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KD Alert - President Trump Signs Historic CARES Act

Employers and employees alike have been anxiously waiting for Congress to pass the "Coronavirus Aid, Relief, and Economic Security Act," also known as the "CARES Act." When that happened late yesterday, it was sent to President Trump, who signed it moments ago.

Several provisions in the CARES Act directly impact the business community at large. Below is a summary of the most significant aspects of the CARES Act upon employers:

Small Business Loans

The CARES Act amends the Small Business Act to allow employers who have been impacted by the COVID-19 pandemic to take out loans for "payroll costs" from February 15, 2020 until June 30, 2020. An employer is eligible for a loan where the employer has fewer than 500 employees (subject to limited exceptions), or where an employer meets the Small Business Administration's industry-based "size standard" requirements.

Under this provision, "payroll costs" include:

- **Compensation to employees included salary, wage, commission, cash tip or the equivalent;**
- **pay for vacation, parental, family, medical or sick leave;**
- **dismissal or severance compensation;**
- **payments for health care or retirement benefits;**
- **State or local taxes assessed on the compensation or employees;**
- **Compensation, including wages, commission, income, to a sole proprietor or independent contractor totaling less than $100,000 in one year;**
- **payments of interests on any mortgage obligation;**
- **rent;**
- **utilities; or**
- **interest on any other debt obligations that were incurred before the covered period**

However, "payroll costs" do not include:

- **Compensation to an employee whose annual salary is in excess of $100,000;**
- **Certain taxes imposed or withheld under chapters 21, 22, or 24 of the IRC;**
- **Compensation to an employee who resides outside of the United States;**
- **Qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act ("FFCRA"); or**
- **Qualified family leave wages for which a credit is allowed under FFCRA.**

The loan amount an employer is eligible for depends on a number of factors, but is capped at $10,000,000.

Loans under this provision of the CARES Act have a maximum maturity of 10 years from the date which the small business applies for

loan forgiveness and the interest rate for the loan will not exceed 4%.

It is worth noting that no personal guarantee is required to receive such a loan and that there will be no recourse against any individual, shareholder, member, or partner of the small business for non-payment of such a loan where the loan was used to cover payroll costs. Additionally, no collateral is necessary to receive a loan. Small businesses are also not required to show that they are unable to attain a loan elsewhere.

To receive a loan, a small business must certify that (1) it does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and (2) during the period beginning on February 15, 2020 and ending on December 31, 2020, the small business has not received duplicative amounts under this same provision.

Small businesses which receive loans under the CARES Act may also be eligible for loan forgiveness in an amount equal to the costs of maintaining payroll continuity and other allowable costs during the covered period.

Retention Credits

The CARES Act also provides eligible employers with a credit against applicable employment taxes for each calendar quarter of an amount equal to 50% of the qualified wages with respect to each employee. The amount of qualified wages cannot exceed $10,000.00. Should the credit exceed $10,000.00 for any calendar quarter, the excess will be treated as an over-payment to be refunded.

An "eligible employer" for the purposes of this section is an employer that carried on trade or business during the 2020 calendar year and during that time, the trade or business operation is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings for commercial, social, or other purposes, ***as a result of COVID-19. An eligible employer is also one that experienced a year-over-year (comparing calendar quarters) reduction in gross receipts of at least 50% – until gross receipts exceed 80% year-over-year.***

Delay of Employer Taxes

The CARES Act postpones the due date for employer payroll taxes and 50% of self-employment taxes related to Social Security and Railroad Retirement and attributable to wages paid during 2020. The deferred amounts are payable over the next two years – one-half due December 31, 2021, and one-half due December 31, 2022.

Paid Leave

The CARES Act expands the coverage of employees eligible for leave under the Family & Medical Leave Act ("FMLA") leave under the recently passed FFCRA. Specifically, the definition of "eligible employee" under the FMLA Expansion provisions of the FFCRA such that an eligible employee would now be defined as, "(i) an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested (ii) the term 'employed for at least 30 calendar days', used with respect to an employee and an employer in (i), includes an employee who has been laid off by that employer not earlier than March 1, 2020, and has worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff, and was rehired by the employer."

Unemployment Benefits

The CARES Act includes far more workers than are usually eligible for unemployment benefits. Specifically, the amendments include self-employed individuals and part-time workers. In other words, people who are unemployed, either partly unemployed or cannot

work for a wide variety of coronavirus-related reasons would be more likely to receive benefits.

The amount an individual would receive depends on the worker's state. The benefits are expanded in a bid to replace the average worker's paycheck. Unemployment benefits often replace approximately 40 to 45 percent of the average worker's weekly pay. Under the CARES Act, eligible workers, on average, would get an extra $600 per week on top of their state benefit. Notably, states have the option of providing the entire amount in one payment, or sending the extra portion separately.

As always during the unprecedented global crisis, the experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck will continue to keep you apprised of any further developments impacting the workplace, as well as be available for any questions you may have or guidance you may need for your business.

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