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EMPLOYER NEWSLETTER

SHOW ME THE MONEY: WHAT THE "CARES" ACT STIMULUS PACKAGE MEANS TO EMPLOYERS

March 30, 2020

On March 27, 2020, Congress passed the Coronavirus Aid, Relief and Economic Security ("CARES") Act, which the President signed without delay. The CARES Act is designed to provide emergency economic relief to employers and individuals because of the economic turmoil and displacement caused by the COVID-19 outbreak.

The law helps individuals by providing direct payments and increasing unemployment insurance benefits. The law helps small businesses by providing loans and tax credits to remain viable and retain employees.

Below is a summary of the CARES Act that will be most important to employers:

"PAYCHECK PROTECTION" LOANS FOR SMALL BUSINESSES

The CARES Act provides "paycheck protection" loans administered by the Small Business Administration ("SBA") to help small employers cover payroll costs and other expenses incurred between February 15, 2020 and June 30, 2020.

Eligibility

Only small businesses (*i.e.*, fewer than 500 employees[1]) are eligible for these loans. The small business must have been operational as of February 15, 2020, had employees on payroll, and paid wages and payroll taxes.

Purpose of Loans

The loans may be used for payroll costs, rent, utilities, health care costs and other debts incurred by the business. However, "payroll costs" do not include paid sick leave and paid sick time benefits

[1] Businesses in the hospitality industry (those with a NAICS Code of 72) are eligible for a loan as long as they employ not more than 500 employees "per physical location." Examples of those businesses: Hotels and Motels, Casino Hotels, Bed-and-Breakfast Inns, RV Parks and Campgrounds, Recreational and Vacation Camps, Rooming and Boarding Houses, Dormitories, and Workers' Camps, Food Service Contractors, Caterers, Mobile Food Services, Drinking Places (Alcoholic Beverages), Full-Service Restaurants, Limited-Service Restaurants, Cafeterias, Grill Buffets, and Buffets, Snack and Non-Alcoholic Beverage Bars.

under the recently passed Families First Coronavirus Response Act ("FFCRA"), which provides separate tax credits for paid sick leave and paid family leave benefits.

<u>Loan Amounts</u>

A formula determines the maximum amount of a loan. The amounts available is the *lesser* of:

- Average monthly payroll costs during the prior year x 2.5; or
- $10 million

For example, if the employer's monthly payroll is $80,000 for the previous year, it would be eligible for a loan of $200,000.

<u>Loan Forgiveness</u>

The federal government will forgive the loans in an amount equal to the amount of "qualifying costs" incurred during an eight-week period after the loan is originated. "Qualifying costs" are payroll costs (except wages above $100,000 per employee), interest on secured debt obligations, rent, mortgages and/or utilities in place before February 2020.

However, the government will reduce the amount of the loan that it will forgive if the employer:

- Reduces its workforce during the eight-week period compared to prior periods; or
- Reduces the salary or wages paid to an employee by more than 25% during the 8-week period (compared to the most recent quarter).

Conversely, an employer will not have the amount reduced that the government will forgive if it (i) re-hires all employees laid off (going back to February 15, 2020); or (ii) increases its employees' previously reduced wages by June 20, 2020. Clearly, these loan forgiveness rules are designed to incentivize employers to retain and rehire employees.

<u>Loans to Larger Businesses</u>

Employers with 500 to 10,000 employees are also eligible for direct loans under the CARES Act. To be eligible, the business must make a "good-faith certification" to comply with certain requirements provided in the CARES Act (*e.g.*, it intends to use the funds to restore its workforce, it will not outsource jobs during the term of the loan, it will not try to unwind collective bargaining agreements with unions, etc.). It is expected that this certification will be part of a form that is part of the loan application process.

<u>PAYROLL TAX RELIEF</u>

<u>Purposes & Eligibility</u>

The CARES Act also provides an "employee retention tax credit" to help employers retain employees. Eligible employers are those whose:

- Operations were suspended entirely or in part due to a COVID-19 related shut down order; **<u>or</u>**

- Gross receipts decreased by more than 50% compared to the same quarter of the previous year (until the business recovers to 80% of gross receipts compared with the same quarter of 2019).[2]

Important Note: No Double Dipping: An employer that receives an SBA "Pay Check Protection Loan" (as described above) does not qualify for the payroll tax credits described below.

Employee Retention Tax Credit Details

Eligible employers receive a tax credit for each calendar quarter equal to 50% of qualified wages paid to each eligible employee for that calendar quarter, up to $10,000 per employee for all calendar quarters.

The qualifications differ for employers of different sizes. For employers with more than 100 full-time employees, qualified wages are only those wages paid to employees during the period that the employees are not providing services due to certain COVID-19-related circumstances. For employers with 100 or fewer full-time employees,[3] all employee wages paid during the applicable period qualify for the credit, whether or not the employee is providing services to the employer.

PAYROLL TAX "HOLIDAY"

The CARES Act allows employers to defer payments of their portion of Social Security taxes in order alleviate cash-flow issues (a "payroll tax holiday"). Any deferred payroll taxes must be paid over the next two years – with half paid by December 31, 2021 and the other half paid by December 31, 2022.

UNEMPLOYMENT INSURANCE PROVISIONS

The CARES Act also increases unemployment assistance benefits through December 31, 2020. Generally speaking, eligible individuals receive a weekly unemployment insurance benefit in an amount specified under state law. The CARES Act provides an *additional* $600 per week per individual until July 31, 2020. According to the Economic Policy Institute this expansion may provide "100% wage replacement of wage income for the bottom half of the workforce."[4]

The CARES Act also extends the time period that an individual may receive the maximum amount of unemployment insurance to 39 weeks (instead of 26 weeks in most states). However, the additional $600 per week is not available after July 31, 2020.

DIRECT FINANCIAL ASSISTANCE TO INDIVIDUALS

The CARES Act also provides direct financial assistance to certain individuals. A detailed discussion is beyond the scope of what employers must know. But we summarize some of the benefits below:

- Individual tax credits: $1,200 for individual taxpayers, or $2,400 for joint taxpayers, plus $500 for each child of the taxpayer. (These rebates are not taxable income for the recipients because they are a credit against tax liability.)

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[2] All 501(c)(3) exempt organizations qualify, regardless of COVID-19-related suspension of operations or loss in gross receipts. CARES Act, section 2301(c)(2)(C).

[3] The number of employees used for this purpose is the average number of employees in 2019. CARES Act, section 2301(c)(3)(A)(i).

[4] https://www.wsj.com/articles/working-after-the-coronavirus-11585265032?mod=opinion_major_pos1

- Process. Tax returns from 2019 will be used to calculate the rebates. (If a 2019 tax return has not been filed, the 2018 tax return will be used instead.) Most individuals will not need to take any action to receive the rebate.

- Income Levels. The rebates are reduced per the taxpayer's adjusted gross income. Specifically, the rebates are reduced by 5% per dollar of qualified income when the adjusted gross income exceeds $150,000 for joint taxpayers, $112,500 for a head of household, and $75,000 for all other taxpayers. The rebates are phased out completely if the adjusted gross income exceeds $198,000 for joint taxpayers with no children, $146,500 for head-of-household taxpayers with one child, and $99,000 for single taxpayers.

- Waiver of Retirement Savings Penalties. The CARES Act waives early withdrawal penalties for individuals who dip into their retirement accounts for COVID-19 related purposes after January 1, 2020. The Act allows the tax payer to pay the income tax consequences of such distributions over three years and to recontribute the withdrawn amounts within three years.

Conclusion

Please let us know if we can help answer your questions or help you plan and implement appropriate policies. Mr. Clark's contact information is (480) 844-0039 or etc@clarkfirm.com.