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Key Employment Law Implications of the CARES Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted on March 27, 2020, is a \$2.3 trillion stimulus package that provides direct financial assistance to Americans and offers eligible businesses tax credits, deferred tax payments, and/or loans through the Paycheck Protection Program (PPP) to encourage and enable eligible employers to keep employees on their payroll. The following is a summary of the significant employment law provisions in the CARES Act.

Amendments and clarification of certain provisions in the Families First Coronavirus Response Act (FFCRA)

As noted by my colleagues Stacey Bowman and Craig Kovarik, there are complex interconnections between the CARES Act and the FFCRA, but in some instances the CARES Act has provided some needed clarity.

Section 3605 clarifies that employees do not need to wait another 30 days on rehire to be eligible for Emergency FMLA if they were laid off on March 1, 2020 or later and if they worked for their employer during 30 of the last 60 days prior to layoff.

Section 3606 amends the FFCRA to allow employers and self-employed individuals to obtain a payroll tax credit advance for payment of mandated Emergency FMLA or Emergency Paid Sick Leave. Penalties for failure to make the required payroll tax deposits will be waived by the Secretary of Treasury if doing so is in anticipation of receiving the FFCRA payroll tax credit.

Sections 3601 and 3602 restate the FFCRA's paid leave caps of:

Emergency FMLA: \$200 per day or \$10,000 total

Emergency Paid Sick Leave:

\$511 per day and \$5,110 total, for an employee under a government or physician directed quarantine or experiencing COVID-19 symptoms and seeking a medical diagnosis

\$200 per day and \$2,000 total for an employee caring for another individual under quarantine or a child under the age of 18 whose school or child care provider is closed or unavailable because of COVID-19, or if the employee is experiencing a substantially similar condition

Expanded unemployment insurance coverage and benefits

The CARES Act provides funding to eligible states to allow those states to offer expanded unemployment assistance due to COVID-19 pandemic, including the following the measures.

Pandemic Unemployment Assistance (PUA) Program (Sec. 2102)

The Pandemic Unemployment Assistance Program is a temporary program, set to expire on December 31, 2020. The PUA provides workers who are unemployed or unable to work due to COVID-19 with up to 39 weeks of unemployment benefits.

Federal Pandemic Unemployment Compensation (PUC) (Sec. 2104)

Section 2104 provides individuals who qualify for unemployment or PUA benefits with an additional \$600 per week for up to four months through July 31, 2020.

Pandemic Emergency Compensation Program (Emergency Compensation) (Sec. 2107)

The Pandemic Emergency Compensation Program provides federal funding for up to 13 weeks of additional unemployment benefits to individuals who are not receiving other benefits or pay and are able, available, and actively seeking work.

Funding the One-Week Waiting Period (Sec. 2105)

The federal government will fund the cost of the first week of unemployment benefit payments in states that waived the traditional one-week waiting period. Many states have already waived the one-week waiting period to qualify for the Families First Coronavirus Relief Act's requirement to receive increased funding of unemployment benefits.

Incentives to retain employees

Paycheck Protection Program (PPP)

The CARES Act provides a paycheck protection program that expands on the Small Business Administration's 7(a) loan program for small businesses to cover certain payroll and other costs. Under the PPP, eligible employers will be provided with partially forgivable small business

loans to cover certain payroll costs, employer group health costs, and other employer incurred costs for eight weeks after the loan origination date. The covered period for loans is February 15, 2020 through June 30, 2020. Please refer to Husch Blackwell's FAQ on SBA loans made available through the CARES Act for more information.

Emergency Economic Injury Disaster Loans

The CARES Act allows advance payments under the Small Business Administration's Emergency Economic Injury Disaster Loans to be used to cover the costs of providing paid sick leave to employees due to COVID-19.

To be eligible to receive a loan under this program, the business must certify, in good-faith, that it will comply with several requirements including not abrogating existing collective bargaining agreements for the term of the loan plus two years and to remain neutral in any union organizing effort during the term of the loan. Additional guidance will likely be forthcoming to define what it means to "abrogate existing collective bargaining agreements" and to "remain neutral". Please refer to Husch Blackwell's FAQ on SBA loans made available through the CARES Act for more information.

Employee Retention Credit

Employers whose operations are fully or partially suspended during the COVID-19 pandemic or whose quarterly receipts dropped by more than 50% as compared to the same quarter in the prior year, may receive a refundable payroll tax credit for 50% of wages (up to \$10,000 per employee) paid during each calendar quarter during the COVID-19 pandemic.

Funding for Short-Time Compensation Programs (Secs. 2108 to 2110)

States that have or will implement certain workshare programs for employees, are eligible to receive additional funding. Under workshare programs, employers reduce the average hours of current employees, across the board, rather than conducting layoffs or furloughs. Those employees then receive pro-rated unemployment benefits known as Short-Time Compensation (STC) benefits. Section 2108 of the CARES Act provides that the federal government will reimburse states 100% of the STC paid under a state's existing workshare program, through December 31, 2020. Section 2109 provides federal funding incentive for states without a workshare program to create one.

Unemployment insurance: frequently asked questions

Q: Can an employee receive both PUA and PUC benefits?

A: Yes. PUA benefits may be claimed for full or partial weeks of unemployment or inability to work due to COVID-19, experienced by an individual between January 27, 2020 and December 31, 2020

(generally up to a maximum of 39 weeks). The additional \$600 PUC weekly benefit is payable through July 31, 2020. Eligible individuals are entitled to receive the extra \$600 even if the payment results in earnings above their pre-unemployment earnings level.

Q: PUA benefits are only available to covered individuals. Who are “covered individuals”?

“Covered individuals” are those individuals who provide a self-certification indicating that they are “able” and “available” to work, as those terms are defined by state law, but are totally or partially unemployed or are unable to work due to:

Their own COVID-19 diagnosis;

Experiencing COVID-19 symptoms and seeking a medical diagnosis;

Exposure to a household member diagnosed with COVID-19;

Providing care for their family or household member who has a COVID-19 diagnosis;

Being unable to work because they are providing primary care for a child or other household member who is unable to attend school or another facility that is closed due to COVID-19;

Being unable to commute to work because of a quarantine imposed as a direct result of the COVID-19 public health emergency or a self-quarantine undertaken with the advice of a health care worker.

Their work being closed as a direct result of the COVID-19 public health emergency;

Being unable to begin work or reach the jobsite as a direct result of COVID-19;

Becoming the major support for a household due to the death of the original head of household as a direct result of COVID-19;

Being forced to quit their job as a direct result of COVID-19; or

Additional criteria set forth by the Secretary of Labor.

Q: Does “covered individuals” include those who are not otherwise eligible for state unemployment benefits, but meet the above criteria?

A: Yes. PUC benefits are available to self-employed workers, independent contractors, individuals seeking part-time employment, individuals without a sufficient work history, and those individuals who would not otherwise qualify for regular unemployment benefits under state or federal law.

Q: Are covered individuals who are receiving sick leave or other paid leave benefits eligible to receive PUC benefits?

A: No. PUC benefits are not available to covered individuals while they are receiving paid sick leave or other paid leave benefits or able to telework with pay.

Contact us

For more information about employment law implications of the CARES Act, please contact Erik Eisenmann, Robert Sanders or your Husch Blackwell attorney.

CARES Act updates

Husch Blackwell's CARES Act resource team has reviewed the Act carefully and is developing content to help clients determine how best to access the available assistance. The team will add new content frequently as the Act is implemented through a number of agency rulemakings over the coming weeks.