COVID-19 Federal Laws and Financial Options for Optometry
Part 2
Jeff Michaels, OD

Disclosure

• The information presented is:
  • Up to date as of today
  • Interpreted by AOA DC office and myself
    • Kara Webb
• Decisions about running your business?
  • Furlough, lay off, get a loan...
  • Consult a lawyer, accountant, business consultant, others as needed
Disclosure

• Presented with assumption that you watched the webinar on March 31

I’m sorry...
Today’s Webinar (April 8)

• Review Families First changes since March 31
  • My 1st webinar
• CARES 7(a) loan experience
• CARES forgiveness thought process
• Most common questions
• NOT being covered today:
  • What does the AOA recommend for Personal Protective Equipment (PPE) in the post-COVID eye care world?
Regulations are constantly evolving!

- Bill
- Signed by President into law
- Regulations (rules) created from the law
  - Department of Labor
  - Department of Treasury
  - Small Business Association
- Normally ~ 6 months
  - < 2 weeks with CARES
  - 3 weeks with Families First

Combined thoughts on Paid Sick Leave & eFMLA
Emergency Paid Sick Leave Act

100% Pay if Employee is...
1. Subject to federal, state, local quarantine or isolation order/shelter in place/stay-at-home order by COVID-19
2. Advised by health care provider to self-quarantine by COVID-19
3. Experiencing symptoms of COVID-19 and seeking medical diagnosis

2/3 (66%) Pay if Employee is...
4. Caring for an individual who is subject to quarantine (federal, state, local) or isolation order/shelter in place/stay-at-home or advised by health care provider to self-quarantine
5. Caring for son/daughter** of employee, if school or place of care has closed, or child care provider is unavailable by COVID-19
6. Experiencing any other substantially similar condition specified by Secretary of HHS

Stay-at-Home Order

• Nearly every OD office?
• “...that cause you to be unable to work even though your employer has work that you could perform but for the order.”
• “You may not take paid sick leave for this qualifying reason if your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order”
Stay-at-Home Order

• Employee cannot exercise their right if:
  • Office is closed
  • Office reduced employee work hours (no work)
  • Employee is receiving unemployment benefits (partial?)
    • You cannot get FF on days there is no work for you to do
  • Employee is allowed to leave home to go to work

• Employee can exercise their right if:
  • You are open but they are forced to not leave their home because of the order

Families First

• You can error on the side of giving leave
  • Remember, it’s dollar for dollar return to you!
Emergency Sick Pay Leave Act

4. That employee has a “personal relationship” with
   • E.g., Live with the family member or responsible for their care

School/Care Provider Unavailable

• Care for your child only when you need to, and actually are, caring for your child
• Generally, you do not need to take such leave if a co-parent or co-guardian is available to provide the care
• Statement that no other suitable person is available to care for the child
• Now includes examples of unpaid grandparents, etc.
When does enforcement start?

• “The Department of Labor will observe a temporary period of non-enforcement for the first 30 days [April 1–30] [March 18-April 17] so long as the employer has acted reasonably and in good faith to comply with the Act.”
  • “Good faith exists when violations are remedied and the employee is made whole as soon as practicable by the employer”

I’m an employee getting 2/3 pay for Families First, can I use my other PTO to supplement my income?

• Families First allows the employee to supplement lost 1/3 of pay with other accrued Paid Time Off (PTO) if they have it (e.g., vacation, personal, sick, medical, other)
  • Can’t force that to happen If office policy, employer can force
  • Cannot exceed their normal full weekly pay amount in total
  • Example
    • 40 hours normally
    • Families First 2/3 pay covers 26.67 hours
    • Can use 13.33 hours of PTO (if they have it) to supplement
  • No Families First tax credit on the PTO portion
Small Business Exemption for Paid Sick Leave & eFMLA?

• Secretary of Labor shall have the authority to issue regulations...to **exempt small businesses with fewer than 50 employees** when the imposition of such requirements would “jeopardize the viability” of the business as a going concern

Small Business Exemption for Paid Sick Leave & eFMLA?

• Exemption only applies to school/day care closed provision

---

**Emergency Paid Sick Leave Act**

1. Subject to federal, state, local quarantine or isolation order/shelter in place/stay-at-home order by COVID-19
2. Advised by health care provider to self-quarantine by COVID-19
3. Experiencing symptoms of COVID-19 or seeking medical diagnosis
4. Caring for an individual who is subject to quarantine/order/stay-at-home order by COVID-19
5. Caring for child’s or parent’s caregiver who is subject to quarantine/order/stay-at-home order by COVID-19
6. Experiencing any other substantially similar condition specified by Secretary of HHS
Small Business Exemption for Paid Sick Leave & eFMLA?

• If an authorized officer of the business has determined that (any of the 3):
  • Provision would result in expenses and financial obligation exceeding available business revenues
  • Absence of this employee would bring substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge or responsibilities
  • There are not sufficient workers who are able, qualified, and available at the time during which the employee requested leave

Small Business Exemption for Paid Sick Leave & eFMLA?

• If you are claiming this exemption
  • DOCUMENT, DOCUMENT, DOCUMENT
First Families Act

• Apply it equivalently in your office across employees
  • Discrimination
• Two separate acts
  • Emergency Sick Pay Act
  • Emergency Family & Medical Leave Act

Families First (FF) Tax Credits

• You get dollar for dollar tax credits toward FF payments you make:
  • Wages
  • Employer Medicare portion (because you still pay this)
  • Employer health portion
• Be sure your payroll company is aware of the employer portion of health paid only DURING THE LEAVE so they know how much to tax credit by year’s end
Families First Tax Credits

• Wait to claim on 941 or start now by reducing federal employment tax deposits
  • Employee federal tax
  • Employee FICA (Social Security & Medicare)
  • Employer FICA (Social Security & Medicare)
• No penalty to start putting aside now!!!!
  • Work with your payroll company
• Beyond this it’s outside my paygrade!

Payroll talk?

• PPP
• Employee Retention Tax Credit
• Deferral of Employer Social Security
• Families First tax retention (block federal impound)
  • I want to block federal impound of federal taxes in anticipation of employees exercising their right for Families First leaves
Coronavirus Aid, Relief, and Economic Security Act (CARES)

Phase 3: Personal and Business Economic Aid

Employer Unemployment Insurance

• If employees use Unemployment Benefits due to COVID, your unemployment insurance rate will not change!
  • Most states adopted
    • Check with your state!
CARES: Unemployed, partially unemployed or unavailable because

• Unable to get to work due to advised self-quarantine by health provider due to COVID
• Was scheduled to commence work but unable to get to job due to COVID
• Became breadwinner because head of household died by COVID
• **Had to quit job due to COVID (not voluntary quit)**
• Place of work is closed due to COVID

What about the $600?

• Federal Pandemic Unemployment Compensation (FPUC)
  • $600 additional UI thru July 31
  • Guidance to states on Apr 5 (3 days ago)
  • States will need time to implement
• Pandemic Emergency Unemployment Compensation (PEUC)
  • Extends 13 more weeks of UI
• Pandemic Unemployment Assistance (PUA)
  • 39 weeks of COVID specific UI
  • Includes self-employed, independent contractors
CARES 7(a) Loans
Payment Protection Program (PPP)

- 220,000 loans
- $66 Billion (of the $349 Billion)
- Congress asking for $251 Billion more 🙄
- More guidance to lenders went out today
  - The bank must make (the first disbursement) of the loan funds to you within 10 calendar days of loan approval
CARES 7(a) Loan

• Designed for you to pay staff for 8 weeks
  • Regardless of how busy you are
  • If you laid off/furloughed bring them all back for 8 weeks
  • If you can’t have them in the office, you pay them anyway
**CARES 7(a) Loan**

<table>
<thead>
<tr>
<th>It is</th>
<th>It is not</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 8 week stress reducer for staff</td>
<td>• Dependent on how busy you are</td>
</tr>
<tr>
<td>• Full pay for 8 weeks</td>
<td>• Dependent on how many patients you see right now</td>
</tr>
<tr>
<td>• <strong>Free</strong> if you use it correctly</td>
<td>• Dependent on office hours open</td>
</tr>
</tbody>
</table>

Think like a stressed out employee that wants to pay their bills and buy overpriced toilet paper!!!

---

**Story of the Benefactor!**
Think like an employee
8 weeks of employee pay that is not coming from your pocket
You are the vessel

CARES 7(a) Loan

• General Changes
  • Average of 2.5x monthly payroll expenses
    • Banks are looking at 2019 payroll
      • Not past 12 months before loan date
    • Think taxable income that you received in 2019
  • Loan payable
    • 1st payment 6 months after loan execution
      • Not 6-12 months
    • Interest is 1%
      • Not 0.5%
CARES 7(a) Loan

• Interest starts to accumulate the day after you get funding
• 1st payment due 6 months from loan start
  • Awaiting guidance: Do you pay interest if you the loan is forgiven before the 1st payment is due
  • Likely you don’t, but trying to confirm

CARES 7(a) Loan Amount

• Payroll: Taxable gross wages including PTO, holiday pay, taxed bonuses, etc
  • Cap at $100,000 per employee
  • Does not include payment to 1099 (independent contractor)
    • 1099 will apply for CARES on their own
      • If you are 1099, you calculate your taxable wages (you gotta do your taxes)
• Employer state and local taxes (SUTA and any other)
  • Not Medicare, Social Security, or FUTA
• Employer portion of health care
• Company match/payment to retirement
Timing of loan?

• Do not try to catch a falling knife!
• Get your CARES 7(a) loan NOW!
  • Do not wait, apply now!
  • Do not wait, apply now!
  • Do not wait, apply now!

Bank Variables

• Can I decide when my 8 weeks start?
  • Yes with some (SBA gave flexibility to bank)
    • 10 calendar days or less
  • No with others
  • Do not search for a bank that meets all your needs
    • Search for a bank that will give you green money!

• Wells Fargo
  • Largest small business lender in USA
  • Originally only given $10 billion of the $349 billion
    • Federal Reserve lifted the asset cap today
Bank Variables

• Borrower requirements
  • Previous customer?
  • Checking account?
  • Previous bank loan?
  • Not a customer?
• Paper work
  • 941s
  • Tax returns
  • Personal Financial Statement

My bank won’t talk to me about CARES 7(a) loans!

• Treasury Dept is authorizing additional lenders
  • Credit Unions and more
  • aoa.org/coronavirus
    • Optometry Financial Relief and Support Services
      • SBA active lenders (excel spreadsheet download)

• Stearns bank is waiting for you!
  • Many of you know Stearns from equipment loans
• I have zero financial interest in Stearns. I used them for an equipment loan in the past
Stearns Bank

- [https://www.stearnsbank.com/cares-act](https://www.stearnsbank.com/cares-act)
  - Not required to be existing client
  - PPP application and payroll docs submitted on portal
    - They review and let you know if approved
  - If approved, Doc-u-sign and upload 941s, and ?
- **1-800-247-1922**
  - 7am-6pm CT Mon-Fri
  - Sat 8am-12pm CT

What **can I pay** with CARES 7(a) loan for forgiveness?

- Wages (taxable): salary, vacation/paid time off, sick leave, company match/payment on retirement, employer state and local taxes
  - Not Families First Emergency Sick Leave or eFMLA
    - Those are tax credits returned to employer
- Rent
- Mortgage interest (not principal, not advanced pre-pay)
- Utilities (specific ones)
  - Electricity, gas, water, telephone, internet access, transportation
    - (this list encompasses every business in America)
    - (When in doubt, leave it out)
- Health premiums (employer portion)
- Interest on any debt obligations incurred before Feb 15
What should I **NOT** pay with CARES 7(a) loan?

- Employer Social Security & Employer Medicare (aka FICA)
- Employer FUTA
- Families First payments to staff
- EHR payments
- Association dues
- Contact lenses, frames, lenses
- Meals, entertainment
- 1099 payments
- Cleaning supplies and masks
- Non-taxable distributions or other payments
- Buying a tiger or liger

FICA and FUTA are not paid with CARES 7(a)?

- You still pay it
- Don’t use PPP funds
  - Meticulous spreadsheet!!
  - Especially if you have PPP and EIDL
  - Waiting on Dept of Treasury guidance
General Loan Forgiveness Thoughts

• You can layoff or reduce hours before and after your 8 week loan
• Your loan is only 8 weeks
  • What you do before and after to save your business is up to you!

What reduces loan forgiveness?

1. Reduction in # Full Time Equivalent (FTE)
2. Paying staff less
FTE and Loan Forgiveness

• Your Full Time Equivalent (FTE)
  • SBA will look at how many FTE you have 8 weeks after your funding date
    • Compared to # FTE Feb 15-Jun 30, 2019; or
    • Compared to # FTE Jan 1-Feb 29, 2020
  • SBA is particularly interested in those you let go Feb 15- Apr 26
• Rules not finalized
  • I expect them to look at:
    • FTE before Feb 15 if 2020
    • How many you laid off/reduced hours Feb 15-Apr 26
      • How many of those did you bring back (or replace)
      • How many FTE you have as the 8 week loan period ends

What is an FTE according to SBA?

• Not yet defined
SBA

- Focused on your getting 8 weeks of payroll to your staff
- SBA doesn’t care how busy you are—it’s called Paycheck Protection Program
- Will figure out the rest later
  - The alternative is wait 6 months for them to set all the rules...

Amount of Pay and Loan Forgiveness

- Are wages of any employee reduced by >25%
  - Only applies to salaries <$100,000 in 2019
  - Compares an employee’s payroll wages during loan vs 2019
    - 8 week loan period vs Q4 2019 or Q1 2020 (if no unemployment)
- SBA wants
  - To make sure you don’t reduce a bunch of hours in the 8 weeks loan period
    - Pay them their full salary regardless of your work load
  - To make sure you don’t low ball their hourly rate when they return for 8 weeks
• Expect more guidance on factors that reduce forgiveness

CARES 7(a) Loan Requires 75% on Payroll

• 75% or more on payroll costs
  • Wages
  • PTO, Sick Pay, Vacation, etc
  • Employer match of retirement
  • Employer portion of state and local taxes (SUTA, etc)
• 25% or less on non-payroll
  • Mortgage interest
  • Utilities
    • Electricity, gas, water, telephone, internet access, transportation
  • Health premiums (employer portion)
  • Interest on any debt obligations incurred before Feb 15
Documenting How You Spend CARES 7(a) Loan

CARES tracker

Other Loan Options
Economic Injury Disaster Loan (EIDL)

- “Disaster Loan” from SBA
- Not the CARES Act, not forgivable!!
- Early adopters thru April 3 had to roll it into CARES 7(a)
- Required collateral pledge if >$200,000
- $2 million, 3.75%, 30 years

How much can you get in EIDL loan?

- ??
- Revenue
- COGS
- 6 months operating expenses?
EIDL Loan Amount?

- Annual “Sales” – COGS = Gross Margin (GM)
- GM/ Sales = GM%
- (Sales x GM%) ÷ 12 x 4 = EIDL loan amount
- $300,000 cap?

I applied for EIDL but haven’t heard a word!

- Not possible to log in and check your status
- Applied before April 3?
  - May have to reapply
EIDL $10k Advance

• An option at the end of EIDL application process
• EIDL $10k advance is 100% forgiven
• You can’t get full CARES 7(a) forgiveness and this EIDL advance forgiveness
  • Example
  • If I got $250,000 CARES 7(a) loan and the $10k advance on EIDL
    • $240,000 of CARES can be forgiven
      • Even if you spent $250,000 on payroll
    • $10k of your CARES loan has to be repaid: 2 year note at 1%
    • You still keep the forgiven EIDL $10k advance!!

EIDL $10k Advance

• Up to $10,000
• $1k per employee?
EIDL Spending Criteria

- Fixed debts
  - Payroll and related benefits
  - Accounts payable
  - AOA dues
  - Other bills that can’t be paid due to the disaster (COVID)

EIDL Timing Confusion

- Received EIDL funding before April 3
  - If used for payroll, should roll into your CARES 7(a) loan
    - Making CARES 7(a) loan more than 2.5x monthly payroll
  - If not used for payroll, won’t roll into CARES and continue spend on non-payroll
- Received EIDL after April 3 (and CARES)
  - Don’t use EIDL for payroll, use CARES
  - COGS, EHR, dues, etc
  - Meticulous accounting
  - Consult your accountant!!
  - Waiting on guidance on federal employer taxes
CARES 7(a) Loan & EIDL

• You can get both!!!
• You cannot spend both on identical expenses
  • Waiting on specific guidance
  • Use PPP for payroll !!!

Michaels Rule of 90/8

AMERICAN OPTOMETRIC ASSOCIATION
Rule of 90/8

- Survival
- Have enough cash flow to weather the storm
- 8 weeks of CARES 7(a) loan
- 90 days of cash
  - EIDL
  - Credit line
  - Other
- 20 total weeks of cash flow

Questions from ODs
Can an owner do Emergency Sick Pay & eFMLA?

• If the owner is a payroll (taxable wages) employee
• Sole proprietor’s have equivalent benefits
  • Tax credits against end of year tax return
  • As your accountant!

My kid’s high school is doing online Zoom interactive learning because of COVID, does that mean they are open or closed?

• Closed!
  • Schools that moved to online because of COVID are still “closed”
We are on a state “lock down”. Our office is open and seeing urgent care only. Employees are here on a reduced work schedule. Do they qualify for #1?

- No. Only if they are locked down and not allowed to leave due to COVID. In your state, they are not “locked down” and are allowed to work
- Employee is able to work
- Your employer has work for you
  - Even if limited work

My employee has a fever and cough. They go for medical attention. The diagnosis is bronchitis. Does that qualify for Emergency Sick Leave?

- Yes and no
  - During the period of symptoms and through the medical diagnosis, they could get Emergency Sick Pay (#3: symptoms and seeking medical)
  - Bronchitis is not COVID but “concerns related to COVID” are a qualifying reason (#2)
    - If the health care provider advised self quarantine, then they still would qualify despite the diagnosis not being “COVID”
I have traditional FMLA in my job, can I use eFMLA also?

- eFMLA is a branch of traditional FMLA
- You get 12 weeks of FMLA
  - Can be any combo of FMLA and eFMLA as long as it does not exceed 12 weeks
    - eFMLA expires on Dec 31, 2020

Who gets the $600 federal unemployment benefit?

- If you qualify for an unemployment payment of at least $1 from your state, then you are eligible for a portion (or all) of the $600.
  - States will decide if you get the whole $600 or only up to the state UI max
My office is closed, can I apply for CARES 7(a) loan?

• Yes!
  • The loan is designed for you to pay your staff
    • SBA doesn’t care if you are open, closed, partial, limited, etc
      • Pay your staff for 8 weeks even if you are closed
      • Do video chat meetings, training, etc
      • Or just pay them
      • Remember: The US Government is paying them!!!!
      • Think like an employee, not an owner!

Does my owner pay count towards CARES 7(a) loan request amount?

• Think: wages you paid taxes on in 2019
  • I do a draw...
  • I do a distribution...
  • I collect the left over...
• When in doubt, ask the banker & accountant
• Same will apply for paying yourself with CARES 7 (a) loan $
  • If it’s not taxable income, it likely won’t be forgiven
I heard there is a roll out of when to apply, when should I apply for CARES 7(a) loan?

• Treasury/SBA window
  • April 3: small businesses and sole proprietors with employees
  • April 10: self employed and independent contractors
    • 1099’s are ONLY part of their own CARES 7(a) application
      • if Dr J works as a 1099 at ABC Eye Care
      • ABC Eye Care applies for CARES loan without Dr J’s wages in their monthly payroll calculation (loan amount)
      • Dr J applies for CARES loan herself, reporting all of her 1099 income in 2019 that becomes taxable wages (see accountant and banker for more)

• What about LLCs and others?
  • Talk to your banker and

Which doctors do I include on my loan request?

• Owners and associates on payroll
• Not 1099 doctors
  • 1099 apply on their own
• Remember your loan request amount
  • Only include up to $100k of their salary
    • You have 3 doctors
      • $60k, gets health care and 401k match
        • include $60k and employer portion of health and company 401k match
      • $150k, gets health care but no 401k match
        • Include $100k and employer portion of health
      • $200k, no health care and gets 401k match
        • Include $100k and 401k match
Make it simple for loan request amount

• Every yearly wage (each one capped at $100k)
• Every employer health portion for full year
• Every employer retirement match for full year
• Every employer state and local tax (SUTA, local tax if any) full year
• Double check your payroll company’s report!!!
• ADP example
  • Can change until the loan is executed (cash in hand)

We use a schedule C or a K1 or a blah blah form, how does that work for CARES 7 (a) loan?

• I know if you have glaucoma!
• I don’t know the tax code (I’m sorry)
  • Please consult the banker and your accountant
What is June 30 for CARES 7(a) loan?

- Last date to apply and receive loan (but don’t wait)
- Last date to rehire employees to count for FTE
- It is not:
  - The last day to spend CARES 7(a) loan money
    - Unless your loan started exactly on May 5

When paying salaries during my 8 week CARES 7(a) loan, do I count employer taxes as part of the forgivable amount (75% payroll portion)?

- Only state and local (SUTA, etc)
  - Anticipate that other employer taxes are not in the forgivable amount
  - Awaiting guidance on whether EIDL can be used to pay employer portion of FICA and FUTA
**Can I use PPP for back pay to employees?**

- SBA doesn’t ask what time frame are you paying staff for?
  - They don’t care
  - They want your staff to get 8 weeks of full pay
    - What time frame you apply that to is up to you

**After my 8 weeks of CARES 7(a) loan, can I send my staff to unemployment without effecting my forgiveness?**

- Yes
  - Before and after your 8 week CARES 7(a) loan period
I entered my 8 week window for CARES 7(a) loan but my staff won’t come back to work, what should I do?

• If your goal is to maximize forgiveness:
  • Pay them to stay home
    • Do FaceTime/Zoom training
    • Do nothing

Can I pay bonuses with CARES 7(a) money?

• Yes! Provided they are taxable wages (W2)
  • Don’t have to justify the reason
  • Equitable and/or rationale (lawyer/accountant)
    • Discrimination
  • You can do 100% CARES 7(a) on payroll!
    • And 0% on non-payroll
Can I hire new employees during my 8 weeks of CARES 7(a) loan?

• Yes!
  • All the payroll wages (new and old employees) paid during the 8 weeks counts!

Can I pay 1099 with my CARES 7(a) loan?

• Not if you want those payments forgiven
I have a CARES 7(a) loan and EIDL. How do I decide which pays which?

- Meticulously track
- PPP
  - 8 week of payroll
  - And the specified utilities, rent, etc
- EIDL
  - Other accounts payable
  - Families First
  - COGS
  - Waiting on guidance for Federal Employer Payroll Taxes (FICA, FUTA)

Guess who else is getting paid by CARES 7(a) loan for 8 weeks?

- Your patients!
  - COMMUNICATE!!!
Questions?

• Webinar and slides will be posted on aoa.org/coronavirus
  • March 31 is already posted
  • This one will be posted within 2 days
• CARES tracker (spreadsheet) will be shared
  • aoa.org/coronavirus (give it a few day)
• If you appreciate what your AOA doing (with these webinars and other COVID resources), send an email to President@aoa.org