

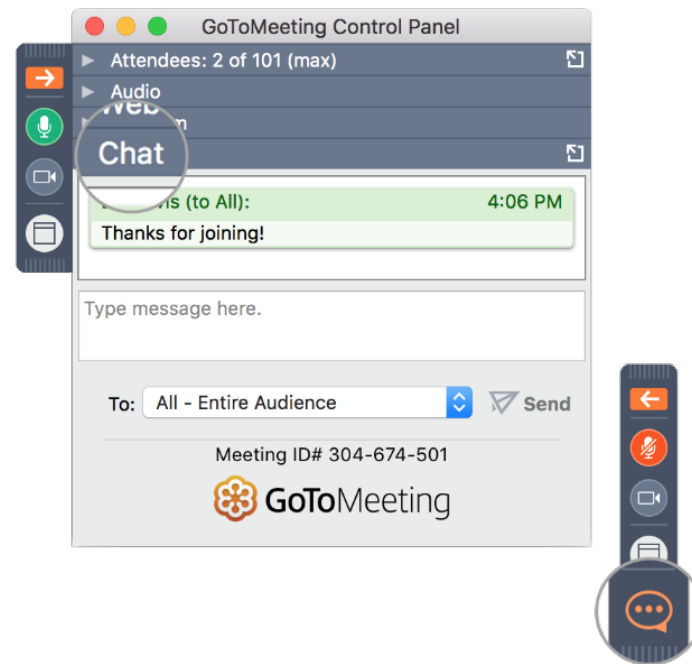
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Tax, HR, and Payroll Implications of CARES Act

April 1, 2020

Webinar Instructions

+Please submit questions through the Chat Box in the webinar control panel



Bill Summary and Federal Tax Provisions

Presenters



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Overview

CARES Act Overview

- +Phase 3 COVID-19 relief bill
- +Trump's signed on Friday March 27
- +\$2.2 trillion in economic relief



SBA Paycheck Protection Loan Program

- + Fully guaranteed by the Federal Government
- + Maximum maturity of ten years and interest rate not to exceed 4%
- + Small businesses (fewer than 500 employees) can access lesser of 2.5 times the average monthly payroll costs and up to \$10 million
- + Proceeds can cover payroll, mortgage payments, rent, utilities, and other debt service requirements
- + Portion of the loan eligible to be forgiven on a tax-free basis to the extent of certain payments made by the borrower during the eight-week period beginning on the date of the loan
- + The amount forgiven is reduced if the employer reduces its workforce or reduces salaries and wages paid to an employee during the covered period.

ESF Program for Larger Employers

- + For larger businesses, the bill establishes an Economic Stabilization Fund (“ESF”) of **\$500 billion** to provide direct loans, loan guarantees, and other investments to eligible businesses who have incurred losses as a result of the COVID-19 crisis and the operations of the business are deemed to be in jeopardy
- + **\$46 billion** of the ESF is targeted for airlines and other businesses crucial to national security, while the remaining \$454 billion is dedicated to support Federal Reserve lending facilities



Health Care Provisions

- + The bill provides **\$140 billion** in emergency funding to Health and Human Services (HHS), including \$100 billion requested by hospitals and health care providers for COVID-19 related expenses and losses
- + **\$1.32 billion** in supplemental funding to community health centers (CHCs) for the epidemic and extends funding for CHCs and a handful of other Medicare and Medicaid programs through November 30



Notable Additional Relief Measures

- + Expanded unemployment insurance
- + Tax breaks for businesses and individuals
- + Direct payments to individuals referred to as “2020 Recovery Rebates”



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Business Tax

Deferral of Employer Payroll Tax Payments

- + Employers and self-employed individuals can defer payment of the 6.2% employer share of Social Security taxes on employee wages otherwise required to be remitted after the date of the enactment.
- + Half of the deferred amount would be required to be paid by the end of 2021 and the rest by the end of 2022.



Revive & Enhance Net Operating Loss Carryback Refund Claims

- + The provision in the bill would remove the NOL limitations in the TCJA (which limited the deduction to 80% of taxable income and repealed carryback provisions).
- + It will restore and enhance NOL carrybacks so that a loss from 2018, 2019, or 2020 can be carried back five years to obtain a refund of taxes paid in those years, and temporarily removing the taxable income limitation to allow an NOL to fully offset income.



Elimination of Loss Limitations

- + A provision in the bill modifies the limitations on business losses applicable to pass-through businesses and sole proprietors, so they can also benefit from the NOL carryback rules above.



Acceleration of Refunds for AMT Credit Carryovers

- + The TCJA eliminated the corporate alternative minimum tax but allowed corporations to claim a refundable credit of any unused portion through 2021.
- + The bill accelerates the year for which a fully refundable credit can be claimed from 2021 to 2019, and allows corporations to elect to claim the fully refundable credit in 2018.



Increasing Deductions for Business Interest Expense

- + The business interest limitation under IRC Section 163(j), currently set at 30% of adjusted taxable income, would be set at 50% for 2019 and 2020 for corporations (including S corporations) and individuals.
- + For partnerships the increase to 50% of adjusted taxable income is delayed until taxable years beginning in 2020. A partner receiving an allocation of suspended interest in 2019 is permitted to deduct half of such interest in 2020, with remaining subject to previous carryover regime.



QIP Technical Correction

- + The bill addressed the so-called “retail glitch” to clarify that Qualified Improvement Property (“QIP”) is 15 year property under MACRS and eligible for 100% bonus depreciation
- + QIP is defined as any improvement to an interior portion of a building which is nonresidential real property if the improvement is placed in service after the date the building was first placed in service by the taxpayer and is not an enlargement of the building, an elevator or escalator, or part of the internal structure framework of the building



Employee Retention Credit

- + Subject to certain eligibility requirements and limitations, a one-year only credit is allowed against the employer's 6.2% share of Social Security payroll taxes for any business that is forced to suspend or close its operations due to COVID-19, but that continues to pay its employees during the shut-down.
- + The credit, which can be claimed on a quarterly basis, is equal to 50% of qualified wages paid but is capped at \$10,000 in aggregate per employee for all quarters.
- + The credit applies to wages paid after March 12, 2020 and before January 1, 2021. This credit is very similar to the paid leave credits granted to employers under the Families First Coronavirus Response Act, but significantly neither the employee nor the employer have to be directly impacted by infection.



Individual, Retirement & Charitable

2020 Recovery Rebates for Individuals

- + The act provides direct payments of up to \$1,200 for individuals and \$2,400 for married couples, along with an extra \$500 per child.
- + Assistance would start to phase out for individuals earning more than \$75,000 and for couples with more than \$150,000 in income (complete phase-out at \$99,000 single and \$198,000 for couples).
- + In order to be eligible for the rebate, the individual must not be: 1) a nonresident alien, 2) able to be claimed as a dependent on another's tax return, 3) an estate or trust, and 4) must have included a SSN for both the taxpayer, the taxpayer's spouse, and eligible children.



Penalty Free Early Withdrawals from Retirement Accounts

- + The bill provides special use for use of retirement funds
 - + Early withdrawal penalties waived on coronavirus related distributions to \$100k
 - + Taxation of distributions to be spread over three years
 - + Allow individuals to return distributions to the retirement account over three years, with such redeposits not subject to annual contribution limits.
 - + A coronavirus-related distribution is a distribution during the 2020 calendar year to a individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Increased Deductions for Charitable Contributions

- + A provision in the bill increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income for the 2020 tax year. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent for the 2020 tax year.
- + The bill would provide an above-the-line deduction of up to \$300 for charitable contributions made in cash during 2020 for taxpayers that do not itemize deductions. Existing income limits would not apply to the new deduction. The new deduction would not be available for contributions to a donor-advised fund.

HR Implications

Presenters



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Overview

Objectives

- + Provide emergency cash to individuals and their families
- + Deliver fast and significant relief to small businesses
- + Help stabilize the economy and curb layoffs



Impact on Unemployment Benefits

- + The bill enhances unemployment benefits by expanding eligibility and offering recipients an additional \$600 a week—beyond what state unemployment programs pay—for four months.
- + Unemployment Benefits are state-specific, so it is critical to follow each state's guidelines.



Families First Coronavirus Response Act

- + On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (H.R. 6201), which will provide paid emergency family leave in limited circumstances, as well as paid sick leave for people affected by COVID-19, the respiratory disease caused by the coronavirus.
- + In general, the legislation's emergency paid-leave provisions apply to businesses with fewer than 500 employees, but there may be some exceptions available for small businesses and companies that employ health care workers.
- + Provisions of the Act take effect on April 1, 2020 and expire on Dec. 31, 2020.



Families First Coronavirus Response Act

- + The U.S. Department of Labor (DOL) announced a nonenforcement period for employers that make good-faith compliance efforts. The department will focus on compliance assistance during that time and enforcement measures will begin April 18, 2020.
- + New FFCRA notice posters are now available: <https://www.dol.gov/general/topics/posters>
 - + Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.



500 Employees Criteria

- + The 500 Employees threshold to exclude companies from the FFCRA requirements will be counted based solely on workers in the United States or any US territory. Those who are already on a leave of absence would also be included.
- + Companies will not be able to include independent contractors in their count. However, they can include temporary workers provided by staffing firms.
- + The DOL's Wage and Hour Division stated in a Q&A post that small businesses with fewer than 50 workers can qualify for an exemption from the law by documenting that their viability would be jeopardized by providing the required paid sick and other leave to workers affected. Details of the criteria for that exemption will in forthcoming regulations.
- + *Note: The SBA Loan defines 500 employees to include foreign affiliates*

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Retirement Plans

Distributions from Retirement Plans

- + Eligible participants in a defined contribution plan may request in-service distributions from their vested account balance without regard to normal withdrawal restrictions. This relief is offered through December 31, 2020.
- + Eligible participants are defined as:
 - + Diagnosed with COVID-19;
 - + Spouse or dependent diagnosed with Covid-19; or
 - + Experience adverse financial consequences as a result of quarantine, furlough, reduced hours, lack of child care, or closing of business due to COVID-19.



Additional Distribution Changes

- + Distributions relating to the coronavirus impact are subject to the following:
 - + Limited to \$100,000 per tax year, aggregated across all plans of the employer or control group;
 - + Not subject to the 20% mandatory withholding;
 - + Exempt from the 10% early withdrawal penalty;
 - + Eligible to be indirectly rolled into an IRA or employer retirement plan within 3 years from date of distribution;
 - + Amounts not indirectly rolled into an IRA or retirement plan are includable in gross taxable income over 3 years beginning with date of distribution.



Retirement Plan Loan Relief

- + Subject to the requirements for eligible participants, plans may allow participants to take the lesser of 100% of their vested account balance or \$100,000. This applies to loans made on or before September 23, 2020 (180 days after the enactment of CARES).
- + Scheduled participant loan repayments due on loans from March 27, 2020 through December 31, 2020 may be delayed up to one year. Interest will continue to accrue and the loan may be extended for one year.
- + *Note: Plan Sponsors do not need to verify if participant meets criteria and may rely on participant's certification for eligibility.*



RMDs are not required for 2020

- + A Required Minimum Distribution (RMD) is calculated using the balance of the participant's retirement account on December 31st of the prior year. With the significant decrease in the stock market, calculations could lead to a disproportionate RMD relative to the participant's current account value. The CARES Act addressed this by suspending all RMDs for 2020.
- + This applies to all participants requiring an RMD, including ongoing and first time.
- + Beneficiaries will also not be required to receive their 2020 beneficiary distribution.
- + Beneficiaries with an account balance subject to the five-year distribution rule may extend their distribution by one year.
- + Distributions that have already occurred may be rolled to an IRA or employer plan.



Plan Amendments

- + Any of these provisions may be utilized immediately. The plan must be formally amended for the new options no later than the last day of the first plan year beginning on or after January 1, 2022.
- + These provisions are not mandatory. Plan sponsors may utilize any of the options or decide not to adopt them.
- + The deadline for the restatement of 403(b) Plans has also been extended from March 31, 2020, to June 30, 2020.



Relief for Defined Benefit Plans

- + Single employer defined benefit plans have until January 1, 2021 to meet their funding obligations that were otherwise due during 2020 (including quarterly contributions). Contributions would be due with interest.
- + Plan sponsors may also choose to use the plan's adjusted funding target attainment (AFTAP) for the plan year ending in 2019. Utilizing this could help sponsors avoid freezing benefits and allow them to continue to offer lump sums in 2020 even if the plan's funded status has significantly declined in the wake of the pandemic.



Payroll Implications

Presenter



Melanie Clark

CPA

Partner, Accounting Services Team Leader



Families First Coronavirus Response Act (FFCRA)

Overview

- + In effect from April 1, 2020 to December 31, 2020.
- + **Who does this apply to?**
 - + Public and private employers with fewer than 500 employees.
- + **Why does this NOT apply to?**
 - + Employees of the Federal government are covered under Title II which was not amended by this Act therefore are not covered by the FFCRA.
 - + Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailable if the leave requirements would jeopardize the viability of the business as a going concern.



What must covered employers provide?

+ Paid sick leave:

- + Employers are required to provide two weeks (up to 80 hours) at the employee's regular rate of pay due to quarantine, and/or experiencing COVID-19 symptoms and seeking a medical diagnosis.

+ Expanded Family and Medical Leave:

- + Employers are required to provide two weeks (up to 80 hours) at two-thirds the employee's rate of pay if they are unable to work because of a need to care for an individual subject to quarantine or to care for a child (under the age of 18) whose school or child care provider is closed or unavailable for reasons related to COVID-19 and/or the employee is experiencing a sustainably similar condition.
- + If an employee has been employed for at least 30 days, up to an additional ten weeks at two thirds of the employee's regular rate of pay if an employee is unable to work due to a need to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.



If I am unable to work or telework, what are the qualifying reasons for leave?

1. The employee is subject to Federal, State or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine related to COVID-19.
3. The employee is experiencing COVID-19 symptoms and is seeking medical diagnosis.
4. The employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2).
5. The employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19.
6. The employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

What is duration of the leave?

+ **Paid sick leave:** If the employee is taking leave because:

- + The employee is subject to Federal, State or local quarantine or isolation order related to COVID-19.
- + The employee has been advised by a health care provider to self-quarantine related to COVID-19.
- + The employee is experiencing COVID-19 symptoms and is seeking medical diagnosis.

Full-time employees are eligible for 80 hours and part-time time employees are eligible for the number of hours that the employee works on average over a two-week period.

+ **Expanded Family and Medical Leave:** If the employee is taking leave because:

- + The employee is caring for an individual subject to an order described in Federal, State or local quarantine or isolation order related to COVID-19 or self-quarantine as described as the employee has been advised by a health care provider to self-quarantine related to COVID-19.
- + The employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Full time employees are eligible for 80 hours and part-time employees are eligible for the number of hours that the employee works on average of a two-week period.

In addition if someone is caring for a child whose school or place of care is closed/unavailable for reasons related to COVID-19, and has been employed for more than 30 days, then 12 weeks at 40 hours a week (prorated for part-time) is available.

How is their pay calculated?

- + **Paid sick leave:** If an employee is taking sick leave because they are unable to work or telework due to a need for leave because:
 - + The employee is subject to Federal, State or local quarantine or isolation order related to COVID-19.
 - + The employee has been advised by a health care provider to self-quarantine related to COVID-19.
 - + The employee is experiencing COVID-19 symptoms and is seeking medical diagnosis.

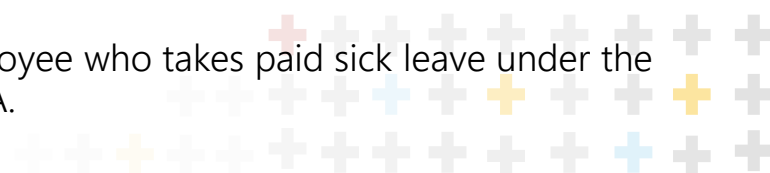
The employee is entitled to a maximum of \$511 per day or up to \$5,110 total during the entire paid sick leave.

- + **Expanded Family and Medical Leave:** If an employee is taking leave because they are unable to work or telework due to a need for leave because:
 - + The employee is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - + The employee is caring for their child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons
 - + The employee is experiencing any other substantially similar condition that may arise, as specified by the Secretary of Health and Human Services

They are entitled to compensation at 2/3 of the regular rate up to a maximum of \$200 per day or \$2,000 during the entire two-week period or (\$12,000 during the entire twelve week period)

Other Questions

- + **Are there any tax credits for providing sick leave and family and medical leave wages?**
 - + Yes, you may qualify for dollar for dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA, including expenses incurred to maintain health coverage.
- + **Should I post this information in the workplace?**
 - + Yes, covered employers must post a notice of the FFCRA requirements in a conspicuous place on its premises.
- + **What are the penalties?**
 - + Violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Section 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217.
 - + The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives written communication from the employer to comply with the Act in the future.
 - + Under the Expanded Family and Medical Leave: violation of the additional 10 weeks' paid leave time will be subjected to the enforcement provisions of the Family and Medical Leave Act.
- + **What else should I know?**
 - + Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.



Coronavirus Aid Relief and Economic Security Act (CARES)

Employee Retention Credit Qualifications

- + The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to an order from the appropriate government authority resulting in COVID-19
- + The business remained open, but during any quarter in 2020, gross receipts for the quarter were less than 50% of what they were for the same quarter in 2019
- + For each quarter, until the business has a quarter where its receipts exceeded 80% of what they were the same quarter in the previous year



Credit

- + Credit against its 6.2% share of social security payroll taxes equal to 50% of the qualified wages paid to EACH employee for that quarter ending on December 31, 2020
- + The credit is refundable if it exceeds the business' payroll tax liability



Qualified Wages

- + If there were **more** than 100 employees during 2019, the qualified wages are limited ONLY to those wages that were paid by the employer during the quarter for the period of time the business was shut down
- + If there were **less** than 100 employees during 2019, the qualified wages include not only those paid to the employees during a shut-down, but also wages paid for each quarter that the business has suffered a sharp decline in year over year receipts



Qualified Wages

- + In both cases qualified wages include any "qualified" health plan expenses. In either case, however the amount of qualified wages for EACH employee for all quarters may not exceed \$10,000.
- + This also excludes the wages from the retention credit if the employer takes out a payroll protection loan under Section 7(a) of the Small Business Act - no employee retention credit will be available



Delay of Employer Payroll Taxes and Self-Employment Tax

- + 6.2% employer's share of social security tax that would be otherwise due from the date of enactment through December 31, 2020 deferred to be paid 50% on December 31, 2021 and 50% on December 31, 2022
- + This applies to both businesses and self-employment tax.
- + This **does NOT** apply to businesses that takes out a payroll protection loan under Section 7(a) of the Small Business Act



Student Loans

- + Employers can provide a tax-free repayment of the employees student loans up to \$5,250
- + This is combined with the previous allowed education reimbursement. A total of \$5,250 will be tax free to the employee
- + Student will not be allowed to deduct the interest for the tax free portion of the loan repayment



Disaster Relief Payments

IRC § 139, Rev. Rul. 2003-12.

- + Employers may offer qualified disaster relief payment programs to provide tax-free reimbursement to employees significantly affected by a qualified disaster.
- + A "qualified disaster" includes federally declared disasters, acts of terrorism or military action, and any other catastrophic event declared to be disastrous by the U.S. government.
- + The payments, used to offset costs of "necessary personal, family, living or funeral expenses incurred because of a qualified disaster," are to be commensurate with reasonable and necessary medical, temporary housing, and transportation expenses not already covered by insurance plans.
- + The payments also may be used to pay for the repair of an employee's residence or the replacement of its contents, but cannot be intended to cover all disaster-related losses, or the cost of lost luxury items and services.
- + Employers do not have to require proof of expenses and are not required to report the payments on the employee's Form W-2, but may list the payments in Box 14 if desired.
- + Special rule: Reimbursements may only be tax-free if issued for expenses not covered by insurance or any other form of assistance.



Questions?

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Thank You

for your time!



MCM COVID-19 Resource Center

www.mcmcpa.com/covid-19