

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

ASSOCIATED EMPLOYERS SUMMARY

The newly passed fiscal stimulus package passed the House and Senate and was signed into law by the President. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") is expected to infuse \$2.2 trillion into the US economy and provide economic relief for individual and businesses hit by the pandemic. Key areas for employers to learn more about are business loans and grants, unemployment benefits, retirement plans, tax credits, and executive compensation. This summary memo focuses on some parts of the CARES Act that deal with employees, health plans, payroll tax relief, loans, and loan forgiveness.

We strongly encourage you to seek a legal and accounting opinion as to how this new law can assist your business. Below is a summary of some of the key items in the CARES Act, as it relates to your business.

Paycheck Protection Program and SBA Loan Forgiveness

Small businesses with less than 500 employees are eligible to receive loans up to a maximum loan amount equal to the lesser of the sum of (1) two and a half times the average total monthly payments by the applicant for payroll costs incurred during the one-year period prior to the date on which the loan is made plus any outstanding amount of a loan made during the period beginning on January 31, 2020 or (2) \$10,000,000. Employers cannot include any salaries over \$100,000 per year and any qualified sick leave wages for which a tax credit is allowed under Sections 7001 or 7003 of the Families First Coronavirus Response Act (FFCRA).

The loan can be used for the following:

- Payroll costs;
- Employee compensation, including salaries, commissions, or similar compensation
- Costs related to the continuation of group health care benefits during period of paid sick, medical or family leave, and insurance premiums;
- Payment of any retirement benefits;
- Payment of state or local tax assessed on the compensation of employees;
- Payment of interest on any mortgage obligation;
- Rent and utilities.

The borrower will be required to make a good faith certification that due to the uncertainty of the current economic conditions it is necessary to obtain the loan to support ongoing operations of the business; the funds will be used to retain workers and maintain payroll or make mortgage, lease or utility payments; and there is not a duplicative application for the same purposes by the business.

The borrower is eligible for loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, mortgage or rent obligations, and payment on any utility or the principal amount of the loan.

Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared to the previous year or time period, proportionate to maintaining employees and wages:

- Payroll costs plus any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) plus any payment on any covered rent obligation and any covered utility payment.
- 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 employees beyond 25% 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 rehire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

Emergency EIDC Grants

The SBA will provide emergency grants in the amount of \$10,000 to certain business with less than 500 employees that were in operation on January 1, 2020, who have applied for a SBA economic injury disaster loan. The loan should be provided within three days of applying and even if the applicant is later not approved for the economic injury disaster loan, they are not required to repay this advance payment.

The grant must be used for:

- Providing paid sick leave for employees unable to work for COVID-19
- Maintaining payroll to retain employment during business interruption
- Meeting increased costs to obtain materials unavailable due to interruption in supply chains
- Paying rent or mortgage
- Repaying obligations that cannot be met due to revenue loss

Unemployment Insurance Enhancement

The CARES Act provides an estimated \$260 billion in enhanced and expanded unemployment insurance benefits. Below is a summary of the expanded benefits and coverage requirements:

- Extends unemployment insurance by 13 weeks and provides a four-month enhancement of benefits;
- Makes unemployment compensation available to those not traditionally eligible for regular unemployment benefits, including those with limited work history or those who have exhausted their state unemployment compensation benefits.

The total amount of benefits will be equal to the amount determined under state law, plus an additional amount of \$600 per worker per week for up to four months (expires on July 31, 2020). It provides for an additional 13 weeks of unemployment benefits to those who remain unemployed after state unemployment benefits are exhausted (expires on December 31, 2020).

Employee Retention Tax Credit

The employee retention tax credit applies to employers subject to closure due to coronavirus. The provision provides a refundable tax credit equal to 50 percent of “qualified wages” paid to employees from March 13, 2020 through December 31, 2020. The tax credit applies against the employer portion of Social Security taxes payable on W-2 wages paid to all employees (after first applying the tax credits for payment of required sick leave and required FMLA leave). The tax credit is available to employers who meet either of the following conditions (“eligible employer”):

- The employer’s operations are either fully or partially suspended by a government order relating to COVID-19
OR
- The employer’s gross receipts during a calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter during 2019

The tax credit is based on the qualified wages paid by an eligible employer. For eligible employers with more than 100 average number of full-time employees during 2019 – qualified wages includes ONLY wages that continue to be paid to employees who are NOT providing services due to a COVID-19 suspension of business operations or the greater than 50 percent reduction in gross receipts. For employers with 100 or less average number of full-time employees during 2019 – qualified wages include ALL wages paid to employees regardless of whether or not the employee is providing services. In all cases, the total amount of qualified wages that can be counted for an individual employee during the entire COVID-

19 period cannot exceed \$10,000. Wages refers to W-2 wages used to determine FICA (Social Security and Medicare) taxes BUT NOT counting FFCRA required sick leave payments and FFCRA required FMLA leave payments.

Note, if an employer takes a loan option, regardless of whether the loan is forgiven or not, the employer CANNOT receive this payroll tax credit.

Delay of Payment of Employer Payroll Taxes

An employer may defer payment of the “employer share” of the 2020 Social Security tax. The deferred employment tax will be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. If an employer or a self-employed individual took a loan (as described above) and they had their loan forgiven (as described above), this employer or self-employed individual would NOT be eligible to defer their “employer share” of payroll taxes.

Advance Refundable Tax Credit for Families First Act “Emergency Paid Sick” and “Emergency FMLA” Leave

The tax credit for the Families First “paid sick leave” and the Families First “FMLA leave” is now “advance-refundable.” In other words, an employer and a self-employed individual can ask the Federal government to send them a direct payment in an amount equal to the tax credit the employer or self-employed individual would otherwise take when they file their quarterly payroll taxes.

The link to the entire Statute: <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

ASSOCIATED EMPLOYERS RESOURCES PAGE

We will continue to update our resources page as more information becomes available. Please see <https://www.associatedemployers.org/2020/03/covid-19-resource-center/>

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