

Coronavirus Aid, Relief & Economic Security (CARES) Act

On Friday, March 27, the U.S. Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The following are provisions most relevant for small- to mid-sized businesses and their affected employees dealing with the workplace disruptions related to COVID-19. *Please note, we have prepared this briefing from the perspective of HR professionals. We are not attorneys or accountants. Accordingly, we strongly encourage you to consult with your legal or financial advisors before making business decisions based on the following analysis.*

Most Relevant to Businesses

The following are assistance programs most relevant to businesses affected by COVID-19.

Payroll Protection Loans: The CARES Act establishes emergency grants and a loan program for employers with fewer than 500 employees. Through the Small Business Administration, small businesses, sole proprietors and non-profits can borrow the sum of 2.5 times their average monthly payroll, health insurance, rent, and utilities, up to a total of \$10 million, to keep their business afloat.

So, for example, your loan may be:

$$\begin{array}{l} \text{Monthly Average Payroll (over previous 12 months)} \\ + \text{ Health Insurance} \\ + \text{ Rent or Mortgage Interest} \\ + \text{ Utilities} \\ \hline \text{TOTAL} \times 2.5 = \text{Loan Amount (Max \$10 million)} \end{array}$$

Monthly payroll costs may include wages, commissions, salaries or similar compensation to an employee or independent contractors, cash tips, vacation, parental leave, medical and sick leave, allowance for dismissal or separation, payments for group health care benefits including premiums, retirement benefit payments, and state or local tax assessments on employee compensation. Payroll costs may not include compensation of any individual employee in excess of an annual salary of \$100,000, payroll taxes, compensation for employees living outside the U.S. and any payments made under the Families First Coronavirus Response Act.

Standard Small Business Administration loan fees will be waived and no personal guarantees are required by business owners. Loans have a maximum maturity of 10 years and an interest rate of no more than 4%.

The Act also provides for possible deferment of repayment of the loans for a period of at least 6 months and up to 1 year.

Forgiveness for Payroll Protection Loans: Essentially, these loans can become grants and don't have to be paid back if the employer meets certain conditions designed to ensure the money goes toward keeping workers employed in the near term. The Act provides for all or some of these payroll protection loans to be forgiven on a tax-free basis provided employers continue paying employees at normal levels during the eight weeks following the origination of the loan. In addition, payments made during that time for payroll costs, rent or mortgage interest, and certain utility payments may be forgiven. To apply for loan forgiveness, the borrower must submit an application that includes documentation verifying the number of employees and pay rates and cancelled checks showing mortgage, rent or utility payments.

The amount eligible to be forgiven is reduced if the employer either reduces its workforce during the covered eight-week period as compared to 2019 or 2020 or reduces the salary or wages paid to an employee who earned less than \$100,000 annually by more than 25% during the covered period. The loan forgiveness reduction may be avoided if the employee is rehired or their pay returned to its previous level in a specified time period.

Refundable Employee Retention Credit: The Act provides a refundable payroll tax credit of 50% of wages paid by employers to employees during the COVID-19 crisis up to \$10,000 per employee. The credit is applied against the employer's share of FICA (social security) tax. To the extent the credit exceeds the employer's share of FICA taxes for the quarter, the excess will be refunded to the employer.

The credit is available to all businesses regardless of size 1) that are fully or partially closed or suspended due to a COVID-19-related shutdown order, or 2) saw their gross receipts decline by more than 50% when compared to the same quarter in the previous year. The Act has separate definitions for employers who had more than 100 full-time employees in 2019 (eligible large employers) and employers who had 100 or fewer full-time employees in 2019 (eligible small employers). For eligible large employers, "qualified wages" means wages paid to an employee who is not performing services for the employer (e.g., a furloughed employee remaining on the employer's payroll). For eligible small employers, "qualified wages" include all wages paid by the employer regardless of whether the employee is performing services for the employer. Qualified wages also include the employer-paid portion of the employee's group health plan premiums. The number of an employer's full-time employees in 2019 is determined under the methodology established under the Affordable Care Act.

Expanded Disaster Loans and Grants: The CARES Act expands access to the Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act to include business with fewer than

500 employees as well as sole proprietors and ESOP's. Until December 31, 2020, loans that are covered will not require a personal guarantee if under \$200,000 and can be taken out between January 31, 2020 and the date when a "payroll protection loan" is available for anything "other than payroll costs."

Emergency grants up to \$10,000 will be advanced to maintain payroll and is not required to be repaid even if the 7(b)-loan request is denied.

Relief for Existing SBA Loans: The Act allocates \$17 billion to help small business cover up to six months of payments on existing SBA loans.

Exclusion of Student Loan Repayment Benefits: The CARES Act allows employers to pay up to \$5,250 of an employee's student loan debt in 2020 as a tax-free benefit to the employee. However, if the employer is already paying an employee's qualified educational expenses (for example, to earn a graduate degree), the tax-free amount would be \$5,250 even if that educational payment plus the student loan repayment is greater than that.

Most Relevant to Employees

Individual stimulus payments: The Act provides for payments to be sent directly to individual Americans. These Individual stimulus payments will be:

- \$1,200 for each single taxpayer who made \$75,000 or less in 2019; those making up to \$99,000 will have their payment reduced by \$5 for each \$100 increment earned above \$75,000.
- \$2,400 for each couple who filed jointly and made \$150,000 or less; single taxpayers filing as head of household if they earn \$112,500 or less; couples making up to \$198,000 will have their payment reduced by \$5 for each \$100 increment earned above \$150,000.
- An additional \$500 will be paid out for each dependent child under the age of 17.

To qualify, recipients must have submitted their 2019 or 2018 taxes or have collected Social Security but did not earn enough to file taxes. Recipients must have submitted a valid Social Security number for themselves, their spouse, and their dependents.

Payments will be made via direct deposit for those filers who provided their bank information on their tax returns. Those who did not provide banking information will receive their payment by check. This payment will be an advance payment that will need to be accounted for in filers' 2020 tax return.

Anyone who does not fall into any qualifying category may be able to take the credit against their tax liability on their 2020 tax return.

Expanded unemployment benefits: The Act expands the eligibility requirements for people to qualify for unemployment benefits by placing fewer restrictions on unemployment conditions and allowing states to relax restrictions if they choose to. It also increases states' weekly maximum payments by \$600 (regardless of income) for four months. The Act extends states' current maximum weekly limit (on average 24 months) by adding 13 weeks of additional unemployment benefits. The individual states will still determine who is eligible for unemployment benefits, when they are eligible, and how much they are entitled to and for how long. As before, companies should not promise their former employees unemployment benefits, but they can agree to not dispute an appeal if the former employee need to file one.

Pandemic Unemployment Assistance Program: For self-employed, gig workers, contractors and those who otherwise wouldn't qualify for unemployment benefits but who can't work due to the coronavirus emergency, recipients will receive the \$600 per week unemployment benefit, plus half the average unemployment benefit in the individual's state. This program will run through December 31, 2020 and is for those who lose work directly related to the COVID-19 emergency.

Other aspects of the bill:

The CARES Act created other provisions not discussed in detail in this analysis, as well as an oversight committee to monitor payouts:

- \$500 billion for businesses, states and municipalities including:
 - \$25 billion to air carriers
 - \$4 billion to air cargo carriers
 - \$3 billion to airline contractors
 - \$17 billion for business critical to national security
 - \$454 billion to other eligible businesses, states and municipalities
- \$130 billion to medical and hospital industries including to cover medical supplies, drug and device shortages.
- Expanded telehealth services offered by and covered by Medicare, including services that are not related to COVID-19.
- Expands the Defense Protection Act for two years and allows the government to correct any shortfall with expenditures up to \$50 million.
- Prohibits use for corporate stock buy-backs and payouts to companies owned by the President, Vice-President, members of the Cabinet or Congress, or family members of the above.

Again, we at Affinity HR Group are not attorneys or accountants. You are strongly encouraged to seek the advice of your legal or financial advisors before making business decisions based on this analysis. Affinity HR Group will keep you informed as we learn more. For coronavirus-related

workplace questions, don't hesitate to contact us at 877-660-6400, contact@AffinityHRGroup.com, or check out our blog at www.AffinityHRGroup.com/BLOG.