

## Summary of the Provisions of the CARES Act Affecting the Workforce

**March 27, 2020**

### **Client Advisory**

March 27, 2020 by Melissa J. Erwin and Leonardo Trivigno

On March 27, 2020, the President signed the Coronavirus Act, Relief and Economic Security Act ("CARES Act"), a \$2 trillion disaster-relief package intended to mitigate the economic impact of the COVID-19 pandemic. The CARES Act appropriates \$349 billion to the Small Business Administration ("SBA") for the Paycheck Protection Program described below. The act also provides expanded unemployment benefits for workers affected by the pandemic.

### **Paycheck Protection Program**

The CARES Act creates a new loan program, the Paycheck Protection Program, under Section 7(a) of the Small Business Act, 15 U.S.C. § 636. The act delegates SBA-approved lenders with authority to make and approve loans under this program. The Paycheck Protection Program is available until June 30, 2020.

### **Terms of Loan**

Loans under the Paycheck Protection Program will be offered to businesses with fewer than 500 employees, including nonprofit organizations, sole proprietorships, independent contractors and self-employed individuals (each a "borrower"). The amount of the loan can be up to 2.5 times a borrower's average total monthly payroll costs over a specified period, but cannot exceed \$10 million. The loans do not require any collateral and are non-recourse to any shareholder, member or partner of the borrower, except to the extent that the loan proceeds were used for an improper purpose (see below).

### **Use of Loan Proceeds**

In addition to the allowable uses of a loan set forth in the Small Business Act, the proceeds of the loan may only be used for certain specified purposes, including to pay:

- Salaries, wages, commissions or similar compensation;
  - Vacation, parental, family, medical or sick leave;
  - Interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
  - Rent (including rent under a lease agreement);
  - Utilities; and
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- Interest on any other debt obligations that were incurred before February 15, 2020.

### **Loan Forgiveness**

Loans issued under the Paycheck Protection Program will be forgiven in an amount equal to the sum of the borrower's payroll costs, payments of interest on covered mortgage obligations, payments on covered rent obligations, and covered utility payments made during the 8-week period beginning on the loan origination date (the "covered period"), up to the principal amount of the loan.

Loan forgiveness will be (i) reduced proportionally by any reductions in the borrower's average number of full-time equivalent employees per month employed during the covered period as compared to an earlier period, and (ii) reduced by the amount of any reduction in total salary or wages that exceeds 25% of the total salary or wages (excluding employees who received wages or salary in 2019 at an annualized rate of pay in an amount more than \$100,000). Loan forgiveness reductions resulting from certain employment and/or salary reductions may be avoided if the borrower has eliminated the reduction by June 30, 2020.

Forgiveness of debt amounts are not included as part of a borrower's taxable income. Loans that are not forgiven will accrue interest at a rate not to exceed 4% and will have a maximum 10-year maturity.

### **Application for Loan Forgiveness**

To receive loan forgiveness, the borrower must complete an application and provide sufficient documentation regarding use of the loan proceeds. Such documentation may include (i) verification of its full-time equivalent employees on payroll and pay rates for the relevant period, (ii) verification of payments on covered mortgage obligations, and (iii) any other information required by the SBA. A lender must make a determination on loan forgiveness within 60 days of receipt of the application and documentation. Absent proper documentation, a loan will not be forgiven.

### **SBA Regulations Are Forthcoming**

Within 30 days after the date of enactment of the CARES Act, the SBA will issue guidance and regulations to implement the Paycheck Protection Program. It is imperative that eligible borrowers seeking to participate begin to compile all the required documentation and information and prepare to submit their application as soon as possible.

### **Expanded Unemployment Benefits**

The CARES Act also creates a Pandemic Unemployment assistance program for workers, including those not traditionally eligible for unemployment benefits such as self-employed individuals and independent contractors, who are unable to work as a direct result of the COVID-19 pandemic for the period of time from January 27, 2020 through December 31, 2020. Specifically, the Pandemic Unemployment assistance program provides benefits to any individual who self-certifies that they are able and available to work, but unemployed or partially unemployed due to:

- The individual being diagnosed with COVID-19 or experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- A member of the individual's household being diagnosed with COVID-19;
- The individual providing care for a family member or member of the individual's household who has been diagnosed with COVID-19;

- A child or other person in the household for whom the individual is the primary caregiver being unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual being unable to reach their place of employment because of a quarantine imposed as a result of the COVID-19 public health emergency;
- The individual being unable to reach their place of employment because the individual has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual becoming the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual having to quit his or her job as a direct result of COVID-19;
- The individual's place of employment being closed as a direct result of the COVID-19 public health emergency; or
- The individual meeting any additional criteria that may be established for Pandemic Unemployment assistance.

Importantly, Pandemic Unemployment assistance is not available to workers who have the ability to telework with pay or workers who are receiving paid sick leave or other paid leave benefits, such as paid family leave, regardless of whether the workers meets the above conditions.

The key features of the expanded unemployment benefits provided by the CARES Act include:

- An extension of benefits from 26 weeks (in most states) up to 39 weeks;
- Benefits are payable for the period beginning January 27, 2020, through December 31, 2020;
- The amount of benefits includes the amount an individual is eligible for under the state law where they were employed, plus an additional \$600 per week for up to four months;
- Waiver of the usual one week waiting period.

Additional benefits may be made available for those workers who exhaust all other available benefits.

## Conclusion

As the legal landscape continues to rapidly evolve in the wake of the COVID-19 pandemic, business-owners are encouraged to consult legal counsel to assist in assessing the applicability of the various statutes and regulations and in evaluating their compliance obligations. The Carter Ledyard team is monitoring developments in this area and will continue to issue updates as the situation evolves.

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*Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, [boxer@clm.com](mailto:boxer@clm.com)), **Judith A. Lockhart** (212-238-8603, [lockhart@clm.com](mailto:lockhart@clm.com)), **Bryan J. Hall** (212-238-8894, [hall@clm.com](mailto:hall@clm.com)), **Alexander G. Malyshev** (212-238-8618, [malyshev@clm.com](mailto:malyshev@clm.com)), **Melissa J. Erwin** (212-238-8622, [erwin@clm.com](mailto:erwin@clm.com)), and **Leonardo Trivigno** (212-238-8724, [trivigno@clm.com](mailto:trivigno@clm.com)). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.*

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