

CORONAVIRUS RELIEF BILL: THE CARES ACT – PROVISIONS AFFECTING U.S. EMPLOYERS AND EMPLOYEES, PART II

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The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or “Act”), enacted on March 27, 2020, has been the subject of government agency interim regulations and guidance. This updates the original BCLP post on the employment-related provisions of the CARES Act through April 7, 2020.

The CARES Act represents the third Phase of Congressional relief responding to the novel coronavirus (COVID-19) pandemic. [Phase I \(Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 \(P.L. 116-123\)\)](#) and [Phase II \(Families First Coronavirus Response Act \(P.L. 116-127\)\)](#) were signed into law on March 6 and 18, respectively. At 883 pages, the CARES Act is the largest relief bill in U.S. history and addresses on multiple fronts the hardships faced by individuals and businesses throughout this crisis. These efforts include an unprecedented expansion of unemployment benefits, significant funding for the health care industry, aid to large and small businesses valued in the billions, and even direct payments to individuals.

The majority of economic relief provisions for U.S. workers and employers is provided in Titles I through IV of Division A of the Act (Division B consists of emergency appropriations to fund various program). The CARES Act also has specific provisions regarding relief for airlines, financial institutions, and other sectors that are considered critical to national security. The three key employment-related sections of the CARES Act, two of which are designed to incentivize employers to retain employees and continue to provide them wages by way of either providing smaller employers with loans, or providing payroll tax credits to certain eligible employers. The third key employment-related section of the CARES Act provides increased federal funding for employment benefits for eligible employees.

Subtitles A and C of Title II of Division A of the CARES Act, which address unemployment insurance programs and provide payroll tax credits, are described in relevant part below.

Title II - Assistance for American Workers, Families, and Businesses

In addition to individual rebates and tax relief, Title II significantly expands unemployment programs and makes critical changes to rules governing retirement plans. Our colleagues in BCLP's Employee Benefits and Executive Compensation Group have summarized the changes to Retirement Benefits, and you can read their summary by clicking [here](#).

Unemployment Benefits

The Act establishes a temporary Pandemic Unemployment Assistance Program, available from January 27, 2020 through December 31, 2020, and extends unemployment benefits to those who are not traditionally eligible (self-employed, independent contractors, and persons with limited work histories) but who have been unable to work as a result of the coronavirus public health emergency. To qualify for benefits, the individual must self-certify that he or she is otherwise able to work and available for work within the meaning of applicable state law except that the individual is unemployed, partially unemployed, or unable or unavailable to work for one of the following reasons:

- He or she is diagnosed with COVID-19;
- He or she has symptoms of COVID-19 and is in the process of seeking a medical diagnosis;
- A household member has been diagnosed with COVID-19;
- He or she is providing care to a household member with a COVID-19 diagnosis;
- A child or other person in the household for whom the individual is the primary caregiver is unable to attend school or facility that is closed due to COVID-19 and such school or facility is required for the individual to work;
- The individual is unable to reach work due to a quarantine;
- The individual is unable to attend work because a healthcare professional advised him or her to self-quarantine;
- The individual is scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
- The individual is the breadwinner/major support in his or her household due to death of the head of household as a result of COVID-19;
- The individual was required to quit his or her job as a result of COVID-19; or
- The individual's place of employment closed due to COVID-19; AND
- The individual is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for unemployment benefits under another state

unemployment program.

Such workers would essentially receive the same unemployment compensation (“UC”) benefit as a regular employee under the relevant state’s UC law, but would also be eligible for the additional federal benefits of \$600 per week for up to 4 months, even if the employee previously was making less than \$600 per week. UC payments would be immediate, without a one-week waiting period.

Individuals are not eligible for benefits if they have the ability to telework with pay or are receiving paid sick leave or other paid leave benefits.

Federal funding would also be available for state short-time compensation (“STC”) programs. STC programs (also known as Workshare Programs) provide benefits to employees who have had their hours reduced in lieu of being furloughed or laid off. Under the CARES Act, states that currently offer STC programs may receive full federal reimbursement for STC benefits paid through December 31, 2020, with benefits payable to an individual limited to 26 times the amount of regular compensation currently payable under a state’s UC program. To encourage more states to offer STC benefits, the CARES Act provides that states entering into an agreement with the federal government to establish a new STC program can receive full federal funding for the establishment of the program, and federal funds would then cover, from the date of such agreement through December 31, 2020, 50% of costs incurred by a state in providing STC. The remaining 50% of costs associated with the state-federal agreements would be paid by participating employers. To qualify, an STC program must provide that employers will maintain health and retirement benefits for affected employees despite reduced hours.

Employer Payroll Tax Benefits

The CARES Act provides certain eligible employers (generally those required to fully or partially suspend operations due to a COVID-19 related government order limiting commerce, travel or group meetings or have a 50% decrease in gross receipts for a calendar quarter when compared to the same quarter in 2019) an employment tax credit (also referred to as an Employee Retention Credit or “ERC”) for each calendar quarter equal to 50% of qualified wages paid (up to \$10,000 in qualified wages, including qualified health plan expenses, per employee for all qualified calendar quarters).

This tax benefit is intended to incentivize employers to continue paying employees, even if such employees are not providing services due to a decline in demand.

For employers with up to an average of 100 full-time employees in 2019, all employee wages (regardless of whether an employee provided services for such wages) are used to calculate the ERC. However, in calculating the ERC, the employer may not include wages paid to employees pursuant to the paid sick leave or expanded family and medical leave provisions of the Families First Coronavirus Response Act. For those employers with an average of more than 100 full-time employees in 2019, only wages paid when an employee does not provide services are eligible for the ERC, and such wages “may not exceed what the employee would have been paid for working an

equivalent duration during the 30 days immediately preceding the period of economic hardship.” IRS FAQs as of March 31, 2020. This credit applies to wages paid after March 12, 2020 and before January 1, 2021. An employer that takes a covered loan under the PPP is not eligible to take the ERC.

The CARES Act also defers payment for the employer’s share of the 6.2% Social Security employment tax paid on wages through the end of 2020. The deferred tax liability would be paid in two equal installments, due by December 31, 2021 and December 31, 2022, respectively. An employer that has indebtedness forgiven with respect to a covered loan under the PPP is not permitted to defer payroll taxes.

Our colleagues in BCLP’s Tax Advice and Controversy Group have prepared a summary of the employer payroll tax benefits, which is available [here](#).

Other Tax Benefits

The CARES Act also provides non-employer specific tax benefits with respect to certain charitable contributions, modification of the refundable corporate alternative minimum tax credit, modification of the limitations applicable to business interest expense deductions, and the use of net operating losses. Our colleagues in BCLP’s Tax Advice and Controversy Group prepared a summary of these other tax benefits changes, which is available [here](#).

BCLP has assembled a COVID-19 HR and Labor & Employment taskforce to assist clients with labor and employment issues across various jurisdictions. You can contact the taskforce at: COVID-19HRLabour&EmploymentIssues@bclplaw.com. You can also view other thought leadership, guidance, and helpful information on our dedicated COVID-19 / Coronavirus resources page at <https://www.bclplaw.com/en-GB/topics/covid-19/coronavirus-covid-19-resources.html>

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