another way for employees to receive partial UI benefits when their hours/wages are reduced. Currently the UI under this program is up to 100% federally funded. Wisconsin Act 185, enacted on April 15, has expanded the availability of this program to most employers and for nonexempt employees to participate in a Work-Share Plan. For more, see the updated DWD Work-Share Fact Sheet or our blog post on this option for employers.
NOTE: If an employee receives $1/week of UI of any kind, they are eligible for the FPUC benefit as well (an additional $600/week in UI). See more on FPUC below at #9 & 10.

Additionally, employers cannot apply these same steps to Exempt employees. See Question #6, above, for reducing Exempt employees’ salary.

8. Question: If we lay people off, can they volunteer their time to do all or some of their job.
We wouldn’t require them to do that, but some of our people have already indicated they’re going to continue doing their job.

Answer: First, I would advise that no nonexempt employee ever “volunteer” or perform their regular work duties for their employer without recording their hours and being paid. The ramifications for wage theft are steep and the wage and hour division of the Department of Labor takes this very seriously.

However, where there is no longer an employment relationship, there is nothing per se violative of a nonemployee volunteering their time to help an organization.

If the employer were to engage in this relationship with the ex-employee, they should communicate consistently verbally and in writing that the volunteer is giving their time for no compensation—or promise of future compensation—of any form whatsoever. There should be no suggestion of any kind that any amount of volunteer service will translate into their return as an employee at some point.

As always with volunteers, review your liability insurance to confirm volunteers are covered when performing services for the benefit of the organization.

9. Question: Wondering if the federal enhancement of $600/week will allow some employees to make more on UI?

Answer: Yes. It is widely acknowledged that the CARES Act provides some recipients with a higher weekly compensation through UI than they normally receive in their wages.

The $600 was intended to be the amount that would—on top of the amount of traditional UI—bring the average recipient’s UI closest to their regular amount of wages. Some recipients will receive less than their regular wages, some will receive more.

10. Question: With the $600/week federal add-on to unemployment, why would any laid-off employee want to come back to work before July 31st – the ending date of that benefit (currently)?

Answer: For those employees that are receiving more weekly income under the enhanced temporary UI compared to their usual wages (see # 9 above), they may feel reluctant to return to work. A wise employer will assess the employees’ financial positions and weigh it
with all other factors, most importantly the long-term wellbeing of the organization, as the employer decides when to bring back employees.

This time of enhanced UI will end. When it does, most employees will value having a job over enjoying a “free ride” while it lasted. In particular, employees who work in the nonprofit sector have a strong sense of loyalty and duty to their organization and its mission.

In multiple advisories in early May (see UIPL 20-20 and UIPL 21-20), the DOL clarifies that refusing work without good cause to obtain any kind of UI benefits is fraud. The DOL further advises that individuals are only entitled to benefits if they are (a) no longer working through no fault of their own and (b) are able and available to work.

Wisconsin’s DWD has updated their Employer Q&A to include guidance when employees decide not to return to work when the business reopens, including providing help center contacts to report employees who are receiving UI fraudulently. If an employee continues to file for UI when refusing work without good cause or receiving unreported wages, we recommend requesting the employee file an amended report. Additionally, remind employees that committing UI fraud will require repayment of benefits and future UI ineligibility.

11. Question: How will my organization be expected to cover Unemployment Insurance benefits for employees that are laid off or furloughed during COVID-19?

Answer: In Wisconsin, nonprofit employers fall into different groups for UI purposes.

- Nonprofits that employ 3 or less employees or are religious organizations are not Covered Entities for Unemployment Insurance (UI) and do not incur UI tax liability.
- “Contributory Employers” pay UI taxes quarterly into an account that is deducted when an individual receives UI stemming from their employment relationship. The DWD assesses the amounts due by these employers based on overall wage reporting and the employer’s UI account’s use toward benefits.
- “Reimbursable Employers” elect to self-insure. Instead of contributing quarterly to an account, they hold the funds that may be subject to UI benefit funding. Should an employee receive UI benefits stemming from their employment relationship, the DWD pays the UI recipient and charges the Reimbursable Employer dollar-for-dollar for the benefits used.

COVID-19 has not altered this UI liability for nonprofits. Pursuant to Wisconsin Act 72, any UI claims paid for weeks between March 12 and December 31, 2020 AND is determined to be related to COVID-19 will NOT be charged to an employer’s UI account. Instead, these amounts will be charged to the state’s balancing account. So contributory employers will have no negative impact of UI benefits under these circumstances.

However, The CARES Act will fund 50% of Reimbursable Employers for their UI costs during this time. In DOL guidance, a Reimbursable Employer must pay 100% of these benefit costs initially before the state can file for reimbursement provided by CARES. Upon receiving these funds, the state will reimburse employers by 50%.
Additionally, the CARES Act creates greater eligibility for UI and increases all UI benefits by $600/week. (See more under PUA, PEUC and FPUC), however, this is all federally funded and will NOT impact a nonprofit’s UI costs.

12. Question: What is the appropriate handing of a situation where an employee’s roommate is being deployed by the National Guard: The National Guard member was told to quarantine for 14 days after their return. Does our employee also need to self-quarantine, too?

Answer This is in a greyer area than some situations. Here are some approaches to best handle this:

First, if your organization has under 500 employees, consider whether the Families First Coronavirus Response Act (FFCRA) applies:

- Does the National Guard order address the expectations of those housed with the quarantined National Guard member? If so, this may qualify for up to two weeks (80 hours) of federally funded paid leave pursuant to FFCRA under the “quarantined pursuant to government order” criterium.
- If not, would the employee’s doctor advise the employee to quarantine during the roommate’s quarantine? This too would qualify for FFCRA leave.

For recording keeping requirements, please review question 15 of the DOL’s FFCRA Questions and Answers resource.

Second, if FFCRA does not apply to this situation, the employer could permit the employee to take a 14-day leave (paid or unpaid) concurrent with the roommate’s quarantine time or advise the employee to find alternative housing during the quarantine period.

13. Question: What are the pros and cons of laying people off vs. shrinking hours across the team?

Answer: So much of this depends on the particular organization and how the workload is impacted by COVID-19. Additionally, consider the individual employees, both their job duties for the organization and their personal circumstances. For example, an employee whose needs to tend to a family member may appreciate being furloughed and receiving UI benefits while s/he tends to personal matters.

Aside from these specifics, here are the generalities to be considered. If you implement any decrease in wages (laying off individuals and/or shrinking workload universally), the organization may be responsible for UI. (See Question #11 for UI impact on nonprofits.)

Generally, decreasing hours evenly among the team could be the best option if your organization participated in Wisconsin’s Work-Share Program (see more on this in Question #7). The benefits to this program at this time are profound: The employer may receive up to $5000 per employee under the Employee Retention Tax Credit and the UI paid under the program is federally funded through the end of 2020. The employee receives wages for hours worked, UI for the reduction in hours/wages and an additional $600/week in FPUC.
14. Question: Can I lay people off and still keep covering their health insurance for a few months or do I have to punt to COBRA?

**Answer:** If you can continue to cover employees’ health insurance benefits, please do. Even if there’s insufficient work for employees and/or the organization cannot afford to pay wages at this time, paying for health insurance is incredibly beneficial. If there was ever a time that people need their health insurance, it is during a pandemic!

Instead of laying these employees off, instead furlough them to a zero-hour status with no wages for the foreseeable future (see question #1 for more on how furloughing works). Additionally, the money the organization contributes toward health insurance benefit costs may be partially refunded through the Employee Retention Tax Credit.

15. Question: If our organization decides to furlough employees, but continue insurance coverage during the furlough, how should we handle the employee-side contribution toward those costs when there are no wages to deduct it from?

**Answer:** There are three options as to how to handle this:

(a) Waive employee portion during furlough--if financially feasible;
(b) Have the employee pay their contribution directly, post-tax (i.e., check, direct payment, or other outside the payroll process); or
(c) Defeer the employee contribution during the furlough.

If your organization chooses (c), be sure that the organization can afford to do this for all impacted employees and create a statement signed by the employee acknowledging their ultimate responsibility for their employee contribution. This statement should define how the payback would occur post-furlough or, alternatively, how the employee will be responsible for 100% of what is due within 30 days of their termination, voluntary or otherwise. Best practice would include providing statements of the employee contribution amounts to keep the employee aware of the expense and the expectation of its repayment.

A word of caution for (c): Wisconsin employers are heavily regulated in making deductions from employees' paychecks. Wisconsin Stats Sect. 103.455 protects employees from having to bear the employer's "costs of operating a business." Be very clear that this amount does NOT fit into this category.

New questions as of 4/23:

16. Question: How do you prove/do you have to prove that your operations were suspended for the Employee Retention Tax Credit (ERTC)?

**Answer:** There is limited guidance on that so far. The Form 7200 does not request specifics regarding eligibility. And the IRS’s Q&A only addresses reduced income. We will be following this, but meanwhile, we suggest documenting how your operations have been fully
or partially suspended and/or your quarterly gross revenues have diminished 50% for Q2 compared with 2019 Q2. As a general rule, applying for a credit in good faith will not result in punitive action from the IRS (unlike hiding income).

17. Question: If you have received a PPP loan, do you have to wait for the 8-week period until you can apply for the DWD Work-Share plan?

Answer: You can apply for a work-share plan at any time. Unlike the PPP’s 8-week window for loan forgiveness, you may indicate the start date of your Work-share plan when you apply. You may choose to implement the plan during the 8 weeks of PPP, although it may affect your loan forgiveness by decreasing wages.

Pro-Tip: Apply for the Work-Share plan now using form UCT-17434-E (application is on DWD Website) are available and list your plan’s proposed effective start date to be immediately after the PPP’s 8-week window ends.

18. Question: Staff remaining had to take a 5% decrease in salary—are they eligible for unemployment?

Answer: Assuming these are exempt employees and the reduction did not go below the exempt employee salary threshold of $684/week, no. However, partial UI is available to anyone who is otherwise eligible and earns less than $500 in a week. (Note: Work-share programs are exempt from this $500 minimum.)

19. Question: Is an organization eligible for ERTC if it’s received PPP?

Answer: No. At this point, the guidance is that it is firmly either ERTC or PPP loan forgiveness, not both.

20. Question: If you receive a PPP loan and payroll isn’t reduced until after June 30, then can a company use it without diminishing forgiveness?

Answer: Maintaining payroll as described in PPP materials for the 8 weeks following receipt of loan money is the key to maximizing loan forgiveness.

21. Question: We are trying to decide between the PPP and ERTC since we temporarily furloughed some of our staff but plan to bring them back. Any idea who would be the best people to talk to, to get feedback on the best strategy?

Answer: This is a question that depends heavily on your organization’s total budget during this time. We highly recommend requesting help from your accountant, consultant or attorney.

22. Question: In the scenario related to seasonal employees, is there a minimum age of the employees? If they are under age 18 for example?
**Answer:** Technically, minors can receive UI benefits, however, it’s rare as they typically have insufficient work history (working limited hours during the school year). It is possible. They should apply for PUA through Wisconsin’s DWD, and follow the guidelines that require data on total employee pay history over the previous year for computation.

23. **Question:** What are the FFCRA poster requirements Sarah mentioned at the beginning of her talk?

**Answer:** I’ve added this link to the last slide in the 4/21 presentation and it’s here. This is even more timely now as the initial temporary non-enforcement period just ended. If you haven’t already shared the poster with your employees (and you have less than 500 employees), you must do this immediately to remain compliant with this law.

**New questions as of 5/1:**

24. **Question:** If an employee is retiring shortly after the PPP loan’s 8-week window, can you pre-pay their accrued vacation pay out?

**Answer:** Probably not. While vacation pay is listed as a payroll cost for calculating loan forgiveness, guidance on the CARES Act specifies these should be “costs incurred and payments made” during the 8 weeks.

However, separation or dismissal pay is also listed as a payroll cost. If the employee’s retirement occurred within the 8-week window, then this would fit as a listed payroll cost that was incurred (at retirement) and paid during the 8-week window.

25. **Question:** If we have hourly staff that are not working now, can we pay them with PPP even if they don't work? Do we call this "bonus" rather than wages?

**Answer:** Yes, you can and should pay them even if there is no work for them to do. This was not in the intention of the PPP loan, but it can be a reality. You should categorize this pay as wages and the payments should closely reflect the wages they would have received under normal working conditions.

26. **Question:** Our organization received a PPP loan, however, we have employees that don’t want hours as they are receiving unemployment and the work that they could do is not urgent. Can we simply “pay them ahead” with the PPP funds? Or if I don’t, have I failed to keep the staff on payroll for PPP loan forgiveness?

**Answer:** UI benefits are currently very generous; it is understandable that many employees’ preferences would be to continue on UI and not return to work (see Question #10 for more on this). However, you must do what is in your organization’s best interests and that is maximize your PPP loan forgiveness, which means asking those employees to report back to work.
Generally, you should not deviate from your organization’s wage payment schedule. In this case, any wages paid to your employees receiving UI must be reported as income to the DWD which would alter their unemployment eligibility, including wages under PPP guidelines.

Additionally, because you have work for these employees (or at least wages), they no longer qualify for UI in Wisconsin as they must be (1) able and ready to work and (2) not have employment through no fault of their own. If these employees choose not to report to work but continue applying for UI as if they have no work, they would be committing fraud. Further, your organization must update the DWD as to changes in employees’ status while they are receiving UI. Therefore, this plan is not compliant with Wisconsin unemployment laws.

27. Question: Are there any negative implications for participating in the Work-Share Program and using the Employee Retention Tax Credit (ERTC)?

Answer: For eligible employers (no PPP loan) with 100 or fewer full-time employees, all employee wages qualify for the ERTC. Qualified wages include healthcare costs paid by the employer toward a group health plan.

Under a Work-Share plan, the organization is eligible for ERTC for all paid wages and eligible healthcare costs for the first $10,000 wages per employee (maximum credit of $5,000 per employee).

28. Question: Are we "bound" to the Work-Share plan if things change?

Answer: No. First, the employer may abandon the plan if it is no longer needed. To preserve potential work-share weeks for future use (which we highly recommend), the employer may terminate the plan before the end of the plan’s effective date by filing a notice with the DWD.

Second, if an employer wants to modify their plan, they may submit an application to modify to the DWD. If approved, the modification is effective immediately and for the remaining effective period of the plan.

Please note: The DWD can revoke the approval of a work-share plan for good cause, which includes “conduct that tends to defeat the purpose and effective operation of the plan, failure to comply with the [statutory] or plan requirements, or an unreasonable change to the productivity standards of the employees” in the plan. Wis. Stats. §108.062(5)

29. Question: I am still having a hard time getting a grasp on how the FFCRA’s two weeks of paid medical leave (+ potentially an additional 10) work for the businesses. Is it correct that businesses with less than 50 employees do not have to comply?

Answer: All employers with less than 500 employees are subject to the FFCRA notice requirements. All employers with less than 500 employees must provide the paid leave to
eligible employees in all cases except those that involve leave that relates to school closures or childcare unavailability.

An employer with less than 50 employees may be exempt from providing FFCRA leave only if (a) the reason for the requested leave is due to the employee’s child’s school closure or childcare unavailability AND (b) an authorized officer of the organization has determined that providing this leave would jeopardize the viability of the organization as a going concern for one of these reasons:

(i) the organization’s expenses and financial obligations would exceed available revenues and cause operations to cease at a minimal capacity;
(ii) the employee requesting leave has specific skills, knowledge, or responsibilities so vital that his/her absence “would entail a substantial risk to the financial health or operational capability” of the organization; or
(iii) there are not enough able, willing, or qualified and available workers to keep the organization operating at a minimal capacity.

30. Question: If an organization grants eligible FFCRA leave, how does this impact their PPP funding?

Answer: If the FFCRA leave occurs during the 8 weeks of the PPP loan, the FFCRA wages eligible for reimbursement cannot be accounted toward payroll costs in the loan forgiveness calculations. However, if the organization decides to pay the employee more than required under FFCRA (e.g., to offset any reduction in wages), this non-FFCRA pay may be included as payroll costs in the PPP loan forgiveness calculations.

For further clarification, the Treasury Department advises that the CARES Act “expressly excludes qualified sick and family leave wages for which a credit is allowed pursuant to FFCRA from PPP payroll costs.

New questions as of 5/14:

31. If returning employees were offered full-time summer employment before the safer-at-home order, and they are not actively on payroll (and have not been for the past 3 months), is there an obligation to include them on a work share plan or furlough? Is the same true for employees newly hired to the organization?

Answer: They are not eligible for a work-share program. Both groups that you describe are ineligible because they have not been employed by your organization for 3 months. The summer employees are seasonal employees and not permitted to participate in a work-share plan.

Those employees are eligible for underemployment under PUA, which will not affect the employer UI account.
32. Can employees apply for unemployment compensation before their work-share plan starts, so they are signed up by the start date?

**Answer:** No. They should wait for the program to be approved first. They will file an application under the approved plan.

33. What are the biggest differences if we furlough instead of implement a work share plan?

**Answer:** Briefly, if an organization uses furlough (vs. Work-Share "WS"), there’s greater flexibility in structure. The employer can choose 0-100% reduction in employee hours, maintain health and retirement benefits or not. Also, if the employer is a reimbursable employer, the organization would be required to pay 100% of UI benefits costs initially, to be reimbursed 50% by federal funds eventually.

If the employer opts for a WS plan, at least 2 employees must be in the plan, the employer must maintain health & retirement benefits and reduce hours between 10 and 60% of their normally scheduled work. All UI benefits through WS are federally funded through the end of 2020.

For the employees, they would receive less or no partial UI benefits under a traditional partial furlough vs. WS. (See more under #34.)

34. If we furlough to say, 50%, can the employee apply for 50% unemployment?

**Answer:** Yes. Under traditional UI, an employee may apply for UI benefits and may receive a partial UI amount depending on the amount of wages received and hours worked. (See partial UI calculator.) Employees who work 32 hours or earn $500 per week are ineligible for UI benefits.

Under WS, all employees receive UI. First, their maximum weekly benefit is computed based on 100% unemployed unemployment (use Weekly Benefit Calculator in link provided above). In WI, this is a maximum of $370/week. Then the employee receives that amount proportionate to the hours reduced. So, if an employee was eligible for that maximum benefit of $370 if totally unemployed, at 50% reduction the employee would receive $185 in benefits plus 50% of their regular compensation.

35. Our vacation time accrual period ends 9/31/20 and doesn’t roll over. Do we encourage people to take vacation time now, and how would that work if they’re furloughed?

**Answer:** These are unique times. If an organization finds it best to unilaterally suspend or temporarily change policies such as this, it can and should. Be sure to apply in an equitable method and implement universally. For more guidelines, review Question #5 above.
New questions as of 5/21:

36. Could we be held responsible for our customers, guests, or visitors becoming sick by coming to our place of business?

**Answer:** It’s possible. And, unfortunately, no one can guarantee that anyone is 100% protected from contracting COVID-19 if they are interacting with others and/or touching surfaces that other may have recently touched.

Having a clear, thoughtful re-opening policy that is responsive to government guidelines is a good step toward mitigating this risk. To further mitigate, we recommend providing a document (by email confirming appointment and/or sign at the door) before entrance to your premises communicating to customers, guests and visitors that—despite the precautions you are taking—there is risk involved in entering, and that by entering, they acknowledge this risk.

37. Would guidelines for high-risk employees be the same for volunteers who fall into that high-risk category?

**Answer:** In terms of how and when to call people back to the workplace, yes. However, there is much greater risk involved with the employees as an employment relationship creates obligations and protections not present with a volunteer.

38. Is there a document that explains the steps that go in the reopening policy regarding what to do if we find out that staff is infected?

**Answer:** Not a comprehensive checklist. Scholz Nonprofit Law is creating one now based on several sources’ guidance. This includes the CDC’s published guidance on immediate steps to close, clean and disinfect, determine which employees may be exposed. Organizations should also contact their local public health department and, if appropriate report the incidence to OSHA (see next question for more on accessing this).

39. Would all businesses need to report sicknesses linked to the workplace to OSHA? Childcare businesses too? We would already report to licensing and health department.

**Answer:** Because colds and flus are generally not OSHA-recordable illnesses, yes. The new policy requires all employers to report if the case is work-related as defined by 29 CFR 1904. The case is work-related if “an event or exposure in the work environment is either caused or contributed to the resulting condition.” Because it will be difficult to determine whether a case is work-related or due to community transmission, OSHA will require reporting from workplaces (other than healthcare, emergency response, and correctional institutions) where (1) there is objective evidence that it is work-related or (2) the evidence of this is readily available to the employer. Making such a report does not admit employer fault.

40. Our business is not really open, but we are allowing a few employees, for whom telework is not feasible, to go to the office. Management is not there regularly. Should we schedule a manager to be onsite at all times?
Answer: It depends. During the pandemic, it is best to limit the number of people in a workplace as much as possible. If these employees would otherwise be permitted to telework, they would not have a manager on the site. However, if there are concerns regarding safety or other considerations that make the manager’s presence outweigh limiting the number of people in the workplace, then assign a manager to be present.

41. If the employee declines to wear a mask but there is no way for them to do their job from home, can we replace them?

Answer: The employer should attempt to convince the employee of the need to wear the mask. Hopefully, the organization has a written policy on this that the employee has already received in writing and acknowledged receipt.

If the employee still refuses, determine if there is an underlying disability preventing the employee from wearing a mask. If so, follow the requirements of the ADA or Wisconsin’s Fair Employment Act and explore possible reasonable accommodations, such as reassignment of work duties, telework, or working at times where the workplace environment doesn’t require the use of a mask.

However, if the refusal is based on preference, this is an insufficient excuse and the employer may require the use of a mask as a condition of employment.

42. An employer has complied with all guidance in creating a reopening policy. If an employee, who is needed in the workplace and is medically vulnerable and/or elderly, will not report to work is the employer subject to a lawsuit if the employee is terminated for refusal?

Answer: It depends. In cases like these, we recommend using careful consideration and consulting with an HR or legal professional before terminating an employee. First, the employer should discuss what steps the employer could take to make the employee feel safe upon return, e.g., greater isolation physically or through staggered shifts. If none, consider reassigning the employee to work that can be done remotely. If this is not an option, I’d recommend reviewing if FFCRA leave is available or if the employee is eligible for unemployment insurance under the PUA. Again, confirm with an HR or legal professional before taking the action to lay off or terminate the employee.

NOTE: Employers are in a challenging time as they work with employees that are at higher risk due to age or medical vulnerability: they must take steps to safeguard those that fit into protected classes while balancing the need to steer the organization out of this economic crisis. Additionally, employers must use care not to prevent these employees from engagement in work as well-intentioned decisions could be nonetheless discriminatory. In order to avoid misunderstandings and exposure to liability, seek out and encourage honest discussions about barriers to participating at work and consult professional help early.

New questions as of 6/5:

43. What are options for continued compensation for employees who are exposed to or contracted COVID-19 and must self-quarantine?
**Answer:** First, use any FFCRA leave available as each employee is eligible for 2 weeks, up to 80 hours of expanded family and medical leave at the employee’s regular rate of pay in these instances. There is no work history requirement for the 2 weeks' leave.

If FFCRA is unavailable or exhausted, an employee is eligible for unemployment insurance benefits (PUA) if they "have been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 and are seeking a medical diagnosis."

Alternatively, consider if creating additional paid sick leave for employees is a possibility. I recommend this where the leave is prompted by a workplace exposure.

### 44. What is the protocol for when an employee listed on our work-share plan quits or is fired for reasons not related to the economic needs? Should the employer file a modified plan that notes this change?

**Answer:** [DWD Response] If an employee (or former employee) should be removed, the employer could remove that individual by emailing the DWD (taxnet@dwd.wisconsin.gov) and provide the plan number and the name of the individual to be removed. You would not need to submit a modification application to remove an individual(s).

### 45. Is an employee that works during the academic calendar (9-10 months of each year) eligible to join a work-share plan when their hours return in the fall?

This employee is eligible for a work-share plan and not categorized as an ineligible seasonal employee. Further, the employer defines the work unit for a plan application so if the employer has employees that would have their normal hours reduced, the employer could apply for that specific work unit.

### 46. If one or more employees on our work-share plan have increased hours due to need, does this jeopardize the work-share plan as it was based on equally reduced hours among all participants? Is it permitted periodically or not at all?

All employers should make a good faith effort to best represent their intentions for staffing in their work-share applications. Assuming this, and following all other requirements and striving to keep within the spirit of the program, i.e., to reduce hours evenly among participants, the plan should be secure.

[From DWD Response] Regarding impact on the employee with increased hours, if the reduction in hours stays within the 10-60% range, there shouldn't be an issue. If there is an employee(s) that has increased hours that return him/her/them to normal hours or under a 10% reduction in hours, they may not be eligible for benefits.

### 47. Is it acceptable to request all employees get tested before reopening?

**Answer:** Unfortunately, there is no standard. Required testing is permitted by the ADA, but all results are afforded confidentiality (as personal healthcare data). With all reopening policy, each organization must assess the risk involved by returning to the workplace, mitigate reasonably, and alter policy in response to changing data and knowledge. Also, all nonexempt employees must be paid for all time spent taking and waiting for tests.
Beware the false sense of security of a one-time test prior to returning to the workplace. Measures that widely recommended and should be used include: exposure to someone with COVID-19, travel outside locality, exposure to someone who has travelled, symptoms such as fever, cough, loss of smell, and temperature checks.

48. We are following state guidelines for our field and wondering about overlap and/or conflict with local/county guidelines.

**Answer:** Consult as many credible guidelines as possible. In this case, the state (in Wisconsin this is WEDC’s Reopening Guidelines) has far more comprehensive material to consult while creating policy. Alternatively, the metrics from the county/local level will be the most meaningful to your organization when monitoring to increase or decrease safeguards. When there is a conflict between state and local (or other governmental authority), consider which is more stringent and more applicable to your organization. Note your reason for opting in favor of one. In the absence of a central authority, organizations must do their best to create appropriate policy.

49. Do we need employees to sign something?

**Answer:** We recommend that employees receive the written policy, preferably with a training, and then sign an acknowledgement that they understand the policies and/or they have attended the training. Included with this should be an acknowledgement that, despite these policies and everyone’s best efforts, there is still a risk of exposure to anyone entering the workplace. Having a record of the employees’ receipt of this information is best practice.

We discourage having employees sign any liability waiver as these are not usually enforceable in court and can be ill-perceived as an avoidance of safeguarding the workplace.

50. Guidance for non-profits using a co-working space when reopening?

**Answer:** If the workspace is shared, the policies should be shared as well. Work together to create joint policies for all shared areas, equipment, and other considerations affecting more than one organization.

51. In childcare, camp or programs with children, should parents sign a form that they believe their child and their family to be COVID free daily?

**Answer:** A daily check-in as part of the start of each day is advisable; it need not be a signed form. While you should require that parents only bring children to attend when they believe their child and family to be COVID-free, the emphasis should be on an integrated screening performed thoroughly every day, with every child. Communicate this expectation as a condition of attendance in emails detailing attendance on a weekly or more frequent basis. Create a screening that prompts parents to answer this through one or more questions.
While Wisconsin’s Department of Children and Families does not require health screenings, DCF does encourage programs to institute one of the CDC’s recommended screening practices. Review these and create a screening practice that your organization can conduct daily.

52. Do our policies need to be revised due to COVID-19?

**Answer:** Possibly. Most handbooks explicitly preserve the employer’s right to change policy as needed. First, review your current policies and flag those policies that are complicated during this time. Be proactive in determining new temporary policies to fit with these times that are financially realistic, equitable, and can be consistently implemented. Be transparent with employees of these changes, explain the impact of the change in a written notice of temporary policy. These policies can remain until further notice. See question #5 earlier for more guidance on creating new policies during COVID-19.

53. Our employees’ hours are reduced during this time (on Work-Share Plan or individual partial reduction in hours). During this time, should we change how paid time off hours are accrued and used at the reduced percentage or at their full-time rate?

**Answer:** It depends and is really the organization’s choice to make. Review the PTO policy and see if what already exists to part-time employees seems appropriate for FTEs working reduced hours.

54. Our organization gives employees their annual allotment of vacation time on September 1 of each year and they must use it by August 31 or it is gone (“use-it-or-lose-it’ policy). Most employees will stand to lose a lot of vacation time as they have and will forgo vacations due to COVID-19. What should be do?

**Answer:** If nothing else, alert employees of how much accrued leave they have and remind them of the deadline to use it. Have a plan for how to have employees take the leave in a staggered schedule.

You can create a temporary carryover policy of one additional year or require the use of the PTO.

55. How will Daycare facilities need to revise policies?

**Answer:** From health screenings of employees and children (see Question #51, above) to mealtime and drop off and pick up procedures, ratios and use of space, organizations working with children will need to create thoughtful policy revisions. Consult the information available from the CDC, DCF and local guidelines for all policy considerations.

56. Can and should you use the PPP loan to pay off PTO accrual?

**Answer:** Yes, if there’s something that has triggered this through organizational policy. For example: an employee quits, it is your organization’s policy to pay out accrued PTO, and the payment falls within the time you measured for loan forgiveness.
Paycheck Protection Program (PPP) and Emergency Injury Disaster Loans (EIDL) – Comparison

- **What are the differences between the PPP and EIDL programs for nonprofits? Should we pursue one or both?** *Answer:* Borrowers may apply for both programs, as long as loan funds from different programs are not used for the same expense. PPP applications are made to local lenders. EIDL applications are made online, directly to the SBA. Generally, PPP loans are more suited to funding “Payroll Costs” to retain or rehire workers, and EIDL loans are more suited to funding other types of operating expenses. It is, of course, more complicated than that. See [PPP Checklist](#) under Resources or email Jeff Femrite at jfemrite@schol-nonprofitlaw.com with more specific questions.

- **Can you explain the relationship between the EIDL and the PPP? We just did the PPP but in case things get extended in the future, should we consider both?** *Answer:* PPP is a short term program, primarily designed to help borrower retain or re-hire workers for the next 8 weeks. Applications for PPP are made to local lenders. PPP is attractive because if loan proceeds are used correctly (75% of proceeds on “Payroll Costs” in 8 weeks after loan funding), then the loan is 100% forgivable. If borrower has longer term issues with funding (i) “Payroll Costs,” and/or (ii) other operational expenses, then an EIDL is a good option. First, EIDL allows borrower to borrow more money than PPP. Second, after PPP funds are expended in 8 weeks of “Payroll Costs,” EIDL funds can be used for ongoing “Payroll Costs.” Finally, EIDL is more flexible than PPP because EIDL proceeds can be used for more types of operational expenses than PPP proceeds. Part of the EIDL is a grant, that need not be repaid, even if the remainder of the EIDL is not approved. Borrower’s EIDL grant will be the lesser of (i) $10,000 or (ii) $1,000 x the number of borrower’s full time employees.

- **Are nonprofits allowed to apply for both the PPP and Economic Disaster Loans?** *Answer:* Yes, as long as proceeds from the different loan programs are used for different purposes. No “double dipping.”

- **PPP vs. EIDL: if your monthly wages are below $4000, is EIDL the best solution?** *Answer:* PPP is well suited for funding “Payroll Costs,” regardless of what borrower’s monthly wages are. PPP is a short term program, primarily designed to help borrower retain or re-hire workers for the next 8 weeks. PPP is attractive because if loan proceeds are used correctly (75% of proceeds on “Payroll Costs” in 8 weeks after loan funding), then the loan is 100% forgivable. If borrower has longer term issues funding (i) “Payroll Costs,” and/or (ii) other operational expenses, then an EIDL is a good option. First, EIDL allows borrower to borrow more money than PPP. Second, after PPP funds are expended on 8 weeks of “Payroll Costs,” EIDL funds can be used for ongoing “Payroll Costs.” Finally, EIDL is more flexible than PPP because EIDL proceeds can be used for more types of operational expenses than PPP proceeds.
The law says the “forgiveness” period starts on origination date which we assume is the date we signed the loan documents and the loan is funded. Do you think the government will require us to take down the loan immediately after it’s approved, or can we delay that date even if we have laid off employees? Answer: The “forgiveness calculation” is measured from the date of loan funding. In other words, once a PPP loan is funded, in order to secure 100% loan forgiveness, borrower must use 75% of loan proceeds on “Payroll Costs” in 8 weeks. Borrower’s should take down the loan ASAP because PPP is oversubscribed and borrowers who do not apply right away may not be funded.

If I file for both PPP and EIDL, and I use the PPP ONLY for payroll, and I only accept that part of EIDL that will be a grant, will both of those "loans" be forgiven? Answer: They should be.

Is there ways to still apply for grants- if so, where? How can my business still profit during this pandemic? Answer: Eligible borrowers can apply for forgivable loans under PPP until June 30 (but apply ASAP!). In addition, eligible borrowers may apply for EIDL, which offers favorable terms.

PPP

Are PPP loans need-based? Should we apply even if we’re probably ok without it? Answer: As part of the PPP application, borrowers are asked to certify “Current economic uncertainty makes this loan request necessary to support the ongoing operations of [borrower].” If borrower can make this certification, and the other certifications provided for in the application, borrower can make application.

What barriers do you foresee will be in place to prevent forgiving the total loan dollars? Answer: The biggest barrier will be borrower’s failure to use 75% or more of loan proceeds on “Payroll Costs” in the 8 weeks immediately following loan funding. If borrower keeps track of loan proceeds, and uses them correctly, the PPP loan should be 100% forgiven.

How do we maximize our ability to gain loan forgiveness when some of our payroll is covered by grants between now and June 30th? Answer: If possible, apply for and secure PPP funds ASAP, and then use at least 75% of those funds on “Payroll Costs” in 8 weeks. Then, once PPP funds are exhausted, use grant funds.

How do self-employeds' file for PPP? Answer: Self-employed and independent contractors are entitled to apply for PPP loans. Application is made to local lenders. Borrowers must document “average monthly ‘Payroll Costs’” which will likely be based off borrower’s tax returns and/or borrower’s profit and loss statements.

Following timely submission of PPP Loan App File to SBA lender, can you predict timeline for decisions? Answer: Lenders are swamped with applications. No predictions. Prepare to be patient but some approvals have come within 5 – 7 days.
A nonprofit organization is continuing to receive federal and state govt grants. Do these take priority over a PPP loan? **Answer:** As long as other grant funds are not used for the same purposes as PPP funds, borrower can receive and use a PPP loan. Borrowers should be very careful with bookkeeping, so borrower is able to document how grant funds and PPP funds are used.

Would like to know more about the PPP re: hourly employees. **Answer:** PPP funds can be used for any eligible costs, including “Payroll Costs” for full-time and part-time employees. In the PPP loan application, “average monthly payroll costs” are calculated on FTE, which includes both full-time and part-time employees.

If we receive a PPP loan, should we keep the funds in a separate bank account, to ensure accountability? **Answer:** Segregating funds in a separate account is not necessary, but be careful to keep track of, and properly document the use of PPP funds.

Are there resources like the PPP loans for 501c6 organizations? **Answer:** 501(c)(6) organizations are not eligible for PPP loans, but they may be eligible, as a “private nonprofit organization,” for EIDL loans.

Want to learn which local banks are helping to distribute the Payroll Protection benefits? Literally don’t know where to apply. **Answer:** Borrowers need to diligently pursue a lender who will take them. PPP is oversubscribed, so lenders are taking care of their existing customers. Accordingly, if borrower has an existing or former credit relationship with a lender, go there. If borrower does not have a credit relationship, then borrower should go to where borrower has a depository relationship. In addition, borrower should reach out to its board and friends, so see if introductions can be made to an appropriate lender. Borrowers may have to try numerous lenders before finding one that will take on new customers … be dogged.

If we apply for PPP, chances of getting a loan? **Answer:** If borrower submits an accurate, good faith application, and lender accepts the application chances of approval are high.

We have applied for an SBA loan through the Paycheck Protection Program. Interested in learning precise requirements that make the loan forgivable. **Answer:** PPP proceeds may be used for (i) “Payroll Costs,” (ii) group health benefits (including insurance premiums), (iii) mortgage interest payments, (iv) rent, (v) utilities, (vi) interest on debt incurred before February 20 and/or (vii) refinancing a recent EIDL loan … but … if Borrower wants the PPP loan to be forgiven, then 75% of loan proceeds must be used on “Payroll Costs” (presumably to rehire or retain workers) within 8 weeks after the date the loan is funded.

Can you receive both PPP and FMLA extended leave as an organization? **Answer:** Yes, borrower can receive both, but borrower cannot use the FFCRA payroll amount toward calculating loan forgiveness.
Our bank just notified me this morning that they have been overrun with PPP applications and cannot process all of them. All the banks are this way. Now what do we do? **Answer:** Banks becoming overwhelmed is going to be a problem. Borrower should reach out to board members and friends to see who may have a relationship with an SBA lender. Be dogged ... finding a lender may be the toughest part of this process.

Can Paycheck Protection Program funds, once approved and received, be used for the next several payrolls even if we have some other revenues to cover payroll, to preserve our other funds since we anticipate reduced revenues to persist after June 30, 2020. **Answer:** If Borrower wants a PPP loan to be forgiven, then 75% of loan proceeds must be used on “Payroll Costs” (presumably to rehire or retain workers) within 8 weeks after the date the loan is funded.

EIDL

Is the EIDL grant (lesser of $10,000 or $1,000 x FTE) repayable in some way? **Answer:** The grant need not be repaid, even if SBA ultimately decides not to fund all of the requested EIDL loan.

Should nonprofits apply for SBA’s Economic Injury Disaster Loan Emergency Grants? **Answer:** EIDL allows borrower to borrow more money than PPP. After PPP funds are expended on 8 weeks of “Payroll Costs,” EIDL funds can be used for ongoing “Payroll Costs.” Finally, EIDL is more flexible than PPP because EIDL proceeds can be used for more types of operational expenses than PPP proceeds.

Is it correct that $10,000 of the EIDL is also forgivable? **Answer:** No ... originally EIDL had a $10,000 grant component, but because EIDL is oversubscribed, now the potential grant is the lesser of (i) $10,000 or (ii) $1,000 x borrower’s FTE. Any grant received need not be repaid, even if SBA ultimately decides not to fund the remainder of the requested EIDL loan.

Do you know how to check that the SBA received the EIDL application, and to know if they have questions? **Answer:** Anecdotally, upon application, borrower receives a “confirmation number,” but as of right now, borrower’s are unable to check progress with that “confirmation number.” You will eventually receive an email but presumably, SBA is overwhelmed, and will soon be able to provide better information.

New questions and specific examples as of 5/1/20

**Question:** If loan funds were received April 29 and Pay date for April 16-30 is the 30th, can this count for forgivable payroll? **Answer:** We are not able to answer definitively until SBA provides additional regulations. Generally, PPP loan funds in an amount equal to eligible “costs incurred and payments made” during the 8 weeks after loan funding are eligible for forgiveness, but absent definitive regulations, it is unclear what “incurred” means. That being said, we believe that if there are five (5) pay periods during the 8 weeks, and pay periods 2, 3 and 4 are entirely in the 8 weeks, and the second half of pay period 1 is in the 8 weeks, and the first half of pay period 5 is in the 8 weeks, then “Payroll Costs”
for the second half of pay period 1, and for the first half of pay period 5 should be interpolated and included with the “Payroll Costs” of pay periods 2, 3 and 4.

Question: If we don’t get the funds for within 10 days or so, our "8 weeks" will go beyond June 30. Do we still have to spend it by June 30? Answer: For loan forgiveness, PPP loan funds need to be expended between the date of loan funding to the date that is 8 weeks after loan funding, even if that is after June 30.

Question: Can insurance be included in forgivability? Answer: Yes and no. Payments for health insurance can be included in eligible “Payroll Costs.” Payments for dental, vision, disability or life insurance cannot be included. Payments of business insurance cannot be included.

Question: Is employer's share of FICA & Medicare an allowable payroll expense? Answer: “Payroll Costs” are calculated on a gross basis without regard federal taxes imposed or withheld including FICA and Medicare. “Payroll Costs” are not reduced by taxes imposed on an employee and are not increased by the employer's share of payroll taxes.

Question: Don't think we'll have a problem spending our loan in payroll, but is it possible to use funds to prepay other expenses (like office rent) a few months out? Answer: We are not able to answer definitively until SBA provides additional regulations. Generally, PPP loan funds in an amount equal to eligible “costs incurred and payments made” during the 8 weeks after loan funding are eligible for forgiveness, but absent definitive regulations, it is unclear what “incurred” means. That being said, if a borrower, acting in good faith, can reasonably pre-pay some eligible expenses, so that payment occurs during the 8 weeks, those reasonable payments may be considered eligible payments for the calculation of forgiveness.

Question: I have seen a definition of PPP "Utilities" as including telephone and internet. Answer: I believe telephone and internet are “Utilities.”

Question: We were fortunate to get a loan, but now the 8-week clock is ticking and the forgiveness rules have yet to be finalized (as far as I know). We cannot afford to go into debt while carrying an unsustainable payroll, so it sort of forces us to make very conservative decisions when it comes to using the PPP money to bring back staff. Answer: If priority is to achieve 100% loan forgiveness, then you have to use the vast majority of loan proceeds on re-hiring employees. While the forgiveness calculations can be complicated (and they may change), what we do know is that an organization can achieve 100% loan forgiveness if it uses at least 75% of loan proceeds on “Payroll Costs” in the 8 weeks after funding.

Question: We received a PPP loan, can you clarify the timeline for spending those funds. Answer: For loan forgiveness, PPP loan funds need to be expended between the date of loan funding to the date that is 8 weeks after loan funding.

Question: Funds cannot be used to supplant federal contract dollars, we only have one federal contract and it is an FSET 50/50 so half of the money is local, private match, much of it
fundraising/donations so can we use PPP for that portion of rent and staffing? Answer: You can and should use PPP Funds for “Payroll Costs” that are not otherwise paid for by other federal grants.

Question: All of our contracts include fundraising/donations to cover operating expenses and those are the dollars taking a hit. Much of that money is allocated to cover payroll costs, can we use PPP to cover the private portion of rent and payroll for 8 weeks. Answer: Yes

Question: Some staff are receiving hazard pay because of their potential exposure - this was happening prior to the PPP loan - is the hazard pay covered as a payroll expense? Answer: As long as wages do not increase by more than 25%.

New questions and examples as of 5/14

Question: If you apply as a sole proprietor for PPP, then receive additional government funding from another program, does that affect forgiveness? Answer: It will depend on how you use PPP funding. You are not allowed to “double dip,” so if your “government funding” is tied to a specific purpose (e.g. payment of wages for a specific employee), then you are not allowed to use PPP funds for the same thing. As PPP funds are supposed to be used 75% for “Payroll Costs,” try to use PPP for payroll, and other government grants from non-payroll expenses.

Question: If I look at the loan as a means of replacing the amount of grant funding that is lost and use it to cover payroll, rent, and utility costs, we would ask that the amount equal to lost grant funding be forgiven and pay back the rest. Do you have a sense yet of whether this approach will be acceptable to banks and the SBA? Answer: Whether you lost grant funding is not relevant to the calculation. The forgiveness calculation for PPP is going to be based on the requirement of using at least 75% of PPP funds on “Payroll Costs,” within 8 weeks after loan funding. Neither SBA or your lender will look at other criteria.

Question: In the forgiveness calculation, should you use payroll information that is older or from the more recent period? Answer: You may pick. Run the numbers and decide what is most beneficial to you.

New questions and specific examples as of 5/21/20

Question: Does definition of “utilities” under PPP include land line, cell phone, fax, conference call lines? Answer: For “utility expenses,” we are advising clients to stick with traditional utility expenses like gas, electric, water, land lines, cable, Internet. Cell phones, mileage, web hosting and the like are more problematic.

Question: Can we use the Alternative Payroll Covered Period for payroll only (75%) and use the regular Covered period to calculate our utilities (25%)? Answer: Yes, “Alternative
*Payroll Covered Period* is only supposed to be used for calculation of forgiveness of “Payroll Costs.” Borrowers need to use “Covered Period” for utilities and other “Non-Payroll Costs.”

**Question:** We contribute to SEP IRA at the year end, can that be accrued for 8 weeks period? **Answer:** At this point SBA regulations have not definitively verified whether or not accrual of retirement contributions is allowed, but we believe accrual of reasonable and allowed “Payroll Costs” should be permitted.

**Question:** FTE is based on 30 hours or 40 hours? **Answer:** For PPP loan forgiveness, FTE is calculated on 40 hours/week. **BUT** … Borrowers may elect an alternative FTE calculation, in which event, Borrower would assign 1.0 FTE to each employee working 40 hours or more per week, and .5 FTE to each employee working less than 40 hours per week. Borrower should prepare both calculations to determine which is more beneficial, and then … obviously … use the more beneficial calculation.

**Question:** What if you have 7 part-time employees during the period used to establish FTE’s, but hired 3 Full time FTE’s instead of 7 part-time is that okay? **Answer:** Yes, that is ok, calculations for PPP loan forgiveness are based on FTE, so fewer employees with more hours is allowable.

**Question:** Our head count comprises many varied hourly employees. What is the best way to calculate the individual FTE number? so I have to review the entire prior year and make an average estimate? **Answer:** On Schedule A of the PPP Forgiveness Application, Borrower will complete the following FTE calculation for each employee: Calculate the average Full Time Equivalency (FTE) during the 8-week Covered Period (or the Alternative Payroll Covered Period) by entering average hours paid/week divided by 40 (rounded up to nearest tenth), with a maximum of 1.0.

**OR**

In the alternative … Borrower may choose to assign 1.0 FTE for employees who work 40+ and .5 FTE for employees who work less than 40. These FTE numbers will then be compared to FTE numbers from the “Reference Period” borrower has chosen (2/15/19 – 6/30/19 … or …. 1/1/20 – 2/29/20 …. or …. for season employers, any consecutive 12 week period between 5/1/20 – 9/15/20), to help calculate the amount of loan forgiveness.

**Question:** Can we pay people more during the pandemic? **Answer:** We believe that if borrower increases salaries by a modest, reasonable amount, to represent hazardous pay or as a reasonable advance on bonus, that those payments will be acceptable.

**Question:** If you normally contribute the full year 401K match at year end, can you contribute 6 months of it now, or will only 8 weeks worth count toward forgiveness?
Answer: At this point SBA regulations have not definitively verified whether or not accrual of retirement contributions is allowed, but we believe accrual of reasonable and allowed “Payroll Costs” should be permitted. With that in mind, a contribution for the 8 week covered period would be preferable.

New questions and specific examples as of 6/5/20

**Question:** My eight (8) week “Covered Period” ends on June 11, and my pay period ends on June 15. Should I pay employees on the 11th or can I wait until the 15th?

**Answer 1:** Use your regular payroll cycle. Under recent PPP regulations, borrowers are allowed to elect an “Alternative Payroll Covered Period,” that begins with the start of borrower’s first payroll cycle AFTER the date of PPP loan funding. Presumably, that will allow you to use four (4) regular payroll cycles, which will presumably, end on the 15th.

**Answer 2:** In the alternative, if you elect the standard “Covered Period,” you will be allowed to count wages that accrued during the eight (8) week “Covered Period,” but paid at the end of your ordinary payroll cycle ... again, presumably, on the 15th.

**Question:** It appears Congress is look at extending the “Covered Period” for PPP loans from eight (8) weeks to twenty-four (24) weeks. Would we have to use all twenty-four (24) weeks for forgiveness calculation? Answer: Borrowers should use as much available time as is necessary for them to maximize the amount of loan forgiveness.

**Question:** If we are allowed to switch to a twenty-four (24) week “Covered Period,” we could exhaust our PPP entirely with straight payroll. That would simplify reporting somewhat. Does that seem like a good strategy? Answer: Very good strategy.

**Question:** With PPP, are we allowed to pay certain employees for additional hours during the “Covered Period? Answer: Yes.

**Question:** Under PPP, do we have to pay all our employees each pay period for twenty-four (24) weeks? We have employees covered by a grant - we have the same FTE but would want to pay only certain employees though the PPP Loan? Answer: This is allowed as long as you keep track of FTE for loan forgiveness purposes, and you are not “double dipping” (i.e. counting both fund sources against the same payroll amount).

**Question:** Our PPP eight (8) weeks is almost up. We have a work-share program to begin at end of PPP. Hours are being reduced by 60%. Will this affect our FTE calculation in forgiveness if the PPP “Covered Period” is extended to twenty-four (24) weeks (6 payrolls at reduced hours). Answer: Yes, it will impact the calculation. You should do some estimating and run the estimates through the PPP forgiveness calculation on the PPP loan forgiveness application. That way, you will have a better idea what the impact will be.
Question: Are lease payments for leased equipment (copiers, printers, postage machines, dishwashers) eligible costs under PPP? Answer: Yes, lease payments for real and personal property are eligible costs.

Question: Can we count employee contributions to retirement plans as an eligible “Payroll Cost?” Answer: No. Employer contributions are eligible; employee contributions are not.

Question: Under PPP, am I allowed to accrue my “Payroll Costs,” and/or my non-“Payroll Costs?” Answer: Yes, accrual is allowed. For loan forgiveness calculations, you are allowed to “count” costs accrued before the “Covered Period,” but paid during the “Covered Period.” In addition, you are allowed to “count” costs accrued during the “Covered Period,” but paid after the “Covered Period” (as long as costs paid before the next normal billing cycle).

Question: Can we count cell phone costs as an eligible expense under PPP? Answer: PPP regulations say utility costs (including “phones”) are eligible costs. Go ahead and include them ... but be aware, your lender may disallow the expense.

Question: Under PPP, is separation pay an eligible “Payroll Cost?” Answer: Yes.