

INSURICA

EMPLOYER UPDATE:

Summary of Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act.

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In the face of large-scale economic damages resulting from the COVID-19 pandemic, President Trump signed two relief packages into law in March of 2020: the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These comprehensive legislative relief packages are designed to help stabilize fragile national, regional, and local industries by providing economic relief and emergency leave to individuals, and loans and tax relief to businesses of every size to help them retain their workforce and continue operations during these uncertain times. They also include options employers may want to consider, from payroll tax deferral to write-offs for paying down employee student debt. The options listed below may be able to help alleviate some of the potential losses caused by the COVID-19 pandemic.

CARES Act Section 1102: Paycheck Protection Program

- Expands eligibility for Small Business Administration (SBA) 7(a) loans and provides small businesses funds for specified COVID-19 related costs incurred from Feb. 15, 2020 through June 30, 2020. Loans are subject to aggregation of affiliates under SBA affiliation rules for purposes of determining eligibility.

CARES Act Section 1106: Loan Forgiveness

- Provides partial loan forgiveness for small businesses.

CARES Act Section 1110: Emergency EIDL Grants

- Allows small businesses to receive cash payments from SBA of \$10,000 within three days and waives certain requirements on loans of less than \$200,000.

CARES Act Section 1112: Subsidy for Certain Loan Payments

- Allows for existing small business loans to receive deferral and for creditors to receive payments from the SBA for deferral.

CARES Act Section 2202: Special Rules for Use of Retirement Funds

- Allows individuals to defer loan payments, apply for increased loan amounts, and take distributions from retirement accounts with deferred income tax and without tax penalties.

CARES Act Section 2203: Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts

- Allows individuals to preserve retirement funds and protects them from having to take a distribution based on 2019 account balance, when entire account in 2020 is deflated due to poor market performance in 2020.

CARES Act Section 2205: Modification of Limitations on Corporate Charitable Contributions

- During 2020 Increases the limitations on deductions for corporate charitable contributions to 25% of taxable income.

CARES Act Section 2206: Exclusion for Certain Employer Payments of Student Loans

- Employer payments during 2020 made to or on behalf of an employee education loan will be treated as educational assistance and are excludible from the employee's gross income.

CARES Act Section 2301: Employee Retention Payroll Tax Credit or 50% Reduction in Gross Receipts

- Provides a refundable payroll tax credit, capped at \$10,000.00 per employee, for 50% of wages paid by employers to employees from March 13 through Dec. 31, 2020 in the event operations are fully/partially suspended or gross receipts decline more than 50% from prior year quarter. Employers are not eligible for this credit if the employer receives any small business interruption loan received pursuant to section 1102 of the CARES Act.

CARES Act Section 2302: Delay of Payment of Employer Payroll Taxes

- Allows deferral of the payment of 100% of the employer share of social security taxes due after the date of enactment through the end of 2020. 50% of repayment amount shall be due Dec. 31, 2021; remaining 50% shall be due Dec. 31, 2022. Employers that receive loan forgiveness under Section 1106 (the Paycheck Protection Loan Program) or Section 1109 (the Small Business Interruption Loans Program) of the CARES Act are not eligible to defer the applicable taxes.

CARES Act Section 2303: Modification of Net Operating Losses

- Allows businesses to carryback 100% of losses as far as 2013 to offset taxable income and access cash to support business operations in 2020 and beyond.

CARES Act Section 2304: Modification of Limitation on Losses for Taxpayers Other Than Corporations

- Allows pass-through businesses and sole proprietors to carryback losses as far as 2013 to offset taxable income and access cash to support business operations in 2020 and future years.

CARES Act Section 2305: Modification of Credit for Prior Year Minimum Tax Liability of Corporations

- Benefits corporations with AMT credits by permitting them to claim a refund now and obtain additional cash flow.

CARES Act Section 2306: Modification of Limitation on Business Interest

- Allows businesses to increase liquidity with a reduced cost of capital by increasing limitation from 30% of Adjusted Taxable Income to 50%.

CARES Act Section 2307: Technical Amendments Regarding Qualified Improvement Property

- Increases companies' access to cash flow by allowing them to amend a prior year return to classify qualified improvement property as 15-year life; incentivizes them to continue to invest in improvements.

FFCRA Section 3102: Emergency Family and Medical Leave Expansion Act

- Provides employees of employers with fewer than 500 employees, who have been on the job for at least 30 days, with the right take up to 12 weeks of paid job-protected leave under FMLA for quarantine due to exposure to or symptoms of coronavirus; to care for an at-risk family member who is adhering to a requirement or recommendation to quarantine due to exposure to or symptoms of coronavirus; and to care for a child of if the child's school or place of care has been closed, or the child-care provider is unavailable, due to a coronavirus. First 10 days of the emergency leave can be unpaid - employees may elect to use other paid benefits (accrued PTO, sick leave, etc.) to cover that time
- Exempts small businesses with fewer than 50 employees when providing such leave would jeopardize the viability of the business as a going concern

FFCRA Section 5102: The Emergency Paid Sick Leave Act

- Requires employers with fewer than 500 employees to provide employees 14 days of paid sick leave, paid at the employee's regular rate, to quarantine or seek a diagnosis or preventive care for coronavirus; or paid at two-thirds the employee's regular rate to care for a family member who is quarantined due to the coronavirus or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus.
- Part-time employees are entitled to the typical number of hours that they work in a typical two-week period.
- IRC Section 45S: Employer Tax Credit for Paid FMLA**
- This section has been extended and could be applied to paid FMLA for companies with 500 or more employees if the credit provisions are met (must pay a certain amount of FMLA and policy must be written). To the extent a company has a written plan for FMLA payment (above use of PPT) that is not covered by the FMLA expansion above and it meets the other provisions, this credit could be available.

FFCRA Section 6001: Coverage of Testing for COVID-19

- Requires private health plans, including self-funded plans to provide coverage for COVID-19 diagnostic testing and related services to employees and their covered dependents, without cost sharing (e.g. deductibles, copayments and coinsurance).
- Covered services and related cost waivers apply to: Diagnostic testing; Facility costs (physical office, urgent care center and emergency room); and Healthcare provider services (in-person and telehealth).
- Compliance is required for insurers and plan sponsors of self-funded plans, although from a practical standpoint, health plan administrators are likely to handle compliance activities.

FFCRA Section 7001: Payroll Credit for Required Paid Sick Leave

- Provides a series of refundable tax credits for employers who are required to provide the Emergency FMLA and paid sick leave, which are allowed against the employer portion of the Social Security tax.
- Employers will only be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the tax they would owe.

FFCRA Section 7005: Special Rule Related to Tax on Employers

- This section ensures that any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act will not be considered wages for purposes of section IRC Section 3111(a) (Social Security wages)

DOL Notice Poster Requirement

- Each covered employer under FFCRA (employers with fewer than 500 employees) must post FFCRA Notice Poster in a conspicuous place on its premises by 4-1-20. Covered employers may satisfy this requirement by emailing or direct mailing notice to employees or posting on employee information internal or external website.

CARES Act Section 3201: Coverage of Diagnostic Testing for COVID-19

- Requires private insurance plans, including self-funded plans, to cover all COVID-19 diagnostic testing without cost-sharing.
- Compliance is required for insurers and plan sponsors of self-funded plans, although from a practical standpoint, health plan administrators are likely to handle compliance activities.

CARES Act Section 3202: Pricing of Diagnostic Testing

- Insurers and self-funded plans must pay contracted rates or cash price for COVID-19 testing with no cost to patients.

CARES Act Section 3203: Rapid Coverage of Preventive Services and Vaccines for Coronavirus

- Requires health insurance issuers and self-funded plans to cover preventive services and vaccines for COVID-19 without cost-sharing.

CARES Act Section 3224: Guidance on Protected Health Information

- Requires HHS to issue guidance on what constitutes protected patient health information during this public health emergency.

CARES Act Section 3601: Limitation on Paid Leave

- Amends FFCRA to clarify that an employer is not required to pay more than \$200 per day and \$10,000 in the aggregate for each employee for paid leave under the Emergency Family and Medical Leave Expansion Act.

CARES Act Section 3602: Emergency Paid Sick Leave Act Limitation

- Amends FFCRA to clarify that an employer is not required to pay more than \$511 per day and \$5,110 in the aggregate for each employee when the employee takes leave under paragraphs (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act and \$200 per day and \$2,000 in the aggregate for each employee when the employee takes leave under paragraphs (4), (5), or (6) of section 5102(a) of the Emergency Family and Medical Leave Expansion Act.

CARES Act Section 3605: Paid Leave for Rehired Employees

- Employees who were laid off before they could have been eligible for paid family and medical leave will be eligible for such leave once they have been rehired.

CARES Act Section 3606: Advance Refunding of Credits

- Amends FFCRA to allow for advances of payroll tax credits available under the FFCRA for sick leave and expanded family leave wages mandated under the FFCRA. Also provides penalty relief for failure to deposit payroll tax amounts in anticipation of those credits.

CARES Act Section 3607: Expansion of DOL Authority to Postpone Certain Deadlines

- Allows the Secretary of Labor to delay ERISA deadlines for up to one year due to declared public health emergencies. Applicability is to be determined as guidance is published.

CARES Act Section 3608: Single Employer Funding Rules

- Provides flexibility for single employer pension plan funding rules. Delays minimum required contributions due calendar year 2020.
- Note that delaying 2020 plan contributions beyond the filing date for the due date for the 2019 tax returns appears to result in such payment not being deductible until 2020 (normally these are re-designated to the preceding year).

CARES Act Section 3701: Exemptions for Telehealth Services

- Allows high-deductible health plans with a health savings account to cover telehealth services prior to a patient reaching the deductible. Increases telehealth access for patients. The plan sponsor would need to amend its plan.

CARES Act Section 3702: Inclusion of Certain Over-the-Counter Medical Products as Qualified Medical Expenses

- Expands HSA, FSA, and HRA eligibility for reimbursement of over-the-counter medical products without a prescription and menstrual care products.

CARES Act Section 4003: Emergency Relief and Taxpayer Protections

- Establishes the Paycheck Protection Program
- Provides up to \$500 billion of liquidity in the form of loans, loan guarantees, and other investments to support eligible businesses, states, and municipalities.
- “Eligible businesses” include any business (of whatever size) that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under CARES Act. Loans not eligible for forgiveness.
- Does not specify that affiliates must be aggregated for purposes of determining eligibility for assistance under specific Treasury program for mid-sized businesses (500-10,000 employees).

CARES Act Section 4004: Limitation on Certain Employee Compensation

- Requires businesses that are receiving loans under Sec. 4003 to limit total compensation paid to high earners and encourages businesses to spend the borrowed funds to the benefit of their employees and other business purposes Compensation limitations for officers and employees whose total compensation (including salary, bonuses, equity awards and other financial benefits) exceeded \$425,000 in 2019 may not receive total compensation during any consecutive 12-month period that exceeds the total compensation received in 2019, or severance pay or other benefits upon termination that exceed twice the compensation received in 2019.
- Officers and employees whose total compensation exceeded \$3 million in 2019 may not receive total compensation during any consecutive 12-month period that exceeds \$3 million plus 50 percent of the excess over \$3 million of total compensation received in 2019.

CARES Act Section 4012: Temporary Relief for Community Banks

- Reduces the Community Bank Leverage Ratio from 9% to 8% and allows for a reasonable grace period if a community bank falls below the ratio until the earlier of Dec. 31, 2020, or the termination date of the COVID-19 emergency.
- Helps maintain compliance with capital adequacy requirements to help businesses with credit and cash flow.

CARES Act Section 4013: Temporary Relief from Troubled Debt Restructurings

- Allows financial institutions to suspend the requirements under U.S. GAAP principles for loan modifications related to the COVID-19 pandemic that would otherwise be categorized as a troubled debt restructuring and suspend any determination of a loan modified as a result of the effects of the COVID-19 pandemic as a troubled debt restructuring.
- The suspension does not apply to (i) modifications of loans that were more than 30 days past due as of December 31, 2019 or (ii) modifications where the adverse impact on the credit of the borrower is not related to COVID-19.
- The applicable period for qualifying loan modifications began on March 1, 2020 and will end on the date that is 60 days after the date the public health emergency terminates.

CARES Act Section 4014: Optional Temporary Relief from Current Expected Credit Losses

- Allows insured depository institution, credit union, bank holding company, or any affiliate thereof to elect not to comply with recent accounting rules for estimating allowances for credit losses until the earlier of Dec. 31, 2020, or the termination date of the COVID-19 emergency.
- Makes it easier for these financial institutions to manage potential losses related to loans with distressed businesses and consumers.

CARES Act Section 4022: Foreclosure Moratorium and Consumer Right to Request Forbearance

- Allows borrowers affected by COVID-19 to delay mortgage payments and avoid foreclosure on their mortgages.

CARES Act Section 4023: Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

- Allows multifamily borrowers affected by COVID-19 to delay mortgage payments and avoid foreclosure on their mortgages.

IRC Section 139: Disaster Relief Payments

- Now activated for application in permitting employee assistance and other benefits related to disaster relief payments without resulting in taxable income to the employee and still providing tax deductibility to the company.
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Important Dates

April 15, 2020 tax deadlines - extended automatically to July 15, 2020 for almost all federal tax returns.

April 15, 2020 tax payments for tax returns due on this date and for 1st quarter Federal estimated tax payments are deferred (penalty and interest free) until July 15, 2020.

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