

The CARES Act for Employers; Possible Means of Business Survival

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The “Coronavirus Aid, Relief, and Economic Security Act” includes several components of critical importance to employers who have been affected by the COVID-19 crisis.

The most significant employment-related provisions of the Act:

Paycheck Protection Program

The Act authorizes the Small Business Administration to guarantee loans of as much as \$10 million to qualified employers (generally those with not more than 500 employees) for the purpose of enabling those employers to continue operations (including payroll) and reduce the need for layoffs during this period of crisis.

The Act authorizes SBA-eligible lenders to make “Paycheck Protection” loans of roughly two-and-one-half times the employer’s average monthly payroll costs (excluding the portion of annualized salaries in excess of \$100,000.00) during the year preceding its application, subject to a cap of \$10 million.

Employers may use Paycheck Protection loans to cover such expenses as employee salaries (again, excluding the portion of annualized salaries in excess of \$100,000.00), paid sick or medical leave, insurance premiums, mortgage, rent, and utility payments, and interest on debt.

Significantly, Paycheck Protection loans are subject to forgiveness under certain conditions. The portion of the loan that will be eligible for forgiveness is determined by the sum that recipients use for covered expenses (including payroll) during the eight-week period following origination of the loan.

The loan amount that will be subject to forgiveness will depend on variations in the recipient’s payroll during that eight-week period. For example, the forgiveness amount will be reduced proportionally if the recipient lays off (and does not rehire) workers during that eight-week period despite receipt of a Paycheck Protection loan. The forgiveness amount also will be reduced if the recipient implements (and does not rescind) certain wage reductions among the work force during that eight-week period.

The Act prescribes that “no personal guarantee” and “no collateral” shall be required for Paycheck Protection loans. Interest on Paycheck Protection loans is capped at four percent, and loans are not subject to pre-payment penalties. The Act also prescribes that payment of principal and interest is subject to deferral for six months to one year, and authorizes re-payment



Donald Peder Johnsen
Shareholder
602-530-8437
dpj@gknet.com

of the balance of the loan (after forgiveness) over a 10-year period.

Economic Stabilization Relief

The CARES Act also authorizes \$450 billion in emergency “economic stabilization” loans for general businesses (including employers with more than 500 employees). The program is intended to assist businesses “that have incurred or are expected to incur covered losses such that the continued operations are jeopardized.”

The program authorizes direct federal lending; that is, the program authorizes loans made directly from the federal government (on specific terms and conditions to be developed by the Treasury Department), rather than through an SBA-eligible lender.

Loans under the program will come with various conditions. Recipients must agree not to pay any dividends or purchase any stock listed on a national exchange (including any buyback of their own stock) for at least one year after the loan is paid back. Recipients also must agree to maintain their employment levels as of March 24, 2020, “to the extent practicable,” through September 30, 2020. Recipients also must agree to certain limitations on high-level employee compensation.

The Act directs the Treasury Department to publish procedures for loan applications by April 6.

Emergency Unemployment Relief

The CARES Act significantly expands unemployment compensation benefits for workers who are laid off or otherwise unable to work as a result of the COVID-19 crisis.

Perhaps most significantly, the Act adds \$600.00 to the weekly benefits that unemployment workers otherwise would receive under existing state law (and prohibits states from reducing their existing benefits). The Act commits the federal government to pay 100 percent of the amount of such additional benefits.

The Act also commits federal funds to expand unemployment compensation benefits for 39 weeks.

The Act also commits federal funds to provide emergency unemployment compensation benefits for workers who are not eligible for regular benefits (either because they do not meet the traditional definition of “employees” who are eligible for unemployment, or because they have exhausted regular benefits).

“Shared Work” Expansion

The CARES Act also contains incentives for employers to avoid layoffs by utilizing “Shared Work” plans authorized under state unemployment compensation law.

Under an approved Shared Work plan, the employer temporarily reduces the hours of a particular pool of workers (instead of laying off some of those workers). All of the workers in that pool then are eligible for a pro rata portion of the normal unemployment compensation benefits that they would have received if they had been laid off, even though they are still working (albeit part time).

The Shared Work Program requires submission of a plan to the Arizona Department of Economic Security, and DES’s approval of the plan.

The CARES Act incentivizes such plans by appropriating federal funds necessary to cover 100 percent of the benefits that states pay out under approved plans.

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In the meantime, we encourage employers who have specific questions about COVID-19 related effects on business (or any employment law topics) to contact Don Johnsen at (602) 530-8437 or dpj@gknet.com.