

## CARES Act Unemployment Compensation Provisions

### HOW THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT EXPANDS UNEMPLOYMENT COMPENSATION & PROVIDES OTHER EMPLOYEE BENEFITS:

#### WHAT EMPLOYERS NEED TO KNOW

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES), was signed into law. The CARES Act is the third aid package intended to address the economic hardship caused by the COVID-19 pandemic. The law provides approximately \$2 trillion in funding and makes a \$260 billion investment into the unemployment insurance program. There are several significant changes to unemployment compensation (UC) and the CARES Act provides clarification of the Families First Coronavirus Relief Act (FFCRA), which becomes effective April 1, 2020. Read our alert regarding FFCRA [here](#).

These are the highlights of the CARES Act implications for employers to know:

- **\$600.00 additional weekly payment:** the CARES Act adds \$600 per week from the federal government in addition to whatever base amount of UC a worker receives from the state. That boosted payment will last for four months. For example, if a Pennsylvania employee is receiving \$573.00 in UC from the state, their new amount will be \$1173.00 for four months.
- **Extended benefit collection period:** the CARES Act adds 13 weeks to the state's current benefit period. Employees nearing the maximum number of weeks allowed by their state will get an extension. New filers will be allowed to collect the benefits for the longer period.
- **Payroll taxes:** the CARES Act allows employers to delay the payment of their portion of 2020 payroll taxes until 2021 and 2022. It will enable employers to receive an advance tax credit from the Treasury instead of having to be reimbursed on the back end.
- **Pandemic Unemployment Assistance:** This new program applies to gig economy workers, freelancers, and contractors, and allows them to collect UC benefits through the end of this year.
- **Student loans:** Employers can provide up to **\$5,250** in tax-free student loan repayment benefits. That means an employer could contribute to loan payments, and workers do not have to claim that money as income.

**The CARES Act provides enhanced unemployment insurance benefits to employees for total and partial unemployment and to employers for retaining certain employees.**

#### Title II – Assistance for American Workers, Families and Businesses

##### Subtitle A -- Unemployment Insurance Provisions

##### Section 2102 – Pandemic Unemployment Assistance

Section 2102 expands UC to cover employees who were terminated or who are unable to work or experiencing reduced hours because of COVID-19, and who are not otherwise eligible for regular compensation or extended benefits. This includes those individuals who have exhausted all rights to regular unemployment or extended benefits under State or Federal law.

- Benefits are available beginning January 27, 2020, through December 31, 2020.
- UC under this section is capped at 39 weeks.
- Gig economy workers, the self-employed, and independent contractors may qualify for UC under this section.

- To qualify, an individual must provide self-certification that they are either:
- able to work except that he or she is unemployed or partially unemployed, or
- unable or unavailable to work because he or she was diagnosed with COVID-19 or is seeking a medical diagnosis, or a member of the individual's household is diagnosed with COVID-19 or meets one of the following factors:
- the individual is providing care to a family member or member in the individual's household who is diagnosed with COVID-19,
- a child or another person in the individual's household cannot attend child care or another facility for care that is closed as a direct result of COVID-19,
- the individual is unable to reach his or her place of employment due to a quarantine requirement,
- the individual can reach his or her place of employment but has been instructed to self-quarantine,
- the individual was scheduled to start employment but cannot reach his or her new place of employment or no longer has the new employment available due to COVID-19,
- the individual has become the breadwinner or major support for the household due to COVID-19,
- the individual has quit his or her job due to COVID-19,
- the individual's place of employment is closed due to COVID-19,
- the individual is self-employed and cannot find work or is unemployed.
- Employees will receive the weekly benefit amount authorized by the state in which they are employed. If the state raises the number of weekly benefits, the employee will be entitled to that amount. For example, the maximum benefit in Pennsylvania is \$573 per week. If Pennsylvania increased its benefit to \$600, current unemployment benefit recipients would receive the benefit of the increase.
- **Exemptions:**
  - Employees who can telework for pay or those who are receiving paid sick leave or any other type of paid leave benefits regardless of their qualifications as outlined above.

#### **Section 2104 – Emergency Increase in Unemployment Compensation Benefits**

- States can elect to participate in this provision, in which eligible individuals would receive an additional \$600 per week on top of the amount provided by the individual's state under that state's unemployment insurance. For example, the maximum weekly benefit in Pennsylvania will be \$1,173.
- States that opt-in to this provision will receive 100% reimbursement from the Federal Government of monies paid out under this provision and related administrative expenses.

#### **Section 2105 – Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week**

- States can elect to participate in this provision, which would waive any state required waiting periods, so benefits are available immediately.

#### **Section 2107 – Pandemic Emergency Unemployment Compensation**

- This section increases the benefits period for eligible individuals by adding 13 weeks of coverage.
- An individual must remain unemployed, be employable, "actively seeking work" as defined by the Act, and have exhausted or have no right to regular compensation available through state or federal means for a benefit year.
- For each eligible individual who applies to pandemic emergency unemployment compensation, the state will establish a pandemic emergency unemployment compensation account with respect to such individual's benefit year.

#### **Section 2108 – Temporary Financing of Short-Time Compensation Payments in States with Programs in Law**

- States that enact a short-time compensation program to assist with employers experiencing certain reduced hours or partial unemployment, as defined by section 3306(v) of the Internal Revenue Code of 1986, will receive 100% of the amount of short-time compensation paid under such program.
- Employees experiencing partial unemployment can use this program to obtain wages they are missing due to partial unemployment.

#### **Section 2109 – Temporary Financing of Short-Term Compensation Agreements**

- 50% of the costs of the short-term compensation will be paid, and Section 2110 provides a \$110 million grant to assist states with these programs.
- The short-time compensation plan shall not permit the payment of short-time compensation to an individual by the State during a benefit year above 26 times the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for a week of total unemployment.
- Employees who are employed on a temporary, seasonal, or intermittent basis are not eligible.

#### **Section 2111 – Assistance and Guidance in Implementing Programs**

- To assist states in establishing, qualifying, and implementing short-time compensation programs, the Department of Labor will provide model legislation, technical assistance for implementation, and establish reporting requirements for the states.

#### **Section 2112-2114 Applies to Unemployment Benefits Under The Railroad Unemployment Insurance Act.**

#### **Section 2206 – Exclusion for Certain Employer Payments Of Student Loans**

- This section adds language to section 127(c) of the Internal Revenue Code of 1986 that allows employers to provide up to \$5,250 in tax-free student loan repayment benefits before January 1, 2021, which employees would not claim as income.

#### **Section 2301 – Employee Retention Credit for Employers Subject to Closure Due to COVID-19**

- Certain “eligible employer[s]” shall be allowed as a credit against social security taxes for each calendar quarter an amount equal to 50 percent of the “qualified wages” with respect to each employee of such employer for such calendar quarter up to \$10,000 in wages paid to employees who for small businesses continue to work and for larger businesses continue to be paid by the employer despite the employee’s inability to work.
- Limitations:
- The tax credit applies to wages paid after March 12, 2020, and before January 1, 2021.
- The amount of “qualified wages” that may be taken into account for the credit for all eligible calendar quarters is \$10,000 in wages paid to each employee.
- An “eligible employer” is an employer:
- Whose operations are fully or partially suspended during a calendar quarter due to orders of a government authority limiting travel, commerce or group meetings due to COVID-19; or
- During an eligible calendar quarter beginning with the first quarter of 2020 had gross receipts, which were 50% less than the gross receipts the employer earned for the same quarter in the prior calendar year. The employer remains eligible until the employer’s gross receipts are 80% of the gross receipts the employer earned for the same quarter in the prior calendar year.
- **Note:** An employer that is an “essential” business exempt from a suspension order or a business that can operate substantially through telecommuting likely will not qualify for the first eligibility test, but may be eligible for the second test.
- **Tax-exempt organizations may be eligible for the Credit**

- “Qualified wages” will depend on whether the employer’s average number of employees during 2019 was more than 100 employees or 100 or less employees.

If an eligible employer receives a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, such employer shall not be eligible for the credit under this section.

### **Section 2302 - Delay of Payment of Employer Payroll taxes**

- This section discusses the deferment of certain tax payments.

### **III. The Act confirms the emergency FMLA and sick leave benefits available to employees and advanced tax credits employers can take in providing these benefits.**

#### **Labor Provisions**

#### **Section 3601 - Limitation on paid leave**

- The expanded FMLA provisions of the Families First Coronavirus Response Act (FFCRA) states that employees of businesses with fewer than 500 employees are eligible for 12 weeks of family leave if they are unable to work because of a school closure or child care provider closure. This section confirms the cap on payments of \$200 per day and \$10,000 in the aggregate per employee.

#### **Section 3602 - Emergency Paid Leave Act Limitation**

- The FFCRA also created the Emergency Paid Sick Leave Act, which requires employers with fewer than 500 employees to provide eligible employees with 80 hours of paid sick leave. This section confirms that the cap on these benefits of \$511 per day and \$5,110 in the aggregate per employee for paid sick leave or a \$200 cap per day and \$2,000 cap in the aggregate per employee for employees taking care of a child or a quarantined individual.

#### **Section 3605 - Paid Leave for Rehired Employees**

- This section amends FFCRA section 3102 of the Emergency Family and Medical Leave Expansion Act, by allowing Employees that were terminated on or after March 1, 2020, and subsequently rehired by the same employer to take FMLA leave if they worked for that employer for 30 of the last 60 calendar days before their termination.

#### **Section 3606 - Advance Refunding of Credits**

- An employer or a self-employed individual may offset on a dollar for dollar basis, and on a payroll, by payroll basis, the amount the employer or the self-employed individual has paid to its employees for Emergency Paid Sick Leave and paid FMLA against the employer’s contribution for social security pursuant to Sections 3111(a) or 3221(a) of the Tax Code. If the amount of benefits paid exceeds the amount of the employer’s social security contribution, the IRS will establish a procedure under which the employer can apply for an expedited refund of those amounts.