

# Relief for Employers and Workers under the CARES Act

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**PRACTICES** Labor and Employment

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On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act into law. The CARES Act, which injects trillions of dollars into the economy, provides relief to employers and workers, alike. There are two aspects of the CARES Act that directly implicate employers and workers: (1) the Paycheck Protection Program providing forgivable loans to employers; and (2) the Relief for Workers Affected by Coronavirus Act providing enhanced unemployment insurance benefits for workers.

## **Paycheck Protection Program**

As the COVID-19 pandemic continues, many employers are in the difficult position of weighing furloughs and layoffs. After all, payroll is one of the biggest expenses for any business and COVID-19 has caused significant revenue decreases across all economic sectors. And for some employers, COVID-19 has caused closures such that there is no work for certain employees to perform. The CARES Act’s Paycheck Protection Program (“**PPP**”) provides employers with a potential alternative to a furlough or layoff to ride out the COVID-19 storm.

In short, PPP amends the Small Business Act (“**SBA**”) and creates a new PPP loan option for eligible employers. For an employer to be eligible to borrow a PPP loan, the employer must have less than 500 employees or meet the SBA size standard for its specific industry. And for certain employers in the accommodation or food service industry, the employer may be eligible for the loan if it employs 500 or more employees, provided it does not employ more than 500 employees at a single physical location.

The PPP loan provides eligible employers the ability to take out a loan in the amount of 2.5 times “payroll costs” (measured over a certain period) and use that loan to cover payroll costs, among other things, for an 8-week period. Under PPP, “payroll costs” include the sum of payments that are:

- Salary, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;[1]
- Allowance for dismissal or separation;
- Payment required for the provisions of group health care benefits, including insurance premiums;
- Payment of any retirement benefit; or
- Payment of State or local tax assessed on the compensation of employees.[2]

However, “payroll costs” do not include:

- Compensation of an individual employee in excess of an annual salary of \$100,000;[3]
- Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;

- Compensation of an employee whose principal place of residence is outside of the United States; or
- Qualified sick leave or family leave wages for which a tax credit is allowed under the Families First Coronavirus Response Act.

Generally, if the employer does not reduce employee headcount or pay under the parameters set forth by PPP, the loan is completely forgivable. For some employers previously left with no option but layoffs or furloughs, PPP may provide the lifeline they need to retain employees through this COVID-19 crisis. Regulations on PPP loans are coming and there is not yet a mechanism for employers to apply for PPP loans.

**For a more comprehensive review of PPP loans and loan forgiveness, and other critical issues related to PPP and the SBA, please see [the linked Alert](#).**

## **Relief for Workers Affected by Coronavirus Act**

For some employers, furloughs, layoffs, or pay/hours reductions are the only options to maintain financial viability throughout the COVID-19 pandemic. Those employers want to know what financial support is available to affected employees until the employees are rehired or brought back to pre-COVID-19 hours and pay. The most prevalent financial support mechanism for impacted employees is state unemployment benefits. But, the unprecedented number of claims for unemployment benefits has put a significant strain on state unemployment insurance systems.

The CARES Act seeks to remedy this issue through the Relief for Workers Affected by Coronavirus Act ("**RWACA**"). Generally, RWACA provides additional financial support for states and additional support for individuals through a \$600 weekly federal unemployment benefit on the top of weekly state unemployment benefits. To distribute these new unemployment benefits, RWACA provides for states and the federal government to enter into agreements that provide three different tiers of support, each with different requirements.

Although whether an individual will qualify for unemployment benefits varies based on the applicable tier, the ultimate weekly benefit received by the individual is generally the same: State weekly unemployment benefits plus \$600 in weekly Federal Pandemic Unemployment Compensation ("**FDUC**"). For example, in Texas, an individual who is eligible for full weekly unemployment benefits under Texas law would receive a total of \$1,121 in weekly unemployment benefits, broken down as follows:

$\$521$  (Texas Weekly Benefit) +  $\$600$  (FDUC) =  $\$1,121$  in Total Weekly Benefit

The following tiers of unemployment benefits are available to qualifying individuals under RWACA.

### *Tier One: Emergency Increase in Unemployment*

If the individual qualifies for unemployment benefits under state law, then the individual may receive the enhanced unemployment benefits under RWACA, which includes the state's weekly unemployment benefit plus the \$600 FDUC. The unemployment benefits under Tier One are only available through July 31, 2020.

### *Tier Two: Extension of Emergency Unemployment Compensation*

If the individual qualifies for unemployment benefits under state law and has exhausted such available state benefits, then an individual may qualify for up to a 13-week extension of

unemployment benefits under RWACA provided that the individual is available to work and actively seeking work. The benefit is the same as under Tier One: the state's weekly unemployment benefit plus the \$600 FDUC. The main difference between Tier One and Tier Two unemployment benefits is that the federal government will cover the costs of the state unemployment weekly benefit and the individual must be available to work and actively seeking work, even if the state's unemployment insurance program does not require it. The extended unemployment benefits under Tier Two are only available through December 31, 2020.

### *Tier Three: Pandemic Unemployment Assistance*

An individual who is not eligible for unemployment benefits under state law or who has exhausted state unemployment benefits may still qualify for unemployment benefits under RWACA, even if the individual is not actively seeking work. Unlike Tier Two, individuals who are not actively seeking work may still collect unemployment benefits, under the same calculus of the state's weekly unemployment benefit plus the \$600 FDUC, provided they qualify as a "covered individual" under RWACA. Generally, to be a "covered individual" qualified for unemployment benefits under RWACA, an individual must not be entitled to paid sick leave or other paid benefits and must be available to work but remain unemployed, partially employed, or unable to work (or telework) because:

- The individual is diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19;
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- The individual is self-employed, seeking part-time employment, does not have sufficient work history or otherwise would not qualify for state or federal benefits but fits within one of the above categories.

The unemployment benefits under Tier Three apply to benefits beginning as early as January 27, 2020, and are only available through December 31, 2020 (capped at 39 weeks including any week in which the individual otherwise received benefits).

RWACA also provides assistance for states that waive the one-week waiting period for unemployment benefits. For those states, the federal government will refund states through

December 31, 2020. This provision will further encourage states that are not already waiving the waiting period to do so. The Department of Labor will soon issue more guidance on RWACA.

With RWACA, employers who are forced to make the difficult decision to layoff, furlough, or reduce employee hours can take solace in the fact that those affected employees will have more financial support to make it through the COVID-19 crisis.

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[1] For those employers who, due to COVID-19, have no work for employees to perform, it is not clear whether PPP allows employers to use a PPP loan to place such employees on 8 weeks of paid vacation and then recoup those costs through loan forgiveness. Guidance is forthcoming and will hopefully address this issue.

[2] There are also special provisions applicable to sole proprietors and independent contractors that are outside the scope of this Alert. This Alert focuses on the employer aspects of PPP.

[3] The usage provisions of PPP delineate between “payroll costs” and “employee salaries, commissions, or similar compensation.” This distinction suggests that an employer could use the PPP loan to pay for employee compensation in excess of \$100,000. But, because the loan forgiveness provisions of PPP make no such distinction, such use of PPP loan amounts is likely not forgivable.

## **Related Alerts:**

- [New Information 3/26/2020 - Employment Issues under the Families First Coronavirus Act of 2020](#)
- [COVID-19 OSHA Guidance: Hazard Assessments at Workplaces Considered Essential Businesses Under Shelter in Place Orders](#)
- [COVID-19 Restructuring and the WARN Act](#)
- [Employment Issues under the Families First Coronavirus Act of 2020](#)
- [New York Enacts COVID-19 Sick Leave Act](#)
- [COVID-19 and OSHA](#)
- [COVID-19 and the American With Disabilities Act](#)
- [COVID-19 and Discrimination Issues](#)
- [Employer Checklist for Responding to a Positive COVID-19 Test](#)