

EMPLOYER LAW BLOG

# CARES Act - Coronavirus Aid, Relief, and Economic Security Act Summary

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Congress responded to the current COVID-19 pandemic crisis by passing the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, H.R. 748 (the “Act”) on March 27, 2020, and it has been signed into law. This Act represents Phase III of the federal response to the coronavirus pandemic in the United States, with an estimated \$2 Trillion of assistance; it is by far the largest direct assistance and economic stimulus legislation ever in the history of the U.S. This summary discusses the impact the Act has on both individuals and businesses; there are other provisions affecting hospitals, state/local governments, and other miscellaneous provisions that are not summarized; readers are directed to the bill text available from the link at the end of this article.

## TITLE II – Assistance for American Workers, Families, and Businesses

### Subtitle A—Unemployment Insurance Provisions

Under the Relief for Workers Affected by Coronavirus Act, individuals may receive assistance under this Act if they have exhausted all other rights to regular unemployment or extended Federal or State benefits. (Sec. 2102). This does not include individuals that are able to telework with pay or individuals who are receiving paid sick leave or other paid leave benefits. To qualify, individuals must provide self-certification that they are otherwise able to work but is unable to because:

- they have been diagnosed with (or seeking a diagnosis after experiencing symptoms of) COVID-19;
- a member of their household has been diagnosed with COVID-19;
- They are providing care for a family member or housemate who has been diagnosed with COVID-19;
- A child or other person for which they are a primary caregiver is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- They have been advised to self-quarantine by a health care provider and as a result cannot reach work;

- They have become the major support, or "breadwinner," because the head of the household has died from COVID-19;
- They have to quit their job as a direct result of COVID-19; or
- Their place of employment closed as a direct result of the COVID-19 public health emergency.

Individuals that qualify shall receive benefit assistance while they are unemployed, partially employed, or unable to work, as a result of COVID-19, for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation. These benefits apply to individuals that are self-employed, although the amount is determined in accordance with Federal Regulations. Benefit assistance under this section applies retroactively to weeks beginning on January 27, 2020. It should be noted that there is a 39-week cap on this benefit assistance.

Further, under agreements between the State and the Federal government, should the State consent, the State will make payments of regular compensation to individuals in amounts that would be determined if that State's laws were applied, with respect to any week for which the individual is otherwise entitled under the State law to receive regular compensation, as if such State law had been modified. (Sec. 2104). The new "modified" regular compensation payable (including dependents' allowances) for any week to an individual will be the amount determined under prior State law plus an additional amount of \$600. This additional \$600 weekly amount is considered the "Federal Pandemic Unemployment Compensation."

If a State chooses to do so, they will make payments of pandemic emergency unemployment compensation to certain individuals. (Sec. 2107). Such individuals are not receiving regular compensation, have already exhausted all rights to regular compensation, have no rights to regular compensation under any Federal law or State unemployment compensation law, and are able to work, available to work, and actively seeking work. The amount of compensation payable to any individual for any week of total unemployment shall be the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment and the amount of Federal Pandemic Unemployment Compensation. The State will establish, for each eligible individual who files an application for pandemic emergency unemployment compensation, a pandemic emergency unemployment compensation account with respect to such individual's benefit year. The amount in this account will be 13 times the individual's average weekly benefit amount, including the amount of Federal Pandemic Unemployment Compensation, for the benefit year. An individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment plus the amount of Federal Pandemic Unemployment Compensation.

Additionally, States may make short-time compensation agreements, but may not compensate an individual in excess of 26 times the amount of regular compensation under the State law, payable to the individual for a week of total unemployment and may not provide payment if the individual is employed by the participating employer on a seasonal, temporary, or intermittent basis. The employer must pay the State ½ the amount of short-time compensation paid under the plan. Grants will be awarded to States that enact short-time compensation programs to help with the implementation and administration of such programs.

This Act contains numerous provisions regarding Federal subsidization of the State unemployment benefits it mandates. To see the financing plans for these benefits, or all of the guidelines for individuals to receive payments in detail, please see the full text.

#### **Subtitle B – Rebates and Other Individual Provisions**

Based on 2019 tax returns (or 2018 if a tax return was not filed in 2019), qualifying individuals will receive a \$1,200 tax credit, \$2,400 for a joint return, and \$500 for each of their qualifying children for 2020. The credit is reduced by 5% of so much the amount the taxpayer's adjusted gross income exceeds \$75,000 (or \$112,500 in the case of a head of household and \$150,000 for a joint return). Nonresident alien individuals, estates and trusts, and individuals with respect to whom a deduction under section 151 is allowable to another taxpayer do not qualify, and individuals must additionally provide Social Security numbers or adoption taxpayer identification numbers. Any credits or refunds are not subject to reduction or offset.

There is no exact date related to the timing of the refund or credit, other than the Secretary shall refund or credit individuals "as rapidly as possible." Refunds and/or credits are only allowed through the end of 2020 and will be disbursed electronically to any account to which the payee authorized the delivery of a tax refund on or after January 1, 2018. Notice will be sent by mail within 15 days after the date of the distribution to the taxpayer's last known address, and will include the method and amount of payment, and a phone number to report a failure to receive such payment.

Participants in eligible retirement plans, such as 401(k) or profit-sharing plans and IRAs, can take distributions in 2020 of up to \$100,000 from their plan benefits without incurring the 10% early distribution tax penalty otherwise applicable. The distribution must be a "coronavirus-related distribution," or made to an individual (i) diagnosed with the virus by a test approved by the CDC; (ii) whose spouse or dependent has been diagnosed with the virus by a test approved by the CDC; or (iii) who experienced adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury in 2020. The Act allows such coronavirus-related distributions to be repaid within three years of taking the distribution, treated as a rollover contribution to eligible retirement plans. Any coronavirus-related distributions are included in taxable income ratably over a three-year period, unless the individual elected to have it taxed in the year of distribution.

Outstanding retirement fund loans have a one-year extension of time for repayment if the due date occurs between the date the Act is enacted and December 31, 2020. It is not clear whether employees may opt out of having their loan due dates extended or whether the extension rules are mandatory.

There is a temporary waiver of required minimum distribution for any distribution required to be made in calendar year 2020 for certain defined contribution plans and IRAs.

For taxable year 2020, there is an allowance of a partial above the line deduction for charitable giving, capped at \$300. There is also a temporary suspension of limitations on certain cash charitable contributions made by individuals, so long as the contribution does not exceed the taxpayer's contribution base. For contributions made by a corporation, there may be a deduction if the aggregate of contributions does not exceed 25% of taxable income over the amount of all other charitable contributions.

## Business Provisions

### Paycheck Protection Program.

This bill appropriates \$349 billion to fund emergency small business loans, utilizing the existing SBA Section 7(a) loan process, pursuant to the following provisions:

- The purpose of this new loan authorization is to allow small business employers (generally defined to be any small business concern with 500 or fewer employees, hotel/restaurant franchise businesses with 500 or fewer employees per location, plus certain private and public non-profit organizations, and including self employed individuals) access to loans (amounts based upon payroll only) that will allow continued payment of payroll, business mortgage or rent obligations, utilities, and debt service for business debt in effect on 2/15/2020.
- The eligible loan amount is determined pursuant to a formula, being the lesser of:
  - “[the average total monthly amount of payroll (as defined) over the last year, multiplied by 2.5], but capped at \$10,000,000.
    - *Note that the loan amount is limited to payroll expenses, but the permitted uses of the loan proceeds also includes mortgage interest, rent, utilities, and interest on pre-existing debt.*
- No or reduced loan application fees.
- Importantly, these specific loans require no personal guarantees or collateral, and are 100% guaranteed by the SBA. Lenders will be scrambling to set up processes to make and handle these loans.

- **Potential Loan Forgiveness:** As an incentive to continue to employ its employees (rather than terminate or furlough them; known as “payroll continuity”), borrowers are eligible for loan forgiveness under the following terms:
  - the covered period is 2/15/20-6/30/20;
  - “covered payroll” is payroll compensation paid to the employee during the covered period, limited to a salary rate of \$33,333 (ie, an \$100K/year annualized rate), plus group health benefits and insurance, and paid sick leave and paid family leave under the recently passed Families First Coronavirus Response Act
  - Amounts eligible for loan forgiveness are limited to total covered payroll costs plus mortgage interest or rent, and utilities.
  - Limitation: loan forgiveness will not be available to the extent the employer reduces its # of FTE employees compared to its applicable period prior to 2/15/20, or to the extent of salary/compensation decreases more than 25%.
  - Amounts forgiven are expressly excluded from being taxable income under the IRC.
  
- **Miscellaneous Business Provisions.** Additional assistance is also provided to businesses for the following:
  - The deadline for payment of corporate estimated income tax payments otherwise due before October 15 is deferred until October 15, 2020;
  - The employer portion of payroll taxes (and one half the self employment tax for self employed individuals) due up to December 31, 2020 are deferred, and will be due and payable:
    - 50% of the deferred amount must be paid by December 31, 2021; and
    - The remaining 50% must be paid by December 31, 2022;
  - Expanded carryback of Net Operating Losses (NOL) for corporations and non-corporate entities;
  - Expansion of deductible business interest expenses for 2019 and 2020.
  - Reinstatement of limits on downward attribution of stock ownership for constructive stock ownership analyses.

- Loans to Distressed Industries and State/Local Governments.
  - Sections 4000-4029 of the bill (Coronavirus Economic Stabilization Act of 2020) provide \$500 Billion to the Secretary of the Treasury to makes loans or guarantees for up to:
    - \$25 billion for passenger air carriers;
    - \$4 billion for cargo air carriers;
    - \$471 billion for other eligible businesses. The term eligible business includes nonprofit organizations with between 500 and 10,000 employees.
  - Conditions: The Secretary must find that (a) other credit is not reasonably available, (b) the intended loan or guarantee is prudently incurred, and (c) the loan is sufficiently secured. Until 12 months after the loan is repaid or the guaranteed loan repaid, the eligible business shall not pay dividends or make other capital distributions with respect to its common stock. Further, the business shall maintain its employment levels as of March 24, 2020 to the extent practicable, and no reduction shall be more than 10 percent from such date. The majority of the business' employees must be located in the United States, and its continued business operations "are jeopardized."
  - Standard loan provisions and covenants shall be included, and the interest rate shall not be less than that for US market obligations of comparable maturity. If an eligible business is financially successful, the Federal Government should participate in the gains of its security holders (i.e., equity participation). The Secretary may use an additional \$100 billion to pay costs and administrative expenses associated with the direct loans or guarantees.
  - Key executives (who earned more than \$425k in 2019) will have compensation limits from March 1, 2020 to March 1, 2022 of their 2019 earnings, and if terminated may not have compensation in excess of double the 2019 earnings.
  - For air carriers, the Secretary may require the carrier to continue its services in place before 3/1/20 taking in to account the needs of small and local communities.
  - Separately, there is an exclusion from income for certain employer payments of student loans. Payments of principal or interest on any qualified education loan made through the remainder of 2020 by an employer and paid to the employee or lender are excluded, but no double benefit is allowed.
  - There are special provisions applicable to (1) Credit Unions and Community Banks, (2) which suspend generally accepted accounting principles related to troubled debt restructuring, and (3) which provide for forbearance and moratoriums with respect to federally insured or guaranteed loans, including Community Affairs, veterans, and agricultural loans, and for eviction of tenants in such properties.

## Part II – Access to Health Care for COVID-19 Patients

Beginning on the date of this Act, health insurance issuers may not impose cost sharing requirements, including deductibles, copayments, and coinsurance, for in vitro diagnostic products (for the detection and diagnosis of COVID-19), or for health care provider office visits, urgent care visits, and emergency room visits that result in administration of or order for such in vitro diagnostic products. Health insurance issuers are also required to cover qualifying coronavirus preventive services including items, services, and immunizations intended to prevent or mitigate the coronavirus with respect to certain individuals.

## Part IV – Health Care Workforce

### Section B – COVID-19 Pandemic Education Relief Act

Under the COVID-19 Pandemic Education Relief Act, the education provisions provide relief to individuals receiving federal education grants and aid.

If a student is unable to remain enrolled in school as a result of a qualifying emergency, that semester shall be excluded from the student's period of enrollment for purposes of loans. (Sec. 3506). Further, any semester that a student does not complete due to a qualifying emergency shall be excluded from the student's Federal Pell Grant duration limit. (Sec. 3507).

These provisions also provide federal student loan flexibility and cancellation. The amounts that students are required to return with respect to Federal Pell Grants or other grant assistance shall be waived if the withdrawals on which the returns are based on are withdrawals by students who withdrew as a result of a qualifying emergency. (Sec. 3508). The Secretary also *shall* cancel the borrower's obligation to repay the portion of a loan for a recipient of assistance who withdraws from the institution during the payment period as a result of a qualifying emergency. (Sec. 3508) (emphasis added). Additionally, a university may, as a result of a qualifying emergency, provide a student with an approved leave of absence that does not require the student to return at the same point in the academic program that the student began the leave of absence if the student returns within the same semester (or the equivalent). (Sec. 3508).

Perhaps most alleviating, all payments due for federal student loans shall be suspended through September 30, 2020 and interest shall not accrue on the loans for which payment was suspended. (Sec. 3513). Each month for which a loan payment was suspended shall be deemed as if the borrower had made a payment for the purpose of any loan forgiveness program for which the borrow would have otherwise qualified. (Sec. 3513).

For the purposes of reporting information about the loan to a consumer reporting agency, any payment that has been suspended is treated as if it were a regularly scheduled payment by a borrower. (Sec. 3513). During the suspension period, all involuntary collection related to the loan is also suspended. This includes wage garnishment, reduction of tax refund, reduction of any other Federal benefit payment, or any other involuntary collection activity. (Sec. 3513). Federal borrowers can expect ample notification regarding the suspension period and when payments will be expected again. (Sec. 3513).

This Act also provides guidance for individuals who perform service hours for educational awards. (Sec. 3514). Any individual serving in a position eligible for an educational award who is performing limited service due to COVID-19 or whose position has been suspended or placed on hold due to COVID-10 shall be allowed to accrue other service hours that will count toward the number of hours needed for the individual's education award. (Sec. 3514).

Finally, this Act singles out grant recipients who perform teaching service. (Sec. 3519). Grant recipients who are unable to fulfill all or part of their service obligations may be excused from fulfilling that portion of service. (Sec. 3519). However, teaching service that is part-time or temporarily interrupted due to the COVID-19 qualifying emergency *shall* be considered full-time service and fulfill the service obligations. (Sec. 3519). The requirement that teaching service years be consecutive shall be waived if the borrower's teaching service is temporarily interrupted due to the COVID-19 qualifying emergency so long as the borrower resumes teaching service after the temporary interruption is over and goes on to complete a total of five years of qualifying teaching service (including service performed before and during the qualifying emergency. (Sec. 3519).

To see guidance for institutions, not just individuals, please see the full text.

#### **Conclusion**

The CARES Act contains many other provisions addressing government-provided relief to businesses and individuals. A full text of the Act may be read at: <https://www.congress.gov/bill/116th-congress/house-bill/748/text>. As legislation and regulations are moving at a quickened pace in response to this pandemic, it is always wise to consult with an attorney if you believe you or your business will be affected.

If you have any questions related to COVID-19 and the impact it has on you or your business, please contact Attorney Douglas Whitlock at (314) 446-4396, or any of our Business or Employment attorneys.