

4/2/2020

Federal Government Passes Major Stimulus Bills

Two major pieces of legislation – the Families First Coronavirus Response Act and the CARES Act – have been passed to help individuals and businesses during the coronavirus (COVID-19) outbreak. Here is our summary of highlights from both pieces of legislation.

1) The Families First Coronavirus Response Act (FFCRA)

Among other things, Families First (passed March 18, effective April 2) temporarily requires certain employers to provide expanded paid sick and family leave for employees affected by the coronavirus (COVID-19) pandemic. Employers' increased costs will be offset by new tax credits, which also may be available to self-employed individuals.

The Families First Coronavirus Response Act offers protection to employees by amending the Family and Medical Leave Act (FMLA) for employees who meet two qualifications:

- Work for employers with fewer than 500 employees
- Have been on the job for at least 30 days

Paid Leave under Families First

Under the bill, these employees (including those who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan) will have the right to take up to 12 weeks of job-protected leave to attend to any of the following situations due to COVID-19:

- Comply with a requirement or recommendation to quarantine due to exposure or symptoms
- Care for an at-risk family member who's quarantined
- Care for their children if the children's school or place of care has been closed, or the childcare provider is unavailable

Although the FMLA generally requires only job-protected leave — not paid leave — the bill mandates paid leave after 14 days at two-thirds of the employee's usual rate. (The first 14 days are covered under the paid sick leave provisions discussed below).

Note, though, that the bill gives the U.S. Secretary of Labor the power to issue regulations that exempt small businesses with fewer than 50 employees from this expansion if it would jeopardize the viability of the business.

Employers who would be subject to these provisions will be allowed to take a tax credit against their share of Social Security taxes for 100% of the qualified family leave wages they pay each quarter. The

amount of wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters. Any excess credit over its Social Security tax liability is refundable to the employer.

No deduction is allowed for the amount of the credit, and no credit is allowed for wages that are subject to the existing Section 45S employer credit for paid family and medical leave. Employers can elect not to have the credit apply.

The 100% refundable family leave credit also is available for certain self-employed individuals, applicable against income taxes. Self-employed people who would be entitled to paid leave under the expanded FMLA if they were employees of a business are eligible.

The qualified leave amount is capped at the lesser of:

- \$200 per day OR
- The average daily self-employment income for the taxable year per day.

These individuals can count only those days they're unable to work for reasons covered by the expanded FMLA. The Treasury Department will establish documentation requirements.

Paid Sick Leave under Families First

The act requires employers with fewer than 500 employees to provide two weeks of paid sick leave, at the employee's regular rate, to quarantine or seek a diagnosis or preventive care for COVID-19.

If the employee has to take leave to care for a sick family member or to care for a child whose school or childcare provider has closed, they must receive leave paid at two-thirds of their regular rate. Full-time employees are entitled to 80 hours of paid sick leave, and part-time employees are entitled to the number of hours that they work in a typical two-week period.

As with expanded family leave, covered employers can claim an elective refundable 100% tax credit for qualified paid sick leave wages, also against Social Security taxes.

But the bill makes a distinction between those wages paid for an employee who must self-isolate or obtain a diagnosis and those paid for to one who is caring for a family member or child.

For the former, the amount of wages taken into account per employee is capped at \$511 per day (or \$5110 in the aggregate); for the latter, it's capped at \$200 per day (or \$2000 in the aggregate). The total number of days taken into account for each employee can't exceed the excess of 10 over the total number of days taken into account for all preceding calendar quarters.

Again, any excess credit over their Social Security tax liability:

- Is refundable
- No deduction is allowed for the amount of the credit
- No credit is allowed for wages that are subject to the existing Section 45S employer credit for paid family and medical leave

The self-employed are similarly eligible for the refundable credit at differing amounts — 100% for their personal needs and 67% to care for a family member or child. The amount of wages is capped at \$511 per day or the average daily self-employment income for the taxable year per day.

HDHP Coverage

The IRS has also published new guidance clarifying that high-deductible health plans (HDHPs) can pay for COVID-19-related testing and treatment without putting their status at risk. That means individuals with HDHPs that provide such coverage can continue to contribute to their health savings accounts (HSAs) and deduct the contributions on their 2020 tax returns (or make pre-tax contributions to their employer-sponsored HSAs).

Health insurance plans generally must satisfy several requirements to qualify as an HDHP. Providing nonpreventive health care coverage without a deductible, or with a deductible below the requisite minimum, would forfeit HDHP status. (Vaccinations are considered preventive care.) The IRS is temporarily suspending this rule to avoid administrative delays or other financial disincentives that could impede testing and treating for COVID-19.

2) Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

In addition to providing relief to individuals and mustering forces to shore up the medical response, the CARES Act (passed March 27) includes numerous provisions intended to help affected businesses, including eligible self-employed individuals, weather the crisis.

Recovery rebates for qualifying individuals is one of the key provisions of the CARES Act:

- Up to \$1,200 for singles and heads of households
- \$2,400 for married couples filing jointly
- \$500 per qualifying child

The rebates are subject to income-based phaseouts starting at \$75,000, \$122,500, and \$150,000, respectively.

Additional individual provisions include:

- Expanded unemployment benefits, such as extra \$600 per week and the inclusion of self-employed and gig-economy workers
- Waiver of the 10% penalty and required minimum distribution rules on COVID-19-related early distributions from IRAs, 401(k)s and certain other retirement plans
- Expansion of charitable contribution tax deductions
- Exclusion for certain employer payments of student loans
- Six-month deferral of student loan payments

Businesses and other employers may benefit from the following:

- Retention tax credit for eligible employers that continue to pay employee wages while their operations are fully or partially suspended as a result of certain COVID-19-related government orders
- Deferral of the employer portion of payments of certain payroll taxes
- Modification of net operating loss (NOL) and limitation on losses rules
- Modification of the deduction limitation on business interest
- Qualified improvement property technical correction, allowing qualifying interior improvements of buildings to be immediately expensed rather than depreciated over a period of years

Employee Retention Tax Credit Details

To encourage employers to keep their workforces intact, the CARES Act creates a new refundable credit against payroll tax.

The credit is generally available to employers whose:

- Operations have been fully or partially suspended due to a COVID-19-related governmental shutdown order, OR
- Gross receipts have dropped more than 50% compared to the same quarter in the previous year

Employers with more than 100 employees can receive the credit for employees who have been furloughed or who have had their hours reduced due to one of the reasons above. Those with 100 or fewer employees can receive the credit regardless of whether employees have been furloughed.

The credit equals 50% of up to \$10,000 in compensation — including health care benefits — paid to an eligible employee from March 13, 2020, through December 31, 2020. Additional rules and limits apply.

Payroll Tax Deferral

The new law allows employers to delay their payment of the employer share (6.2% of wages) of the Social Security payroll tax. These taxpayers can pay the tax over the next two years, with the first half due by December 31, 2021, and the second half due by December 31, 2022. Self-employed individuals receive similar relief under the law.

Expanded SBA Assistance for Small Businesses

The CARES Act expands the ways the Small Business Administration (SBA) can help small businesses remain open and meet payroll. For example, it temporarily doubles the maximum loan amount under its primary low-interest loan program from \$5 million to \$10 million.

The law expands the allowable use of the so-called “Section 7(a)” funds to include payroll support, including paid leave, mortgage payments, insurance premiums, and debt obligations. It also waives many of the usual requirements, such as collateral and personal guarantees.

Moreover, if employers maintain their payrolls for eight weeks after the loan origination, the portion of the loan applied to payroll, mortgage interest, rent and utilities may be forgiven. To qualify, businesses

generally must have 500 or fewer employees and have been operational on February 15, 2020. Sole proprietors, independent contractors and other self-employed individuals may qualify as well.

The new loan program will be available retroactively from February 15, 2020, so employers can re-hire any recently laid off employees through June 30, 2020.

For more information, please refer to the [SBA's PPP homepage](#) and future Seiler communications.

Relaxed Restrictions on Losses

Under the Tax Cuts and Jobs Act (TCJA), NOL deduction is limited to 80% of taxable income for the year. There is no carryback of NOLs, but there is no time limit on NOLs carryforwards.

The CARES Act loosens the TCJA restrictions. It allows NOLs arising in 2018, 2019, or 2020 to be carried back five years. It also temporarily removes the taxable income limitation for years beginning before 2021, so that NOLs can fully offset income.

The new law also amends the TCJA to temporarily eliminate the limitation on excess business losses for pass-through entities and sole proprietors. These taxpayers can now deduct excess business losses arising in 2018, 2019, and 2020. Taxpayers may need to file amended tax returns to obtain the full benefits of these changes.

Modified Limitation on Business Interest Deductions

For tax years beginning after 2017, the TCJA amended the Internal Revenue Code to limit the deduction for business interest incurred by both corporate and noncorporate taxpayers. It generally limits the deduction to 30% of the taxpayer's adjusted taxable income (ATI) for the year.

The CARES Act allows businesses to deduct up to 50% of their ATI for the 2019 and 2020 tax years. (Special partnership rules apply for 2019.) It also permits businesses to elect to use 2019 ATI, rather than ATI in 2020, for the calculation, which will increase the amount of the deduction for many businesses.

Expedited Depreciation of Qualified Improvement Property

Prior to the TCJA, qualified retail improvement property, restaurant property and leasehold improvement property were depreciated over 15 years under the modified accelerated cost recovery system (MACRS).

The TCJA classifies all of these property types as qualified improvement property (QIP). The legislative history of the TCJA is clear that Congress intended QIP placed in service after 2017 to have a 15-year MACRS recovery period and, in turn, qualify for 100% bonus depreciation through 2023, when the allowable deduction will begin to phase out.

But, in what's been called "the retail glitch," the statutory language didn't define QIP as 15-year property, so QIP defaulted to a 39-year recovery period, making it ineligible for bonus depreciation. The CARES Act includes a technical correction to fix this drafting error.

Hotels, restaurants and retailers that have made qualified improvements during the past two years can claim an immediate tax refund for the bonus depreciation they missed. They also can claim bonus depreciation going forward, according to the phaseout schedule.

Amendments to the New Paid Leave Law

The CARES Act also makes some critical modifications to the Families First Coronavirus Response Act, which was signed into law on March 18. That law temporarily requires certain employers to provide expanded paid sick and family leave for certain employees affected by COVID-19.

The CARES Act provides a new rule that defines “eligible employee” for purposes of paid sick and family leave to include employees who meets these three qualifications:

- Laid off by the employer March 1, 2020, or later,
- Worked for the employer for at least 30 days in the 60 calendar days prior to the layoff
- Have been rehired by the employer

The CARES Act allows advances on anticipated tax credits for employers’ paid leave costs and provides penalty relief for employers that don’t deposit tax amounts because they expect credits.

Financial Breakdown of the CARES Act

The act includes \$2 trillion of economic support for a variety of categories. Here are some of the primary earmarks:

- \$350 billion for small businesses, if they agree to retain workers
- \$17 billion for national security (in particular, Boeing Co.)
- \$25 billion in grants for airlines
- \$25 billion in passenger carrier loans
- \$3 billion to airline contractors
- \$4 billion for cargo hauler grants
- \$150 billion for equipment and supplies for healthcare providers

Many of these provisions come with qualification requirements. Seiler can help you identify which opportunities best fit your individual and business needs.

Continued Outreach

Don’t hesitate to reach out to your Seiler advisor to determine how best to minimize the financial impact as the pandemic continues in the U.S. and beyond.

More Information

US Government Response to Coronavirus, COVID-19

<https://www.usa.gov/coronavirus>

The Families First Coronavirus Response Act (FFCRA)

Families First Act Legislation

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

US Treasury Guidance “COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs”

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Department of Labor Q&A on Families First Coronavirus Response Act

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

CARES Act Legislation

<https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

Small Business Administration’s page on Paycheck Protection Program (PPP)

<https://www.sba.gov/funding-programs/loans/paycheck-protection-program>

IRS FAQs: Employee Retention Credit under the CARES Act

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

US Chamber of Commerce’s COVID-19 Emergency Loans: Small Business Guide

<https://www.uschamber.com/report/covid-19-emergency-loans-small-business-guide>

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