

RECENT CORONAVIRUS LEGISLATION: TAKING ADVANTAGE OF THE BENEFITS & UNDERSTANDING THE REQUIREMENTS

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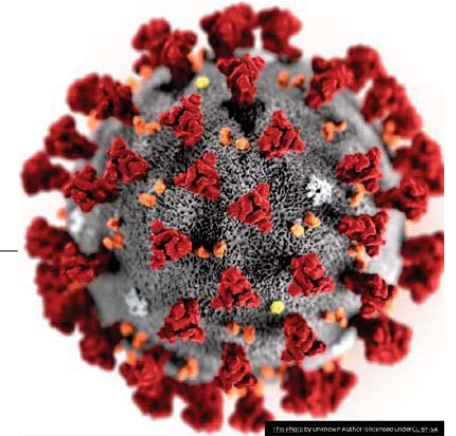
Coronavirus Legislation

Disclaimer

- This presentation is being made with legislation and interpretative guidance as of 3/29/2020
- Round 1 of this legislation passed last week, Round 2 on Friday and Saturday, with guidance coming out constantly since
- *In other words, stay tuned...*

TODAY'S TAKE-AWAYS:

- Tax Filing and Payment Extensions
- **Coronavirus Aid, Relief and Economic Security Act**
“CARES” Act
 - Paycheck Protection Program
 - Tax credits for small businesses
 - Deferrals and modifications
- **Coronavirus Preparedness and Response Supplemental Appropriations Act 2020**
 - Economic Injury Disaster Loans (EIDL)
- **Families First Coronavirus Response Act (FFCRA)**
“Families First” Act
 - Paid sick and family leave
 - Tax credit provisions



TAX FILING AND PAYMENT EXTENSIONS

- Federal income tax payments and returns that were due 4/15/2020, including payment of estimated taxes, will be due 7/15/2020
- No action needed to benefit from the postponed dates

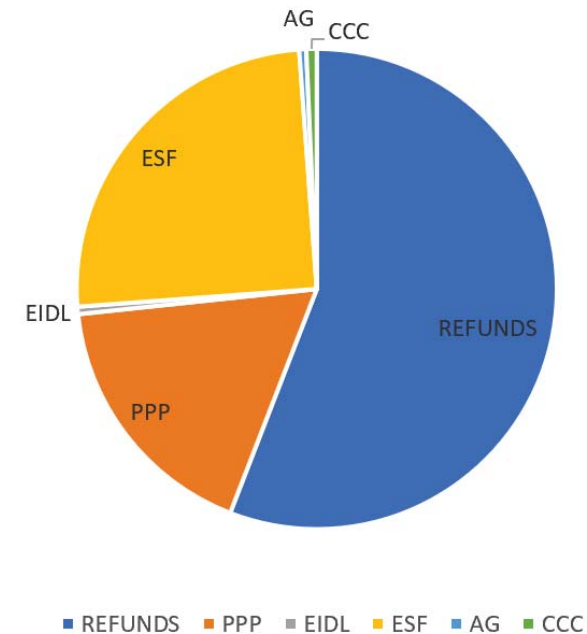
Coronavirus Aid, Relief and Economic Security Act (CARES Act) H.R. 748



Coronavirus Aid, Relief and Economic Security Act (CARES Act) H.R. 748

\$2T Stimulus

- \$349 B - Paycheck Protection Program
- \$10 B for EIDL Loans
- \$500 B – Economic Stabilization Fund
- \$9.5 B – Secretary of Agriculture
- \$14 B– Commodity Credit Corporation
- \$1.2 T Individual Payments (Refunds)



Coronavirus Aid, Relief and Economic Security Act (CARES Act) H.R. 748

Business Provisions

- Employee Retention Credit for Employers Subject to Closure due to COVID-19
- Deferral of Payroll Taxes for Employers and Self-Employed Individuals
- Relaxed Net Operating Loss (NOL) Rules
- Limitation of Individuals' Use of Business Losses
- Corporate Alternate Minimum Tax Credit Refund
- Business Interest Limitation under IRC section 163(j)
- Bonus Depreciation Allowed on Qualified Improvement Property (QIP)
- Excise Tax Exemption
- Expansion of the SBA's Business Loan Program and Disaster Loan Program and Loan Forgiveness



Individual Provisions

- Cash Payments
- Retirement Fund Rules
- Charitable Contributions
- Employer Payment of Student Loans Education Assistance Program



CARES Act PAYCHECK PROTECTION PROGRAM:

ELIGIBLE APPLICANTS

- Small business
- Any business or 501c3 non-profit with <500 employees
- Can have >500 employees depends on NAICS code
- Not limited by SBA income limitations for small business concerns.
- 500 employees in one location for NAICS code 72 (restaurants, food service, hotels, casinos)
- Affiliation rules can be waived. Affiliation = 50% or greater control on control based on contract.

For determining if business employs not more than 500 employees the term employee includes any full time or part time employee or other basis.



CARES Act PAYCHECK PROTECTION PROGRAM:

MAXIMUM LOAN AMOUNTS

- Maximum loan amount 2.5x average monthly payroll
 - Payroll incurred during a 1-year period before the date on which the loan is made
 - adjusted calculation for businesses not in business for full year
- Outstanding Amount of b(2) loan
 - issued after Jan. 31, 2020 and ending on date on which the covered loans are made available to be refinanced under the covered loan
- Or \$10 million

CARES Act PAYCHECK PROTECTION PROGRAM:

DEFINITION OF PAYROLL COSTS

- Compensation with respect to employees that is a salary, wage, commission or similar compensation
- Payment of cash tip or equivalent
- Payment for vacation, parental, family, medical or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance benefit
- Payment of retirement benefit
- Payment of state or local tax assessed on the compensation of employees

Does NOT include

- Compensation of employee annual salary greater than \$100,000 as prorated for the covered period
- Any compensation of an employee whose principal place of residence is outside the US
- Taxes imposed or withheld under chapters 21, 22 or 24 of IRS code of 1986 during covered period,
- Qualified sick leave wages for which a credit is allowed under section 7001 of Families First Coronavirus Response Act (public law 116-127)
- Qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA (public law 116-127)

CARES Act PAYCHECK PROTECTION PROGRAM:

ELIGIBLE USE OF FUNDS

- Payroll costs
 - Costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave and insurance premiums
 - Employee salaries, commissions or similar compensations
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligations)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period

CARES Act PAYCHECK PROTECTION PROGRAM:

CERTIFICATIONS

- Uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- Eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
- During the period beginning on February 15, 2020 and ending on December 31, 2020, eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan

CARES Act PAYCHECK PROTECTION PROGRAM:

LOAN FORGIVENESS

- Calculated over an 8-week period starting on the date of the origination of a covered loan
 - Payroll
 - Payments of interest on covered mortgage obligation (no prepayment or principal payments)
 - Any payment on any covered rent obligation
 - Any covered utility payment
- Debt forgiveness excluded from gross income

CARES Act PAYCHECK PROTECTION PROGRAM:

LOAN FORGIVENESS (continued)

- Forgiveness amount reduced by (election of borrower)
 - Dividing number of employees during the covered period by avg monthly number of employees from 2/18 - 6/30/2019
 - Avg number of full-time equivalent employees 1/1 – 2/29/2020
 - Reduction by more than 25% of salary/wages (<\$100k) during most recent quarter prior to covered period
 - 30 days after enactment to rehire or raise salaries
- Application for Forgiveness and requirement of documentation
 - Lender held harmless if documentation is in hand

CARES Act PAYCHECK PROTECTION PROGRAM:

ADDITIONAL INFORMATION

- Funds that are not forgiven will then be termed out up to 10 years maximum with a maximum 4% interest
- Waiver of normal loan/guarantee fees
- No requirement that credit is not available
- No personal guarantee
- No collateral

CARES Act

Supplemental Appropriations Act 2020 H.R. 6074

- \$8.3B coronavirus spending bill
- Economic Injury Disaster Loan (EIDL)(7)(b) program – applied to coronavirus

CARES Act

SBA Economic Injury Disaster Loan (EIDL):

ADDITIONAL INFORMATION

- Ability to use along with Paycheck Protection Program
- Covers operating expenses and working capital
- Potential for longer terms

CARES Act

SBA Economic Injury Disaster Loan (EIDL):

ELIGIBLE ENTITY

- Business with not more than 500 employees
- Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor
- An ESOP (as defined in section 3 of the small business act (15 U.S.C 632)) with not more than 500 employees or
- A cooperative with not more than 500 employees
- A tribal small business concern, as described in section 31(b)(2)(C) of the Small Business Act (15 U.S.C. 657a(b)(2)(c), with not more than 500 employees
- Private nonprofit organizations and small agriculture cooperatives

CARES Act

SBA Economic Injury Disaster Loan (EIDL):

COVERAGE

- Repaying obligations that can't be met due to revenue losses
- Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains
- Making rent or mortgage payments
- Maintaining payroll
- Providing sick leave to employees unable to work due to direct effect of COVID-19

CARES Act

SBA Economic Injury Disaster Loan (EIDL):

LOAN AMOUNT

- \$2M max; amount will be determined case by case

TERMS

- Interest rate of 3.75% for small business/2.75% for non-profits
- Maximum of 30-year payback period

WAIVER

- Personal guarantee on advances and loans below \$200k
- Requirement that an applicant needs to have been in business for the 1 year period before disaster
- Credit elsewhere

NOT ELIGIBLE FOR DEBT FORGIVENESS

CARES Act

EMPLOYEE RETENTION CREDIT (EMPLOYERS SUBJECT TO CLOSURE)

What is it?

Refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis.

What Employers eligible?

- Operations were fully or partially suspended, due to a COVID-19-related shut-down order, or
- Gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

What wages?

- Employers **>100 full-time employees**, qualified wages are wages paid to employees ***when they are not providing services due to the COVID-19-related circumstances***
- Employers **<100 or fewer full-time employees**, **all employee wages** qualify for the credit, **whether the employer is open for business or subject to a shut-down order**

How much?

- The credit is provided for the **first \$10,000 of compensation**, including health benefits, paid to an eligible employee.
- The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.



CARES Act

PAYROLL TAX PAYMENT DEFERRALS

What is it?

A deferral of the **Employer's portion** of FICA taxes for the period of enactment to 1/1/2021

- @ 12/31/2021 → 50% of deferred amount due
- @ 12/31/2022 → 50% remaining due
- Similar rules allow deferral of 50% of Federal self-employment taxes

NOTE: Does not appear that this deferral can be used if a loan is forgiven under the Paycheck Protection Program

CARES Act

NOL MODIFICATIONS

What is it?

Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year.

- The provision provides that an NOL arising in a tax year beginning in **2018, 2019, or 2020** can be carried back **5 years**.
- Temporarily removes the taxable income limitation to allow an NOL to offset income *fully*.

These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

CARES Act

BUSINESS INTEREST LIMITATION MODIFICATIONS

What is it?

Provision *temporarily* increases the amount of interest expense businesses are allowed to deduct on their tax returns under section 163(j) by:

- Increases the **30%** limitation → **50%** of taxable income (with adjustments) for **2019 and 2020** for Sole Proprietorships and Corporations **but just 2020** for Partnerships
- Taxpayers *can elect* to calculate the interest limitation for 2020 *using their 2019* adjusted taxable income as the relevant base, which often will be *significantly higher*

CARES Act

FINE PRINT/FREE LUNCH PITFALLS?

- Social Security Trust Funds are made whole with Treasury appropriations to make up differences
- Restrictions on business loan recipients in the Economic Stabilization Fund (ESF):
 - Currently **NOT** part of the **PPP or EIDL**, but beware of future translations as it is a core part of the legislation for the **ESF** (big Company/Airline (etc) “bail-outs”)
 - Businesses must contractually agree that, *until 1 year after the loan (or loan guarantee) is no longer outstanding*, it will:
 - **NOT** Pay dividends or buy-back publicly-traded stock
 - **NOT** Pay increased compensation (*or severance over certain limits*) to any officer or employee whose total compensation exceeded \$425k in 2019 (*other than certain employees subject to collective bargaining agreements*)
 - **WILL** reduce the compensation of officers or employees whose total compensation in 2019 was > \$3M

CARES Act

INDIVIDUAL PROVISIONS

- Excess Business loss limitations for non-corporate taxpayers deferred to 2021
- Individual Rebates - **\$1,200/\$2,400 plus \$500** per qualifying child – “advance refund credits” against 2020 taxes (*phase-outs apply*)
- Access to retirement funds – individuals **may withdrawal up to \$100k** from retirement funds during calendar year 2020 **without being subject to the 10%** early distribution tax. The individual must have been furloughed or experiencing adverse financial consequences from COVID-19. Taxable income may be spread over 3 years, or alternatively can be repaid during that period.
- Student loan repayment assistance - enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer **may contribute up to \$5,250 annually** toward an employee’s student loans, and such payment would be excluded from the employee’s income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (*e.g., tuition, fees, books*) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.
- Increased deductions for charitable donations – temporarily **lifts** income-based limitations on donations from individuals in 2020. For corporations, temporarily raises the income-based limitation to **25%** of taxable income (*vs. 10%*)

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

- Emergency Family and Medical Leave Expansion Act.
- Emergency Unemployment Insurance Stabilization and Access Act of 2020
- Emergency Paid Sick Leave Act
- Tax Credits for Paid Sick and Paid Family and Medical Leave

Families First Coronavirus Response Act (FFCRA)

EMERGENCY LEAVE

Public Health Emergency Leave

- **What is it?** An expansion of 12-week FMLA leave to cover employees who cannot work due to childcare obligations
- **Who is eligible?** Employees who have been employed for 30 days as of the date their leave begins
- **How much must be paid?** The first two weeks are unpaid; the remaining 10 weeks are paid at 2/3 the employee's regular pay – up to \$200/day, \$10,000 total
- **Any exemptions?** Employers under 50 employees (must apply), and health care workers

Emergency Paid Sick Leave

- **What is it?** A new sick leave bank *in addition* to any sick leave already offered by the employer
- **Who is eligible?** All employees on 1st day of employment
- **How much must be paid?** 80 hours for full-time workers; prorated for part-time workers. Two tiers of pay:
 - **Tier 1:** Employees directly affected by COVID-19 must receive 100% of regular pay, up to \$511/day
 - **Tier 2:** Employees who are out of work due to child-care unavailability must receive 2/3 of regular pay, up to \$200/day
- **Any exemptions?** Employers with fewer than 50 employees (must apply); and healthcare workers

Families First Coronavirus Response Act (FFCRA) FAMILY/MEDICAL LEAVE TRIGGERS

Employee is unable to work because:

- Subject to government quarantine or isolation order;
- Doctor orders to self-quarantine;
- Experiencing COVID-19 symptoms and seeking diagnosis;
- Caring for quarantined “individual” (not limited to family);
- Caring for child whose school/daycare is closed; or
- Experiencing other substantially-similar conditions as specified by the Secretary of HHS, in consultation with DOL and Treasury

Families First Coronavirus Response Act (FFCRA) FAMILY/MEDICAL LEAVE REQUIREMENTS

- FFCRA covers leave taken between 4/1/20 and 12/31/20
- First 10 days can be unpaid or covered by sick leave (if applicable) or by other PTO
- Employer with <25 employees not to rehire someone coming back from FML if position no longer exists b/c of economic downturn
- Max 12-week total if employee is both sick and child's school is closed (2 weeks full-pay sick leave; then 10 weeks 2/3 pay family leave)

Families First Coronavirus Response Act (FFCRA)

OTHER PROVISIONS

- Does not make regular FMLA leave paid leave
- Not retroactive
- In addition to state leave requirements (CA, etc.)
- Employers forbidden from discharging, disciplining or otherwise discriminating against any employee taking family leave
- DOL civil money penalties for failure to comply
 - 30-day non-enforcement period (April 2020) if employer shows “good faith” in remedying violations ASAP, no willful violation, written commitment to future compliance with the Act

Families First Coronavirus Response Act (FFCRA)

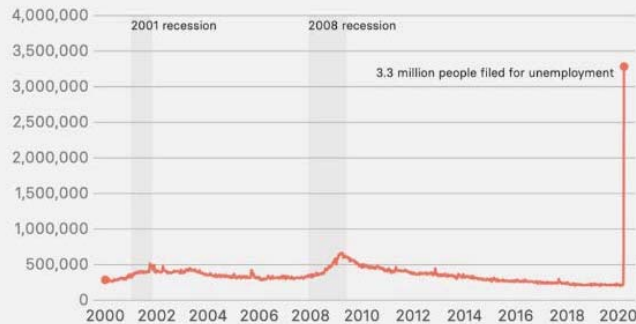
TAX CREDITS

Tax Credits for Wages Paid to Employees on Public Health Emergency Leave and Emergency Paid Sick Leave

- ***What is it?*** Refundable payroll tax credits for wages paid to employees who take paid Public Health Emergency Leave or Emergency Paid Sick Leave
- ***How is the credit taken?*** On quarterly payroll tax returns; IRS is developing a process to get refunds processed and paid quicker than quarterly.
- Similar credit for self-employed individuals against SE tax

Families First Coronavirus Response Act (FFCRA) UNEMPLOYMENT/FURLOUGHS

Nationwide Unemployment Claims



Notes: National data are seasonally adjusted.
Source: Department of Labor, NBER

FURLOUGH:

A furlough continues employment, but reduces scheduled hours or requires a period of unpaid leave

- If you want to continue to provide medical insurance check with your provider to ensure you are in compliance with eligibility requirements

LAYOFF:

A layoff (temporary or permanent) involves terminating employees.

- It is important to be careful that determinations are clear, and do not appear as a target to protected classes. It's crucial to be intentional with reasons for your decisions – production vs. non-production employees for example. Many businesses are applying different percentages of layoffs and furloughs based upon essential and nonessential employees.

UNEMPLOYMENT:

Any employee experiencing even a reduction in hours can apply for unemployment (Furloughed and Laid-off Employees)

COVID-19 HR Toolkit

COVID-19 RESOURCES & UPDATES

[CLICK HERE](#)

- California – Notice of Reduced Earnings
- Sample Acknowledgement of Receipt of Company Policy
- Sample Communication to Employees
- Sample Emergency Sick Policy
- Sample Letter of Layoff
- Sample Notice of Furlough Letter
- Sample Work from Home Agreement
- Sample Essential Employee Letter

QUESTIONS?

COVID-19 RESOURCES & UPDATES

[CLICK HERE](#)



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