

## **HR 748, Coronavirus Aid, Relief, and Economic Security Act (CARES)**

Here is the third major piece of federal legislation enacted to address the coronavirus pandemic. Below are highlights of the new law that may affect you, your businesses, and your employees now, soon, and later.

### **Now:**

- Can defer paying fifty percent (50%) of Social Security payroll tax due for 2020 and 2021.
- Can immediately monetize tax losses.
- Extends the federal tax filing deadline to July 15.
- Foreclosure of federally-backed home mortgages blocked for at least 60 days.
- Evictions banned at properties connected to the federal government.

### **Soon:**

- Small Business Administration (“SBA”) loans and grants that apply to businesses negatively affected by the coronavirus and Covid-19, including but not limited to, hotels, restaurants, and non-profits.
  - Provides \$350 billion in small business loans for businesses with less than 500 employees, including self-employed, to pay for payroll, rent, and utilities; loans become grants if loans are used as such (maximum loan of \$10 million).
  - Increases SBA Express loans amounts from \$325,000 to \$1 million and reduces time to receive loan.
  - Increases eligibility for Economic Injury Disaster Loans (“EIDL”), including to sole proprietorships and private non-profits; removes requirement for loan guarantees on amounts less than \$200,000; authorizes \$10,000 advance when qualified and requested, which may not require repayment.
- Allocates \$150 billion to support hospitals and healthcare workers; outlines accelerated payments for rural hospitals and those serving vulnerable populations (i.e., children’s hospitals) when elective procedures are suspended.
- Large employers can receive loans from the Secretary of the Treasury.
  - \$454 billion available, with conditions, including:-
    - Must keep 90% of workforce through September and no outsourcing or moving overseas for two years.
    - May not break union agreements and must stay neutral if union attempts to unionize.
    - Executive pay and benefits limited; no ability to repurchase stock or pay dividends.
  - Tax rebate checks of \$1200 per adult whose most recent Adjusted Gross Income is no more than \$75,000 (filed singly), \$112,500 (filed as head of household), or \$150,000 (filed married jointly). Payment amount decreases as AGI increases above the limits. Qualifying adults will receive \$500 per child under age 17 for whom a child tax credit was claimed on most recent taxes. This is a tax credit for 2020.
  - Increased unemployment eligibility, maximum time to receive unemployment (39 weeks v. 26 weeks), payments increased by \$600 per week. Freelance and contract workers may receive benefits.

### **Later:**

- Fifty-percent (50%) employee retention tax credit against what employers pay in Social Security payroll taxes, up to \$10,000 per employee.

**The Families First Coronavirus Response Act (“FFCRA” or the “Act”)** takes effect this week. The Act provides eligible employees with two (2) weeks of paid leave for qualifying absences and expanded FMLA leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19. As a reminder, FFCRA provisions are temporary and apply only to qualifying absences that occur between April 1, 2020 and December 31, 2020. The Act takes effect on **April 1, 2020**.

Employers are required to post the FFCRA Notice Poster on or before April 1, 2020. The notice must be posted in a conspicuous location in the workplace and be accessible to employees working remotely. Employers may satisfy the notice requirement by emailing or direct mailing the notice to remote workers or posting the notice on the company's internal or external website. Employees who are laid off or are on furlough are not required to receive a mailed/emailed copy of the notice.

As we continue to wait for official regulations, the U.S. Department of Labor provided guidance through two (2) fact sheets titled Employee Paid Leave Rights and Employer Paid Leave Requirements. It also issued three sets of Questions and Answers (1-59 total) to address some of the most pressing employer questions. Specifically, we now have some clarity that:

- Employees are required to provide documentation to support their qualifying absence(s) and that employers must maintain that documentation to claim the tax credit. See # 15-16.
- FFCRA leave is not available to employees on layoff or furlough or to make up for a reduced work schedule. See # 23-28.
- Employees are entitled to a maximum of 12-weeks of FMLA, in a rolling 12-month period, and leave taken for traditional FMLA qualifying absences in the same time period counts against the entitlement. See # 44-45.

The Q&A also provides some guidance on the employee's ability to work or telework, that the use of intermittent FMLA for FFCRA reasons is at the employer's discretion, and that a Shelter-in-Place or Stay at Home order is not the same as a qualifying quarantine or isolation order related to COVID-19.

Qualifying Reasons for Leave Under the FFCRA

- As a reminder, the qualifying reasons for leave under the FFCRA include an inability to work (or telework) because the employee:
  1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  2. has been advised by a health care provider to self-quarantine related to COVID-19;
  3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  4. is caring for an individual subject to an order described in (1) or self-quarantined as described in (2); or
  5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19
  6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Because the COVID-19 situation is dynamic and the news updates frequently, employers are encouraged to keep up with developments as new information is added or clarified. According to the DOL, official FFCRA regulations will be issued sometime in April.

Martin Browne, will continue to monitor these situations and provide updates as necessary. Our attorneys are on hand to answer your questions and provide guidance on how to navigate these critical issues. Please contact Shannon Wahl, Randall Comer, Steve McCready, or any attorney in Martin Browne's Labor & Employment Practice group.

*This is not intended as a substitute for professional legal advice and its receipt does not constitute an attorney-client relationship. If you have any questions about this information, please contact your attorney at Martin, Browne, Hull & Harper, P.L.L. at 937-324-5541.*