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CARES Act

Paycheck Protection Program

CAN EMPLOYERS IN PUERTO RICO USE PPP FUNDS TO COVER SEVERANCE PAYMENTS UNDER PR'S UNJUST DISMISSAL ACT (ACT NO. 80) AND IN CALCULATING THEIR FORGIVENESS AMOUNT?

JUNE 3, 2020

Yes, with certain limitations.

According to the Interim Final Rule on Loan Forgiveness issued jointly by the U.S. Small Business Administration and the Department of the Treasury effective May 28, 2020, payroll costs includes allowance for separation or dismissal.¹ Consequently, severance payments constitute compensation subject to forgiveness. The more important question is, however, are there any limits in the amounts that may be credited?

Indeed.

Under the terms of PPP rules, payroll costs for any employee are capped at a pro-rated portion of \$100,000 (on an annualized basis) of an employee's cash compensation. If we are to prorate the compensation to the corresponding 8-week period, the cash compensation limit would be \$15,385. With the issuance of the loan forgiveness application, we obtained more clarity as to the treatment of cash versus non-cash compensation is to be reported. Non-cash compensation includes the cost of group health insurance, retirement plan contributions, and employer-paid state and local taxes on employee compensation. Cash compensation has the \$15,385 limit, while non-cash compensation has no established cap.

In connection to severance payments, there is no doubt these payments shall be considered as cash compensation. Pursuant to the Paycheck Protection Program Loan Forgiveness Application, Instructions for PPP Schedule A Worksheet, Cash Compensation is defined as "the sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), **and allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period.**"

The Loan Application Form goes on to clarify that for each individual employee, "the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period; therefore, do not enter more than \$15,385."

Accordingly, employers may use PPP Funds to pay for "mesadas" or severance payments in Puerto Rico and may consider the amounts so paid in calculating their PPP forgiveness amount up to \$15,385.

1. See [Paycheck Protection Program - Loan Forgiveness Interim Final Rule](#)
2. See [Paycheck Protection Program Loan Forgiveness Application](#)