



## **COVID-19 EMPLOYER UPDATE**

### ***CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT UPDATE***

**UPDATED March 27, 2020**

As discussed in our March 26, 2020 Employer Update, the U.S. Senate passed the *Coronavirus Aid, Relief, and Economic Security Act* (“**CARES Act**”). Today the CARES Act was passed by the U.S. House of Representatives and was immediately signed into law by President Trump. We have provided a summary of the Act and its key components, with respect to employers, below.

#### **Emergency EIDL Grants**

- **Which businesses qualify for the Program?**
  - Applicable to businesses that have 500 or fewer employees
    - The term employee includes individuals employed on a full-time, part-time, or other basis
  - Includes sole proprietors, independent contractors, and eligible self-employed individuals
  - Expands allowable uses to include: payroll costs; costs of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensations; interest on mortgage obligations; rent; utilities; interest on other debt obligations incurred before the covered period
  
- **What are the specific requirements for the Program?**
  - Eligible businesses may receive a grant not to exceed \$10,000
  - Required to make good faith certification that the employer has been affected by COVID-19 and will use funds to retain workers and maintain payroll and other debt obligations
  - No requirement that applicant is unable to obtain credit elsewhere
  - Coverage period January 31, 2020 through December 31, 2020
  - Business **MUST** be operational on January 31, 2020
  - Must be used for:
    - Providing sick leave due to COVID-19
    - Maintaining payroll to retain employees during disruption/slowdown
    - Covering increased costs due to interrupted supply chains
    - Paying rent/mortgage payments
    - Repaying obligations that cannot be met due to revenue losses

- **How does an eligible business apply for a grant?**
  - Within 10 days of enactment, the SBA will publish procedures for application and minimum requirements
- **Does the Grant have to be repaid?**
  - No. However, if an eligible business subsequently receives a loan under the Paycheck Protection Program, the amount of the grant will be deducted from the loan forgiveness amount

### **Small Business Loan Forgiveness (“Paycheck Protection” Program)**

- **Which businesses qualify for the Program?**
  - Applicable to businesses that have 500 or fewer employees
    - The term employee includes individuals employed on a full-time, part-time, or other basis
  - Includes sole proprietors, independent contractors, and eligible self-employed individuals
  - Expands allowable uses to include: payroll costs; costs of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensations; interest on mortgage obligations; rent; utilities; interest on other debt obligations incurred before the covered period
- **What are the specific requirements for the Program?**
  - Eligible businesses may take out loans up to \$10 million (subject to a formula tied to payroll costs) and can cover employees making up to \$100,000 per year
  - Required to make good faith certification that the employer has been affected by COVID-19 and will use funds to retain workers and maintain payroll and other debt obligations
  - No requirement that applicant is unable to obtain credit elsewhere
  - No personal guarantee or collateral is required for the loan
  - No pre-payment penalty
  - Business must maintain its March 24, 2020 employment levels through September 30, 2020 as much as practicable, and in any case shall not reduce its employment levels by more than 10%
- **As a small business, does the Act incentivize me to keep employees on payroll?**
  - Yes. The portion of the loan used for covered payroll costs, interest on mortgage obligations, rent, and utilities would be forgiven on a tax-free basis as long as the employer does not:
    - Reduce its number of employees during the 8-week covered period compared to the prior year; or
    - Reduce employee’s pay by more than 25% during the 8-week covered period
  - No reduction if the employer rehires or increases the employee’s pay within the specified time period

- **Where will I get my loan?**
  - The loans will be available through banks and credit unions that already participate in the Small Business Administration’s 7(a) loan program
- **What interest rate will be applied to the loan?**
  - No more than 4%
- **When do loan repayments begin?**
  - No sooner than 6 months after disbursement of the loan funds but no later than 12 months
  - Repayment deferment includes principal, interest and fees
- **What amount of the loan is eligible for forgiveness?**
  - The forgiveness period is a period of 8 weeks from the date the loan is approved
  - The portion of the loan used to pay qualifying expenses during the 8-week period is eligible for forgiveness, up to the full amount of the loan principal
  - The amount forgiven will be reduced if the employer reduces its workforce during the 8-week period
  - The employer may rehire any employees who have already been laid off due to the COVID-19 crisis without penalty
- **When will the loan be forgiven?**
  - No later than 90 days after submission of documentation required for loan forgiveness

### **Employee Retention Credit**

- **Who is eligible for the Employee Retention Credit and what amount of credit may be claimed?**
  - Eligible employers who partially or fully suspend operations due to orders from appropriate governmental authority are allowed a credit against employment taxes equal to 50% of qualified wages (up to \$10,000 in wages) for each employee

### **Expansion of Unemployment Benefits (“Relief for Workers Affected by Coronavirus Act”)**

- **Who is eligible for the program’s unemployment benefits?**
  - While unemployment is normally not available for those who are self-employed, those individuals are now entitled to benefits under the Relief Act
  - An individual who is unemployed, partially unemployed, or unable or unavailable to work because:
    - Individual diagnosed with COVID-19 or experiencing symptoms and seeking a medical diagnosis of COVID-19
    - Member of the individual’s household has been diagnosed with COVID-19
    - Individual is providing care for a family member with COVID-19
    - Child or other person in the household in which the individual has primary caregiving responsibility is unable to attend school or another facility that

is closed due to COVID-19 and such care is required for the individual to work

- Unable to reach place of employment because of quarantine
  - Individual has been advised to self-quarantine by a health care provider and is unable to reach the place of employment
  - Individual was scheduled to commence employment and does not have a job or is unable to reach the job as a result of COVID-19
  - Individual has become the breadwinner or major support for a household because the head of household died as a direct result of COVID-19
  - Individual has to quit as a direct result of COVID-19
  - Individual's place of employment is closed as a direct result of COVID-19
  - Individual is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law
- **Who is not eligible for the Relief Act's unemployment benefits?**
    - An employee who is able to telework with pay
    - An individual receiving other paid leave benefits
  - **How does the Relief Act increase my unemployment benefits?**
    - Individuals will not only receive the usual calculation of benefits from the State, but the federal government has allocated an additional \$600 per week of unemployment for up to four months for each individual
    - All eligible workers will receive an additional 13 weeks of unemployment benefits, not to exceed 39 weeks
  - **Have the procedures for collecting unemployment changed?**
    - A one-week waiting period before receiving benefits is customary in many states, but the federal government has incentivized states to waive that requirement
  - **How long are the increased unemployment benefits available?**
    - Benefits will cover the period of unemployment between January 27, 2020-December 31, 2020

### **Recovery rebates**

- **Who is eligible for a recovery rebate?**
  - All U.S. residents who are not the dependent of another taxpayer and have a work-eligible Social Security Number, whose taxable income falls under one of several predetermined amounts
- **How much money can I expect to receive?**
  - Individuals earning \$75,000 (or heads of household earning \$112,500) or less will receive \$1,200 with an additional \$500 for every qualifying child
  - Married couples earning \$150,000 or less will receive a total of \$2,400

- Payments decrease for individuals earning above \$75,000 or married couples earning above \$150,000. Individuals making more than \$99,000 or married couples earning \$198,000 will not receive the direct cash payments
- A formula to determine an individual or families' expected rebate is attached as Schedule A
  
- **What year is my income based on to determine eligibility for the direct cash payments?**
  - For those that have not yet filed their 2019 tax return, 2018 income will be used
  
- **Do I need to take any action to receive the payments?**
  - No, there is no specific action you need to take
  
- **Is the payment subject to income taxes?**
  - No.

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*Employers are also encouraged to seek legal counsel prior to taking actions to avoid violations of federal or state employment laws including, but not limited to, the Family Medical Leave Act and its expansion under the Families First Coronavirus Response Act, the Fair Labor Standards Act, the Texas Payday Law, Texas small employer health insurance laws, new hire reporting laws, the Texas Commission on Human Rights Act, various EEO laws covered by Title VII of the Civil Rights Act of 1964, Occupational Safety and Health Administration laws, the Immigration Reform and Control Act, EEO-1 reporting requirements, the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the National Labor Relations Act, the Worker Adjustment Retaining Notification Act, and the Employee Retirement Income Security Act of 1974.*

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**SCHEDULE A**

***“RECOVERY REBATE FORMULA”***

R = recovery rebate amount

K = number of qualifying dependents **16 years old or younger**

G = adjusted gross income for 2019 (unless you haven't filed your tax return for 2019, in which case taxable income for 2018)

**For individuals not filing as head of household who made \$75,000 or less**

$$R = [1,200 + (500 \times K)]$$

**For individuals not filing as head of household who made more than \$75,000**

$$R = [1,200 + (500 \times K)] - [(G - 75,000) \times .05]$$

**For heads of household who made \$112,500 or less**

$$R = [1,200 + (500 \times K)]$$

**For heads of household who made more than \$112,500**

$$R = [1,200 + (500 \times K)] - [G - 112,500) \times .05]$$

**For married filing jointly who made \$150,00 or less**

$$R = [2,400 + (500 \times K)]$$

**For married filing jointly who made more than \$150,000**

$$R = [2,400 + (500 \times K)] - [(G - 150,000) \times .05]$$