

ALTSHULER BERZON LLP

Information about the Proposed Coronavirus Aid, Relief, and Economic Security (“CARES”) Act

March 26, 2020

As you have read in the news, the U.S. Senate adopted the “CARES Act” (HR 748, the “Coronavirus Aid, Relief, and Economic Security Act”) last night and the legislation is headed for the U.S. House of Representatives with action expected on Friday. **Please note that the bill may change before final adoption and signature by the President.** The bill is 880 pages long and this summary is necessarily an initial and broad overview.

We are available if you would like more specific advice on any aspect of the bill.

Family and Medical Leave Updates

Our previous client update explained the expanded family and medical leave available under HR 6201. The CARES Act expands eligibility to employees who were laid off and then rehired, **allowing recall of laid off employees**, if they meet any of the conditions for which expanded family and medical leave is available.

- To qualify, the employee must: have been laid off on or after March 1, 2020; have worked for the employer for at least 30 days in the last 60 calendar days prior to the layoff; and have been rehired.
- Also allows for employers to obtain advances on payroll tax credits for sick leave and family leave costs.

Unemployment Insurance

- **\$250 billion** to Expand and Extend Unemployment Benefits.
- **Expands Eligibility:** Makes self-employed and independent contractors, like Uber/Lyft drivers and other gig workers, eligible for unemployment benefits if their unemployment is caused by the Covid-19 pandemic (there are certain requirements that apply). The bill also includes support to state and local governments and nonprofits so they can pay unemployment to their employees.

- **Increases Benefits and Time Period:** Adds a \$600/week across-the-board payment increase through the end of July. In addition, for those who need it, the bill provides an additional 13 weeks of benefits beyond what states typically allow.
- The expansion in unemployment benefits expires at the end of 2020.

Taxes

- **Direct payments to individuals:** There will be a one-time tax rebate check of \$1,200 per individual and \$500 per child for those with a valid SSN. There are no earned income or tax liability requirements to receive these rebate checks. The full rebate amount is available for those with incomes at or below \$75,000 for individuals, \$112,500 for head of household, and \$150,000 for married couples.
- **Payroll tax credit:** Employers of all sizes that face closure orders or a 50% drop in gross receipts due to the Covid-19 pandemic that continue to pay employees that are furloughed may be eligible for a 50% refundable payroll tax credit on up to \$10,000 of wages paid to those employees. For employers with over 100 full-time employees, qualified wages are those paid to employees who are not working due to Covid-19. For smaller employers, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for wages paid or incurred from March 13, 2020, through December 31, 2020.
- **Loosens Rules on Retirement Accounts:** Older Americans that are subject to mandatory minimum distributions from their retirement accounts may keep their capital invested instead of being forced to cash out to draw on that capital without penalty, which would be suspended for 2020. Also waives the 10% penalty on coronavirus-related early distributions from 401(k)s and IRAs, which applies to distributions made at any time during 2020.
- **Delays Payroll Tax Payments for Employers:** Employers would be able to delay the payment of their 2020 payroll taxes until 2021 and 2022.

Support for Businesses with Restrictions

- **Loans for Major Industry:** Direct lending to the following: \$50 billion for passenger airlines, \$8 billion for cargo airlines, and \$17 billion for businesses critical to “maintaining national security.”
- **Limits on Executive Compensation:** Employee and executive total compensation may not exceed \$425,000, stock buybacks are prohibited during the duration of the loan, and borrowers must maintain existing payroll as of March 13.
- **Worker-Friendly Restrictions on \$454 billion in loans or loan guarantees to mid-size businesses:** Mid-size businesses, which include nonprofit organizations, are defined as those having 500 to 10,000 employees”). Eligible borrowers applying for a direct loan must make a “good-faith certification” that 10 enumerated conditions shall be met, including:

(II) the funds it receives will be used to retain at least 90 percent of the recipient's workforce, at full compensation and benefits, until September 30, 2020;

(III) the recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than 4 months after the termination date of the public health emergency;

(VIII) the recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan;

(IX) the recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan; and

(X) that the recipient will remain neutral in any union organizing effort for the term of the loan.

- **Airline Industry and Essential Businesses Loans:** The airline industry (which will not likely qualify as mid-size businesses) and national security critical businesses have a separate set of restrictions. Through September 30, 2020, they may not conduct involuntary furloughs or reduce pay rates and benefits; must maintain 90% of their March 24, 2020 employment levels (and more if practical); and must have a majority of their employees based in the United States. Also, the federal government may not condition financial assistance on entering negotiations to modify CBA provisions.
- **Forgiveness for Small Business Loans for Keeping Employees:** Creates a \$350 billion program for small employers, self-employed individuals, and gig economy workers. Provides 8 weeks of cash-flow assistance through 100% federally guaranteed loans to small employers that maintain their payroll during this emergency. If the employer maintains payroll, the portion of the loans used for covered payroll costs, interest on mortgage obligations, rent, and utilities would be forgiven. This proposal would be retroactive to February 15, 2020, to help bring workers who may have already been laid off back onto payrolls.

Health Care

- **Health Investments:** Provides over \$140 billion in health system appropriations, including (1) \$100 billion for a new program to provide grants to hospitals, public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers to cover unreimbursed health care related expenses or lost revenues attributable to the public health emergency resulting from the coronavirus and (2) \$16 billion to the Strategic National Stockpile to procure personal protective equipment, ventilators, and other medical supplies for federal and state response efforts.
 - **Research and Development:** \$11 billion to support research and development of vaccines, therapeutics, and diagnostics to prevent or treat the effects of coronavirus.

- CDC: \$4.3 billion to the CDC to support federal, state, and local public health agencies.
 - Rural and Tribal Health: \$185 million through HRSA to support rural critical access hospitals, rural tribal health and telehealth programs.
 - Nursing Homes: \$200 million for CMS for priorities like assisting nursing homes with infection control and supporting states' efforts to prevent the spread of coronavirus in nursing homes.
 - Other Critical Services: Funding for community health centers, reauthorizes rural grant programs for community health, invests \$30.75 billion into Education Stabilization Fund to help states, school districts and colleges and universities.
- **Supplies:** Takes steps to address supply shortages, including in the Strategic National Stockpile and removing legal barriers to the production of more masks.
 - **Telehealth:** Expands telehealth by allowing patients to see doctors with whom they don't already have a relationship, connects individuals on home dialysis with providers, and allows federally qualified health centers and rural health centers to participate. Expands telehealth services for home health and hospice.
 - **Home health prescribing authority:** Allows nurse practitioners and physicians' assistants to prescribe home health services.
 - **Medicare:** Allows for accelerated Medicare payments and creates a 20 percent add on payment for inpatient treatment.

Conclusion

We will keep you updated about the progress of the CARES Act and other Covid-19-related legislation. Please contact us if you have any questions.

In Solidarity,

Altshuler Berzon LLP