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Basics of the CARES Act

The Coronavirus Aid, Relief and Economic Security (“CARES”) was enacted on Friday, March 27, 2020. The CARES Act creates a half-dozen new programs to help distressed businesses and workers deal with COVID-19 and related shutdowns. These programs include forgivable loans, tax credits, and expanded unemployment insurance. This update is limited to the resources available for businesses.

Paycheck Protection Program (“PPP”)

This program would provide cash-flow assistance through 100 percent federally guaranteed loans to employers with 500 or fewer employees who maintain employees on their payroll during this emergency. If employers maintain employees on their payroll, the loans would be forgiven, which would help workers remain employed, as well as help affected small businesses and our economy snap-back quicker after the crisis. PPP has a host of attractive features, such as forgiveness of up to 8 weeks of payroll based on employee retention and salary levels, no SBA fees, and at least six months of deferral with maximum deferrals of up to a year. Eligible entities will be able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020. This program would be retroactive to February 15, 2020, in order to help bring workers who may have already been laid off back onto payrolls. Loans are available through June 30, 2020.

Maximum PPP loan size is equal to 250 percent of the business’s average monthly payroll costs during that time period, up to \$10 million. If the business employs seasonal workers, it can opt to choose March 1, 2019 as the time period start date. Loan proceeds can be used for things like payroll costs, group health care benefit costs, salaries, commissions and other compensation (with certain exclusions for employee or owner compensation over \$100,000), rent, mortgage interest, utilities, and interest on any other debts incurred before the covered period. The loans may not be used to provide paid sick leave under FFCRA or other coronavirus related benefits. The loans are forgivable in certain circumstances, but the borrower must apply for forgiveness through its lender.

Congress gave the Small Business Administration (“SBA”) responsibility for implementing the program. The SBA will make the loans available through existing lenders. It will also waive standard fees and personal-guarantee requirements—no collateral is required. Instead, the SBA will require employers to certify that: (1) the employer needs a loan to support its operations; (2) the employer will use the loan to retain its workers, maintain payroll, or pay other qualifying expenses; (3) the employer does not have another application for the same purpose pending; and (4) the employer has not already received a loan covering the same period.

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Small Business Debt Relief Program

This program will provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans. Under it, SBA will cover all loan payments on these SBA loans, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out loans within six months of the President signing the bill into law. In general, businesses must meet size standards, be based in the U.S., be able to repay, and have a sound business purpose. To check whether your business is considered small, you will need your business's 6-digit North American Industry Classification System (NAICS) code and 3-year average annual revenue. See <https://www.sba.gov/fundingprograms/loans> for more details, as each program has different details.

A 7(a) loan is an affordable loan product of up to \$5 million for borrowers who lack credit elsewhere and need access to versatile financing, providing short-term or long-term working capital and to purchase an existing business, refinance current business debt, or purchase furniture, fixtures and supplies. In the program, banks share a portion of the risk of the loan with SBA. There are many different types of 7(a) loans.

A 504 loan provides loans of up to \$5.5 million to approved small businesses with long term, fixed-rate financing used to acquire fixed assets for expansion or modernization. It is a good option if a business needs to purchase real estate, buildings, or machinery.

The microloan program provides loans up to \$50,000 to help small businesses start up and expand. The average microloan is about \$13,000. These loans are delivered through mission-based lenders who are also able to provide business counseling.

SBA has a free referral service tool called Lender Match to help find a local lender for each of these types of loans.

Economic Injury Disaster Loans & Emergency Economic Injury Grants

These grants provide an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19 within three days of applying for an SBA Economic Injury Disaster Loan (EIDL). To access the advance, a business must first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.

Delay of Payment of Employer Payroll Taxes

This provision would allow taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability. Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.

What This Means for Employers:

If you need funding to continue your operations, there are options out there which could help. Contact Barsamian & Moody for any questions on where to go from here.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.