

Title II of the CARES Act: Assistance for American Workers, Families and Businesses

Karen A. Evans, Jemi Goulian Lucey, Maja M. Obradovic and Thomas C. Senter

Greenbaum, Rowe, Smith & Davis LLP Client Alert

March 30, 2020

On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.

Title II of the Act encompasses "Assistance for American Workers, Families and Businesses" and is broken out into three sections: Subtitle A: Unemployment Insurance Provisions; Subtitle B: Rebates and Other Individual Provisions; and, Subtitle C: Business Provisions.

The following summarizes key provisions of Title II providing relief to both businesses and individuals under the CARES Act.

Subtitle A: Unemployment Insurance Provisions

Subtitle A addresses relief provisions for individuals deemed "unemployed" under the CARES Act.

Additional \$600 Per Week and No "Waiting" Week for State Eligible Unemployed

- Section 2104 provides individuals who are eligible for unemployment insurance benefits through their existing state programs, with an additional \$600 per week of "Federal Pandemic Unemployment Compensation" to be paid through July 31, 2020.
- Section 2104 does not appear to prevent an individual from receiving more in unemployment benefits through Federal Pandemic Unemployment Compensation than they were making while employed.
- Under Section 2105, any state may agree to waive its "waiting week" and pay unemployment benefits to eligible individuals on the first week of unemployment, with states receiving full reimbursement of those monies from the federal government.

Attorneys

Jemi Goulian Lucey

Maja M. Obradovic

Thomas C. Senter

Additional 13 weeks of Unemployment Benefits to All Unemployment Benefits Recipients

- Section 2107 provides for federally funded "Pandemic Emergency Unemployment Compensation" in the form of an additional 13 weeks of benefits, to be payable through the states to individuals who have exhausted all other unemployment benefits.
- The maximum any state currently provides is 26 weeks of unemployment benefits, which would be extended to 39 weeks of benefits through Pandemic Emergency Unemployment Compensation. The additional 13 weeks of benefits would be available if the individual is "able to work, available to work, and is actively seeking work."
- The weekly benefit amount tracks Section 2104 - the state calculated benefits amount plus \$600 - with payments available for unemployment through December 31, 2020.

Unemployment Benefits for Many Currently Ineligible for Benefits

- Section 2102, the federally funded Pandemic Unemployment Assistance program, provides unemployment benefits to many individuals not already eligible for unemployment benefits through existing state and federal programs.
- To qualify under Section 2102, an individual: (1) is not otherwise eligible for, or has exhausted all rights to, unemployment benefits; and (2) is otherwise able to work and available to work except the individual is unemployed, partially unemployed, or unable to work because the individual:
 - has COVID-19
 - has a household member who has COVID-19
 - is providing care to a family member who has COVID-19
 - has a child who is out of school due to a COVID-19 related closure
 - cannot get to work due to quarantine
 - has been advised by a health care provider to self-quarantine
 - was scheduled to start a job but cannot due to COVID-19 related restrictions
 - has become the head of the household due to a spouse's COVID-19 related death
 - has to quit his or her job as a result of COVID-19
 - cannot go to work because the place of employment is closed due to COVID-19
- The categories of covered individuals under Section 2102 also include someone who: (1) is self-employed, such as an independent contractor or consultant; (2) is seeking part-time employment; (3) does not have a sufficient work history; or (4) otherwise would not qualify for regular unemployment, including under Section 2107.
- The weekly benefit amount tracks Section 2104 - the state calculated benefits amount plus \$600 - with payments available for unemployment retroactively from January 27, 2020 up to December 31, 2020, up to a maximum of 39 weeks. A separate calculation exists in Section 2102 for individuals who are

self-employed.

- Employees who can telework with pay, or who are already eligible to receive leave benefits under existing state sick or family leave laws, or under the federal First Coronavirus Response Act enacted on March 18, 2020, are not eligible for unemployment benefits under Section 2102 for at least as long as they telework or collect leave benefits.

Short-Time Compensation Program or "Work Sharing"

- Under Sections 2108 and 2109, states may elect to participate in a Short-Time Compensation program for employers that reduce employee hours as an alternative to full layoffs. This program is not available for seasonal, temporary or intermittent employees.
- Akin to the existing "work share" programs in many states, employees under this program would receive pro-rated unemployment benefits, with federal funding for 50 percent of the costs the state incurs. Employers would be reimbursed 100 percent of the costs associated with retaining the employees at reduced hours through December 31, 2020.

Subtitle B: Rebates and Other Individual Provisions

Subtitle B addresses relief provisions for individuals under the CARES Act.

2020 Recovery Rebates to Individuals

- Section 2201 provides that individual taxpayers will receive a stimulus check commensurate with their adjusted gross income as reported on their 2019 income tax returns. If the 2019 return has not yet been filed, the adjusted gross income reported on their 2018 income tax return will be used for the purposes of determining the amount of the payment.
- Individuals with an adjusted gross income of less than \$75,000 (\$112,500 for head of household) are entitled to receive a stimulus payment of \$1,200. Married couples filing jointly with an adjusted gross income of less than \$150,000 are entitled to a stimulus payment of \$2,400.
- In certain cases, the parents of children under the age of 17 years will receive an additional payment of \$500 for each eligible child.
- The rebate payment is reduced by \$5 for each \$100 that an individual's income exceeds the thresholds stated above.
- The rebate payment is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.
- Any individual who is claimed as a dependent on another tax return will not be eligible to receive a payment, regardless of their age and income.
- No individual is eligible to receive a payment without a valid Social Security number.
- Estates and trusts are not eligible to receive payments, even with a valid tax identification number.

Enhanced Access to Retirement Funds

- Under Section 2202, coronavirus-related distributions are available in amounts up to \$100,000 to profit sharing and 401(k) plan participants, and IRA account holders, who are impacted by COVID-19 in 2020. The \$100,000 limit is an aggregate limit that applies to all such distributions received by an individual. These distributions are exempt from the normal restrictions that may otherwise apply to an in-service distribution and are also exempt from the 10% penalty tax that applies to certain in-service distributions.
- To be eligible for a coronavirus-related distribution, a participant or account holder must be impacted by the pandemic. In general terms, an impacted individual is diagnosed or has a spouse or dependent who is diagnosed with COVID-19 or has suffered financially as a result of COVID-19. While the CARES Act lists certain examples of financial suffering, the U.S. Secretary of the Treasury is charged with issuing additional guidance concerning this issue.
- Recipients of a coronavirus-related distribution may elect to pay the tax on the distribution received this year over a three-year period ending in 2022. They may also elect to repay the distribution to their qualified plan account or IRA by the end of 2022, thus avoiding current taxation on the prior distribution.

Increased Participant Loan Limits and Repayment

- Under Section 2202, the dollar limit on participant loans taken from a qualified retirement plan between the date of enactment and December 31, 2020 has been increased from the lesser of 50% of the participant's account balance or \$50,000, to the lesser of 100% of the participant's account balance or \$100,000.
- Loans taken during this period may be repaid over a 6-year period and the repayment period for previously outstanding loans is tolled between the date of enactment and December 31, 2020.

Charitable Contributions

- Under Section 2204, individuals who do not itemize their deductions may deduct up to \$300 for contributions made to charity in 2020.
- Under Section 2205, individuals who itemize deductions may deduct 100% of their contributions against their 2020 adjusted gross income and corporations making contributions to charity may deduct up to 25% of their taxable income (raised from 10% under the prior law).
- Under both Sections, these provisions are limited to gifts of cash to public charities. Contributions to private foundations, donor-advised funds, and supporting organizations do not qualify for this treatment.

Subtitle C: Business Provisions

Subtitle C addresses relief provisions for employers and businesses under the CARES Act.

Employee Retention Credit

- Section 2301 provides tax credits to employers whose businesses are affected by the COVID-19. These tax credits are in addition to those provided under the Families First Coronavirus Response Act (FFCRA).
- To be eligible under Section 2301, an employer:
 - must carry on trade or business during 2020 tax year
 - must either close or partially suspend its operations as the result of an order from a governmental entity which limits commerce, group meetings, travel or other activities in order to stem the spread of COVID-19
 - must continue to pay its employees
- All tax-exempt organization qualify automatically.
- Employers whose income based on gross receipts falls below 50% of its gross receipts for the same quarter in the preceding year can avail themselves of this tax credit until their receipts increase to 80% of the corresponding quarter of the prior year.
- Notably, Section 2301 prohibits employers from simultaneously receiving tax credits under the Employee Retention Credit provisions and either FFCRA or "Work Opportunity Credit" pursuant to IRC Section 51.

Amount of Tax Credit under Section 2301

- Eligible employers are entitled to a credit against their portion of payroll tax up to 50% of "qualified wages" for each employee paid during the period from March 12, 2020 through December 31, 2020.
- The total wages per employee are limited to \$10,000 and include health benefits - therefore the maximum credit for each employee is \$5,000. However, the determination of which wages are "qualified" depends on the size of the employer.
- For employers with 100 or fewer full-time employees, each employee's wages up to \$10,000 are considered "qualified wages" and can be used for tax credit purposes.
- For employers with 100 or more full-time employees, only wages that are paid to those employees who are unable to work for reasons related to COVID-19 are considered "qualified wages."

Deferral of Payroll Taxes

- Section 2302 allows for deferral of the employer's share of Social Security taxes owed in 2020 (including the share owed by self-employed individuals), with the deferred amount to be paid in equal amounts over 2021 and 2022.

Net Operating Losses

- Section 2303 reverses certain restrictions on businesses' use of net operating losses, which were enacted under the Tax Cuts and Jobs Act of 2017 (TCJA).
- The Act permits businesses to apply their net operating losses for tax years prior to 2021 to offset up to 100% of the businesses' current taxable income (as opposed to the 80% offset limitation imposed under the TCJA).
- The Act also allows for a 5-year carryback of net operating losses arising in tax years beginning in 2018, 2019, or 2020.

Alternative Minimum Tax

- Section 2305 modifies restrictions imposed by the TCJA with respect to the application of alternative minimum tax (AMT) credits. The TCJA eliminated the corporate AMT, however corporations which had an AMT tax credit carryforward from prior years were permitted to utilize such carryforwards to offset federal income tax payable at the ends of 2018, 2019 and 2020.
- Under the Act, a corporation may elect to claim an immediate refund for any remaining credit carryforwards, thereby accelerating the ability of a corporation to utilize such credits to offset its current tax liability.

Please contact the following co-authors of this Alert with questions or to discuss your specific personal or business circumstances:

Karen A. Evans

Counsel: **Tax, Trusts & Estates Department**
kevens@greenbaumlaw.com | 732.476.2480

Jemi Goulian Lucey

Partner: **Litigation Department**
Member: **Employment Law Practice Group**
jlucey@greenbaumlaw.com | 732.476.2502

Maja M. Obradovic

Partner: **Litigation Department**
Co-Chair: **Employment Law Practice Group**
mobradovic@greenbaumlaw.com | 732.476.2454

Thomas C. Senter

Partner: **Tax, Trusts & Estates Department**
Chair: **Employee Benefits & Executive Compensation Practice Group**
Co-Chair: **Employment Law Practice Group**
tsenter@greenbaumlaw.com | 732.476.2650