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RECENT DEVELOPMENT

Senate Passes CARES Act with Relief for Businesses and Additional Unemployment Benefits

By William Hays Weissman, Michael J. Lotito, and Jim Paretti on March 26, 2020

The U.S. Senate unanimously passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in the late hours of March 25, 2020. The bill provides various tax relief and loan provisions to assist businesses impacted by COVID-19, as well as additional unemployment benefits for individuals affected by the pandemic. The bill now heads to the U.S. House of Representatives. Whether the House will approve the bill as written and send it to the president for signature, or whether it will adopt additional changes, is yet unclear.

The 800+-page bill is designed to inject $2.2 trillion into the economy, and includes a number of provisions designed to aid both employers and workers facing the dramatic challenges of the COVID-19 public health crisis. Assuming many of these provisions become law, agencies like the Small Business Administration and the Department of the Treasury will be charged with establishing mechanisms for participation and the "fine print" of these programs.

Littler WPI will keep you apprised of relevant developments as they occur. Some key provisions of the bill include:

Loan Provisions

The CARES Act contains provisions that offer loan support to small businesses. Some key provisions would:

- Increase the government guarantee of loans made for the Payment Protection Program under section 7(a) of the Small Business Act to 100% through December 31, 2020.

- Define eligible businesses to include non-profits, sole proprietorships, self-employed individuals and firms with fewer than 500 employees per location.
- Include franchise businesses as eligible for relief.
- Specify allowable uses of the loan to include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
- Set a maximum interest rate of 4% and waive various requirements (personal guarantees, etc.).
- Allow for six-month loan deferments.

The CARES Act also provides for loan forgiveness. The key features of loan forgiveness include:

- Borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan.
- Eligible payroll costs do not include compensation above $100,000 in wages.
- Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8-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.

Other changes include amendments to Chapter 11 of the Bankruptcy Code to address coronavirus-related issues, including excluding from income coronavirus-related payments from the federal government to the debtor.

Unemployment Assistance

The CARES Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency. Specifically, the CARES Act provides that a “covered individual” includes anyone who self-certifies that they are able and available to work but is unemployed or partially unemployed due to any of the following:

- Has been diagnosed with COVID-19 or is experiencing symptoms and seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or household member who has been diagnosed with COVID-19;
- The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility as a direct result of COVID-19;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19;
- The individual is unable to work because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
- The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19;
- The individual has to quit their job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of COVID-19.

The Secretary of Labor may establish additional eligibility criteria as well. Importantly, the law not only apply to employees, but also to those who are self-employed (independent contractors). Individuals are not eligible for benefits if they have the ability to telework with pay or are receiving paid sick leave or other paid leave benefits.

Other key features of the new unemployment benefits include:

- Benefits extended from 26 weeks (in most states) to 39 weeks.
- Benefits are payable for the period beginning on January 27, 2020, and ends on December 31, 2020.
- The amount of benefits includes the amount that would be calculated under state law plus $600 per week for up to four months.
- Waiver of the usual one-week waiting period.

Additional benefits may also be available to those who exhaust their benefits. The CARES Act also provides funding to states for work share programs.

Payroll Tax Credit and Deferral

The CARES Act provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 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. 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.

Employers and self-employed individuals may also defer payment of the employer share of the Social Security tax on employee wages. Deferred employment tax must 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.

Individual Rebates and Retirement Accounts

All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work-eligible social security number, are eligible for the full $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable, means-tested benefit programs, such as SSI benefits.

For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as the IRS will use a taxpayer’s 2019 tax return if filed, or in the alternative, their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by $5 for each $100 that a taxpayer’s income exceeds the phase-out threshold. The amount is completely phased out for single filers with incomes exceeding $99,000, $146,500 for head-of-household filers with one child, and $198,000 for joint filers with no children.

Individuals may also be able to tap into retirement accounts. The provision waives the 10% early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief.

There are many other aspects to the CARES Act, including numerous provisions relating to health care and other issues. For employers, the CARES Act offers both opportunities and potential pitfalls, as the new unemployment benefits are likely to be broadly applied, potentially causing disruptions to existing workforces that believe they fall within one of the enumerated categories. Because there is no clear precedent for these benefits, it remains to be seen how state unemployment agencies process new claims under these expanded benefit provisions.

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