

March 31, 2020

CORONAVIRUS AID RELIEF AND ECONOMIC SECURITY (CARES) ACT SUMMARY

In our E-Blast last week, we focused on the Families First Coronavirus Response Act (FFCRA) and forecast the effects of an anticipated \$2T stimulus package. Last Friday, Congress approved and the President signed the \$2T **Coronavirus Aid Relief and Economic Security (CARES) Act** stimulus package.

What does CARES mean to you as an employer? How can it help you weather the COVID-19 storm? To assist you in answering these questions, this E-Blast summarizes key provisions of CARES and identifies questions and considerations raised by the Act. Although many questions remain about the scope of CARES (implementing regulations are expected soon), it is clear that for certain employers, CARES provides additional lifelines in the form of tax deferrals, tax credits, and SBA loans, which are intended to help employers keep their businesses afloat and retain their workforce until the COVID-19 storm subsides.

CARES Act: Key Provisions Summarized

1. Paycheck Protection Program

- Provides loans through SBA lenders to businesses with 500 employees or fewer, including nonprofit organizations and various self-employed individuals. (Certain industries with more than 500 employees may be eligible to participate).
- Loan amounts are determined by the employer's average payroll during the past year. Some or all of the loan may be forgiven if used for approved expenses (see below), and subject to workforce retention requirements.
- Loan amounts may be up to 2.5 times the employer's average monthly payroll costs over the prior 12 months, but no more than \$10 million. (Additional amounts may be available to employers with outstanding SBA disaster loans)
- Loans have a maximum interest rate of 4% and a maximum 10 year maturity period.
- Deferment periods of at least 6 months and up to 1 year are available on all principal, interest, and fees, with no prepayment penalties.

- Loan forgiveness is available for approved expenses incurred by the employer during the 8 weeks following receipt of the loan. These expenses include payroll (including wages, benefits, commissions and other forms of compensation up to \$100,000 per employee), mortgage interest, rent, and utility payments.
- Loan forgiveness is not available for costs associated with providing newly mandated sick leave and expanded FMLA under FFCRA.
- The extent of loan forgiveness will be reduced if the employer reduces workforce expenses through salary reductions, furloughs, layoffs, or terminations. However, forgiveness reductions may be mitigated if the employer restores employees and compensation to February 15, 2020, levels by June 30, 2020.
- Employers may receive only one Paycheck Protection Program loan.
- Loans will be available through June 30, 2020, subject to available funding.
- Importantly, employers receiving loan forgiveness under this program may not participate in other economic stabilization programs available under CARES (payroll tax deferral or employee retention tax credit).

2. Payroll Tax Deferral (*Unavailable to recipients of Payroll Protection Loan*)

- Employers may defer payment of the 6.2% Social Security payroll tax incurred from March 27, 2020, to December 31, 2020.
- 50% of tax may be deferred until December 31, 2021, and the remaining 50% may be deferred until December 31, 2022.

3. Employee Retention Tax Credit (*Unavailable to recipients of Payroll Protection Loan*)

- Available to qualified businesses who are: i) subject to suspension or closure due to government order, or ii) suffer a significant decline in gross revenue (a quarterly decline of 50% or more compared to same quarter in preceding year).
- A refundable credit equal to 50% of qualified wages (up to \$10,000 per employee) applied against payroll taxes.
- Employers with more than 100 employees are subject to additional restrictions on tax credits.

4. Extension of Tax Deadlines

- Employer deadlines for filing and payment of taxes are postponed until July 15, 2020, without penalties or interest.

5. Employee Benefit Plans

- Expands the scope of COVID-19 testing services that must be provided by health plans without cost sharing by employees (deductibles, copays and coinsurance) beyond what was previously required in FFCRA.
- Eliminates the requirement for a prescription for over-the-counter (OTC) medications.
- Eliminates the 10% early withdrawal penalty for certain qualifying distributions from retirement plans before age 59 ½.
- Makes retirement plan funds more accessible to participants for plan loans and provides for delayed payment in some cases.
- Delays the requirement to make required minimum distributions from certain retirement plans.

Considerations

As you can see, the passage of the CARES Act raises new and sometimes conflicting considerations for employers. We are here to help you navigate through this confusing maze of employment laws, both new and old, as you grapple with how your company can best weather the storm. Here are just some of the additional considerations raised by CARES:

- Should my company apply for a Paycheck Protection Program Loan?
- Or is it better for my company to pursue available payroll tax deferrals/employee retention tax credits?
- How do company plans to terminate, lay off, or furlough employees affect Paycheck Protection Program Loan forgiveness?
- What other legal considerations are relevant when furlough/layoff decisions are made?
- How and when does my company have to amend its employee benefit plans, and/or notify my employees of changes to their benefit plans?
- Will layoffs/furloughs impact employee entitlement to group health plan benefits, or retirement plan vesting?

Please know that your friends at JAH and the **Employment Practices and Benefits Group** are on standby to assist you. For more information, please contact Patrick Kelly or Jon Coffin—or any member of the Group shown below.