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## Employment Update: Employer Focused CARES Summary *Posted March 27, 2020*

Our team put together this summary of the key employer-related points to the Coronavirus Aid, Relief and Economic Security (CARES) Act. If you have any questions, please feel free to reach out to us. Marissa Buck and Josh Devore spent many hours sorting through the 800+ page bill, so many thanks are owed to them!

### Important Changes to Families First Coronavirus Response Act ("FFCRA")

- Allows an employee who was laid off by an employer on March 1, 2020 or later to have access to paid leave under the EFMLA if they are rehired by the employer and they worked for the employer for at least 30 of the last 60 calendar days prior to being laid off.
- Allows employers to receive an advance of the payroll tax credit provided under the FFCRA for qualified wages paid for EMLA and EPS leave. Forms and instructions for this process are to be provided by the Secretary of the Treasury.

### Unemployment Benefits

- **Emergency increase in unemployment compensation benefits:**
  - Provides an additional \$600/week recipients of UI benefits or Pandemic Unemployment Assistance from the date the State enters into the agreement with the Secretary of Labor through July 31, 2020.
  - Payments will be processed through the States along with regular state UI benefits and can be provided in the same check or a separate check, but must be provided on a weekly basis.
- **Federal Funding For First Week of Unemployment Period with No Waiting Period:**
  - Provides 100% reimbursement to States for benefits paid during the first week of unemployment if States waive the one week waiting period for UI benefits. California has already waived the 1 week waiting period.
- **Pandemic Unemployment Assistance Program:**
  - Creates a new Pandemic Unemployment Assistance program (through December 31, 2020) to help those not traditionally eligible for unemployment insurance (UI) benefits, including self-employed individuals, independent contractors, those with limited work history and those who are unable to work as a result of the coronavirus public health emergency.
- **Pandemic Emergency Unemployment Compensation:**
  - Provides an additional 13 weeks of UI benefits to those who remain unemployed after all weeks of state unemployment are no longer available.
  - The amount provided is the same as above – the regular amount provided by the State plus an additional \$600/week.

### SBA Loan and Loan Forgiveness Provisions

- Creates a loan program for employers with fewer than 500 employees and other SBA defined small businesses to borrow up to 2.5x their monthly payroll (with a maximum loan amount of \$10 million). Sole proprietors and independent contractors are also eligible.
- Loans can be used to cover payroll and other specified compensation including: healthcare costs, mortgage interest (but not principal), rent, utilities, and interest (but not principal) on other preexisting debt obligations.

- Payroll costs means any compensation given to employees that is a salary, wage, commission, payment of cash tip or equivalent, payment for vacation, family, medical, or sick leave (but not wages paid under the FFCRA), allowance for dismissal or separation, health care benefits including premiums, retirement benefits, and state or local tax assessed on compensation.
- Payroll costs cannot exceed \$100,000 annually for an individual employee (prorated).
- Payroll costs do not include qualified sick and family leave wages under the FFCRA for which a credit is already allowed.
- Interest rates cannot exceed 4%, and all payments must be deferred for at least 6 months and up to 1 year.
- Loans do not require a personal guarantee or collateral, and are nonrecourse to businesses' shareholders, partners and members. Employers are also not required to show that they were unable to obtain credit elsewhere.
- The principal amount that is used to cover payroll, mortgage interest, rent and utilities (but not the other allowed uses) for the 8 weeks following the loan approval will be forgiven as long as employee numbers and payrolls are maintained
  - Allows forgiveness for extra wages provided to tipped employees.
- The forgiveness amount is reduced proportionately by any decrease in the number of employees as compared to the prior year. Forgiveness is also reduced if any employee who earns under \$100K on an annualized basis has their wages reduced by more than 25%.
  - **Exemption for Re-Hires:** To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period. This applies to a reduction in force or reduction in salary for 1 or more employees during the period beginning on February 15, 2020 and ending 30 days after the enactment of the Act. Employers must re-hire employees (or eliminate the reduction in wages) no later than June 30, 2020.
- The remaining balance after forgiveness can have a maturity up to 10 years. Prepayment penalties are not allowed.

#### Additional Business Provisions

- **Payroll Tax Credit for Employee Retention:**
  - The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose: (1) operations were fully or partially suspended, due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.
  - The credit is based on qualified wages paid to the employee.
    - For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related shutdown order.
    - For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shutdown order.
  - The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. This does not include any wages paid to employees under the FFCRA for EFMLA or EPS leave.
  - The credit applies to wages paid after March 12, 2020, and before January 1, 2021.

- The credit is reduced by any amounts credited under the FFCRA for wages paid under EMFLA or EPS leave.
- Employers who receive a covered loan from the SBA (see above) are not eligible for the credit under this section.
- **Delay of payment of payroll taxes:**
  - Allows employers to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
  - The deferred employment tax is required to be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.
  - The payroll tax deferral period runs from the date of enactment of the Act until December 31, 2020.
  - This section does not apply in an employer had their indebtedness forgiven under the provisions of this Act for a covered SBA loan.
- **Modification of Net Operating Losses (“NOL”):**
  - An NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. It also temporarily removes the taxable income limitation to allow an NOL to fully offset income.
- **Modification of Limitation on Business Interest:**
  - Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020.
- **Amendment Regarding Qualified Improvement Property:**
  - Enables businesses, especially in the hospitality industry, to write off costs associated with improving facilities immediately, instead of having to depreciate those improvements over the 39-year life of the building.