

# MARR JONES & WANG

A LIMITED LIABILITY LAW PARTNERSHIP

*Labor and Employment Law*

## **“Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” Update** **Update as of March 27, 2020, 8:00 HST**

On March 25, 2020, the Senate unanimously passed the CARES Act, which is Phase Three of the legislative response to the COVID-19 pandemic. On March 27, 2020, the House passed it, and the President will sign it shortly. To assist you we have prepared a short summary of the key areas.

The bill is over 800 pages, and there are sections specific to hospitals, airlines and other industries, which we will not cover in this update. Since much of the relief for employers has tax implications, you may wish to consult your tax professional as we do not practice in that area.

**Key parts:**

### **For Business Loans and Tax Deferrals**

- **Loans for small business, which are defined as less than 500 employees (special rule for hospitality and dining businesses of 500 *per location*), that can be forgiven if used to: retain workers and maintain payroll or make mortgage, lease, and utility payments and are needed to continue operations.**
- **Bill uses same definition of “small business concern” as used in Section 3 of the Small Business Act to determine if business has less than 500 employees.**
- **Limit of loan amount of the lesser of \$10 million or 2 ½ times the average total monthly payroll costs.**
- **Payroll costs include paid leave; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors but capped at \$100,000 per employee.**
- **Loans are forgiven based on a formula that compares the number of full-time equivalent (“FTE”) employees during the period from February 15, 2020 to June 30, 2020 divided by average number of employees (FTEs) in the period of February 19, 2019 to June 30, 2019 *or* the period January 1, 2020 to February 29, 2020. You can select which “pre COVID” period to use.**

- **Amount forgiven is the total of payroll costs as defined above for an 8-week period after the loan is made, payment of any rent or mortgage in that period and utility costs in that period.**
- **June 30, 2020 safe harbor date. If you have already furloughed/laid off employees (or plan to in the future) or reduced salaries, you are still eligible for the loan forgiveness if, no later than June 30, 2020, you restore the number of FTEs to the pre-COVID period and/or have eliminated any salary reductions.**
- **SBA Disaster Loan Program can now be used for loans for maintaining payroll, paying sick leave, paying rent.**
- **Larger Business Loan Program. For businesses with between 500 and 10,000 employees, low interest loans of not more than 2% are available with deferral of repayment for first 6 months after the loan is made. Recipients of such loans must use the loans to retain at least 80% of their workforce at full compensation and benefits until September 30, 2020 and must intend to restore not less than 90% of their workforce that existed as of February 1, 2020 and to restore all compensation and benefits to its workers no later than 4 months after the termination of the public health emergency declared by the Secretary of Health and Human Services. Must be a business domiciled in the United States with significant operations and employees in the United States and be organized in the United States.**
- **Conditions on Larger Business Loan Program: Recipient does not file for bankruptcy, does not pay dividends or repurchase its stock, and does not “outsource or offshore” jobs for the term and the loan and for 2 years after repayment is completed; will not abrogate existing collective bargaining agreements for the term of the loan and for 2 years after repayment is completed; and will remain neutral in any union organizing effort for the term of the loan.**
- **Payroll Tax Credit/Deferral: If your operations are suspended in full or in part due to COVID-19 or your gross receipts decline by more than 50% compared to the same quarter in the prior year, you are eligible for a federal payroll tax/credit deferral.**
- **Tax Credit = payroll taxes equal to 50% of the first \$10,000 per employee including health care premium costs. If employer has more than 100 FTEs the credit is only for those not working because of COVID-19; for employers with less than 100 FTEs, it is for any employee. Includes non-profits.**
- **Payroll taxes on wages paid in 2020 are deferred: Half due December 31, 2021, and half due December 31, 2022. Also applies to 50% of self-employment taxes for Social Security.**

### **For Employees: Direct Payments and Enhanced Unemployment Benefits**

- **\$1,200 direct payment for those making up to \$75,000 (\$150,000 if married).**
- **Unemployment supplement of \$600/week for 4 months. Maximum benefit under Hawaii law is \$642; total benefit can reach \$1,242.**
- **13-week extension of unemployment benefits from 26 to 39 weeks.**
- **Employer may pay up to \$5,250 of employee's student loans without including it in gross income.**
- **Retirement Account distributions not subject to 10% early withdrawal penalty if made for COVID-19 related reasons. Employees can return funds to retirement account within three years without regard to limit on contributions.**

### **Corrections to Families First Coronavirus Response Act ("FFCRA")**

- **Clarifies that the \$200/day, \$10,000 cap on paid FMLA for Public Health Emergency Leave is per employee.**
- **Employers can receive advance tax credit for payments made under FFCRA instead of waiting for reimbursement.**

**We will be further analyzing the CARES Act. We anticipate additional legislation. Please contact us if you have any questions.**