

Summary of the COVID-19 Stimulus Bill Passed March 27, 2020

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), a massive stimulus bill designed to address the COVID-19 pandemic. The monumental \$2 trillion Act is the largest of its kind since the stimulus bill President Obama signed into law during the 2008/2009 recession. The most notable provisions of the CARES Act include, but are not limited to, individual stimulus payments; expansion of unemployment benefits; small business loans and grants/advances; aid to large businesses; \$150 billion for state and local governments; and aid to public health and social services.

The focus of this article is on certain provisions of the CARES Act pertaining to aid provided to businesses and amendments to the Families First Coronavirus Response Act (the “FFCRA”). There is also additional information/guidance included as provided by the Department of Treasury and IRS. It should be noted that the following is not an all-encompassing summary of the CARES Act or additional federal guidance applicable to the CARES Act and does not provide a summary for every provision applicable to small and large businesses.

SMALL BUSINESS ASSISTANCE

Paycheck Protection Program (Section 1102)

The CARES Act provides necessary assistance to small businesses in the midst of the COVID-19 pandemic. The first notable form of assistance provided to small businesses is the Paycheck Protection Program (“PPP”), to which the CARES Act allocated \$349 billion dollars. The CARES Act specified that the covered period for a loan under the PPP begins on February 15, 2020, and ends December 31, 2020, although the Department of Treasury recently stated that the application must be completed and submitted by June 30, 2020. Businesses eligible for a loan under the PPP include, but are not limited to those that employ no more than 500 employees, or the number of employees established by the Small Business Administration. The Department of Treasury also released relevant information regarding the PPP: businesses can begin applying on April 3, 2020, and independent contractors and self-employed individuals can apply starting April 10, 2020. Other notable information the Department of Treasury provided regarding the PPP includes, but is not limited to, a 1.0% fixed interest rate; no collateral required; “Credit Elsewhere” requirement waived; loan is due in two years; and no personal guarantee required. The maximum loan available to an eligible applicant is \$10,000,000.

The proceeds of the maximum \$10,000,000 loan may be used for the following “allowable uses” under the Act: (1) payroll costs (subject to a cash compensation cap of \$100,000 for each employee (it does not exclude non-cash benefits such as retirement plans)); (2) costs associated with the continuation of group healthcare benefits; (3) employee salaries, commissions, or other related compensation; (4) payments of interest on a mortgage; (5) payment of rent; (6) payment of utilities; and (7) interest on any other debt incurred before February 15, 2020. It should be noted that the term “payroll costs” does not include payment for leave wages paid pursuant to the FFCRA. Furthermore, a business applying for a PPP loan has to make certain good faith certifications.

During the covered period, the fees of a loan under the PPP may be waived altogether. The PPP also allows for payment deferment relief for six months. Subject to restrictions and limits, loan proceeds from the PPP will be forgiven by the Small Business Administration if the workforce is maintained and the proceeds are used for allowable uses, as provided above. The amount of forgiveness on the loan will decline if the number of employees or salaries/wages decrease. To seek loan forgiveness, a business must have verifying documentation, such as payroll tax filings; state income, payroll, and unemployment filings; financial statements; certification from a representative; and other documentation as required by the Small Business Administration. We anticipate that there will be more guidance issued on the requirements and criteria for businesses to seek loan forgiveness. Finally, the CARES Act waives any prepayment penalty for payment made on a covered loan. Applications for a PPP loan can be found at: <https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form-Fillable.pdf>.

Emergency Economic Injury Disaster Loans (Section 1110)

The CARES Act also provides for Emergency Economic Injury Disaster Loan (“EIDL”) Grants. Under the section applicable for EIDL Grants, the covered period is January 31, 2020, through December 31, 2020. Eligibility for the EIDL Grant includes a business that has not more than 500 employees; a sole proprietorship or an independent contractor; a cooperative that has not more than 500 employees; an ESOP; or a tribal small business concern as defined under the Small Business Act. If a business applies for an EIDL Grant, the business may request an advance of up to \$10,000. Such advance may be used for the following reasons:

1. Providing paid sick leave due to COVID-19;
2. Maintaining payroll to retain employees;
3. Meeting elevated costs to obtain unavailable materials due to interrupted supply chains;
4. Paying rent or mortgage; and
5. Repaying obligations which are unable to be paid due to lost revenue.

Section 1110(e)(5) of the CARES Act provides that “[a]n applicant shall not be required to repay any amounts of an advance . . . even if subsequently denied a [EIDL].” The deadline for applying for and obtaining an EIDL Grant is December 31, 2020.

Debt Relief for Small Businesses (Section 1112)

The CARES Act also provides some debt relief to small businesses. Pursuant to section 1112(c), the CARES Act provides that the Small Business Administration will pay the principal and interest of certain loans.

PROVISIONS APPLICABLE TO BOTH SMALL AND LARGER BUSINESSES

Credit for Employee Retention for Employers Subject to COVID-19 Closure (Section 2301)

The CARES Act provides a fully refundable tax credit for eligible employers if they retain employees. The tax credit is fully refundable in that an eligible employer may receive a refund if

the credit is more than the federal employment taxes owed. Employers eligible for this tax credit are those that (1) were in business during 2020 and (2)(a) during any quarter the operation of the business was suspended (fully or partially) due to government orders *or* (2)(b) the business had a “significant decline in gross receipts.” The operation of a business is partially suspended if a government authority mandates limitations on the business operation and, as such, the business is not operating at full capacity. A “significant decline in gross receipts” occurs where the gross receipts for a 2020 calendar quarter that are less than 50% of the gross receipts for the same quarter in 2019, and ends with the first quarter in which the 2020 gross receipts are greater than 80% of the gross receipts in the same quarter during 2019. However, the credit is not available to state, local, or federal governments or any political subdivision thereof. Furthermore, the credit is not available to a small business that receives a loan under the PPP or to self-employed individuals.

The tax credit is limited to 50% of the first \$10,000 of qualifying wages (including certain health plan costs) paid after March 12, 2020, and before January 1, 2021, to each employee for all quarters paid. Thus, the credit is limited to \$5,000 for any employee. Such qualifying wages are based on the average number of employees in 2019.

An eligible employer may fund payments of qualified wages before the tax credits are received by decreasing its deposits of federal employment taxes. Subject to certain criteria, an eligible employer may decrease its deposit of federal employment taxes by the paid qualified wages without subjecting itself to a “failure to deposit penalty.” Further, to assist employers that do not have adequate federal employment taxes set aside for payments, the IRS established a process for an employer to receive an advance of the refundable tax credits. Finally, it should be noted that there are significant other limitations and criteria under the Act for such tax credits.

Delay in Payment of Payroll Taxes (Section 2302)

The CARES Act also delays payments an employer has to make for federal payroll taxes. The first 50% of applicable employment taxes will not have to be paid until December 31, 2021, and December 31, 2022, for the remaining amount of the taxes. However, the delay in payment of applicable employment taxes is not applicable if a business has had certain loans forgiven under the SBA and the CARES Act. Recently, the Department of Treasury noted that employers that receive PPP loan forgiveness are eligible to defer payroll taxes until the date the PPP loan is forgiven.

Other Tax Provisions (Sections 2303-2308)

There are also multiple other tax provisions under the CARES Act. Notably, those tax provisions provide for the modification of net operating losses; modification of limitation of losses incurred by noncorporate taxpayers; modification of credit for a corporation’s prior minimum tax liability; business interest limitation modifications; amendments concerning qualified improvement property; and a temporary exception from excise tax on alcohol used in hand sanitizer.

AMENDMENTS TO THE FFCRA

In addition to providing aid to small and large businesses, as highlighted above, the CARES Act amended the FFCRA in several ways.

The FMLA (with the addition of the Emergency Family and Medical Leave Expansion Act (the “EFMLEA”)) was amended to strike a clause and provide a limitation section, which states that an employer is not required to pay more than \$200 per day and \$10,000 total for EFMLEA Leave. Such limitation solely clarified the cap an employer must pay under the EFMLEA.

Furthermore, the Emergency Paid Sick Leave Act (the “EPSLA”) was amended to add limitation sections that provide:

- An employer is not required to pay more than \$511 per day and \$5,110 total for each employee who is subject to a quarantine or isolation order; has been advised by a health care provider to self-quarantine; or has COVID-19 symptoms and is seeking a diagnosis.
- An employer is not required to pay more than \$200 per day and \$2,000 in total for each employee who is caring for an individual subject to quarantine or is self-quarantining; caring for a child whose school or care provider is closed or unavailable; or is experiencing any other substantially-similar condition.

Similar to the EFMLEA, the CARES Act amendment to the EPSLA was included solely to clarify an employer’s payment caps.

Furthermore, both the EFMLEA and EPSLA were amended to include language to designate authority to the Director of the Office of Management and Budget to exclude, for good cause, certain U.S. Government employers from the EFMLEA and EPSLA. EFMLEA was further amended to revise the definition of “eligible employee” to include rehired employees under the Act. Specifically, an eligible employee under the Act is an employee who has been employed for at least 30 calendar days. In regard to rehired employees, the definition of an “eligible employee” was amended to include an employee who was laid off on March 1, 2020, or after, had worked for the employer for 30 of the last 60 calendar days prior to the layoff, and was subsequently rehired. Finally, both the EFMLEA and EPSLA were amended to provide for provisions related to advance refunding of tax credits due to leave paid under both Acts.

CONCLUSION

The CARES Act is an extensive bill aimed at fighting the adverse impact made by the COVID-19 pandemic. As highlighted above, the Act provides for helpful and much-needed aid to businesses, but is extremely complicated and convoluted.

If you have any questions regarding the foregoing or any other aspect of the CARES Act, the FFCRA, or other COVID-19 related issues, please do not hesitate to contact Davis & Campbell L.L.C. at (309) 673-1681 or via the e-mail address of any of our attorneys. We are here to assist businesses, no matter the size, during these uncharted and trying times.