

From MMTA Government Relations & Legal Counsel Representative Jamy B. Madeja, Esq.

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**FINANCIAL RESOURCES AVAILABLE TO SMALL BUSINESSES
UPDATE ON 'ESSENTIAL BUSINESS' STATUS and
FEDERAL ENVIRONMENTAL ENFORCEMENT**

FEDERAL ASSISTANCE

- **Economic Injury Disaster Loan (EIDL)**
 - Small businesses* and non-profit organizations which have been financially impacted as a direct result of the Coronavirus (COVID-19) since Jan. 31, 2020, may qualify for Economic Injury Disaster Loans (EIDL) of up to \$2 million to help meet financial obligations and operating expenses which could have been met had the disaster not occurred.
 - The Disaster Loan program is run by the Small Business Administration (SBA), and has an interest rate of 3.75 percent.
 - To qualify as a 'small business,' you must meet the SBA 'industry size standard,' which is determined based on average gross receipts or number of employees.^{[\[1\]](#) [\[2\]](#)} Below are the 'industry size standards' for MMTA member businesses:

Marinas: average gross receipts must be ≤ \$8 million

Boat Dealers: average gross receipts must be ≤ \$35 million

Boat Building: number of employees must be ≤ 1,000.

- Many MMTA members will meet these small business thresholds and therefore, if they can show financial losses that have occurred during the past month, should apply for a SBA Disaster Loan as soon as possible. The application process is straightforward, but requires you complete a number of financial forms. For an overview of the application process, click here: https://www.sba.gov/sites/default/files/files/Three_Step_Process_SBA_Disaster_Loans.pdf
- To apply and download necessary forms for the SBA Disaster Loan click here: <https://disasterloan.sba.gov/apply-for-disaster-loan/index.html>

- **Postponed Deadline for *Federal* Tax Returns – now due July 15, 2020**
 - The U.S. Treasury Department and Internal Revenue service announced on March 20th that tax returns and payments that are usually due by April 15, 2020, will now be due July 15, 2020. This applies to both individuals and businesses.
 - ****Note**, while the Massachusetts Department of Revenue (DOR), has discussed moving back the *state* tax filing deadline, they have not done so yet. <https://www.mass.gov/info-details/important-covid-19-coronavirus-response-update-from-dor>

- **Federal Stimulus Bill (The Coronavirus Aid, Relief, and Economic Security Act):**

****These tentative measures just passed both House and Senate and require Presidential signature, we are monitoring actively. IF the pending version becomes law, below is what would be Provisions for Owners and Employees of Small Businesses (fewer than 500 employee):**

- **TENTATIVE SBA 7(a) Loan**

- Through the preexisting Small Business Administration 7(a) Loan Program, small businesses will be able to apply for a loan of up to \$10 million to cover fixed debts, salary, wages, benefits, and additional bills that can't be paid because of COVID-19's impact. (loan approval expected to take 2 weeks)
- The interest rate, which varies by each bank lender, will not exceed 4%.
- ***If the business uses the loan funds for the allowed purposes (employee salaries, paid/sick leave, mortgage payments, insurance premiums and any other debt obligations) and **maintains the average size of its full-time workforce** based on when it received the loan, the principal of the loan will be forgiven, meaning the company will only need to pay back the interest accrued.
- There is also 6 months of loan forbearance for existing SBA loans.
- **Note, you can only apply for one SBA Loan, i.e., you cannot apply for both a Disaster Loan and a 7(a) Loan

- **TENTATIVE Economic Injury Disaster Grant**

- Immediate grant (within 3 days of applying) of up to \$10,000 to businesses that **maintains their payroll** during corona-virus, to cover operating costs (payroll, mortgage interest, rent and utilities)
 - Available through the Small Business Administration (SBA)

- **TENTATIVE Direct Payments**

- The Act has been said to provide for a one-time payment of \$1,200 directly to most taxpayers, with an additional \$500 per child under 16. However it appears this may take the form of a tax credit, not money. The

full payment is available for individuals making up to \$75,000, or joint filers making up to \$150,000.

- IT appears the credit is less for those who make more than \$75,000, and is not available for individuals who make over \$99,000 (or couples who make over \$198,000).

- **TENTATIVE Expanded Unemployment Insurance**

- The Act makes more people eligible for unemployment, expanding coverage to 1099 independent contractors, freelance workers, furloughed employees, part-time employees, and gig-economy workers. It would provide a flat weekly payment of \$600 on top of the unemployment benefits workers will receive from their State's unemployment program, for up to four months.

- **TENTATIVE Deferred Payroll Taxes**

- Businesses would be allowed to defer payroll taxes until 2021 and would temporarily allow businesses to claim deductions for current losses against past profits to claim refunds.

STATE ASSISTANCE:

- **Executive Office of Labor & Workforce Development Resources**

- **Rapid Response Team** – helps employers avert layoffs, through various state programs, such as WorkShare, where employers can reduce payroll costs while avoiding layoffs: <https://www.mass.gov/service-details/rapid-response-layoff-aversion>

- **Covid-19- specific Unemployment Resources** – for both employers and employees: <https://www.mass.gov/info-details/massachusetts-covid-19-unemployment-information>
- **Small Business Recovery Loan** – *temporarily suspended*
 - Massachusetts recently setup the Small Business Recovery Loan Fund with an initial \$10 Million in funds. Unfortunately, the Fund is no longer taking applications because it has exhausted the fund base. MMTA's General Counsel has contacted the Governor's Office and our partners in the Legislative Boating Caucus about allocating more funding to the Recovery Loan Fund so that more small businesses can obtain the financial assistance they need.

UPDATE ON ESSENTIAL BUSINESS STATUS AND REMAINING OPEN OR REOPENING

As per recent E-NEWS briefs, the Governor's order closing non-essential businesses contained many provisions which characterize many MMTA business functions as "essential" and able to remain open (with appropriate safety and health precautions).

It is generally agreed that all fueling and all marine servicing are "essential businesses" whether commercial/industrial or for recreational vessels. It is also generally agreed that providing and servicing housing, such as hotel workers and, by analogy, livaboards, are essential functions. Retail operations are not essential, other than selling safety equipment for first responders and the like. In theory, one is meant to be open only for essential functions and to close non-essential ones. However, it is also recognized that many businesses do not break down into neat sectors with an employee serving only one function (e.g. a Target or other food market employee can check out both food and a pair of pants, not just food).

If you decide to reopen or remain open, you MAY require a health declaration from

employees, ranging from a doctor's note to the more easily obtained self-certification regarding absence of symptoms, contact with symptomatic people and you absolutely should require extremely careful sanitation protocols.

Whatever each business decides, you are not required to ask the government to stay open if you have a reasonable basis for concluding you are within the "essential function" category, nor are you required to notify the government if you close.

There are many, many, many employment law questions to numerous for this E-NEWS brief. This author has been keeping up on these matters as best as possible but direct information from the Department of Labor and the invaluable assistance of Foley & Foley have been MMTA's main information sources.

FEDERAL ENVIRONMENTAL ENFORCEMENT

It has recently been announced that the federal Environmental Protection Agency (EPA) will not be imposing fines and penalties on facilities unable to comply with usual environmental laws. There has been no such statement from the Commonwealth. More information will follow as it becomes available.

If you have any questions regarding these state and federal financial resources, or any other government compliance questions, please contact Jamy Madeja at 617-227-8410 or jmadeja@Buchananassociates.com. All MMTA members are also entitled to a free consultation on any topic.

[1] Note that the size of the applicant with its affiliates, must also be below the industry size standard.

[2] For a full list of Industry categories with their accompanying size standard, view the SBA table at: https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf