

MARR JONES & WANG

A LIMITED LIABILITY LAW PARTNERSHIP

Labor and Employment Law

CARES ACT UPDATE

April 14, 2020 at 2:30 p.m.

Congress continues to dither over additional funding for the Paycheck Protection Program (PPP) and additional relief. So much for quick and decisive action. In the interim many of you are waiting for your loan to be approved and funded.

There is one nuance that the IRS announced regarding the interrelation between a PPP loan and deferring payroll taxes:

You can do both before your loan is forgiven!

On April 10, 2020 the IRS stated:

Employers who have received a PPP loan, **but whose loan has not yet been forgiven, may defer deposit and payment of the employer's share of social security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan in accordance with paragraph (g) of section 1106 of the CARES Act**, without incurring failure to deposit and failure to pay penalties. Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer's share of social security tax due after that date. However, the amount of the deposit and payment of the employer's share of social security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the "applicable dates," as described in FAQs 7 and 8.

First quarter FICA taxes can be deferred, and most likely second quarter FICA taxes. A decision on loan forgiveness most likely will not be made until after June 30, 2020 and perhaps even later.

Deferring taxes, ½ due December 31, 2021 and the other ½ to December 31, 2022, does not mean the taxes are forgiven, they are merely postponed.

And this is only for the employer's share of FICA. It is not for Medicare taxes.

Happy deferring.

The April 10, 2020 IRS news release is available at: <https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020>.