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>> COVID-19 ALERT

Coronavirus Aid, Relief and Economic Security Act: What You Need to Know

UPDATE

Since this alert was first published there have been updates to the Paycheck Protection Program addressing what the new program covers and how small businesses can participate.

To review the latest information, please consult our **COVID-19 Paycheck Protection Program Updates FAQs**

President Donald Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (CARES Act) on March 27, 2020, which provides $2 trillion in aid in response to the novel coronavirus (COVID-19) pandemic.

As described further below, the CARES Act:

1) Appropriates significant funds to various financing programs;
2) Expands the unemployment benefits available to individuals who are unemployed due to COVID-19;
3) Clarifies the previously enacted Family First Coronavirus Response Act (FFCRA); and
4) Contains a number of income tax related provisions designed to enhance the cash flow of individuals and businesses during the immediate crisis.

This alert provides a high level summary of the key provisions of the CARES Act. A more in-depth analysis of each of the subjects discussed can be found here.

PAYCHECK PROTECTION PROGRAM

The CARES Act appropriates $349 billion for the creation of the Paycheck Protection Program (PPP) under Section 7(a) of the Small Business Act. Through the PPP, the U.S. Small Business Administration (the SBA) guarantees loans to eligible small businesses made by SBA approved lenders through June 30, 2020.

THE BOTTOM LINE

- On March 27, 2020, the President signed into law the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), a $2 trillion relief package designed to assist qualifying individuals, large and small businesses, states and municipalities in response to the COVID-19 pandemic.
- The CARES Act modifies existing loan programs made available by the Small Business Administration, allocates funds for loans to certain businesses, states and municipalities, expands unemployment benefits for individuals unemployed due to the COVID-19 pandemic, clarifies the previously enacted Emergency Family and Medical Leave Expansion Act and enacts income tax reforms to provide additional cash flow to individuals and businesses.
- Individuals and businesses should review these reforms to determine what types of economic relief they may be eligible to receive.

Small businesses with 500 or fewer employees (or who otherwise meet the SBA's general size standards) are eligible for loans of up to $10 million (determined by a formula based on the small business's payroll) to be used for payroll costs, payment of rent, utility expenses and interest on existing mortgages and debt obligations. All payments of principal and interest (and any fees) on the loans are deferred for at least six months and up to 12 months from the date of the initial loan.

Loans under the PPP will be eligible for loan forgiveness in an amount equal to the amount the borrower spends in an eight week period following the initial disbursement of the loan on the below (which are subject to additional conditions and limitations set forth in the CARES Act):

- Payroll costs;
- Interest payments (but not payments of principal) on any existing mortgage;
- Rent; and
- Utilities.

Any cancelled indebtedness resulting from the loan forgiveness will not be included in the borrower's taxable income.

The amount of the loan that may be forgiven will be proportionally reduced in the event the borrower reduces its staff as compared to a prior period to be selected by the borrower or its total employee salaries by more than 25 percent compared to the period before it received the loan. Notably, the amount of compensation for each employee included in the calculation of the forgiveness amount is capped at $100,000 on an annualized basis.

If a borrower has already laid off employees or cut salaries due to the COVID-19 crisis, the borrower will not be penalized if, no later than June 30, 2020, it rehires the same number of full time employees or reinstates the prior salaries.

Any portion of a loan under the PPP that is not forgiven will incur interest at a rate of no more than 4 percent per year, have a maturity date of up to ten years and will be guaranteed by the SBA.

The SBA announced that lenders may begin to start processing applications on April 3, 2020. A sample PPP application form is available here to provide applicants with insight into the information that be required. For more information on the PPP, see here.

EIDLP EXPANSION

The CARES Act appropriates $10 billion to expand the SBA's Economic Injury Disaster Loan Program (EIDLP) to provide low-interest loans of up to $2 million to eligible small businesses. The expanded list of eligible small businesses includes any business with no more than 500 employees, as well as private non-profit organizations. The CARES Act relaxes certain requirements for obtaining such loans, including waiving the requirements that the applicant:

1) Provide a personal guarantee; and

2) Be unable to obtain credit elsewhere.

In addition, the SBA is required to advance up to $10,000 to any applicant under the program, which is not required to be repaid, even if the applicant is subsequently denied a loan. For more information on the changes to the EIDLP, see here.

LOAN SUBSIDY PROGRAM

The CARES Act appropriates $17 billion to subsidize six months of principal, interest and fees owed by borrowers under certain existing loans under the SBA's 7(a) and microloan programs.

For more information on the terms and conditions of the SBA's loan subsidy program, see here.

FEDERAL RESERVE LIQUIDITY PROGRAM

The CARES Act also appropriates $500 billion for loans, loan guarantees and other investments to provide liquidity to the financial system, of which:

1) $46 billion is allocated to specific industries (*e.g.*, air carriers and businesses critical to maintaining national security); and

2) $454 billion is allocated to states, municipalities and "eligible businesses" (which are

defined as U.S. businesses that have not otherwise received adequate relief under the CARES Act).

The Federal Reserve is tasked with setting up the programs and facilities to disburse the $454 billion described above.

In addition to other conditions, the CARES Act requires businesses accepting direct loans under such programs to agree, for a period of 12 months following the termination of the loan, to:

1) Refrain from stock buybacks of publicly-listed equity securities (except pursuant to previously existing contractual arrangements);

2) Not issue any dividend on common stock (except pursuant to previously existing contractual arrangements); and

3) Maintain certain restrictions on compensation and severance.

For more information on the Federal Reserve's liquidity program, see here.

TAX PROVISIONS

The CARES Act provides a number of tax benefits, including:

1) A credit for 50 percent of wages paid up to $10,000 per employee for employers that suffer significant adverse effect from the COVID-19 slowdown;

2) A deferral of the payment of employer-side employment taxes and certain other deposits until December 31, 2021, when half the deferral must be repaid, with the rest being payable on December 31, 2022;

3) A $1,200 individual tax credit ($2,400 in the case of joint filers);

4) An increase of the business interest limitation in certain circumstances from 25 percent to 50 percent of adjusted taxable income;

5) An increase in net operating losses (NOLs) deductible each year, plus the provision of a five-year carryback of NOLs generated in 2018, 2019 and 2020;

6) An acceleration of certain business alternative minimum tax credits;

7) An increase in deductibility of certain non-corporate tax losses;

8) Current deductibility of certain capital expenditures;

9) An elimination of the early withdrawal penalty for certain qualified plan distributions during the rest of 2020, as well as a cap increase on loans from qualified plans to beneficiaries;

10) A waiver of minimum qualified plan contribution requirements for 2020;

11) An exclusion from an employee's income of certain repayments by employers of employee student debt; and

12) An allowance of $300 in individual charitable deductions without being subject to itemized deduction limitations, as well as a loosening of certain other restrictions on charitable deductions.

For more information on the tax provisions, see here.

ENHANCED UNEMPLOYMENT BENEFITS

The CARES Act greatly expands:

1) The universe of individuals who can collect unemployment insurance benefits in the wake of the COVID-19 crisis;

2) The amount of benefits that they can collect; and

3) The length of time that they are eligible to collect benefits.

Individuals who are currently unemployed due to COVID-19 related reasons will now be eligible to receive enhanced unemployment benefits through July 31, 2020 equal to their typical weekly unemployment benefit plus an additional $600. This includes furloughed workers, contractors and gig workers.

Individuals are not eligible for unemployment benefits, however, if they can telework with pay or they are receiving paid sick leave benefits from their employer. For a more detailed list of the expanded categories of eligibility for COVID-19 related reasons, see here. There are penalties and potential prison sentences for anyone who makes false or fraudulent representations in the attempt to obtain these benefits.

The CARES Act also eliminates the five-day waiting period for receipt of unemployment benefits, so that individuals impacted by COVID-19 related unemployment do not have to wait a week to start receiving income.

Finally, the CARES Act provides an additional 13 weeks of unemployment benefits to those who may still be unemployed for COVID-19 related reasons after the traditional employment period has run. Individuals who are eligible for the additional 13 weeks of unemployment benefits will also be able to receive the equivalent of what their typical weekly amounts under regular state unemployment processes would have been if they had not exhausted those benefits, plus an additional $600 per week.

For more information on the elongated unemployment program, see here.

CLARIFICATIONS TO THE FAMILY FIRST CORONAVIRUS RESPONSE ACT

The CARES Act clarifies that under the Emergency Family and Medical Leave Expansion Act (EFMLEA), which Congress recently enacted as part of the FFCRA, employers *can*, but are not required to, pay more than $200 per day ($10,000 in the aggregate) to employees taking EFMLEA leave to stay home with minor dependents because of pandemic-related school and daycare closures.

It also expands EFMLEA eligibility to include those employees who were laid off by their employer on or after March 1, 2020 due to the pandemic, if they worked for the employer for at least 30 of the last 60 days prior to the layoff and were rehired by the employer.

The CARES Act similarly amends the Emergency Paid Sick Leave prong of the FFCRA to clarify that employers *can*, but are not required to, pay more than $511 per day ($5,110 in the aggregate) to an employee:

- Who takes leave because they are subject to a federal, state or local quarantine or isolation order due to COVID-19;
- Who has COVID-19; or
- Who is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

Likewise, an employer *can*, but is not required to, pay more than $200 per day ($2,000 in the aggregate) to an employee who takes leave to care for:

- An individual who is subject to a federal, state, or local quarantine or isolation order; or
- A minor dependent at home due to school or daycare closure due to the pandemic.

For more information on the FFCRA amendments, see here.

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