

ALTSHULER BERZON LLP

Options for Unions and Employers to Recover Payroll Costs under Federal Covid-19 Legislation

March 31, 2020

We want to make sure you are aware of some potential federal options available to unions and employers to cover payroll costs in this time of public health crisis. Additional options may be available under state and/or local law.

If your union is interested in taking advantage of any of these programs, or urging an employer to take advantage of them, please contact us for further guidance.

SBA Loan and Loan Forgiveness (“Paycheck Protection”) [for employers]

- **What are these:** Small Business Administration (“SBA”) loans of **up to \$10 million** (depending on particular employer’s payroll costs) to cover payroll, rent/mortgage interest, utilities, and other operating expenses, ***which will be forgiven*** if loan recipient does not reduce staff or compensation.
 - Covered period will be February 15 to June 30, 2020.
 - All payments will be deferred for 6 months to 1 year.
 - Amount forgiven will be reduced if employer reduces number of employees or salaries/wages.
- **Who may take advantage:** Available to small businesses (less than 500 employees) including certain nonprofits, but ***not*** to 501(c)(5) labor organizations.
- **How to take advantage:** Employers will apply through approved banks and other lenders. Information should be available soon through SBA website.

SBA Disaster Loan Program [for unions and nonprofit employers]

- **What are these:** Emergency grants of up to **\$10,000** and additional loans to pay bills including payroll.
 - \$10,000 emergency grant to be provided up to three days after loan application.

- Loan must be repaid (with 2.75% interest rate) except for emergency grant amount, but repayment can be deferred for up to 4 years.
- Maximum loan amount based on actual economic injury caused by Covid-19.
- **Who may take advantage:** Nonprofit organizations, which appears to include 501(c)(3), (c)(4), (c)(5), and (c)(6) organizations – and so should include unions.
 - May be combined with “Paycheck Protection” program.
- **How to take advantage:** Information should be available soon through SBA website.

Employee Retention Credits [for unions and employers]

- **What are these:** Refundable **payroll tax credit** against social security payroll taxes in amount **equal to 50% of qualified wages** paid to eligible employees, capped at \$10,000 in quarterly wages/benefits per employee. That is, credit can be \$5,000 per employee per quarter.
 - The payroll tax credit is generally limited to the 6.2% employer portion of the employment taxes imposed on wages, but any excess will be treated as a refundable overpayment.
- **Which wages count as “qualified wages”:**
 - For wages paid or incurred from March 13 to December 31, 2020.
 - “Qualified wages” include certain health care expenditures but not wages paid for emergency sick leave or family leave under the FFCRA.
- **Which employees’ wages count depends on size of employer:**
 - For employers with up to 100 full-time employees, all wages qualify for the credit.
 - For employers with over 100 full-time employees, only employees who are *not providing services* for the employer due to Covid-19 are eligible for the credit.
- **Who may take advantage:**
Employers must have ***either:***
 - (1) Fully or partially suspended business operations due to Covid-19-related government order; ***or***
 - (2) Seen gross receipts decrease by over 50% from same quarter in previous year.
 - May not be combined with Paycheck Protection program.

Other Relief for emergency sick and family leave [for employers and unions]

In addition, recall our previous advice on payroll tax credits under the Families First Coronavirus Response Act for most public employers and private employers with up to 500 employees:

- Employers must provide two weeks of emergency sick leave at **100% of the employer's regular rate of pay, up to \$511 per day**, capped at \$5,110 per employee, and may receive an **equivalent payroll tax credit**, for employees who are unable to work because they:
 - (1) are subject to a Covid-19-related quarantine or isolation order,
 - (2) were advised to self quarantine due to Covid-19, or
 - (3) are experiencing Covid-19 symptoms and seeking diagnosis.

- Employers must provide two weeks of emergency sick leave **at two-thirds of the employee's regular rate of pay, up to \$200 per day**, capped at \$2000 per employee, and may receive an **equivalent payroll tax credit**, for employees who cannot work because they are
 - (1) caring for an individual subject to a quarantine or isolation order or who has been advised to self quarantine,
 - (2) caring for a son or daughter whose school or childcare provider is unavailable due to Covid-19 precautions or closure, or
 - (3) experiencing a similar condition as specified by federal guidance.

- Employers must provide twelve weeks of emergency family or medical leave paid (except for the first two weeks, which may be unpaid) at **two-thirds of the employee's regular rate of pay, up to \$200 per day**, capped at \$10,000 per employee, and may receive an **equivalent payroll tax credit**, because they need to care for a son or daughter whose school or childcare has been closed, or whose childcare provider is unavailable, due to Covid-19 measures.
 - (Note that employees who have already exhausted some of their annual FMLA leave may not be eligible for this.)

- These payroll tax credits can be **advanced**. Further guidance is expected.

Conclusion

To discuss this further, please contact the Altshuler Berzon LLP attorney you are regularly in contact with, or sleyton@altber.com.

In Solidarity,

Altshuler Berzon LLP