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COVID-19: What the CARES Act Means to Employers

Legal Update
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On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)—a $2 trillion emergency stimulus bill—intended to mitigate the economic impact of COVID-19. This is the third aid package from Congress and the largest emergency aid package in U.S. history. The CARES Act provides relief and a federal safety net to six main groups impacted by COVID-19: individuals, small businesses, large corporations, hospitals and public health, education, and state and local governments.

The CARES Act is effective immediately. However, the Act incorporates various specific effective dates, some retroactive, applicable to specific provisions. Generally, the unemployment provisions become effective when individual states enter into an agreement with the federal government to administer the program.

Below is a summary of the provisions that most directly impact employers.

Expansions to Unemployment Assistance

The CARES Act provides an unprecedented expansion to unemployment benefits.

Expanded Eligibility

Section 2102 of the Act provides a set amount of unemployment benefits for individuals who are not already eligible for state and federal unemployment programs but who are unable to work due to the COVID-19 outbreak. In other words, fully funded federal unemployment benefits are now available through December 31, 2020, to **self-employed workers, independent contractors, individuals with limited work history for up to 39 weeks of employment, and even those individuals who quit their employment for "COVID-19 related reasons,"** including those who must leave their jobs to care for family members and do not have access to paid leave benefits. Employees who are able to work remotely or receive some form of sick leave or other paid-leave benefits are excluded from this provision.

Section 2102 allows these workers to submit a “self-certification” that they are unable to work due to the COVID-19 outbreak. The Act neither provides guidance on the requirements for a “self-certification,” nor a mechanism for providing oversight to ensure compliance.

Emergency Increase in Weekly Unemployment Benefits

Section 2104 provides additional compensation for individuals who are already eligible, or who will become eligible, for state unemployment benefits in the coming weeks or months. These individuals will receive the sum of whatever benefit amount would have been provided at the state level, **plus an additional emergency increase of $600 per week.** This $600 increase, referred to as “Federal Pandemic Unemployment Compensation,” is available from the date each state enters into an agreement with the federal government to expand unemployment compensation (expected to be immediately) and **expires July 31, 2020.** States are not permitted to decrease their unemployment benefits to account for this federally funded supplement.

Notably, the CARES Act imposes no cap to ensure that employees do not make more on unemployment than they were making while working. It also does not distinguish between employees who were laid off from part-time work and those who were laid off from full-time work. The $600 weekly supplement applies across the board without regard to an employee’s prior salary/wages.

Extension to Length of Unemployment

Section 2107 provides an **additional** 13 weeks of “Pandemic Emergency Unemployment Compensation” to all individuals who otherwise would be ineligible for such compensation because they exhausted all their rights to regular unemployment compensation under applicable state or federal law. This additional emergency compensation is available from the date each state enters into an agreement with the federal government (expected to be immediately) and **expires December 31, 2020.**

Iowa, North Dakota and Minnesota, like most other states, provide for unemployment benefits for 26 weeks. The CARES Act thus effectively extends eligibility to 39 weeks. Individuals may receive the additional 13 weeks provided they (i) have no rights to regular unemployment compensation under any applicable state or federal law, (ii) are not receiving unemployment compensation under Canadian law, and (iii) are able, available and actively seeking work. The amount of unemployment compensation payable to an individual under this Section is equal to the amount of unemployment benefit the individual would otherwise be entitled to under applicable federal or state law, plus the additional $600 of Federal Pandemic Unemployment Compensation.

Section 2107 provides that states shall provide “flexibility” to individuals who cannot meet the “actively seeking work” requirement due to their inability to search for work because of reasons stemming from COVID-19, such as the individual becomes ill, gets quarantined or even has their "movement restricted."

Emergency Relief for Government Entities & Nonprofit Organizations

Section 2103 of the Act provides federal funding to states who reimburse nonprofits, government agencies and Indian tribes for half the costs they incur through December 31, 2020, to provide unemployment benefits to their laid-off employees.

Full Federal Funding of "Waiting" Week

Section 2105 recognizes that many states have a one-week waiting period for unemployment compensation and provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020, for those states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits. In Minnesota, the one-week waiting period has already been waived by Governor Walz's March 16, 2020, executive order. This change is inapplicable in Iowa and North Dakota, where an individual's claim is effective the Sunday of the week in which it is filed.

"Short-Time Compensation" Funding and Assistance

Section 2108 provides funding to support "short-time compensation" programs, where employers reduce employee hours instead of laying-off workers and the employees with reduced hours receive a pro-rated unemployment benefit. Section 2108 provides states with federal funding for 100 percent of the costs they incur in providing short-time compensation programs through December 31, 2020. Note that employees who are working reduced hours do not appear to be eligible for the $600/week federal supplement. Employees with reduced hours will receive the prorated amount allowed by their state unemployment insurance program, for which the state will receive reimbursement from the Federal Government.

Section 2109 through 2111 also provide funding and assistance to support those states which **commence** "short-time compensation" programs, by paying 50 percent of the costs a state incurs in providing such programs through December 31, 2020, and alternatively, granting $100 million dollars to states that enact, implement, and administer "short-time compensation" programs indefinitely.

Financial Relief to Small and Distressed Businesses

The CARES Act provides for grants, forgivable loans, and relief for existing loans for qualifying small businesses with 500 or fewer employees. The Act further provides loans to assist certain distressed, larger corporations. Additionally, the Act provides for fully refundable tax credits to help businesses that are closed or distressed keep their employees on their payroll and allows certain businesses to defer social security payroll taxes for a period of time. These provisions of the CARES Act, which may be important to employers contemplating a furlough or layoff, are summarized here and here.

Other Provisions that May Impact Your Employees

Employers may also want to be generally aware of the following provisions of the CARES Act, which may be applicable to their employees.

One-Time Direct Payment

Most individuals earning less than $75,000 can expect a one-time cash payment of $1,200. Couples who filed jointly would receive a check for $2,400 and families would get an additional $500 per child. The cash payments are based on either 2018 or 2019 tax filings. People who receive Social Security benefits but who do not file tax returns are still eligible. Payments begin to phase out after the $75,000 threshold and disappear completely for individuals making more than $99,000 and married couples making more than $198,000. These direct payments are available to all individuals who meet the income thresholds and **will be paid separate from, and in addition to, any unemployment benefits individuals may also be receiving.**

Federal Tax Returns

The filing deadline for 2019 tax returns has been extended to July 15, 2020. Anyone who has filed or plans to, and is owed a refund, can still expect to receive one.

Private Medical Insurance

The Act requires all private insurance plans to cover COVID-19 treatments, vaccines, and make all COVID-19 tests free.

Student Loans

The Department of Education will suspend payments on student loans without penalty through September 30, 2020. In addition, employers can contribute up to $5,250 of an employee's student loan obligation on a tax-free basis and employees would not have to include the loan payments as income.

Mortgage Foreclosure and Eviction Protection

Individuals facing hardship due to COVID-19 will be given a 60-day forbearance on a federally backed mortgage loan, which may be extended for four periods of 30 days each. Fees, penalties, and additional interest may not be charged as a result of delayed payments. Additionally, landlords with federally backed mortgage loans are not allowed to evict tenants solely for failure to pay rent for a 120-day period and may not charge late fees or penalties for a tenant's failure to pay rent.

Preparedness for 2020 Elections

The Act budgets approximately $400 million to provide states the means to take measures to make voting by mail and early voting easier.

Other Funding

The Act provides a long list of other industries and programs that will receive federal funding, including hospitals, Center for Disease Control and Prevention programs, and the health care industry; child nutrition, food stamps, and food banks; food assistance and distribution to U.S. territories and American Indian reservations; state and local governments; and emergency transit funding.

Key Takeaways for Employers

Takeaway #1

Employers considering a furlough, pay reduction or layoff should carefully weigh their options. The CARES Act provides for significant unemployment benefits for a variety of workers who are laid off, furloughed, or have their hours/pay reduced, but the CARES Act also provides for forgivable loans for certain employers who keep employees on the payroll notwithstanding a business interruption or shut-down.

Takeaway #2

Employers should be aware of the fact that the Act's unemployment provisions will allow some individuals making under a certain threshold to collect unemployment compensation **in excess of what those individuals were being paid prior to a furlough or layoff for up to four months (through July 31, 2020).** The Act allows for this by significantly expanding unemployment benefits for eligible out-of-work individuals by $600 per week. Additionally, unemployment benefits are not subject to Social Security and Medicare taxes, and in many states are not subject to state and local tax. For example:

- In **Minnesota**, employees making $62,000 or less who are laid off will receive more compensation through unemployment. For example, an employee making $40,000 per year grosses $769 weekly before taxes. If that employee is furloughed or laid off, the employee would receive approximately 50 percent of his or her average weekly wage in state unemployment benefits—$384 a week. The CARES Act adds $600 a week, for a total of $984 in weekly unemployment compensation. This amount exceeds the employee's weekly wages by $215 per week (over $800 per month)—before taking into account the additional tax savings.
- In **Iowa**, an employee with no dependents making $40,000 per year would receive $435 weekly in state unemployment benefits. The CARES Act adds $600 a week, for a total of $1035 in weekly unemployment compensation. This exceeds the employee's weekly wages before layoff of $769.
- In **North Dakota**, an employee making $40,000 per year, would receive approximately $384 weekly in state unemployment benefits. The CARES Act adds $600 a week, for a total of $984 in weekly unemployment compensation. This exceeds the employee's weekly wages before layoff of $769.

Takeaway #3

The reality that some employees may now receive more on unemployment than they were earning while working may have implications for employers who need to bring employees back to work or rehire *en masse* two or three months down the road. The CARES Act does not specifically require a job search for an employee to receive the Federal Pandemic Unemployment Compensation (Section 2104), which is available through July 31, 2020. Therefore, employers who anticipate a need to call employees back to work in the short term (*i.e.,* through the end of July 2020) may want to consider a furlough rather than a layoff.

Takeaway #4

Employers implementing a temporary layoff or furlough, without a termination of employment, often allow employees to use sick time or paid time off to “bridge the gap” between unemployment benefits and an employee’s prior salary or wages. Doing so may no longer make sense given that payment of sick time or PTO will disqualify an employee from the regular and expanded unemployment benefits discussed above.

Contact Us

Fredrikson & Byron lawyers have been and continue to advise and assist clients in developing response plans and practical solutions to the ever-evolving challenges presented by COVID-19.

Please reach out to the Fredrikson & Byron Employment and Labor Team with any questions.

COVID-19 Employment Question of the Day