

CARES ACT: CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT

On Friday, March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which has since been signed into law. Many sections of the almost 900-page Act provide emergency funding and other forms of financial relief to a variety of critical agencies throughout the country. The Act also creates and amends obligations related to the employer-employee relationship, including employee benefits.

This synopsis of the CARES Act describes the Act's amendments to FMLA, paid leave, unemployment insurance, and healthcare (including Health FSAs and HRAs).

FMLA

The Act amends FMLA to include a rule regarding eligibility for FMLA for employees that were “rehired” in the wake of COVID-19. The Families First Coronavirus Response Act (the “FFCRA”), which was passed in March, authorized FMLA leave for employees who were employed for at least 30 days (a temporary amendment of the typical 12-month requirement under the FMLA that only applies to employees that have to stay at home to provide care for their dependents due to a COVID-19-related school or daycare closure). The CARES Act, however, clarifies that an employee that is “employed for at least 30 calendar days” includes an employee who was laid off by that employer no earlier than March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff and was rehired by the employer.

Paid Leave

The CARES Act also creates a limitation stating an employer (with less than 500 employees) shall not be required to pay more than \$511 per day and \$5,100 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee.

Through September 30, 2020, the Act also authorizes federal agencies to pay contractors whose employees are required to provide services at government facilities and are denied access to those facilities due to COVID-19.

Unemployment Insurance

The Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020. This program is anticipated to provide payment to many individuals that were not traditionally eligible for unemployment benefits (including self-employed individuals, independent contractors, those with limited work history, and others). In addition, the Act provides payment to states to reimburse nonprofit organizations, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020, to pay for unemployment benefits.

It also includes an additional \$600 per week payment, on top of state benefit levels, to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months, through July 31. (Laid-off workers currently qualify for up to 26 weeks of unemployment insurance. Benefit levels vary by state with most replacing about half of an individual's wages during that time.) Beyond that, the Act provides an additional

13 weeks of federally-funded unemployment insurance benefits beyond the standard 26 weeks through December 31, 2020, to help those who remain unemployed after state unemployment benefits are no longer available. The amount provided would be the same as the regular benefit paid by the state.

The Act provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers, and the employees with reduced hours receive a prorated unemployment benefit. Under the bill, the federal government would pay 100% of a state’s short-time compensation benefits for up to 26 weeks of benefits.

Not all states have short-time compensation programs, but they can choose to develop one to take advantage of the federal assistance. If they choose to establish a program after the passage of this bill, the federal government will pay up to 50% of the state’s benefit costs.

States are also provided with temporary, limited flexibility to hire temporary staff, re-hire former staff, or take other steps to quickly process unemployment claims.

The Act includes funding for the Labor Department Inspector General oversight of the program.

Healthcare (including HFSAs and HRAs)

The Act clarifies that all testing for COVID-19 is to be covered by private insurance plans (without cost-sharing) and provides free coverage of a COVID-19 vaccine (without cost-sharing) within 15 days. The Act also provides that a plan will not fail to be a qualified high deductible plan for HSA contribution purposes if it has no deductible for telehealth services. This will apply through December 31, 2021.

Critically, the Act strikes the last sentence of IRC Section 223(d)(2) and adds menstrual care products to the definition of “qualified medical expenses.” The last sentence of IRC Section 223(d)(2) previously stated that “qualified medical expenses” were limited to “an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin. Because the Act strikes that provision, it appears that over-the-counter medications are now considered to be qualified medical expenses for purposes of HSAs, HFSAs and HRAs.

Employer-Sponsored Student Loan Repayment Programs

Employers can now institute a student loan repayment program whereby an employer can make student loan payments to or on behalf of an employee on a pre-tax basis up to \$5,250.

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