



PrestigePEO

June 17, 2020

COVID-19

We Are Here For You

Today's Presenters



Jason Flinn
Today's Moderator
and Director of
PrestigePEO Client
Services



Andrew Lubash
Founder and
Principal of
PrestigePEO



Seth Perretta
Principal
Groom Law Group



Carol Sawyer
Tax Manager at
PrestigePEO

Today's Topics



- Introduction by Andrew Lubash, PrestigePEO Founder and Principal
- Overview of PPP Flexibility Act (“Act”)
- PPP Act Implications for borrowers
- Expected next steps from the Treasury, SBA and lenders
- Frequently Asked Questions

❖ Webinar Forum

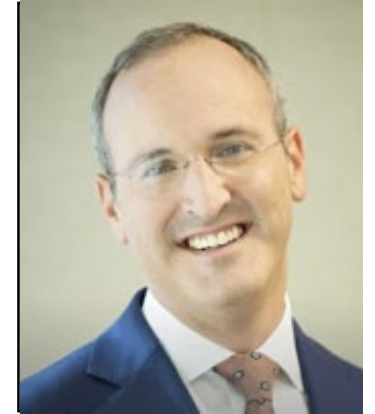
- All participants are muted.
- Please type questions in the side navigation panel and we will try to address most questions.
- Today's presentation will be posted prestigepeo.com/covid-19.

Welcome Update Presented by Andrew Lubash



- Andrew (Andy) Lubash is Founder and Principal of Prestige Employee Administrators.
- Andy currently holds several positions at the National Association of Professional Employer Organizations (NAPEO);
 - Chairman of the Board of Directors
 - Member of the Federal Government Affairs Committee
 - Member of the Healthcare Committee
- Previously, Andy was Chairman of the State Government Affairs Committee for five years.

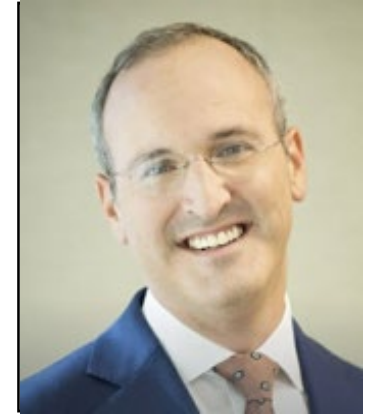
PPP Loan Forgiveness Presented by Seth Perretta



- Seth Perretta is Principal at Groom Law Group, where he focuses his practice on employee benefit matters
- Based out of Washington, D.C., Seth interfaces regularly with regulators at the federal agencies and has been carefully following the federal legislative and regulatory developments
- Seth is outside counsel to NAPEO, the organization that represents the PEO industry, as well as American Benefits Council (ABC).
- Seth is a graduate of NYU School of Law and Cornell University

Today's Discussion

Presented by Seth Perretta



- Overview of Paycheck Protection Program Flexibility Act (“Act”)
- Implications for borrowers
 - Existing loan terms
 - Loan use
 - Loan forgiveness applications
 - Approach
 - Timing
 - Forms
- Expected next steps from Treasury/SBA/Lenders

PPPFA Background

Paycheck Protection Program Flexibility Act

- The Act was initially passed by the House on May 28th
- Several Senators had proposed their own bill for consideration by the Senate
- With the House on recess until the end of June, the Senate moved forward with passage of the House's version (i.e., the Act), without changes, to facilitate relief for PPP borrowers
- President signed the Act into law on Friday, June 5th

Paycheck Protection Program Flexibility Act

- Notable provisions of PPPFA
 - Allows borrowers to use existing 8-week loan forgiveness covered period or elect alternative covered period equal to 24 weeks (or until 12/31/20 if earlier)
 - Uses 60/40 rule versus 75/25 rule regarding use and forgiveness
 - Extends loan term to minimum of 5 years, maximum of 10 years
 - Extends deferral period to when forgiveness occurs (or, if later, 10 months after close of covered period)
 - Extension of FTE reduction and salary/hourly wage reduction safe harbor through 12/31/20
 - Provides for an exception to FTE reduction factor based on inability to rehire or return to pre-pandemic business levels
 - Allows borrower to defer ER share of payroll taxes regardless of forgiveness

PPPFA Potential Implications

Paycheck Protection Program Flexibility Act

Potential Implications

- As we will discuss, the Act liberalizes numerous aspects of the PPP
- These changes will likely require and/or result in many borrowers:
 - Considering changes to PPP loan use
 - Potentially using a covered period longer than 8 weeks
 - Needing new payroll and employment data for calculation of loan forgiveness applications
 - Taking the additional time provided by the Act to see whether they can avail themselves of certain expanded and new safe harbor rules
- These changes will likely result in changes lenders considering:
 - Reformation of loan terms
 - Possible issuance of revised loan documents
 - Changes to lender loan forgiveness application materials
- These changes are resulting in new forms, instructions, and additional guidance from SBA/Treasury

PPPFA Provisions

NEWS

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STATEMENTS & REMARKS

Joint Statement by Treasury Secretary Steven T. Mnuchin and SBA Administrator Jovita Carranza Regarding Enactment of the Paycheck Protection Program Flexibility Act



June 8, 2020

WASHINGTON—U.S. Treasury Secretary Steven T. Mnuchin and Small Business Administration (SBA) Administrator Jovita Carranza issued the following statement today following the enactment of the Paycheck Protection Program (PPP) Flexibility Act:

“We want to thank President Trump for his leadership and commend Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy for working on a bipartisan basis to pass this legislation for small businesses participating in the Paycheck Protection Program.

“We also want to express our gratitude to Chairman Rubio, Ranking Member Cardin, Senator Collins, Congressman Roy, Congressman Phillips, and other members of Congress who have helped to create and guide our implementation of this critical program that has provided over 4.5 million small business loans totaling more than \$500 billion to ensure that approximately 50 million hardworking Americans stay connected to their jobs.

“This bill will provide businesses with more time and flexibility to keep their employees on the payroll and

LATEST NEWS

June 8, 2020

[Readout from a Treasury Spokesperson: Secretary Mnuchin's Meeting with Minister of Finance of the Russian Federation](#)[Joint Statement by Treasury Secretary Mnuchin and SBA Administrator Jovita Carranza Regarding Enactment of the Paycheck Protection Program Flexibility Act](#)

June 3, 2020

[Treasury, IRS Announce Delivery of Economic Impact Payments](#)[Statement from Secretary Steven T. Mnuchin on Debt Transparency and Sustainability](#)[Statement of the G7 Finance Ministers on Debt Transparency and Sustainability](#)

Deadline to Apply for PPP Loan

- In addition, the new rules will confirm that June 30, 2020, remains the last date on which a PPP loan application can be approved.

6/30/20

(Note: Extension of “Covered Periods” under PPP Flexibility Act had suggested that PPP loans would be available through December 31, 2020. SBA/Treasury apparently does not intend to interpret the statute this way.)

Effective Date

- Generally effective as if included in the PPP legislation originally (except for provision extending maturity period of PPP loans)
 - Implications:
 - Would seem to allow liberalized rules and relief provisions to apply to existing borrowers back to the date of the loan origination date
 - Could result in reformation of existing loan terms
 - Could result in issuance of revised loan documents


Extension of Loan Forgiveness Covered Period

- CARES Act – 8 week period beginning on loan origination date
- SBA/Treasury – Added “alternative payroll covered period” for eligible payroll costs
- **The Act – Expands forgiveness covered period until the earlier of: (a) the date that is 24 weeks after the date the loan was originated; or (b) December 31, 2020**
 - However, a borrower that received a loan before the Flexibility Act was enacted can elect to have the prior rule apply (i.e., covered period ends eight weeks after the date the loan was originated)
- Implications:
 - Should make it easier for borrowers to get full forgiveness
 - But creates new questions, such as whether the borrower that elects the longer covered period must use full duration, or whether can use something longer than 8 weeks, but less than 24 weeks?

24 Weeks
(or December 31, 2020 if earlier)

Reduction in 75% Payroll Cost Requirement to 60%


- CARES Act – Sets forth “allowable uses” for PPP loans, but no restrictions requiring a certain amount of the loan to be spent on payroll costs
- SBA/Treasury – Created rule that 75% of loan proceeds must be used for payroll costs and forgiveness amount must be comprised of at least 75% of eligible payroll costs
- **The Act – Imposes 60% use/forgiveness requirement on the “covered loan amount”**



60%

Reduction in 75% Payroll Cost Requirement to 60%

- Lower the requirements that 75 percent of a borrower's loan proceeds must be used for payroll costs and that 75 percent of the loan forgiveness amount must have been spent on payroll costs during the 24-week loan forgiveness covered period to 60 percent for each of these requirements. If a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.



60%

Reduction in 75% Payroll Cost Requirement to 60%

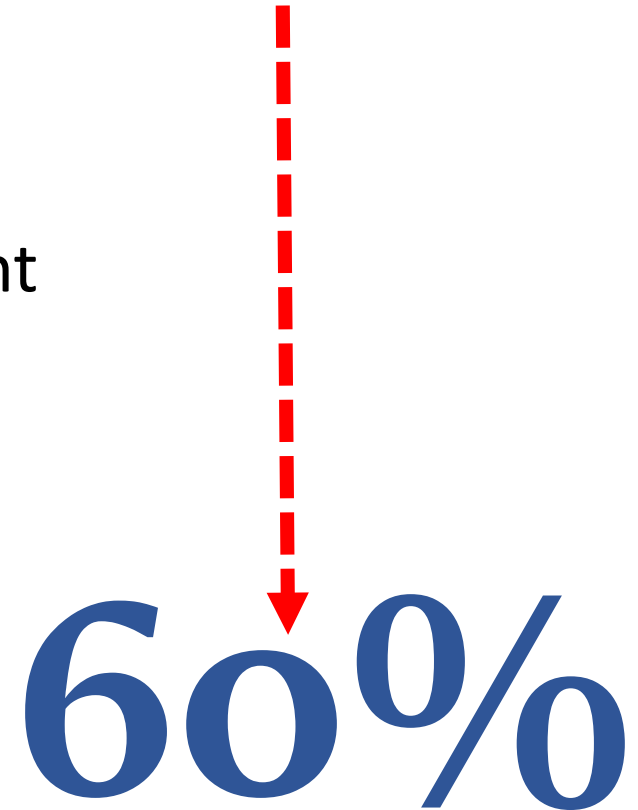
Example: Acme Co. receives a loan for \$1,000,000. During the loan forgiveness covered period, they spend \$550,000 on payroll costs, and \$400,000 on business rent or lease payments + utility payments

- **UNDER CURRENT RULES:**

- Even though Acme Co. spent \$950,000 on allowable costs during covered period, total forgivable amount would be capped at \$733,333.33 (\$550,000 divided by 0.75)

- **UNDER PPP FLEXIBILITY ACT RULE:**

- The new 60% threshold will be applied like the current rules, just using 60% instead of 75%. In this case, divide \$550,000 by 0.60, which provides a total maximum forgiveness amount of \$916,666.67



FTE Reduction Safe Harbor Expansion

- CARES Act – Allows the borrower to avoid a reduction in the forgivable amount that would otherwise result from a reduction in employee headcount relative to a pre-pandemic reference period if the borrower can restore FTE headcount by June 30, 2020
- **The Act – Effectively gives the borrower until December 31, 2020 to restore FTE headcount**
- Implications
 - Could result in borrowers delaying filing for forgiveness if they want to utilize additional time under the Act to attempt to restore qualifying headcount levels
 - But if you restore headcount prior to December 31, 2020 is that enough, or do you need to maintain through December 31, 2020? Is it possible to apply for loan forgiveness prior to close of 24-week period and use date of forgiveness application for purposes of determining whether the borrower meets the safe harbor?



12/31/20

Salary/Hourly Wage Reduction Safe Harbor Expansion

- CARES Act – Allows the borrower to avoid a reduction in the forgivable amount that would otherwise result from a reduction in an employee's salary/hourly wages compared to February 15, 2020 if the borrower can restore the salary/hourly wages by June 30, 2020
- **The Act – Effectively gives the borrower until December 31, 2020 to restore salary/hourly wages**
- Implications
 - Could result in borrowers delaying filing for forgiveness if they want to utilize additional time under the Act to attempt to restore salary/hourly wages
 - Same questions exist as those regarding FTE reduction safe harbor



12/31/20

12/31/20

New FTE Reduction Factor Exception

- CARES Act – None
- SBA/Treasury – Allows borrower to avoid reduction to forgiveness amount in certain instances:
 - Qualifying employment offer is made and declined
 - Employee is fired for cause
 - Employee voluntarily resigns
 - Employee voluntarily requests reduction in hours
- **The Act** – Allows borrower to avoid reduction if the borrower, in good faith: (a) is able to document (1) **inability to rehire individuals** who were employees of the borrower on February 15, 2020 and (2) **inability to hire similarly qualified employees for unfilled positions** on or before December 31, 2020; or, (b) is **able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020**
 - Implications: Unclear whether existing SBA/Treasury-provided exceptions will remain available to borrower

Loan Term

- CARES Act – No more than 10 years
- SBA/Treasury – Created a rule that PPP that maturity period would be 2 years
- **The Act – Makes clear the loan maturity period must be a minimum of 5 years and a maximum of 10**
- Implications:
 - This is only provision of PPP Flexibility Act that is not retroactively effective (i.e., only applies to loans made after enactment of PPP Flexibility Act)
 - Effectively overrides Treasury interpretation
 - Lenders and borrowers could mutually agree to modify loans made prior to the enactment date to conform with this change
 - Remember: Borrowers can always pre-pay loan amounts

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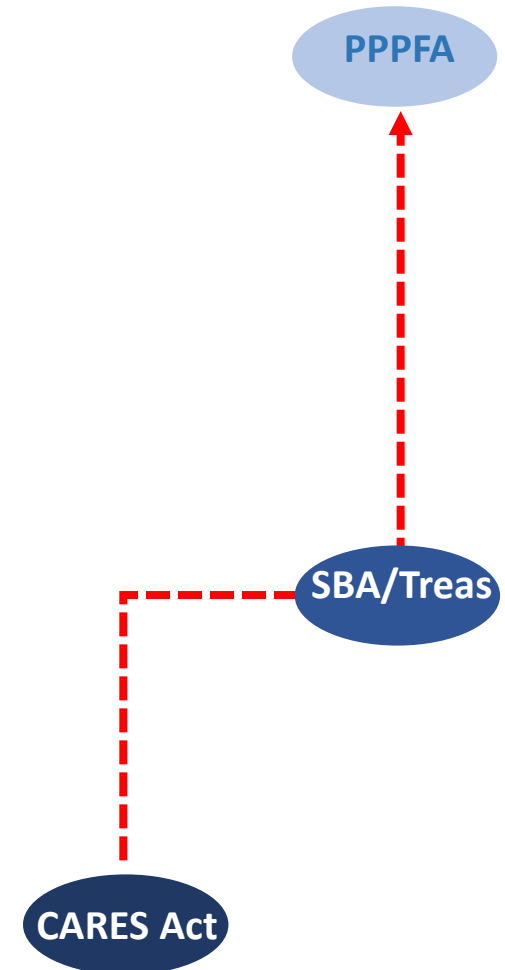
Extension of Loan Deferral Period

- CARES Act – Deferral of payment, interest and fees for *not less than* 6 months, and no more than 12 months
- SBA/Treasury – Created rule that deferral would apply for 6 months following disbursement of loan
- **The Act – Lenders will have to allow for deferral until the date on which the amount of loan *forgiveness* is remitted to the lender**
 - **BUT, If the borrower does not apply for forgiveness within 10 months after the close of the “loan forgiveness” covered *period*** (see above), payments of principal, interest, and fees on the loan must begin no earlier than that date (i.e., 10 months after the last day of such covered period)
- Implications:
 - Provides for additional time to defer payments, interest and fees
 - Effectively overrides Treasury’s interpretation and aligns deferment with expanded loan forgiveness period



Expansion of Access to CARES Act Employment Tax Deferral

- CARES Act – Borrowers who have PPP loan amounts forgiven cannot use Social Security employment tax deferral provision
- SBA/Treasury – Only applies to taxes after forgiveness date
- **The Act – Allows borrowers to use employment tax deferral provision regardless of forgiveness**
- Implications
 - Will allows borrowers to take full advantage of the employment tax deferral (i.e., for both taxes owing before and after forgiveness)



FAQs

FAQs

PPP Loan Forgiveness

Is the cap going to increase from \$15,385 since the covered period moved from 8 to 24 weeks?

- The current interpretations of the PPPFA say yes.

How do I prove that an employee has declined an offer of employment? We called an employee to let them know that they would be brought back from furlough, but the employee's unemployment benefits were higher than their salary so they declined and resigned from the company.

- You are going to want to provide an offer letter and get a written revocation of this offer from her. If the employee declines an offer of work, they may also lose eligibility for unemployment. You can also reach out to your HRBP for assistance on handling this.

FAQs

PPP Loan Forgiveness

If you keep the 8 week period, does the new 60/40 rule for payroll apply?

- Yes, the 60/40 rule applies to all PPP loans.

Under what circumstance can an employer not use the safe harbor provisions?

- Any business that applies for forgiveness prior 12/31/20 will not be able to utilize the safe harbor since the safe harbor date is now 12/31/20.

Is there any information available for when the revised loan forgiveness application will be available?

- We truly have no idea when it will be available. SBA/Treasury has typically posted on Friday evenings or on the weekend. Fingers crossed that it is this weekend!

FAQs

PPP Loan Forgiveness

Is the forgiveness period the next 8 weeks after the date of funding or any 8 weeks?

- The covered period for PPP loans is the 56 days period starting the date the loan proceeds are received. Businesses that pay bi-weekly or weekly may choose an alternate covered period starting on the first day of the next pay period after funding.

Loans funded after 6/5 must use the 24 week covered period. If you received your loan before June 5, may you still elect the 24 week covered period?

- Yes, loans funded prior to the PPPFA may choose either the 8 week or the 24 week covered period

FAQs

PPP Loan Forgiveness

If you move to the 24 week period do you get to include 6 months of rent in the loan forgiveness calculation?

- The current interpretation of the PPPFA is that all eligible costs in the 24 weeks are eligible for forgiveness as long as the 60/40 split is met.

One of our employees has requested a reasonable accommodation because they live with a family member who is in a vulnerable population and are afraid of transmitting the virus to them. Do we have to accommodate them?

- No. The has EEOC confirmed that workers are not entitled to an ADA reasonable accommodation simply to avoid exposing a vulnerable family member to a potential case of COVID-19.

FAQs

PPP Loan Forgiveness

Our lease renewal was established before Feb 2020, but the renewal date is beginning May 2020. Can our lease renewal be included in the rent calculation?

- Rent payments on agreements entered into prior to Feb 15, 2020 are eligible for forgiveness.

Can I require an employee to bring their own facemask to the office or should the employer be paying for the facemasks that the employees wear?

- If you require employees to wear face coverings, you should pay for them. Many state and local orders specifically require that employers pay for face coverings that employees wear. Consult your state and local orders.

FAQs

PPP Loan Forgiveness

For employers that process their payroll on a semi-monthly basis...can you begin the 56 day covered period on the day of the first payroll run?

- Semi-monthly payroll schedules are not eligible for the alternate covered period. But remember that payroll costs paid OR incurred during the 56 day period are eligible for forgiveness. So the first pay date after receiving the loan is eligible.

Are we required to pro-rate either the first or last semi-monthly payroll, as it doesn't fall neatly into an 8 week period?

- Only the final semi-monthly payroll needs to be pro-rated. The first pay date in the 8 week period is fully eligible for forgiveness - even though the pay period started before loan was received.

FAQs

PPP Loan Forgiveness

If an employer uses the PPP loan funds within the 8 weeks -should they choose to use the 24 weeks? Is there a benefit to extend to the 24 week period?

- There are many variables involved with this decision. If you are able to complete the forgiveness application for 8 weeks and calculate full forgiveness (you do not need the safe harbor calculation) then the 8 weeks should be sufficient.

Has there been any further interpretation as to what can be included as a utility, such as ADT or pest control, or things of that nature?

- The definition for utilities has not been updated. At this time, ADT and Pest Control are not included under the definition of “utility”.

FAQs

PPP Loan Forgiveness

Can we ask older workers, such as those age 65 and over, not to come into work because they are at higher risk for a severe case of COVID-19 if they contract the virus?

- No, the EEOC has indicated this would be improper age discrimination.

What about pregnant employees? Can we ask them not to come to work to protect them?

- Just as with older workers, you may not involuntarily exclude an employee from the workplace due to pregnancy.

FAQs

PPP Loan Forgiveness

I received an EIDL grant after the PPP loan. Should this amount be included in the PPP loan forgiveness application?

- Yes. The forgiveness amount will be reduced by any EIDL grant. There is a place on the forgiveness calculation form for the EIDL Grant amount and the EIDL application number.

Will we be telling our payroll specialist which time frame we will be using 8 vs 24 and which percentage 60/40 vs 75/25 when they do our calculations, or can they do it both ways and we can decide which is more advantageous?

- All loans will utilize the 60/40 split in the PPPFA. Choosing between the 8 weeks and 24 weeks is up to the borrower. We will provide reports for businesses to complete the applications.

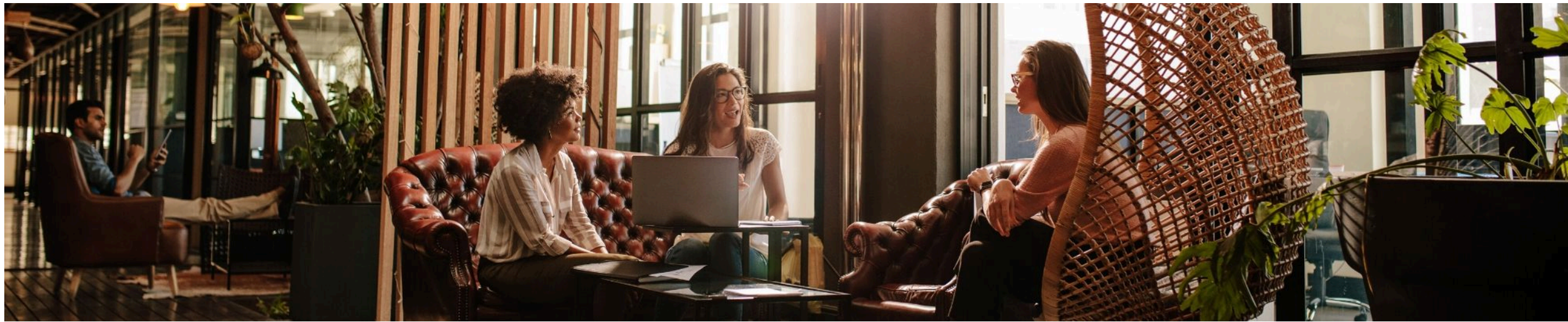
COVID-19 Client Communications

COVID-19 Communications

- Today's presentation will be posted on our COVID-19 resource center located at [PrestigePEO.com/COVID-19](https://www.prestigepeo.com/COVID-19)
- The weekly COVID-19 email update will deploy later this week
- Stay tuned for an invitation to next weeks webinar



COVID-19 Client Support



- Daily support from your HRBPs, Payroll, Benefits, Compliance, Workers' Comp & Retirement Specialists
- Try the new PrestigeGO mobile app to link directly to your dedicated support teams
- Visit our [PrestigePEO.com/COVID-19](https://www.prestigepeo.com/COVID-19) resource center for all things COVID-19



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