



Coronavirus Aid and Response Acts

On Friday, March 27, 2020, the “Coronavirus Aid, Relief, and Economic Security Act” (“CARES Act”) was signed into law. It supplements the “Families First Coronavirus Response Act” passed last week in the wake of the economic recession caused by the Coronavirus (COVID-19). Below are summaries of the major points (of what is over 800 pages of legislation) which we believe are most important to our clients. It is important to note that these provisions are a “floor.” Anything in your collective bargaining agreement that provides for a better benefit or anything you can achieve in emergency bargaining that surpasses what is here would take precedence. For those who are curious or otherwise suffering from chronic insomnia in these difficult times, you can read the full Acts and DOL Q&As at the following links: [H.R. 748](#); [H.R. 6201](#); [Mandatory Posters & Q&As](#)

H.R. 748 – CARES Act

TITLE I – KEEPING WORKERS PAID AND EMPLOYED

- **Paycheck Protection Program (Section 1102)**

Increases the government guarantee of loans made for the Payment Protection Program under section 7(a) of the Small Business Act to 100 percent through December 31, 2020.

Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.

- **Loan Forgiveness (Section 1106)**

Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payments on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.

The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

- **Educational Provisions and Student Loan Flexibility (Subtitle B)**

For students who dropped out of school as a result of COVID -19, the student is not required to return Pell grants or federal student loans to the Secretary. In addition, student loan payments will be deferred for 6 months, through September 30, 2020, without penalty to the borrower for all federally owned loans. This provides relief for over 95 percent of student loan borrowers. For teachers who could not finish their year of teaching service as a result of COVID-19, their partial year of service shall be counted as a full year of service toward TEACH grant obligations or Teacher Loan Forgiveness.



TITLE II - ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

Unemployment Insurance (Subtitle A)

- **Pandemic Unemployment Assistance Extending Benefits (Section 2102)**
Creates a temporary unemployment assistance program through December 31, 2020 to provide payments to those not traditionally eligible for unemployment benefits (part-time, self-employed, gig economy workers, limited work history, *etc.*) who are unable to work as a result of COVID-19.
- **Emergency Relief to Reimbursements (Section 2103)**
Provides payments to reimburse nonprofits, governmental agencies and Native American tribes for half the costs they incur to pay unemployment benefits through December 31, 2020.
- **Emergency Increase in Unemployment Benefits (Section 2104)**
For states that choose to participate in this program, this section provides an additional \$600 per week to each recipient of unemployment insurance or pandemic unemployment assistance for up to four (4) months.
- **Temporary Elimination of the Waiting Week (Sections 2105)**
Provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they are unemployed.
- **Emergency Continuation of Unemployment Compensation (Section 2107)**
Provides an additional 13 weeks of unemployment benefits through December 31, 2020 for those who remain unemployed after their state unemployment benefits are exhausted.
- **Temporary Funding of Short-Term Compensation (Sections 2108 through 2111)**
Provides funding to states that have Short Term Compensation Funding Programs in place where employers reduce hours rather than laying employees off. The employees with reduced hours will receive a pro-rated unemployment benefit. Reimburses states for half the program costs. Additional grants and assistance are provided through this Act to enact these programs.

Rebates and Other Individual Provisions (Subtitle B)

- **Recovery Rebates for Individuals (Section 2201)**
All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 if married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 if married) rebate. In addition, they are eligible for an additional \$500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children. The IRS will issue checks based on a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. (Ensure a bank account is on file with the IRS for a quicker rebate *via* direct deposit.)



- **Early Withdrawal Penalty on Retirement Funds Waived (Section 2202)**

This provision waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts, *e.g.*, 401K Plans for COVID-19-related reasons on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may retribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.

- **Temporary Waiver of Minimum Distribution Rules (Section 2203)**

The provision waives the required minimum ("RMD") rules for certain defined contribution plans, *e.g.*, 401K Plans, and IRAs for calendar year 2020. This provision provides relief to individuals who are required to withdraw a limited amount of funds from such retirement accounts during the economic slowdown due to COVID-19 and permits the individual to withdraw more than the RMD without penalty. Normal taxes would still apply.

Business Provisions (Subtitle C) (Sections 2301 through 2308)

- Employee Retention Credit for Employers Subject to Closure
- Delay of payment of employer payroll taxes
- Modification for net operating losses
- Modification of credit for prior year minimum tax liability
- Modification of limitation on business interest
- Technical amendment regarding qualified improvement
- Temporary exception from excise tax for alcohol used to produce hand sanitizer

Labor Provisions (Subtitle C)

- **Paid Leave for Rehired Employees (Section 3605)**

Allows an employee who was laid off after March 1, 2020 to have access to paid family and medical leave if they are rehired by the employer. They must have been working for the employer at least 30 days prior to being paid off.

- **Single-Employer Plan Funding Rules (Section 3608)**

Provides certain single employer pension plans an opportunity to delay contributions due during 2020 until January 1, 2021. The bill also provides that a plan's status for benefit restrictions as of December 31, 2019, will apply throughout 2020. We will provide more detail on this provision in an update on our ERISA notes section.

TITLE III – SUPPORTING AMERICA'S HEALTHCARE SYSTEM

To learn more about what this Section provides, visit the HR 748 bill link at the top of this article.

TITLE IV -ASSISTANCE TO SEVERELY DISTRESSED SECTORS

Provides \$500 billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments. **Businesses and non-profits between 500 and 10,000 employees in receipt of an emergency loan will be subject to the following additional loan criteria and obligations:**



- Borrowers and their affiliates cannot engage in stock buybacks, unless contractually obligated, or pay dividends until the loan is no longer outstanding or one year after the date of the loan;
- Borrowers must, until September 30, 2020, maintain their employment levels as of March 24, 2020, to the extent practicable, and retain no less than 90 percent of their employees as of that date;
- Borrowers must agree the loan cannot be forgiven;
- In the case of borrowers critical to national security, they must certify their operations are jeopardized by losses related to the coronavirus pandemic.
- The funds received must be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through September 30, 2020;
- The recipient will not outsource or offshore jobs for the term of the loan plus an additional two years;
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years; and
- The recipient must remain neutral in any union organizing effort for the term of the loan.

Protection of Collective Bargaining Agreement (Section 4025)

- The issuance of a loan shall not be conditioned upon on a business's measures to enter into negotiations with the certified bargaining representative regarding pay or terms and conditions of employment. We interpret this provision to protect the integrity of existing CBAs and prevent concessionary bargaining.

H.R. 6201 - Families First Coronavirus Response Act (FFCRA)

The FFCRA created two new types of emergency paid leave for workers effective April 1, 2020 to December 31, 2020. In general, all employers with less than 500 employees are required to make these types of paid leave available to workers; however, businesses with less than 50 employees may apply for an exemption with the DOL if they can prove complying with the FFCRA would jeopardize the viability of their business. Under the FFCRA, employers pay for the leave and are reimbursed in the form of a tax credit on their payroll taxes. Employees at multiple locations and integrated subsidiaries may be counted together, which would put many business counts over 500 employees.

Emergency Family and Medical Leave Expansion Act (Division C)

- **FMLA Expansion Act:** Only covers employees who, due to COVID-19, are unable to work because they need to care for a child whose school, childcare provider or place of care is closed or unavailable. It does not broadly extend paid family leave to all COVID-related events. It also allows for a 100% refundable credit to cover the cost of FMLA benefits paid by the employer. Employers may obtain the credit by offsetting FMLA benefit payments against their payroll taxes or, if benefits exceed payroll taxes, filing a request for an accelerated refund which the IRS claims will be paid within two weeks.



- **Requirements:** (1) it applies to private employers with *fewer than 500 employees* and all public agencies with any number of employees; (2) covered employees (those who have been on the payroll for 30 days) will receive 2 weeks of unpaid leave for which eligible employees may use federal paid sick leave benefits (PSL) followed by up to 10 weeks of paid FMLA leave. The pay is *capped at \$200/day (and \$10,000 in the aggregate), based on not less than 2/3 of the employee's regular pay rate; or, for variable hour employees, the number of hours normally scheduled to work;* (3) during the first two weeks of unpaid leave, the employee can, but cannot be compelled to, use any paid leave they have on the books with their employer, or may use the PSL benefit if eligible; (4) for the remainder of the FMLA leave, the employer is responsible for continuing pay at no less than 2/3 of the employee's "regular weekly rate," and; (5) there are, of course, exceptions/safe harbors that can be granted by the DOL (generally to employers with less than 50 employees) for hardship reasons.

Emergency Unemployment Insurance Stabilization Act (Division D)

- **Requires and funds additional/supplemental unemployment benefits.**
There are no earmarks for special industries, workers, etc. The idea is to get everyone out of work due to COVID-19 onto UI so they have money. The CARES Act above supplements this section.

Emergency Paid Sick Leave (Division E)

- **Paid Sick Leave (PSL) Benefit:** Applies to private employers with less than 500 employees and all public agencies with any number of employees. It applies to all employees who cannot report to work due to (1) federal, state or local quarantine orders; (2) advice by a medical provider to self-quarantine; (3) those experiencing COVID-19 symptoms and seeking a medical diagnosis; (4) caring for an individual who is subject to the above; or (5) caring for a child due to a school or day care provider closure due to COVID-19 precautions.
- **Benefits:** Employees receive 100% of their regular rate of pay for 2 weeks (equal to 80 hours for full time employees), up to a maximum of \$511/day (and \$5,110 in the aggregate). However, the rate of pay for those caring for a person affected by COVID-19 or for a child in the event of a school or day care closure will be paid at 2/3 their normal rate of pay, not to exceed \$200 a day (and \$2,000 in the aggregate). Employees are eligible for the PSL no matter how long they have worked for the employer. There is no length of service requirement.
- **Funding of Benefits:** As with FMLA benefits, employers may obtain reimbursement for PSL benefits by offsetting benefit payments against their payroll taxes. If PSL benefits exceed the amount of the employer's payroll taxes, the employer may file a request for an accelerated refund with the IRS.
- **Exceptions:** The DOL may exempt small businesses with less than 50 employees if these obligations would jeopardize the viability of their business and may allow employers to exclude health care and emergency responders from this Act.