



## **BULLETIN #55/2020 APRIL 30, 2020**

### **\_CORONAVIRUS UPDATE #41**

#### **MASSACHUSETTS COVID-19 DAILY TRACKER**

#### **NEW STATE JOBLESS CLAIMS NUMBER 25% OF WORKFORCE**

#### **NEW PPP LOAN INFO ISSUED (FAQ #39)**

#### **NEW EPA, CDC GUIDANCE FOR SANITIZING**

#### **ALBIN, RANDALL & BENNETT WEBINAR ON PPP LOANS – FRIDAY, MAY 1, 10 AM**

#### **NADA DEALERSHIP LIFELINE WEBINARS SCHEDULE**

*[This bulletin supplements our previous bulletins #11 and #16 through #54 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]*

#### **Daily Massachusetts COVID-19 Tracker**

As we wrote yesterday, the Commonwealth of Massachusetts has commenced issuing comprehensive COVID-19 data on a dedicated web site found [here](#). Governor Charlie Baker and his pandemic response team speak of the data at each press conference and point to it as part of the analysis when considering the re-opening of the state's economy. The compilation is quite voluminous but broken down in an easy to read manner. It includes information on testing, confirmed cases, hospitalizations, and deaths, broken down in a range of categories, including age, sex, race, location, etc. It can be a valuable tool to give a sense of direction when discussing changes to the governor's current closure orders, especially if and when the Commonwealth can get to the downward side of the hospitalization, confirmed cases, and deaths curves.

As of the close of creating today's report at 4pm, as unfortunate as these numbers are and represent considerable heartache to those family members, there have been recorded 3,562 deaths of confirmed COVID-19 cases in Massachusetts. Of that number, 3,394 of the deaths (95.3%) are of individuals 60 years of age or older (60-69: 344; 70-79: 787; 80+: 2,263), with the average age of deaths in confirmed COVID-19 cases at 82. Of the total death number, 2,101 are recorded as COVID-19 deaths reported in long-term care facilities.

As the governor discussed today:

Baker said the state continues to monitor the rates of positive COVID-19 tests and hospitalization of patients. He said the state processed 11,118 tests Wednesday, and 1,963 were confirmed positive for a positive rate of about 17.7 percent -- down from a



were confirmed positive, for a positive rate of about 17.7 percent -- down from a "previous high that was much closer to 30 percent."

The governor said the lower rate "is a good sign because we test a lot more than we did a few weeks ago and we've also tried to test in places where we're particularly concerned about the potential of community and organizational spread."

COVID-19 hospitalization rates, Baker said, "have been pretty flat now for about 15 days in a row," and officials continue to watch for a "downward trend" in hospitalizations.

"We have, in fact, bent the curve. We did, in fact, reduce the spread," Baker said. "We are now living with a plateau that I'm sure all of us would like to see dip a little bit so that we can move a little more quickly with respect to what a reopening strategy would look like."

### **Nearly Quarter of Labor Force Has Filed Jobless Claims**

[Courtesy of *State House News Service*]

APRIL 30, 2020.....Nearly 900,000 Massachusetts workers, representing almost a quarter of the state's entire labor force, have filed new claims for unemployment benefits since mid-March as the COVID-19 pandemic and the widespread shutdowns it prompted continue to exert an economic toll.

Labor officials on Thursday [reported](#) 3.8 million initial standard unemployment insurance claims submitted nationwide between April 19 and April 25 and more than 70,000 in Massachusetts, the sixth straight week of elevated demand. Service industries such as restaurants and hotels have been hit particularly hard.

Over the past six weeks with the outbreak in full force, more than 30 million Americans have filed new applications for jobless aid in a historic surge. Massachusetts recorded more than 720,000 initial claims for unemployment insurance in the same span.

The state is also more than a week into offering aid to a range of applicants, including gig workers and the self-employed, who did not qualify for benefits until Congress expanded eligibility in the so-called CARES Act last month.

From April 19 to April 25, the Baker administration received 171,598 claims for that program, known as Pandemic Unemployment Assistance, the state Executive Office of Labor and Workforce Development said in a Thursday [press release](#).

The office [had said](#) last week that it received more than 200,000 applications in the first three days. A spokesman could not be reached to clarify the difference between applications reported last week and claims reported in Thursday's update.

Many laid off workers are waiting to see when the government will begin easing restrictions that have left non-essential workplaces unable to open their doors to employees, customers or the public. The timing hinges on the success of efforts to bring the ongoing public health crisis under control.



Between unemployment insurance and the expanded PUA program, Massachusetts received 893,607 new claims between March 15 and April 25, the administration said.

Those new claims alone are about 24 percent of the state's adjusted labor force as counted in March, which totaled 3,740,600 workers, according to state data.

Combined with the roughly 2.9 percent seasonally adjusted unemployment rate observed before the start of the outbreak, some experts such as the Pioneer Institute's Greg Sullivan have projected that roughly one in four Massachusetts workers are now out of jobs.

Ongoing claims, which refer to those who seek continuing weeks of benefits, totaled 527,538 in Massachusetts last week, a roughly 14 percent increase over the previous week.

Industries most vulnerable to the economic cliff-plunge have been restaurants, hospitality and retail, according to state data. Among the more than half million workers who sought ongoing benefits last week, the Baker administration reported that 93,168 were in food and accommodation, 69,333 were in retail trade and 66,202 were in health and social assistance.

Worker Adjustment and Retraining (WARN) Act reports, which employers must file if they close facilities or units affecting at least 50 employees or either lay off or cut hours for a significant enough part of their workforce, offer an anecdotal snapshot supporting that trend. Many of the WARN reports filed with the state in [last week's update](#) came from restaurants such as Friendly's or other tourism-related businesses.

Four Boston hotels -- The Ritz-Carlton Boston, InterContinental Hotel Boston, Westin Boston Waterfront and the operator of the Boston Park Plaza Hotel -- each reported layoffs some time in the past six weeks affecting 200 or more employees.

The largest total in the most recent WARN update was from Boston University, which listed 1,633 employees affected by layoffs between March 17 and April 7. Colin Riley, a spokesman for the university, told the News Service that the report referred only to student workers in jobs at the school.

"They are all students who held part-time positions at the university," Riley said. "These were positions where the students were unable to work remotely."

All were given two weeks' pay ahead of their layoffs, Riley said, while those in federal work-study programs will continue to receive paychecks through the end of the semester. He added that there have been no layoffs of full-time BU faculty.

The state Department of Unemployment Assistance is paying standard benefits to about 450,000 people and PUA assistance to about 150,000 as of Thursday. Since March 15, the office said in its press release, it has paid more than \$2.3 billion out to almost 700,000 total claimants across both programs.

Weekly benefits max out at \$823. Massachusetts is responsible for standard



unemployment insurance using premiums paid by employers, while the federal government will reimburse the costs of both PUA benefits and the additional \$600 per week all recipients get as part of the so-called CARES Act.

The record level of need has dented the state's trust fund used to pay out support. On March 1, the Massachusetts unemployment insurance trust fund had a balance of about \$1.63 billion, and that was down more than half to \$748 million on April 16, according to U.S. Treasury Data.

Gov. Charlie Baker [sought a \\$1.2 billion loan](#) from the federal government in early April, writing that he believes Massachusetts will need injections of \$900 million to cover costs in May and \$300 million for June.

### **SBA and Treasury Department Issue New PPP FAQ #39**

Today, the Small Business Administration and the U.S. Treasury Department issued a new [FAQ#39](#) to address the issue regarding review of loan applications for compliance with current Paycheck Protection Program rules. The full FAQ document can be accessed [here](#). New FAQ #39 reads as follows:

"39. Question: Will SBA review individual PPP loan files? Answer: Yes. In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Additional guidance implementing this procedure will be forthcoming. The outcome of SBA's review of loan files will not affect SBA's guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the Paycheck Protection Program Rule (April 2, 2020) and further explained in FAQ #1.15"

### **EPA, CDC Release Guidance for Sanitizing Where Americans Live, Work and Play**

The U.S. Environmental Protection Agency and the Centers for Disease Control and Prevention released [updated guidance to help facility operators and families properly clean and disinfect spaces](#). Developed in concert with the White House, the guidance provides step-by-step instructions for public spaces, workplaces, businesses, schools and homes and falls in line with the Opening Up America Again guidelines. For more information on safely operating a dealership during COVID-19, see NADA's [Dealership Health and Safety Concerns During a Pandemic FAQs](#).

### **NADA's Driven Management Guides Cover All Bases During COVID-19**

One of the best weapons against COVID-19 is knowledge. [NADA's Driven guides](#)—free to NADA and ATD members—offer information that's relevant before, during and after a pandemic.

A tip for service departments from [Safely Operating your Dealership During a Pandemic](#): Every vehicle is a hot spot, a confined area that must be touched to be operated safely. Utilize cleaning and disinfecting procedures for all customer vehicles. Also remember to



maintain social distancing with customers.

## **You've Been Approved for a Paycheck Protection Program Loan. Now What?**

By Beth Yohai

[Courtesy of Associated Industries of Massachusetts]

The Paycheck Protection Program, enacted under the Coronavirus Aid, Relief and Economic Security Act (CARES Act), is an extension of the Small Business Administration (SBA) 7(a) loan program, allowing financial institutions to provide federally backed, forgivable loans to eligible businesses. The Paycheck Protection Program and loan forgiveness are intended to provide economic relief to small businesses adversely impacted by the COVID-19 pandemic.

### Paycheck Protection Program highlights:

At least 75 percent of the PPP loan is supposed to be used to fund payroll and employee benefits costs:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee).
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit.
- State and local taxes assessed on compensation.
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

The remaining 25 percent can be spent on:

- Interest on mortgage obligations, incurred before February 15, 2020.
- Rent, under lease agreements in force before February 15, 2020.
- Utilities, for which service began before February 15, 2020.

The maximum amount eligible employers can borrow is 250 percent (or 2.5 times) the borrower's average monthly payroll cost in 2019, up to a maximum of \$10 million.

- If you are a seasonal employer, the lender will use a 12-week period beginning either February 15, 2019 or March 1, 2019 and ending June 30, 2019.
- If your business did not exist before June 30, 2019, the lender will look at your costs in January and February 2020.

The SBA wants borrowers to certify that the loan is "necessary" to support ongoing operations.

- Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should carefully review the required certification that "current economic



uncertainty” makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

- Lenders may rely on a borrower’s certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of the guidance issued on April 23, 2020 and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

As loans under the Paycheck Protection Program are distributed, the eight-week “covered period” is beginning for many small businesses. The “covered period” begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than 10 calendar days from the date of loan approval.

Although the SBA is expected to publish additional guidance on loan forgiveness, here is what we know so far:

- The CARES Act requires the SBA to issue guidance on the loan-forgiveness provisions of the PPP within 30 days from enactment, or April 26, 2020.
- The CARES Act states that the forgiveness of debt under the PPP program will not be taxable to the borrower for federal income tax purposes (but not necessarily for state and local income tax purposes).
- The CARES Act itself does not require any specific allocation of proceeds. However, the SBA’s Interim Rule (and all subsequent SBA guidance) requires borrowers to spend at least 75 percent of the loan proceeds on “payroll costs,” with any balance going towards covered mortgage interest payments, covered lease payments or covered utilities.
- The borrower is responsible for documenting use of proceeds for payroll costs in order to determine the amount of forgiveness.
- If a borrower uses loan proceeds for unauthorized purposes, the borrower will be required to repay those amounts and could be subject to additional charges from the SBA for knowing violations or misappropriations.

Below are some of the many questions employers have been asking:

**What expenses may be paid from the PPP loan amount?** The loan may fund “payroll costs,” including the employer cost of group health insurance and retirement; mortgage interest payments (but not prepayments or principal payments); rent payments; utility payments; interest payments on any other debt obligations that were incurred before February 15, 2020; and refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

**How are full-time equivalents (FTEs) computed?** The CARES Act Sections 1102 and 1106 do not define FTEs. Guidance has not yet been provided with respect to defining an FTE. CARES Act Section 2301(c)(3), which pertains to the employee retention credits, defines a full-time person by referencing Internal Revenue Code, Section 4980H. A full-time employee is an individual who works an average of at least 30 hours per week. A



full-time equivalent employee is determined by adding the hours of part-time employees on a monthly basis and dividing by 120 [IRC Section 4980H(c)(2)(E)].

**How do you determine loan forgiveness?** The maximum forgiveness amount, which must be substantiated by documentation, is the sum of expenses you incur or pay during the eight-week period following loan origination (when the company receives its first disbursement of PPP funds) to cover payroll costs and mortgage interest, rent and utilities payments; provided, however, that not more than 25 percent of the forgiven amount may be for non-payroll costs.

**How do you calculate loan forgiveness?** Once your business has determined the payments are eligible for forgiveness, you will need to complete two additional calculations to determine if such amount is ultimately forgivable. Both calculations are based on your payroll: the first is a measurement of your number of Full Time Equivalents (“FTEs”), and the second is a measurement of your actual salary expense. If a business reduces its full-time employees during the “covered period” (defined as the eight-week period after the company receives its first disbursement of PPP funds), the forgiveness amount is reduced by a ratio defined as:

- The average number of FTEs during the covered period (numerator) divided by the average number of FTEs during the base period (denominator).
- For the purposes of the calculation, the current thinking is that one FTE equals one employee that worked at least 30 hours in a week.

There are three different options to determine the base period, and borrowers can select the one most favorable to them:

- Using 2019 Information –the average number of FTEs per month from February 15, 2019, through June 30, 2019
- Using 2020 Information –the average number of FTEs per month from January 1, 2020, to February 29, 2020
- Seasonal Businesses –the average number of FTEs per month from February 15, 2019, through June 30, 2019.

**The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?** No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans.
- payment for the provision of employee benefits consisting of group-health care coverage, including insurance premiums.
- payment of state and local taxes assessed on compensation of employee.

**What happens if I need to reduce the pay for some of my employees?** To ensure that companies were hiring back employees at a wage rate that was similar to pre-COVID-19 levels, the amount of loan forgiveness is further reduced if employees who made less than \$100,000 in annualized wages in 2019 receive a reduction in pay of more than 25 percent during the “covered period.” The SBA will issue additional guidance on the loan-forgiveness element of the PPP, and specific guidance on this provision is warranted to determine how this dollar-for-dollar calculation will work in practice.



**As a result of Governor Baker’s Stay-at-Home Advisory, I furloughed my employees. Will the amount of my loan forgiveness be reduced?** Businesses that re-hire laid off workers by June 30, 2020 and restore any reductions in employment that occurred between Feb. 15, 2020 and April 26, 2020 will not be penalized and are still entitled to full forgiveness. This is a simple quantitative test—the SBA will look at the number of employees on February 15, on a full time equivalent (FTE) basis and compare that number to the number of full-time equivalent employees at June 30, 2020. There is no requirement that the borrower rehire the same employees; restoring the number of full-time equivalent employees is sufficient.

**How do employers persuade employees making more money on unemployment to return to work and make less money?** Because of the enhanced unemployment provisions in the CARES Act, many employees are making more money collecting Unemployment Insurance (UI) benefits, than they were making pre-pandemic. As a result, many employers are considering providing furloughed employees a bonus, increasing salary levels, offering extra vacation time or flexible work schedules to incentivize them to forego their unemployment benefits and return to work. It is unclear, however, whether these additional payments will be considered payroll costs eligible for forgiveness.

**What happens to the remainder of the loan that is not forgiven and what are the key loan terms?** The loan has a maturity of two years and an interest rate of 1 percent. There will be no prepayment penalty, meaning you will be able to repay the loan at any time before the maturity date. There is no collateral or personal guarantee required. All loans will be processed by third-party lenders under delegated authority of the SBA, and the lenders are permitted to rely on the certifications of the borrowers in order to determine eligibility of the borrower and the use of loan proceeds.

**How do the retention credits interact with the PPP?** The retention credit of CARES Act Section 2301 is not available if the taxpayer receives a covered SBA loan under SBA Section 7(a)(36) (i.e., a PPP loan).

**How does the deferral of payroll taxes provision of the CARES Act interact with the PPP?** Employers that received a Paycheck Protection Program loan may not defer the deposit and payment of the employer’s share of Social Security tax that is otherwise due once the employer receives a decision from the lender that the loan was forgiven. The amount of the deposit and payment of the employer’s share of Social Security tax that was deferred through the date the PPP loan is forgiven continues to be deferred and will be due on the “applicable dates”:

- On December 31, 2021, 50 percent of the deferred amount; and
- On December 31, 2022, the remaining amount.

### **PPP Loans Webinar – Friday, May 1, 10:00 a.m. ET**

The U.S. Small Business Administration opened up a second round of Paycheck Protection Program (PPP) loan applications today as a result of President Trump signing a re-authorization into law on Friday. To assist dealers who have been approved for a PPP loan, MSADA associate member Albin, Randall & Bennett will conduct a webinar on Friday, May 1, at 10:00 a.m. ET, entitled, “You Have Your PPP Loan...Now What? An



In-Depth Discussion about Loan Forgiveness”. Click [here](#) to register.

### **NADA Dealership Lifeline Webinar Series Continues This Week**

**Friday, May 1, 1pm-2pm ET: [The Best Ideas from NADA 20 Groups, Part 3: In Times of COVID-19 Pandemic](#)**

*Presented by: Tom Carney, NADA 20 Group Dealership Management Consultant*

Join NADA 20 Group Dealership Management Consultant, Tom Carney, as he reviews some of the new best ideas from the NADA 20 Groups during these unprecedented times. [REGISTER.](#)