



Western Building Material Association

PO Box 1699 - Olympia, WA 98507-1699
909 Lakeridge Drive SW - Olympia, WA 98502
(360) 943-3054 - (888) 551-WBMA - FAX (360) 943-1219

WBMA Member Update May 27, 2020

In follow up to NLBMDA's report last Wednesday, the Occupational Safety and Health Administration (OSHA) has revised its previous enforcement policy for recording cases of COVID-19. **The new enforcement guidance went into effect May 26th.** All information pertaining to OSHA's new enforcement policy with respect to COVID-19 can be found in an enforcement memo. Visit www.wbma.org home page for the link.

All employers who are currently subject to OSHA's existing recordkeeping requirements, which includes building material and supply dealers, must now record a case of COVID-19 as job-related if the case:

- Is confirmed as a COVID-19 illness (positive test);
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

Employers with fewer than 10 employees are exempt from OSHA's recordkeeping requirements.

Given the nature of the disease and ubiquity of community spread, in many instances it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace. In light of these considerations, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations.

In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, Compliance Safety and Health Officers (CSHOs) will apply the following considerations:

- The reasonableness of the employer's investigation into work-relatedness.
- The evidence available to the employer.
- The evidence that a COVID-19 illness was contracted at work.

Further information on these considerations can be found in OSHA's enforcement memo linked above.

If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

As a reminder, all employers must report the following to OSHA:

- Any employee fatality as a result of a work-related incident (within 8 hours)
- Any in-patient hospitalization of one or more employees as a result of a work-related incident (within 24 hours).
- Any employee amputation as a result of a work-related incident (within 24 hours).
- Any employee loss of an eye as a result of a work-related incident (within 24 hours).

SBA and Treasury Release Additional PPP Loan Forgiveness Guidance

Over the weekend, the Small Business Administration (SBA) and Treasury Department released an interim final rule which provides borrowers and lenders guidance on requirements governing the forgiveness of Paycheck Protection Program (PPP) loans.

A summary of the provisions is detailed below:

- Creates an alternative method for determining when the eight-week period starts for businesses with pay cycles of biweekly or more frequent. These borrowers can choose an alternative payroll covered period, which is the eight-week period starting the first day of the pay period after they received the funds.
- Clarifies when non-payroll costs must be incurred or be paid to qualify for loan forgiveness. Specifically, the costs must be paid during the eight-week period or incurred during the period and paid on or before then next regular billing date, even if that date is after the eight weeks. The guidance also states that advance payments on mortgage interest are not eligible for loan forgiveness.
- Reiterates previous guidance setting the rules for when employers can exclude from loan forgiveness calculations employees who refuse to be rehired. The new guidance states that in calculating any reduction in full time equivalent employees, employers can exclude any employees who decline a good faith offer to return at the same pay and hours as before they were laid off or furloughed. The guidance includes a requirement for borrowers to notify the state unemployment office of an employee's rejected offer within 30 days of that rejection.
- Includes definition of full-time equivalents (FTEs) as 40 hours, and two methods for calculating FTEs for non full-time employees.
- Borrowers can restore forgiveness if they rehire employees by June 30 and reverse reductions to salaries and wages for FTE employees by June 30. The guidance said loan forgiveness totals would not be reduced for both hours and wage reductions for the same employee.

In addition, the SBA and Treasury released an interim final rule which informs borrowers and lenders of SBA's process for reviewing PPP loan applications and loan forgiveness applications and related borrower and lender responsibilities.

A summary is detailed below:

- States that the SBA may review any PPP loan, regardless of size, to determine if the borrower is eligible for PPP loans under the CARES Act, whether the borrower calculated the loan amount correctly and used the funds for eligible costs, and whether the borrower is eligible for the amount of loan forgiveness it requests.
- Borrowers may appeal SBA determinations within 30 days of receipt. The guidance also says an appeal process will be established, with the specifics coming later guidance.
- Requires lenders to decide on loan forgiveness within 60 days of receipt of the complete application from the borrower. The SBA then has 90 days to review the loan forgiveness application.
- Clarifies that borrowers may be asked questions by lenders and the SBA.

NLBMDA Town Hall: COVID-19 Federal Small Business Relief Discussion
Friday, May 29th at 11:00 am PT

As Congress continues their focus on Phase 4 relief legislation, NLBMDA already has a robust lobbying strategy underway. In addition, NLBMDA has several key wins, specifically with the Small Business Administration (SBA) on protecting dealers amid the pandemic.

This unique **MEMBER ONLY** industry town hall event will provide a forum for NLBMDA's government relations team to brief you on legislative and regulatory issues, provide the latest information regarding topics such as the SBA loan program, and address your questions submitted in advance. Make sure to register today and join us for a town hall discussion on **Friday May 29 at 11:00 AM PT**.

The town hall discussion will also review how dealers can access federal resources and offer guidance on applications, federal agency resources and contacts, and other important information.

Lastly, all participants are highly encouraged to submit their questions in advance and you may do so when you complete your registration or email us at membersupport@dealer.org.