

STIMULUS 2.0: The Consolidated Appropriations Act 2021 – Key Provisions for Employers

Labor & Employment Law Update

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While it has not yet been fully passed and enacted into law, the full text of the Consolidated Appropriations Act, 2021 was released days ago and announced as having bipartisan support. Within the over 5,500-page Act, are several provisions designed to assist smaller businesses and those hardest hit by the economic challenges presented by the COVID-19 pandemic. As is common with legislation, the Act essentially presents only an outline of Congress' intent and leaves relevant agencies to fill in the details of that outline. Pursuant to mandates in the Act, most agencies, such as the IRS, are directed to publish clarification within weeks of enactment.

While we await further guidance and clarification, the below list highlights those provisions, not specific to particular industries, that businesses should be aware of:

- **Paycheck Protection Program (PPP)**

- Borrowers now have the green light to claim deductions for any and all expenses paid with loan proceeds, regardless of whether or not they obtain forgiveness of their loan amount.
- Employers are permitted to cover additional categories of non-payroll costs with PPP loan proceeds, such as:
 - "covered operations expenditures" which means "payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses"
 - "covered property damage costs" which means "a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation"

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- *“covered supplier costs”* which means payment to a supplier of goods for goods that are “essential to the operations of the entity at the time at which the expenditure is made; and is made pursuant to contract, order, or purchase order...”
- *“covered worker protection expenditures”* which means an “operating or a capital expenditure to facilitate the adaptation of the business activities of an entity” to comply with guidance issued by HHS, CDC, OSHA or any equivalent requirements issued by state or local government since March 1, 2020. This may include expenses to create a drive-through window facility, an indoor, outdoor or combined air or air pressure ventilation or filtration system, a physical barrier such as a sneeze guard, an expansion of indoor or outdoor business space, or onsite or offsite health screening capability.
- Clarification that “payroll costs” for purposes of PPP loans, includes group life, disability, vision or dental insurance benefit costs.
- Simplified forgiveness application process for PPP loans up to \$150,000.
- ***“Second Draw Loans” for the Paycheck Protection Program***
 - *Eligible entities:*
 - includes those employing *less than 300 employees* (now including nonprofit organizations) AND
 - Those that had “gross receipts” in a quarter during 2020 that represents a *25% reduction from gross receipts* of the entity during the corresponding quarter in 2019.
 - *Maximum loan amounts are 2.5 times the average monthly payroll costs up to \$2 million* (NAICS 72 entities can obtain 3.5 times the average monthly payroll costs up to \$2 million).
 - An entity that returned all or part of a prior PPP loan has an *opportunity to reapply*.
 - Entities that did not obtain the maximum amount of PPP loan available to them based upon the regulations in place at the time of their initial application, *may request a modification to previous loan amount*.
- For information on the extension of the availability of payroll tax credits under the **Families First Coronavirus Response Act (FFCRA)**, see “COVID-19 Relief Bill: FFCRA Leave Mandate Not Extended; Tax Credits Available for Voluntary Leave.”
- **Expansion of the Employee Retention Tax Credit**
 - Expanded eligibility:

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- Participation in the Paycheck Protection Program *does not* lead to disqualification where the payroll at issue is not funded by PPP loan proceeds.
- Gross receipts for the calendar quarter are less than 80% of the gross receipts for the employer in the same calendar quarter during 2019 (was previously required to be less than 50%).
- Previously, those with more than 100 employees could only take the credit in regard to wages paid to an employee that was not providing services. Those at or under 100 employees could take the credit in regard to wages paid to any employee. This threshold was increased from 100 to 500 employees.
- Extension of the program through July 1, 2021
- 50% credit for qualifying wages increased to 70%
- Instead of “qualifying wages” capped at \$10,000 per employee, revised to \$10,000 per employee per calendar quarter.
- **Unemployment Insurance benefits**
 - An additional \$300 per week for all receiving unemployment benefits through March 14, 2021.

Be assured that we will be providing more insight as more developments unfold to our contacts and clients in the days and weeks to come.