New PPP IFR - Treatment of Owners and Forgiveness of Certain Nonpayroll Costs

On August 24th, the SBA issued a new Paycheck Protection Program Interim Final Rule ("IFR") regarding "Treatment of Owners and Forgiveness of Certain Nonpayroll Costs." The IFR can be found here.

The key provisions are set forth below:

- Owner-employees with less than a 5% ownership stake in a C or S corporation are not subject to the owner-employee compensation rule. The previous rules capped the amount of loan forgiveness for payroll compensation attributable to an owner-employee. However, the SBA has now determined that **this cap does not apply** to an owner-employee who owns less than 5% of the C or S corporation stock.

- Amounts attributable to the operation of a tenant or sub-tenant are not eligible for forgiveness. For example, if a borrower pays $10,000 per month in rent, but collects $2,500 in rent from a sub-lessor, only $7,500 is eligible for loan forgiveness. Similarly, if a borrower pays mortgage interest but leases out 25% of the space to another entity, it may only claim forgiveness for 75% of the mortgage interest. If rented space is shared, the borrower must prorate rent and utility payments. And a borrower working from home may only include covered expenses that were deductible on the borrower's 2019 tax filings.

- Rent paid to a related party is forgivable, **as long as** (1) the amount of loan forgiveness requested for rent or lease payments to a related party is **no more than the amount of mortgage interest owed on the property** for the Covered Period, and (2) the lease/mortgage were entered into prior to Feb. 15, 2020. However, mortgage interest payments to a related party are NOT forgivable.

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.