Update on Paycheck Protection Program Issues

We recently advised that the SBA has directed that all applicants for the Paycheck Protection Program ("PPP") must review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. Borrowers who are found to have failed this good faith certification requirement will face penalties.

The SBA had initially stated that borrowers who have already received a PPP loan may repay that loan in full by May 7 and will then be deemed to have made the certification of necessity in good faith (the "Safe Harbor"). **On May 5, 2020 the SBA issued FAQ #43 stating that it has extended the repayment date for this Safe Harbor to May 14, 2020.**

FAQ #43 also indicates that the SBA will be issuing additional guidance on how it will review the borrower's certification.

In other PPP news, the SBA recently addressed an issue related to loan forgiveness and re-hiring laid off workers by June 30, 2020. While the SBA has provided little guidance on how loan forgiveness will actually be implemented, it did address one issue for employers who may find that their laid off workers refuse to report to work once they are recalled. According to the SBA, it intends to issue a rule providing that **an employer will not be penalized if an employee refuses to return to work**, but the employer must make a good faith, written offer of rehire and document the employee's rejection of the offer.

This memo is intended only as a summary and general overview. If you have any questions or would like legal advice regarding the above or any other employment issue, please contact David Lawrence or Sarah Gidley.