Massive Stimulus Package Provides Numerous Avenues of Relief for Businesses

Related People:
Pamela J. Moore
Hugh F. Murray, III

Labor & Employment Alert

03.27.2020

The CARES Act May Pay Your Workers for You

Title I – Keeping American Workers Paid and Employed Act
Title II – Assistance for American Workers, Families and Businesses

As the COVID-19 pandemic and the response to it continue to disrupt normal economic activity, many employers are facing difficult decisions about maintaining operations. While one response has been to strengthen the unemployment benefit programs that help out-of-work Americans, part of the federal government's $2.2 trillion package is designed to encourage and assist employers to maintain their workforces – largely by picking up the tab for payroll costs for a limited period of time.

The Small Business Administration (SBA) has long administered a loan program designed to help small businesses survive and become bigger businesses. We discussed the program and some of the existing assistance it could provide to businesses here. But with the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the federal government has temporarily but substantially expanded the loan program to allow businesses to, among other things, pay workers' wages and benefits and, importantly, to entirely forgive the loans if the business does maintain its workforce. The federal government, therefore, ends up paying a business's employees for eight weeks, taking some of the pressure off the business as it prepares for the next phase of pandemic response.

Highlights of the program are as follows:

- The forgivable loans are available for any business concern, nonprofit organization, or tribal business if it employs fewer than 500 employees, as well as sole proprietors, independent contractors, and certain self-employed individuals.
- The maximum available amount of the loan is 2.5 times the business's average monthly payroll costs (taking into account any other SBA loan the business has) with a maximum loan amount of $10 million.
- The loans are to be used by the business to pay: (i) payroll costs (employee salary, wage, commissions and other compensation, and employee benefits); (ii) interest on commercial mortgages; (iii) commercial rent; (iv) utilities; and (v) interest on other debts incurred before the program starts.

- The program provides forgiveness for the amount of the loan spent on: (i) payroll costs (inclusive of benefits); (ii) interest on commercial mortgages; (iii) commercial rent; and (iv) utilities.
- The payroll costs for which the forgivable loans may be used are limited to employees who make less than $100,000 per year, and a number of the rules are designed to ensure that the government is not subsidizing more highly compensated workers.
- Forgiveness is tied to maintaining the workforce. The amount of the forgiveness goes down if the employer reduces the number of full-time equivalent employees (FTEEs) or reduces pay to employees. For example, if an employer reduces the workforce by 20%, it is entitled to only 80% of the loan forgiveness.

As with any large government benefit program, there are some detailed requirements, but the legislation has made efforts to make the process as simple as reasonably possible so that businesses can receive money for operations quickly. Employers who wish to learn more about the program as a way to maintain operations during the pandemic should explore it with their lending institution.

For a more detailed look at the SBA loan program and other financing opportunities available under the CARES Act, see CARES Act: Keeping American Workers Paid and Employed Act (Title I).

Enhanced Unemployment Benefits

For employers who do not qualify for SBA loans or who otherwise need to temporarily or permanently separate employees from service, the CARES Act provides both protection for employees who might not otherwise qualify for unemployment compensation and enhanced levels of unemployment benefits for anyone who becomes unemployed or partially unemployed for a reason related to the COVID-19 pandemic. The CARES Act also enables unemployed individuals who have exhausted their unemployment benefits for the benefit year to collect benefits for an extended period of 13 weeks.

To qualify for benefits, employees must provide a self-certification that they are otherwise able to work but are unemployed, partially unemployed, or unable or unavailable to work because they:

- have COVID-19 or are experiencing symptoms of COVID-19 and seeking a medical diagnosis
- have an individual in their household who has been diagnosed with COVID-19
- are providing care for a family member or household member who has been diagnosed with COVID-19
- have a child for whom they have caregiving responsibilities who is unable to attend school or day care as a result of the COVID-19, health emergency and school or day care is required for the individual to be able to work
- cannot get to work because of a quarantine
- cannot get to work because a health care provider advised him/her to self-quarantine
- were scheduled to begin employment but lost the job or are unable to reach the job because of COVID-19
- are the breadwinner or major support for a household because the head of the household died as a result of COVID-19
- are forced to quit because of COVID-19
- cannot work, as their place of employment is closed because of COVID-19

Self-employed individuals and, those who are seeking part-time employment, and individuals who do not have sufficient work history or otherwise would not qualify for regular unemployment or extended benefits under state or federal law are also eligible as long as they meet the criteria and execute the self-certification described above.

Individuals who can telework or who are receiving paid sick leave or other paid leave benefits are not eligible while receiving such benefits.

The maximum period of benefits from unemployment is 39 weeks (through December 31, 2020) as opposed to the normal period of 26 weeks. If an employee has already exhausted unemployment benefits for the benefit year, s/he are entitled to an additional 13 weeks. Such individuals, however, must be actively seeking work and able and available to work.

In addition to regular unemployment compensation benefits, once a state enters into an agreement to participate to increase unemployment benefits, the normal unemployment compensation rate will be supplemented by a flat rate payment of $600 per week for the period beginning after the agreement is entered through July 31, 2020 (for a maximum of four months). The increased amount of unemployment will not be considered for purposes of determining eligibility for certain public assistance programs.

If states enter into an agreement with the federal government, then any waiting period requirement is eliminated.

Unemployment benefits under the Act (except for the $600 federal pandemic supplement) can be made retroactive to January 27, 2020.

The federal government will fund amounts paid by states for short-time compensation (partial unemployment) programs, sometimes referred to as work-sharing agreements, and states that do not have such programs are incentivized to create them.

Short-time compensation programs incentivize employers to retain employees in some capacity while taking advantage of the availability of unemployment benefits for the loss of full-time income. Short-time compensation programs under the CARES Act do not apply to seasonal, temporary, or intermittent employees. Benefits paid under such programs cannot exceed 26 times the total unemployment benefits that the employee would have received under state law.

On March 24, 2020, the United States Department of Labor published its its Employee Rights poster for the Families First Coronavirus Response Act, which must be displayed in the workplaces of covered employers, i.e., those who have fewer than 500 employees. A copy of the posters in both English and Spanish are available here.