COVID-19: FEDERAL "CARES ACT" PROVIDES ECONOMIC RELIEF TO BUSINESSES AND WORKERS

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), authorizing $2 trillion in emergency spending to support the economy. The CARES Act provides forgivable SBA loans for small businesses that maintain their payroll expenses, expands the SBA disaster loan program to provide relief for COVID-19 business disruption, and provides business tax benefits to give relief to eligible employers, including a payroll tax credit on wages paid to employees during a shutdown or disruption related to COVID-19.

Key provisions in the CARES Act include:
• $600 extra weekly unemployment benefits through July 31, 2020, to be administered through the states’ unemployment insurance departments;

• $1200 to each individual taxpayer earning less than a specified minimum adjusted gross income level and $500 for each child; and

• Loans of up to $10,000,000 for small businesses (500 employees or fewer) tied to payroll costs, which may be forgiven if certain conditions are met related to employee retention and maintaining employee wages.

Overall, the CARES Act provides businesses with economic assistance for losses due to COVID-19 business disruption. The CARES Act also expands unemployment insurance benefits for workers unable to work for reasons related to COVID-19, including independent contractors, self-employed workers, and “gig economy” workers who do not normally qualify for benefits. Additional information regarding the Act's key benefits and programs is outlined below.

**Paycheck Protection Program**

The Paycheck Protection Program (“PPP”) expands the Small Business Administration (SBA) 7(a) loan program to provide partially-forgivable loans of up to $10,000,000 per employer during the covered period of February 15, 2020 to June 30, 2020. PPP loans are intended to help small businesses employing 500 or less full-time and/or part-time employees (including 501(c)(3) organizations, veterans’ organizations, sole proprietorships, independent contractors, self-employed individuals and tribal business concerns) maintain their payroll.

Covered expenses include payroll costs, costs related to continuation of healthcare benefits for workers on leave, and operating expenses such as rent, utilities and interest payments on mortgages and older debts. These loans cannot be used to cover paid sick leave and expanded FMLA under the Families First Coronavirus Response Act (FFCRA).

Loan amounts are based upon a formula tied to payroll costs. A PPP loan amount will be the lesser of the average monthly payroll costs
during the “1-year period before the date on which the loan is made” multiplied by 2.5, or $10,000,000. For example, if the business’s average monthly payroll costs over the past year was $500,000, the business would receive a loan for $1,250,000. Note that different calculations will apply for seasonal businesses as well as businesses not in operation during the period of February 15, 2019 to June 30, 2019. The loan interest rate cannot exceed 4%.

A portion of the loan equal to the qualifying costs spent during an eight-week period after loan origination will be forgiven if employers maintain their payroll during the same eight-week period. If an employer is not able to maintain its payroll, the amount of loan forgiveness will decrease proportionally based on the number of employees not maintained and/or the decrease in salary/wages paid to employees. Employers must maintain payroll and later provide documentation to support the amounts spent, or risk losing their potential loan forgiveness. Employers who recently laid off or reduced employee wages may still qualify for loan forgiveness, provided that the employees are rehired and/or wages are increased by June 30, 2020.

SBA application fees will be waived, and lenders are prevented from requiring personal guarantees or collateral to secure the loans during the covered period. Borrowers will be required to make a good faith certification that economic conditions make the loan necessary to support ongoing operations and the funds will be used to retain workers, maintain payroll, or make mortgage, rent and utility payments, among other commitments.

For eligibility purposes, lenders must determine if the business was operational as of February 15, 2020 and had employees on payroll or paid as independent contractors. Certain employers in the Accommodation and Food Services sector (NAICS Code 72) with more than 500 employees also may be eligible, if they have no more than 500 employers per physical location.

**Expansion of SBA Disaster Loan Program**

The CARES Act also expands the SBA's Disaster Loan Program during the covered period of January 31, 2020 to December 31, 2020 for businesses with 500 or fewer employees, and waives certain rules such as requiring personal guarantees on advances/loans of less than $200,000.
Companies applying for loans in response to COVID-19 may request an emergency advance of up to $10,000. This advance does not have to be repaid, even if the loan application is later denied. Advances are to be awarded within three days of a submitted application, and can be used for payroll during business disruptions or slow-downs, rent/mortgage payments, and other business uses.

If an entity that receives an emergency advance is later approved for a loan under the Paycheck Protection Program, the advance amount will be reduced from any payroll cost forgiveness amounts.

To apply for Disaster Loan Assistance, click here.

**Payroll Tax Credit for Employee Retention During a COVID-19 Shutdown or Disruption**

Eligible employers will be entitled to a credit against the applicable employment taxes for each calendar quarter of 50% of qualifying wages (including employer contributions to health insurance payments) paid to employees during a COVID-19-related shut-down or business disruption for each calendar quarter between March 13, 2020 and the end of the year. The credit is available to employers with business operations fully or partially suspended due to government orders limiting commerce, travel or group meetings, as well as employers experiencing a year-over-year reduction in gross quarterly receipts of at least 50%. This credit is not available to employers who take advantage of the SBA loans under the Paycheck Protection Program, and employee wages for which the employer already received a tax credit under the emergency sick pay or paid FMLA provisions in the FFCRA are excluded from this benefit.

Different rules apply for employers of different sizes. For employers with more than 100 full-time employees, the tax credit will be limited to those wages paid to employees who are not providing services because of COVID-19-related business disruption. For employers with 100 or fewer employees, there is no limitation on which employee wages will qualify for payroll tax credit.

**Additional Business Tax Provisions**
There are additional business tax provisions designed to provide relief to eligible employers, including:

- Postponement of the due date for depositing the employer’s portion of Social Security taxes to be paid during 2020, with 50% to be paid by December 31, 2021 and the remaining 50% by December 31, 2022.

- Suspension of changes to the loss provisions made by the Tax Cuts and Jobs Act (TCJA) in an effort to allow companies to offset greater losses as well as to claim refunds for certain losses.

- Temporary increase of the limitation on interest deductions imposed by the TCJA.

**Economic Stabilization and Assistance to Severely-Distressed Sectors**

The CARES Act provides $500 billion to the U.S. Department of the Treasury’s Exchange Stabilization Fund for loans, loan guarantees and investments in the Federal Reserve’s lending facilities to support states, municipalities, and “eligible businesses” that have not received “adequate economic relief” in the form of other loans or loan guarantees.

The $500 billion is allocated as follows:

- Up to $25 billion in loans and loan guarantees for air carriers;

- Up to $4 billion in loans and loan guarantees for cargo air carriers;

- Up to $17 billion in loans and loan guarantees for businesses critical to maintaining national security; and

- Up to $454 billion for loans, loan guarantees, and investments in support of facilities established by the Federal Reserve to support lending to eligible businesses, states, and municipalities.

**Emergency Relief and Taxpayer Protection**
Mid-size companies with more than 500 but fewer than 10,000 employees do not qualify for the Paycheck Protection Program, but are eligible for loans under the Emergency Relief and Taxpayer Protection portion of the CARES Act.

To receive a direct loan, the company must make a “good-faith certification” that it will comply with certain terms, including some with labor law implications. Required certifications include, among others:

- The company must remain neutral in any union organizing effort for the term of the loan.

- The company will not “abrogate existing collective bargaining agreements” for the term of the loan and two years after repaying the loan.

- The company intends to use the loan to retain at least 90% of its workforce (with full compensation and benefits) until September 30, 2020.

- If the company has already instituted layoffs, it will rehire at least 90% of its workforce existing on February 1, 2020, including restoring all compensation and benefits for those employees, no later than four months after the termination date of the public health emergency declared by the Secretary of Health and Human Services related to COVID-19.

- The company will not outsource its jobs or send them offshore for the term of the loan and within two years after repaying the loan.

**Changes to Paid Sick Leave and Expanded FMLA Under the FFCRA**

The CARES Act also clarifies and modifies several provisions of the Families First Coronavirus Recovery Act, including the following:

- Allows the Office of Management and Budget (OMB) to exclude certain U.S. government employers and executive branch employees from the paid sick leave and expanded FMLA requirements enacted under the FFCRA;
• Clarifies that certain employees laid off and then rehired are eligible employees for the purposes of expanded FMLA requirements; and

• Allows for advances on anticipated tax credits for employers’ paid family leave and paid sick leave costs, as well as penalty relief for failure to deposit tax amounts in anticipation of credits (the details/process for which will be worked out in future instructions provided by the Department of Labor (DOL)).

Expanded Unemployment Insurance Benefits

The CARES Act allows each state to participate in an agreement with the federal government to provide expanded unemployment insurance benefits of $600 per week through July 31, 2020. These expanded benefits are in addition to any state unemployment benefits received by eligible workers and will be administered by the states’ unemployment insurance departments.

States would also be permitted to expand unemployment insurance eligibility to provide unemployment compensation to workers who are not normally eligible for benefits, including:

• Self-employed individuals;

• Independent contractors;

• “Gig economy” employees; and

• Individuals who were unable to start a new job or contract due to COVID-19.

These workers must self-certify that they are unable or unavailable to work due to a COVID-19 qualifying reason, and would receive the amount of benefits that they would be entitled to as an employee under state law, plus the expanded unemployment insurance benefits of $600 per week.

Finally, all states would be eligible to provide up to 39 weeks of unemployment benefits to workers who need assistance beyond what is provided for in state and federal law. This would mean an additional 13 weeks beyond the 26 weeks allowed under California law, to be
funded by the federal government through the state’s Economic Development Department (EDD).

**Expansion of “Work Sharing” Programs to Provide Partial Benefits to Individuals with Reduced Hours**

The CARES Act temporarily provides full funding for states with “Work Sharing” programs (California has such a program) or Short-Time Compensation programs. States currently fund these programs, but the CARES Act will now provide $100 million in grants for work sharing program promotion and enrollment of employers, and for implementation or improved administration.

**2020 Recovery Rebates for Individuals**

The CARES Act also provides immediate benefits to all eligible taxpayers, including one-time direct payments of up to $1,200 for individuals ($2,400 for couples) and an additional $500 for each child under the age of 17. Eligibility will depend on income:

- Single taxpayers whose adjusted annual gross income is $75,000 or less will receive the full $1,200 benefit. Taxpayers with adjusted gross incomes above $75,000 will get smaller amounts, with no payment to anyone earning $99,000 or above (with no children). For heads of household, the limit is $112,500.

- Individuals filing jointly with adjusted annual gross income of $150,000 or less will receive the full $2,400 benefit. Joint filers with adjusted gross incomes above $150,000 will receive smaller amounts, with no payment to any couple making $198,000 or above (with no children). For heads of household, the limit is $146,500.

The IRS will determine eligibility based on the taxpayer’s 2019 tax return, or the 2018 tax return if the taxpayer has not yet filed for 2019. If a taxpayer has not filed in either of those years, the income will be based on the taxpayer’s Social Security Statement.

Government officials have said that the payments will arrive within three weeks, but that timetable seems to assume that the IRS already has the taxpayer’s bank account information (which must be provided for direct deposit of any refund or payment). If the taxpayer has not
provided the IRS with bank information, experts estimate that it will take from six weeks to two months to distribute the payments.

**OTHER PROVISIONS OF THE CARES ACT:**

In addition to the above, the CARES Act provides for the following additional benefits:

- Loosens the limits on withdrawing up to $100,000 out of retirement savings in the form of an IRA or 401k loans without penalty (instead of the current cap of $50,000).

- Allows employers to repay student loan debt of up to $5,250 per employee through December 31, 2020.

- Allocates approximately $150 billion to hospitals and healthcare workers for equipment.

- Exempts taxpayers subject to the excise tax on distilled spirits from paying these taxes on distilled spirits used in producing hand sanitizer in response to COVID-19.

- For those who still have not gotten their “REAL ID,” the CARES Act extends the deadline to do so until “at least September 30, 2021.

The full language of the bill establishing the CARES Act can be found [here](#).

As one might imagine, this 880-page legislation has quite a few moving parts. In addition to the assistance LightGabler’s attorneys can provide on employment law issues relevant to the bill, employers are advised to consult their accounting professionals, insurance advisors and business attorneys to understand the many layers of the CARES Act that may or will impact them.

For further questions or legal assistance with COVID-19 issues specific to your company, contact the employment attorneys at LightGabler.

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