COVID-19 FEDERAL LEGISLATION: WHAT YOU NEED TO KNOW

Congress has passed two major pieces of legislation to deal with the coronavirus crisis, the Families First Coronavirus Relief Act ("FFCRA") and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Both include important protections for workers affected by the current crisis. This memorandum summarizes the provisions providing: (1) unemployment benefits, (2) paid leave benefits, and (3) cash payouts.

I. Unemployment Compensation under the CARES Act

The CARES Act expands state unemployment insurance ("UI") programs in four ways: it (1) expands access to UI benefits; (2) increases the amount of UI payments; (3) extends the duration of UI benefits; and (4) eliminates waiting periods. The changes only go into effect if a state enters an agreement with the federal government agreeing to certain terms. However, because the federal government will pay for 100% of the CARE Act's changes, we anticipate that most, if not all, states will offer these expanded benefits.

The CARES Act provides the following:

For workers who qualify for regular UI benefits:

- All weekly UI benefits will be increased by $600 through July 31, after which the regular UI benefit continues.
- State-law mandated "waiting periods" are waived.
- Benefits can be received for an additional 13 weeks beyond the period that state laws typically allow. Most states provide 26 weeks of unemployment benefits,[1] which are often extended by another 13 weeks; this adds 13 weeks to the state's total.
- These enhancements are for unemployment for any reason – not just COVID-19.

For workers who typically would not qualify for regular UI benefits:

- Access to the UI system is expanded to: individuals who have exhausted their benefits, independent contractors, sole proprietors, those – like apprentices -- without a wage history, and others who usually would not qualify for UI benefits.
- Benefits under this program are available for up to 39 weeks of unemployment between January 27 and December 31, 2020 (excluding any weeks of benefits the worker received under regular UI).
- The weekly benefit amount is the same as for those who qualify for regular UI:
    - The regular UI under state law plus $600. The additional $600 is only through July 31, 2020, after which the regular UI amount would continue.
- An individual may receive these benefits if available for work, but unemployed or unavailable to work because:
    - the individual's place of employment is closed as a direct result of COVID-19;
    - the individual is diagnosed with COVID-19, or has symptoms of COVID-19 for which the individual is seeking a diagnosis;

[1] All but eight (8) states offer 26 weeks of UI benefits. Arkansas, Alabama, Florida, Idaho, Kansas, Missouri, and South Carolina offer less than 26 weeks of regular UI benefits. Georgia expanded to 26 weeks on March 26, 2020.

- 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 individual's household who has been diagnosed with COVID-19;
- a child or other person in the household for whom the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility being open is required for the individual to work;
- the individual is unable to reach their place of employment because of a quarantine;
- the individual is unable to reach their place of employment because they have been asked to self-quarantine by a health-care provider;
- the individual was scheduled to commence employment but is unable to reach the job or no longer has the job because of COVID-19;
- the individual has become the breadwinner or major support for their household because the head of household has died as a result of COVID-19;
- the individual has to quit their job as direct result of COVID-19;
- the individual meets any other, additional criteria established by the Secretary of Labor for unemployment assistance.

For workers covered by Railroad Unemployment Insurance

- Waives the 7-day waiting period for railroad unemployment benefit claims for claims filed after the law's enactment and through December 31, 2020.
- Increases the maximum bi-weekly railroad unemployment benefit to $1200 (from current $780).
- Extends railroad extended benefits (which apply after initial 130 day benefit period), to 130 days.

II. Paid Leave Under FFCRA: The Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA)

These two laws provide paid leave to employees who cannot work for COVID-19-related reasons. ***Both***:

- Apply to employers with *fewer than 500* employees.
- Are effective on April 1, 2020.
- Do not apply if your employer has closed down before April 1, and only apply while your employer is open for business. If your employer is closed, you may be eligible for unemployment compensation (see section I above).
- Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits (through Dec. 31, 2020).
- Employers in multiemployer bargaining units have option of satisfying their obligations by paying into a multiemployer benefit plan *if* the plan provides employees with the required benefits.

Emergency Paid Sick Leave Act

- Benefits are available to all employees, regardless of length of tenure with the employer
- Requires employers to pay – for up to 80 hours (pro-rated for part-time):
    - Regular wages, capped at $511/day ($5110 maximum) for employees unable to work because:

        - Employee is subject to a public COVID-19-related quarantine or isolation order;
        - Health care provider has advised employee to self-quarantine; or
        - Employee is experiencing COVID-19 symptoms and seeking diagnosis.
    - 2/3 of regular wages, capped at $200/day ($2000 maximum) for employees unable to work because the employee is:
        - Caring for an individual subject to a public quarantine or isolation order or who has been advised to self-quarantine;
        - Caring for a son or daughter if the school or childcare facility is closed or childcare provider is unavailable; or
        - Experiencing similar conditions, as specified by HHS.
        - DOL can provide an exemption for employers with fewer than 50 employees from the childcare provision if complying would jeopardize the employer's business.
        - DOL can exclude certain healthcare workers and first responders. Employers of healthcare workers and first responders can elect to exclude them as well.

Emergency Family and Medical Leave Expansion Act

- Available to employees who have been employed for 30 days with the employer from which they are requesting the leave.
- Requires employers to provide 10 days *unpaid* leave and up to an additional 10 weeks of *paid* leave to care for son or daughter whose school or childcare facility is closed or childcare provider is unavailable for COVID-19 related reasons.
- Paid leave is 2/3 of regular wages, capped at $200/day ($10,000 maximum)
- Employees can elect to use EPSLA leave or accrued vacation, personal, medical or sick leave for the unpaid portion.
- DOL can provide an exemption for employers with fewer than 50 employees if complying would jeopardize the employer's business.
- DOL can exclude certain healthcare workers and first responders.

III. Direct Cash Payments under the CARES Act

The CARES Act also provides for "recovery rebates" of $1,200 per individual ($2,400 if filing jointly), plus $500 for each qualifying child, subject to income caps starting at $75,000 (or $150,000 per couple). The payments phase out above the income caps. Individuals with adjusted gross incomes above $75,000 will get smaller amounts, with no payment to anyone making $99,000 or above. For married couples, the $2,400 benefit begins to phase out after $150,000 in combined annual income, with no payments to any couple making $198,000 or more.