

U.S. CORONAVIRUS RELIEF BILL: THE CARES ACT – PROVISIONS AFFECTING EMPLOYERS AND EMPLOYEES

Apr 03, 2020

Following tense negotiations throughout last week, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or “Act”) became law on March 27, 2020. The CARES Act represents the third Phase of Congressional relief responding to the novel coronavirus (COVID-19) pandemic. Phase I (Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123)) and Phase II (Families First Coronavirus Response Act (P.L. 116-127)) were signed into law on March 6 and 18, respectively. At 883 pages, the CARES Act is the largest relief bill in U.S. history and addresses on multiple fronts the hardships faced by individuals and businesses throughout this crisis. These efforts include an unprecedented expansion of unemployment benefits, significant funding for the health care industry, aid to large and small businesses valued in the billions, and even direct payments to individuals.

The majority of economic relief provisions for U.S. workers and employers is provided in Titles I through IV of Division A of the Act (Division B consists of emergency appropriations to fund various program). The CARES Act also has specific provisions regarding relief for airlines, financial institutions, and other sectors that are considered critical to national security. Titles I through IV of Division A of the CARES Act is are described in relevant part below.

Title I – Keeping American Workers Paid and Employed Act

Title I of the CARES Act provides relief through employee paycheck protections, loan forgiveness, and small business contracting relief. The Act enables the Small Business Administration (“SBA”) to provide federally-backed loans to eligible businesses to assist in operational costs such as payroll, rent, insurance premiums, and utilities. BCLP’s Finance Team has published a summary of the SBA provisions of the CARES Act, and is available [here](#).

Importantly, Title I of the CARES Act adds the Paycheck Protection Program to the SBA’s selection of loan programs. The Paycheck Protection Program provides federally-guaranteed loans up to a maximum amount of \$10 million to eligible businesses, which can be partially forgivable, to encourage businesses to retain employees through the COVID-19 crisis by assisting in the payment of certain operational costs.

To be eligible, the business must qualify as a “small business concern,” and may not employ more than the greater of (i) 500 employees (includes individuals employed on a full-time, part-time or other basis) or (ii) if applicable, the size standard in number of employees established by the SBA for the industry in which the business operates. There is a special eligibility rule for businesses in the hospitality and dining industries. For businesses with more than one physical location, if it employs 500 or fewer employees per location and is assigned to the “accommodation and food services” sector (Sector 72) under the North American Industry Classification System (“NAICS”), the business is eligible to receive a loan. SBA regulations on entity affiliations (under 13 CFR 121.103) are waived for the covered period for business concerns, non-profits, and veterans’ organizations for businesses in Sector 72 under the NAICS with 500 or fewer employees, franchise businesses with SBA franchisor identifier codes, and any business that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act.

To be eligible for a Paycheck Protection Loan, the business must certify that the loan is needed to support ongoing operations during the COVID-19 emergency, funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments, and that the applicant does not have any other application pending under this program for the same purpose.

The proceeds of a Paycheck Protection Loan may be used to pay for only the following items (subject to certain specified exclusions):

- (i) payroll costs, excluding the prorated portion of any compensation above \$100,000 per year for any person;
- (ii) costs related to group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
- (iii) mortgage interest payments (but not any prepayment of or payment of principal on a mortgage obligation);
- (iv) rent and utilities; and
- (v) interest on any other debt obligations that were incurred before February 15, 2020.

Portions of the loan attributable to the payments listed above are forgiven in their entirety if they are (1) made between from February 15, 2020 and June 30, 2020 (and cannot exceed the principal amount of the loan), and (2) all employees during this same timeframe are retained.

If any employees have been laid off since February 15, 2020, or if the employer’s total payroll expenses on workers making less than \$100,000 per year decreases by more than 25%, the loan forgiveness amount will be reduced using a specified formula. If some employees have already been laid off, the loan can still be forgiven for the full amount of payroll costs if those employees are rehired by no later than June 30, 2020.

Title II – Assistance for American Workers, Families, and Businesses

In addition to individual rebates and tax relief, Title II significantly expands unemployment programs and makes critical changes to rules governing retirement plans. Our colleagues in BCLP's Employee Benefits and Executive Compensation Group have summarized the changes to Retirement Benefits, and you can read their summary by clicking [here](#).

Unemployment Benefits

The Act establishes a temporary Pandemic Unemployment Assistance Program through December 31, 2020, which extends unemployment benefits to those who are not traditionally eligible (self-employed, independent contractors, and persons with limited work histories) but who have been unable to work as a result of the coronavirus public health emergency. To qualify for benefits, the individual must self-certify that he or she is otherwise able to work and available for work within the meaning of applicable state law except that the individual is unemployed, partially unemployed, or unable or unavailable to work for one of the following reasons:

- He or she is diagnosed with COVID-19;
- He or she has symptoms of COVID-19 and is in the process of seeking a medical diagnosis;
- A household member has COVID-19;
- He or she is providing care to a household member with COVID-19;
- A child or other person in the household for which the individual is the primary caregiver is unable to attend school or daycare due to COVID-19;
- The individual is unable to reach work due to a quarantine;
- The individual is unable to attend work because a healthcare professional advised him or her to self-quarantine;
- The individual is scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
- The individual is the sole wage earner in his or her household due to death of the head of household as a result of COVID-19;
- The individual was required to quit his or her job as a result of COVID-19;
- The individual's place of employment closed due to COVID-19; and
- The individual is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for unemployment benefits under another state

unemployment program.

Such workers would essentially receive the same unemployment compensation (“UC”) benefit as a regular employee under the relevant state’s UC law, but would also be eligible for additional federal benefits for up to \$600 per week for up to 4 months, even for employees currently making less than \$600 per week. UC payments would be immediate, without a one-week waiting period.

Individuals are not eligible for benefits if they have the ability to telework with pay or are receiving paid sick leave or other paid leave benefits.

Federal funding would also be available for state short-time compensation (“STC”) programs. STC programs (also known as Workshare Programs) provide benefits to employees who have had their hours reduced in lieu of being furloughed or laid off. Under the CARES Act, states that currently offer STC programs may receive full federal reimbursement for STC benefits paid through December 31, 2020, with benefits payable to an individual limited to 26 times the amount of regular compensation currently payable under a state’s UC program. To encourage more states to offer STC benefits, the CARES Act provides that states entering into an agreement with the federal government to establish a new STC program can receive full federal funding for the establishment of the program, and federal funds would then cover, through December 31, 2020, 50% of costs incurred by a state in providing STC. The remaining 50% of costs associated with the state-federal agreements would be paid by participating employers. To qualify, an STC program must provide that employers will maintain health and retirement benefits for affected employees despite reduced hours.

Employer Payroll Tax Benefits

The CARES Act provides certain eligible employers (generally those required to fully or partially suspend operations due to a COVID-19 related order or have a 50% decrease in gross receipts for a calendar quarter when compared to the same quarter in 2019) a refundable employment tax credit for each calendar quarter equal to 50% of qualified wages paid (up to \$10,000 per employee for all calendar quarters). All employee wages paid by employers with up to 100 full-time employees in 2019 are eligible for the credit. However, if an employer had more than 100 full-time employees in 2019, only wages paid when employee services are not provided (limited to 30 days per employee) are credit-eligible.

The CARES Act also defers payment for the employer’s share of the 6.2% Social Security employment tax paid on wages through the end of 2020. The deferred tax liability would be paid in two equal installments, due by December 31, 2021 and December 31, 2022, respectively.

Other Tax Benefits

The CARES Act also provides non-employer specific tax benefits with respect to certain charitable contributions, modification of the refundable corporate alternative minimum tax credit, modification

of the limitations applicable to business interest expense deductions, and the use of net operating losses. Our colleagues in BCLP's Tax Advice and Controversy Group prepared a summary of the tax changes, which are available [here](#).

Title III – Supporting America's Health Care System in the Fight Against the Coronavirus

Employer Health and Welfare Plans: The CARES Act amends the COVID-19 diagnostic testing coverage mandate for most employer group health plans that was included in the Families First Coronavirus Response Act. For a summary of this guidance from BCLP Employee Benefits experts, please click [here](#).

Families First Coronavirus Response Act: Title III of the CARES Act also includes some amendments to the federal Family and Medical Leave Act – specifically, the Families First Coronavirus Response Act ("FFCRA") which passed on March 18. The BCLP Employment and Labor team has summarized the FFCRA, which can be found [here](#) (Part 1, paid sick leave) and [here](#) (Part 2, emergency family leave). In addition, the Department of Labor ("DOL") has issued a series of informal guidance materials on the FFCRA. The BCLP Employment and Labor team's summaries of the current guidance is available [here](#) (the DOL's initial Q&As), [here](#) (the DOL's model notice poster and accompanying FAQ), [here](#) (the DOL's second set of Q&As), and [here](#) (the DOL's revised second and third set of Q&As).

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors

Among other things, Title IV of the Act provides certain low-interest loans and loan guarantees for mid-size businesses and nonprofit organizations with 500-10,000 employees. Eligible borrowers are limited to (i) entities or businesses domiciled in the U.S., (ii) with significant operations and a majority of its employees in the U.S., (iii) borrowers who are not debtors in bankruptcy, and (iii) borrowers who can certify that the uncertainty of current economic conditions makes a loan necessary to support ongoing operations.

Borrowers of the mid-size business loans must certify, among other things, that they will (i) restore 90% of its workplace from February 1, 2020, restore all employees' compensation and benefits within four months of the termination of the COVID-19 public health emergency, (ii) retain 90% of its workforce (at full compensation and benefits) until September 30, 2020, (iii) not outsource or offshore jobs for the term of the loan and two years thereafter, (iv) not abrogate collective bargaining agreements for the term of the loan and two years thereafter, and (v) remain neutral in any union organizing efforts for the duration of the loan.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers deal with coronavirus related issues. If you or your organization would like more information on such issues or any other employment issue, please contact an attorney in the Employment and Labor practice group.

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