

COVID-19 Financial Relief Evaluation and Selection Tool

During this crisis, Preti Flaherty remains focused on our many clients affected by new COVID-19 laws. A large number of these clients are trying to understand the financial assistance currently available under Federal law. Broadly speaking, clients can choose from among several Federal Government Assistance Options. We have developed a useful comparison tool for evaluating these options, and we are offering the tool to anyone who might find it helpful.

The tool consists of two spreadsheets. The first spreadsheet analyzes the following:

- The Qualified Sick Leave Credit,
- The Qualified Family Medical Leave Credit,
- The Employee Retention Credit,
- Deferral of Payroll Tax,
- Small Business Administration Payroll Protection Program Loans,
- Small Business Administration Payroll Protection Program Loan Forgiveness, and
- Emergency Injury Disaster Loans ("EIDL Loans")

The second spreadsheet describes how each of the options for relief affects the availability of the other options. Some forms of relief make the others unavailable. Most, but not all, are for smaller employers (generally 500 employees or less) and most, though not all, have a connection to payroll.

While the tool currently does not address relief offered to Maine entities under the Finance Authority of Maine (FAME) and does not include large employer loans and certain other prospective relief that is being rolled out under to-be-issued rules and guidance, the tool will be updated regularly as new opportunities are put into effect by the Federal Government.

These spreadsheets analyze a very new and very complex set of laws. They represent our best understanding of the laws based on the information available at present, but they do not represent our advice and do not constitute an opinion on the law. The various federal departments will continue to issue guidance on these laws and the practical application thereof. We will update this guidance as quickly as possible to include such new information, however, **ANYONE USING THIS TOOL MUST RELY ON SUITABLE FINANCIAL AND LEGAL COUNSEL IN MAKING ANY FINAL CHOICES.**

OUR TAX TEAM

If you have any questions concerning the choices described above, you may contact:

Emily T. White

T. 207.791.3243

E. ewhite@preti.com

Stephan G. Bachelder

T. 207.791.3238

E. sbachelder@preti.com

Martha L. Fox

T. 207.791.3265

E. mfox@preti.com

Mariana Baron

T. 207.791.3260

E. mbaron@preti.com

OUR COVID-19 TASK FORCE

If you have other legal questions about COVID-19, reach out to a member of our COVID-19 task force.

Debt Relief/Bankruptcy

Gregory A. Moffett

T. 603.410.1525

E. gmoffett@preti.com

Anthony J. Manhart

T. 207.791.3251

E. amanhart@preti.com

Employment

Elizabeth A. Olivier

T. 207.791.3227

E. eolivier@preti.com

Matthew J. LaMourie

T. 207.791.3250

E. mlamourie@preti.com

Energy

Todd J. Griset

T. 207.623.3280

E. tgriset@preti.com

Steven A. Hudson

T. 207.623.3279

E. shudson@preti.com

Environmental

Sharon G. Newman

T. 207.791.3115

E. snewman@preti.com

David B. Van Slyke

T. 207.791.3221

E. dvanslyke@preti.com

Health Care

John P. Doyle, Jr.

T. 207.791.3208

E. jdoyle@preti.com

J. Andrew Cashman

T. 207.623.3039

E. jcashman@preti.com

Municipal

Stephen E.F. Langsdorf

T. 207.623.3291

E. slangsdorf@preti.com

Kristin M. Collins

T. 207.623.3292

E. jcashman@preti.com

Other Loans (4003) for Mid-Sized & Larger Businesses

Eric P. Stauffer

T. 207.791.3205

E. estauffer@preti.com

Bonnie L. Martinolich

T. 207.791.3252

E. bmartinolich@preti.com

Small Business Loans (SBA)

John M. Sullivan

T. 603.410.1550

E. jsullivan@preti.com

Sara N. Moppin

T. 207.791.3214

E. smoppin@preti.com

Taxation

Emily T. White

T. 207.791.3243

E. ewhite@preti.com

Stephan G. Bachelder

T. 207.791.3238

E. sbachelder@preti.com

Martha L. Fox

T. 207.791.3265

E. mfox@preti.com

Mariana Baron

T. 207.791.3260

E. mbaron@preti.com

Summary of Federal Employer Relief Options Provided for Under Families First Coronavirus Response Act and CARES Act							
	Sick Leave Credit	Family Leave Credit	Employee Retention Credit	Employment Tax Payment Deferral	Payroll Protection Program	Loan Forgiveness	Economic Injury Disaster Loan Program
Benefit	Receive tax credit equal to 100% of “qualified sick leave wages” paid in the calendar quarter	Receive tax credit equal to 100% of “qualified family leave wages” paid in the calendar quarter	Receive tax credit equal to 50% of “qualified wages” paid in the calendar quarter	Delay payment of Employer’s portion of social security tax (6.2% on wages paid) to the IRS until December 31, 2021 (when 50% are due) and December 31, 2022 (when the remainder is due)	Receive loan (“PPP Loan”) for payment of operational expenses at low interest rate without Employer providing guarantee or collateral and ability to have PPP Loan forgiven	Have PPP Loan forgiven to the extent of certain operational payments	Pre-existing Economic Injury Disaster Loan (“EIDL”) Program revised up for COVID-19 costs. NOTE: NOT FORGIVEABLE but can be refinanced as a part of a PPP Loan if EIDL was received prior to PPP Loans being made available.
Total Maximum Benefit	Between \$2,000 and \$5,110 per Employee depending on the reason for sick leave. <ul style="list-style-type: none"> • May be greater due to health plan expenses • May be greater due to Employer Medicare taxes imposed on sick leave wages 	Up to \$10,000 per Employee. <ul style="list-style-type: none"> • May be greater due to health plan expenses • May be greater due to Employer Medicare taxes imposed on family leave wages 	Up to \$5,000 per Employee <ul style="list-style-type: none"> • May be greater due to health plan expenses 	Dependent on Employer’s Social Security tax liability (less any sick, family, or employee retention credits that are applied to the same)	2.5X the Employer’s “payroll costs” in testing period plus any eligible EIDL debt being refinanced up to \$10,000,000	The amount of eligible payroll costs, mortgage interest, rent payments, and utility payments within 8 weeks of receiving the PPP Loan	Maximum amount of loan is \$2 million.
Effective Dates	Claim credits based on “qualified sick leave wages” paid in any calendar quarter between April 1, 2020 and December 31, 2020	Claim credits based on “qualified family leave wages” paid in any calendar quarter between April 1, 2020 and December 31, 2020	Claim credits based on “qualified wages” paid after March 12, 2020 and before January 1, 2021 during an “applicable period”	Social Security tax obligations incurred by Employer on or after March 27, 2020 and before January 1, 2021	A loan under the program that is made during the period beginning February 15, 2020 and ending June 30, 2020	Within 8 weeks of the PPP Loan originating	Applies to EIDL loans made during the period beginning January 31, 2020 and ending December 31, 2020
Eligibility	<ul style="list-style-type: none"> • Fewer than 500 Employees • Pays “qualified sick leave wages” required by the Emergency Sick Leave Act in the quarter • Must retain documentation of leave 	<ul style="list-style-type: none"> • Fewer than 500 Employees • Pays “qualified family leave wages” required by the Emergency Family and Medical Leave Act in the quarter • Must retain documentation of leave 	<ul style="list-style-type: none"> • Operates a business in 2020 • Pays “qualified wages” during an “applicable period” • An “applicable period” is a calendar quarter: <ol style="list-style-type: none"> 1. In which, the Employer’s operations are fully or partially suspended due to COVID-19 orders; or 2. That is in period beginning first calendar quarter the gross receipts are less than 50% of the gross receipts in the same quarter the previous year and ending after the first quarter gross receipts are greater than 80% of the gross receipts in the same quarter the previous year 	Employer that incurs Social Security tax obligations during effective period	<ul style="list-style-type: none"> • Fewer than 500 Employees or higher amount applicable under the SBA table or is a nonprofit, veteran organization, or Tribal business • Must certify: <ul style="list-style-type: none"> ○ PPP Loan is necessary for ongoing operations; ○ Funds used for payroll and other eligible costs; ○ No other application pending for another SBA 7(a) loan (does not include EIDL); and ○ Through December 31, 2020 Employer will receive no other PPP Loan to cover same purpose 	<ul style="list-style-type: none"> • Received PPP Loan • Paid “eligible costs” during effective dates • Must provide documentation of payroll and pay rate for covered and testing periods as well as documentation of eligible costs paid 	<ul style="list-style-type: none"> • Fewer than 500 employees or higher amount applicable under the SBA table, or is a private nonprofit organization, small agricultural cooperative, an individual operating as a sole proprietorship or an independent contractor, a cooperative with fewer than 500 employees, or a tribal small business concern with fewer than 500 employees. • Business concern must be located in US or US Territory • Business concern suffered “substantial economic injury” as a direct result of a declared disaster such as COVID-19. • Does not own property subject to a judgment lien owed by the US government <ul style="list-style-type: none"> ○ SBA Affiliation rules apply to determine company size and revenue (no exceptions under CARES Act)
Application of credits/funds	<ul style="list-style-type: none"> • Credits are allowed against Employer’s social security tax owed on wages paid in the calendar quarter • Excess of credit over Employer’s social security tax is available as a refund to Employer 	<ul style="list-style-type: none"> • Credits are allowed against Employer’s social security tax owed on wages paid in the calendar quarter after the amount owed is reduced by the sick leave credits • Excess of credit over Employer’s social security tax is available as a refund to Employer 	<ul style="list-style-type: none"> • Credits are allowed against Employer’s social security tax owed on wages paid in the calendar quarter after the amount owed is reduced by the sick leave and family leave credits • Excess of credit over Employer’s social security tax is available as a refund to Employer 	N/A	Loan amount can be used to pay: <ul style="list-style-type: none"> • Payroll costs; • Health care benefits; • Employee salaries; • Mortgage interest; • Rent; • Utilities; and • Interest on any other debt obligation 		Loan amounts can be used to pay: <ul style="list-style-type: none"> • fixed debts (but see below), • payroll, • accounts payable, • Mortgage or rent, and • other bills that cannot be paid due to revenue losses. Funds may not be used to: <ul style="list-style-type: none"> • Refinance Pre COVID-10 debt • Pay-off federal government debt • Pay any government penalties/fines

Summary of Federal Employer Relief Options Provided for Under Families First Coronavirus Response Act and CARES Act							
	Sick Leave Credit	Family Leave Credit	Employee Retention Credit	Employment Tax Payment Deferral	Payroll Protection Program	Loan Forgiveness	Economic Injury Disaster Loan Program
							<ul style="list-style-type: none"> • Repair physical damage • Pay dividends or distributions
Limitations	<ul style="list-style-type: none"> • “Qualified Sick Leave Wages” per Employee is equal to: <ul style="list-style-type: none"> ○ The lesser of: <ul style="list-style-type: none"> ▪ The wages actually paid to an Employee for a day of sick leave required to be paid by the Act; and ▪ \$200 (or \$511 depending on the category the sick leave day falls into) per day; ○ Multiplied by the lesser of: <ul style="list-style-type: none"> ▪ The number of days sick leave is paid in the quarter; and ▪ 10 less the # of days in previous quarters for which the Employer paid qualified sick leave to the Employee • Increased by portion of health plan expenses allocated to the sick leave days • Increased by Employer Medicare taxes imposed on sick leave wages • Is not available for governmental Employers 	<ul style="list-style-type: none"> • “Qualified Family Leave Wages” per Employee is equal to: <ul style="list-style-type: none"> ○ The lesser of: <ul style="list-style-type: none"> ▪ The wages actually paid to an Employee for a day of family leave required to be paid by the Act; and ▪ \$200 per day; ○ Multiplied by the number of days family leave is paid as a result of the Act in the quarter; ○ Subject to the overall limitation that the qualified family leave wages paid to an Employee throughout all quarters cannot exceed \$10,000 • Increased by portion of health plan expenses allocated to the family leave days • Increased by Employer Medicare taxes imposed on family leave wages • Is not available for governmental Employers 	<ul style="list-style-type: none"> • “Qualified Wages” per Employee is equal to: <ul style="list-style-type: none"> ○ If the Employer had fewer than 100 Employees in 2019, wages paid to the Employee during the “applicable period”; or ○ If the Employer had 100 or more Employees in 2019, wages paid to the Employee during the “applicable period” for which the Employee does not provide services due to the circumstances causing it to be an “applicable period” ○ Subject to the overall limitation that the qualified wages paid to an Employee throughout all quarters cannot exceed \$10,000 ○ Subject to overall limitation that “qualified wages” for a period cannot exceed the amount the Employee would have been paid for working equivalent duration during the 30 days before the period • Increased by portion of health plan expenses allocated to the qualified wages • Is not available for governmental Employers 	Only applicable to Employer’s portion of Social Security taxes. Employer’s portion of Medicare taxes has its normal due date.	<ul style="list-style-type: none"> • Loan amount is limited to the lesser of: <ul style="list-style-type: none"> ○ Any eligible EIDL debt being refinanced plus 2.5X the Employer’s average monthly “payroll costs” in the: <ul style="list-style-type: none"> ▪ The 12-month period prior to when the loan is made (special rules for seasonal employers); or ▪ At the election of the Employer, the period from March 1, 2019 through June 30, 2019; or ▪ If Employer was not in business during first half of 2019, the period from January 1, 2020 through February 29, 2020; and ○ \$10,000,000 • “Payroll costs” means the salary of an employee, payment of tips, cost of vacation, medical, and sick leave, cost of retirement benefits, state and local tax assessed on compensation, and sum of payments to independent contractors that is not more than \$100,000 per year. <ul style="list-style-type: none"> ○ Overall limitation of \$100,000 to any individual • Payroll costs does include payments to sole proprietors and independent contractors. Appears to also apply to partners’ guaranteed payments. • Wages considered for determining sick and/or family leave credits cannot be considered for determining “payroll costs” • Only EIDL debt made between January 31, 2020 and the date PPP Loans are made available are eligible to be refinanced. Recent SBA Application form seems to indicate this window has closed. 	<ul style="list-style-type: none"> • “Eligible Costs” limited to payroll costs and payments on mortgage, rent, and utilities must be based on contracts in force before February 15, 2020 • Payroll costs are subject to the \$100,000 annualized salary limit • Amount forgiven cannot exceed principal amount of PPP Loan • Amount able to be forgiven is reduced by multiplying: <ul style="list-style-type: none"> ○ The eligible costs in the 8-week period; multiplied by: ○ A percentage equal to: <ul style="list-style-type: none"> ▪ The number of average full-time equivalent Employees employed per month in the 8-week period; divided by ▪ The average number of such Employees employed from February 15, 2019 through June 30, 2019 or (at Employer’s election) from January 1, 2020 through February 29, 2020 • Amount able to be forgiven is further reduced by the amount that wages to Employees, with 2019 annualized salaries of less than \$100,000, during the 8-week period are less than 75% of the total wages of such Employee in most recent full quarter of employment *An Employer can re-hire individuals causing the above reductions to be diminished • The amount able to be forgiven is reduced by EIDL \$10,000 prepayment on EIDL Loan application that was denied 	<ul style="list-style-type: none"> • Loan amount is limited to the economic injury as determined by the SBA subject to overall limit of \$2 million • Public nonprofit organizations generally and businesses that do not meet employee limitations are ineligible • An applicant may receive an EIDL and loans under other programs (such as the PPP), but only if costs being paid with each are different • Business had to be in operation on January 31, 2020. • Personal guarantees for loans under \$200,000 removed by CARES Act, but loans over \$200,000 must be guaranteed by any owner having a 20% or greater interest in the applicant
Repayment	<ul style="list-style-type: none"> • No repayment; • Employer’s gross income is increased by amount of credit • Wages considered for determining credit cannot be considered for Employer’s credit for paid family and medical leave 	<ul style="list-style-type: none"> • No repayment; • Employer’s gross income is increased by amount of credit • Wages considered for determining credit cannot be considered for Employer’s credit for paid family and medical leave 	<ul style="list-style-type: none"> • No repayment; • Wages considered for determining credit cannot be considered for Employer’s credit for paid family and medical leave 	See below.	<ul style="list-style-type: none"> • Payments on loan are deferred for 6 to 12 months; • Repay in accordance with loan terms unless loan forgiven pursuant to forgiveness program 	<ul style="list-style-type: none"> • No repayment • Forgiven amount is not considered taxable income to borrower 	<ul style="list-style-type: none"> • Term is up to 30 years • Loans are not eligible for forgiveness, except for funds received as an emergency grant (up to \$10,000); • If Loan is made before PPP Loans are available, loan can be refinancing into PPP loan

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	Sick Leave Credit	Family Leave Credit	Employee Retention Credit	Employment Tax Payment Deferral	Payroll Protection Program	Loan Forgiveness	Economic Injury Disaster Loan Program
Form of Benefit	<ul style="list-style-type: none"> • Credit and Excess as cash refund; • Credit is reimbursed immediately: <ul style="list-style-type: none"> ○ Employer retains and is able to use <u>federal employment taxes</u> (Employer and Employee portions of Social Security and FICA, and income withholding) withheld from <u>all</u> Employees' wages in the quarter up to the amount of the credit rather than deposit such amounts with the IRS; ○ Employer able to file request for advance payment of the amount of credit in excess of these withholdings 	<ul style="list-style-type: none"> • Credit and Excess as cash refund; • Credit is reimbursed immediately: <ul style="list-style-type: none"> ○ Employer retains and is able to use <u>federal employment taxes</u> (Employer and Employee portions of Social Security and FICA, and income withholding) withheld from <u>all</u> Employees' wages in the quarter up to the amount of the credit (after applying the sick leave credit to such amounts) rather than deposit such amounts with the IRS; ○ Employer able to file request for advance payment of the amount of credit in excess of these withholdings 	<ul style="list-style-type: none"> • Credit and Excess as cash refund; • Credit is reimbursed immediately: <ul style="list-style-type: none"> ○ Employer retains and is able to use <u>federal employment taxes</u> (Employer and Employee portions of Social Security and FICA, and income withholding) withheld from <u>all</u> Employees' wages in the quarter up to the amount of the credit (after applying the sick leave and family leave credits to such amounts) rather than deposit such amounts with the IRS; ○ Employer able to file request for advance payment of the amount of credit in excess of these withholdings. 	<ul style="list-style-type: none"> • Due date to remit Employer's Social Security taxes to the IRS is extended as follows: <ul style="list-style-type: none"> ○ 50% of obligation must be paid by December 31, 2021; and ○ The remainder must be paid by December 31, 2022 	<ul style="list-style-type: none"> • Loan is made available in immediate funds; • Program removes normal SBA loan requirements of collateral and personal guarantees; • Loans are nonrecourse as to owners; • Interest rates cannot be greater than 4%; • No prepayment penalties • Does not require the Borrower to certify that it cannot receive credit elsewhere in order to be eligible • Applications may begin to be filed April 3, 2020 	<ul style="list-style-type: none"> • Cancellation of indebtedness 	<ul style="list-style-type: none"> • Receive loan for operational expenses at low interest rate without (i) the requirement of personal guarantees for loans up to \$200,000, (ii) the requirement that the applicant must be in business for a year, and (iii) meeting the credit elsewhere test. EIDL statutory interest rate (4%) is reduced to 3.75% for businesses and 2.75% for nonprofits. • Able to receive \$10,000 within 3 days of apply for the loan. If denied approval, will be able to keep \$10,000. This amount will reduce forgiveness amount of PPP Loan if such occur.

Ability to Use Multiple Federal Relief Options Provided for Under Families First Coronavirus Response Act and CARES Act **choose an option in left-hand column and follow the row to determine what other options may be used in combination therewith** ...is Employer also able to use this Relief Option								
	Sick Leave Credit	Family Leave Credit	Employee Retention Credit	Employment Tax Payment Deferral	Payroll Protection Program	Loan Forgiveness	Economic Injury Disaster Loan Program	
If Employer uses this Federal Relief Option...	Sick Leave Credit	Y	Y* •days considered for sick leave credit cannot be considered for family leave	Y* •days considered for sick leave credit cannot be considered for Employee Retention Credit	Y* •Credit reduces obligation	Y* •Sick leave wages considered for credit are not considered “payroll costs” for the PPP Loan	Y* •Sick leave wages considered for credit are not considered “payroll costs” that can be forgiven	Y
	Family Leave Credit	Y* •days considered for sick leave credit cannot be considered for family leave	Y	Y* • days considered for family leave credit cannot be considered for Employee Retention Credit	Y* •Credit reduces obligation	Y* •Family leave wages considered for credit are not considered “payroll costs” for the PPP Loan	Y* •Family leave wages considered for credit are not considered “payroll costs” that can be forgiven	Y
	Employee Retention Credit	Y* •days considered for sick leave credit cannot be considered for Employee Retention Credit	Y* • days considered for family leave credit cannot be considered for Employee Retention Credit	Y	Y* •Credit reduces obligation	N* •Receiving PPP Loan makes Employer ineligible for Employee Retention Credit	N* •Because unable to receive PPP Loan, unable to have forgiveness	Y
	Employment Tax Payment Deferral	Y* •Credit reduces obligation	Y* • Credit reduces obligation	Y* • Credit reduces obligation	Y	Y* • Only if PPP Loan is not forgiven	N* • Employer who has PPP Loan forgiven is ineligible for Employment Tax Deferral	Y* • To the extent any portion of the Loan is not refinanced into PPP Loan and forgiven
	Payroll Protection Program	Y* • Sick leave wages considered for credit are not considered “payroll costs” for the PPP Loan	Y* •Family leave wages considered for credit are not considered “payroll costs” for the PPP Loan	N* •Receiving PPP Loan makes Employer ineligible for Employee Retention Credit	Y* • Only if PPP Loan is not forgiven	•Y	•Y	Y* • Application cannot be to pay the same costs
	Loan Forgiveness	Y* •Sick leave wages considered for credit are not considered “payroll costs” that can be forgiven	Y* •Family leave wages considered for credit are not considered “payroll costs” that can be forgiven	N* •Because unable to receive PPP Loan, unable to have forgiveness	N* •Employer who has PPP Loan forgiven is ineligible for Employment Tax Deferral	Y	Y	• Y
	Economic Injury Disaster Loan Program	Y	Y	Y	Y* •To the extent any portion of the Loan is not refinanced into PPP Loan and forgiven	Y* • Application cannot be to pay the same costs	Y	Y