

ALERT

# ASBCA Has Jurisdiction to Hear Claims Relating to COVID-19 Labor Costs Arising Under CARES Act

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**WHAT:** In *Aviation Training Consulting, LLC*, the Armed Services Board of Contract Appeals (ASBCA) held that it had jurisdiction to hear the contractor's claim for increased costs to keep its workforce in a ready state during the COVID-19 pandemic. The Board denied the government's motion to dismiss that had argued the Board lacked jurisdiction because the claim arose under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Though the claim arose under the CARES Act, it still "related to a contract" and thus the Board had jurisdiction to hear it.

**WHAT DOES IT MEAN FOR INDUSTRY:** Contractors who experienced unreimbursed labor costs associated with maintaining employees or subcontractors who could not physically work due to COVID-era restrictions may have an avenue to seek relief. The CARES Act includes certain restrictions on eligibility – e.g., the inability to work must relate to facility closures or other restrictions, and the work could not otherwise be performed remotely – and the Act gives the agency a fair amount of discretion. But contractors who experienced those costs can still seek relief pursuant to the CARES Act and, ultimately, can bring denied claims to the ASBCA for further review. The statute of limitations for most claims is six years, so the clock is ticking on claims arising from early-period COVID restrictions.

Aviation Training Consulting, LLC (ATC) operated and maintained the Air Force's training systems for B-52 bombers. Due to restrictions imposed in response to the COVID-19 pandemic, ATC was unable to perform certain work, but alleged that it experienced over \$500,000 of "increased costs to keep its workforce in a ready state" for when

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## Practice Areas

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work could resume.

In late March 2020, Congress passed the CARES Act, which was promptly signed into law. Section 3610 of the CARES Act provided agencies the discretion to modify the terms and conditions of government contracts to reimburse the contractor for paid leave for certain employees or subcontractors related to the COVID-19 pandemic. ATC sought an equitable adjustment from its contracting officer under this provision, but that request was denied. ATC appealed the contracting officer's final decision to the Armed Services Board of Contract Appeals (ASBCA or Board), and the government moved to dismiss, arguing that the Board lacked jurisdiction to hear claims arising under the CARES Act.

The Board denied the motion. The Board observed that the Contract Disputes Act (CDA) establishes jurisdiction to entertain an appeal from a contracting officer's final decision on a "claim" that has been submitted according to the procedures outlined in the CDA. One of the requirements is that the claim be one "relating to a contract" with the government. The Board noted that the phrase "relating to a contract" should be read broadly, and that, on these facts, it encompassed the claim ATC brought. The CARES Act provided agencies the discretion to modify a contract to compensate contractors for certain costs incurred for paid leave that was a direct result of COVID-19 closures or other restrictions. A contractor's refusal to exercise the discretion to modify a contract necessarily "relates to a contract," and so the Board had jurisdiction to hear an appeal of that denial.

What the Board did not address is the standard of review for establishing entitlement. The CARES Act does not require agencies to provide compensation for paid leave related to COVID-19; it only affords them the discretion to do so. Contractors will likely have a stronger case if they received direction or encouragement from the government to maintain a ready state capability. And in light of the CDA's six-year statute of limitations, any claims relating to the early period closures and restrictions should be brought promptly.