

CARES Act Payroll Tax Credits, Unemployment Benefits Enhancements, and Lending Programs Impact Compensation, Furlough, and Layoff Strategies

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The Coronavirus Aid, Relief, and Economic Security Act, commonly known as the CARES Act (the “Act”), enacted March 27, 2020, contains several interrelated elements that employers should consider when making decisions about reducing employee hours and pay, furloughs, and workforce reductions. Specifically, the Act provides payroll tax credits to encourage employers to retain and continue to pay workers, more generous unemployment insurance benefits for workers who are furloughed or laid off, and loan programs that are designed both to help employers survive the economic downturn resulting from the COVID-19 pandemic and to incentivize employers to retain employees during these challenging times.

Employee Retention Payroll Tax Credit

The Act provides a refundable payroll tax credit for 50% of “qualified wages” paid by eligible employers, up to a maximum of \$10,000 of qualified wages per employee. The credit is available to employers (1) whose operations were fully or partially suspended due to a COVID-19-related governmental order, or (2) whose gross receipts during a calendar quarter within the relevant period declined by more than 50% when compared to the same quarter in the prior year.

The definition of “qualified wages” differs by employer size. For eligible employers whose average number of full-time employees during 2019 was greater than 100, “qualified wages” are wages paid to employees when they are not working due to the circumstances described in (1) or (2) above. For smaller employers, virtually all wages paid during the applicable period are considered “qualified wages,” whether the employer is open for business or closed as a result of a governmental order.

Additional information about this payroll tax credit can be found in our bulletin, “Key Tax Provisions Affecting Businesses Contained in the CARES Act,” available here: <https://www.vedderprice.com/key-tax-provisions-affecting-businesses-contained-in-the-cares-act>.

Enhanced Unemployment Insurance Benefits

The Act provides funding for an additional \$600 per week in unemployment benefits to workers in participating states through July 31, 2020. The \$600 supplemental benefit is in addition to what workers currently receive under state law. For many workers who are furloughed or laid off, the \$600 per week supplement may provide complete income replacement or even exceed the weekly amount earned while working.

For example, in Illinois, the regular weekly unemployment benefit amount is approximately 47 percent of a worker’s prior average weekly wage, with a maximum weekly benefit of \$471 per week for an individual with no dependents. An Illinois worker making \$17 per hour and working full-time earning \$680 per week ($\$17 \times 40 = \680) is eligible for an unemployment insurance benefit of \$320 per week, without any dependent allowances, provided sufficient base period earnings, and assuming no offsets. The Act’s \$600 per week supplement increases the weekly unemployment benefit for this typical worker from \$320 to \$920 through July 31, 2020.

The total amount of unemployment benefits available with the temporary \$600 supplement will vary by individual based upon earnings history and number of dependents, and by state (because the supplement is added to the benefits currently available and those differ from state to state). Regardless, the Act’s \$600 supplement is so substantial compared to regular

unemployment benefits that it and the employer payroll tax credit, if available, will be factors to consider in evaluating staffing and compensation strategies.

Employer Strategies

Employers who are continuing to pay employees who are not currently working because of stay-at-home orders or a lack of work may be able to take advantage of the employer payroll tax credit to cover part of the cost of doing so. Yet, while the \$600 supplemental unemployment benefit is available, at least some of those employees will be eligible to receive as much or more in unemployment benefits if furloughed.

Similarly, the Act's payroll tax credit and \$600 supplement may affect how employers view different strategies for temporarily reducing payroll expenses for employees who are currently working, either on-site in essential operations or remotely. Common strategies include:

- Reducing scheduled hours with a corresponding reduction in salary (e.g., 80% of regular schedule)
- Cutting salaries and wage rates (without a corresponding reduction in hours)
- Furloughing employees on alternating workweeks (i.e., working one week of every two, three or four, with eligibility for unemployment insurance benefits during the furlough weeks)
- Furloughing employees for two weeks or more

The Act changes the calculus for analyzing the financial impact of these alternatives during the coronavirus pandemic.

The \$600 supplement may also influence decisions on whether to provide severance pay to laid-off workers. For some workers, the standard severance benefit traditionally provided by the employer may be less than the weekly unemployment benefit the worker is expected to receive.

Lending Programs

The Act's lending programs (including the Small Business Administration Paycheck Protection Program) also should be taken into account in these types of strategy decisions if an employer is considering taking advantage of one those programs. These programs will be made available to a broad spectrum of small to mid-size employers and are intended to help businesses weather the economic downturn and retain employees. These programs include favorable terms for employers, such as the Paycheck Protection Program's debt forgiveness feature which provides for the forgiveness of some or all of the debt if loan proceeds are utilized to pay payroll costs (and other qualifying expenses), and the employer maintains specified employee headcount and wage levels.

Additional information for borrowers about these programs can be found in our forthcoming bulletins on the subject, which will be available through our Coronavirus Task Force home page: <https://www.vedderprice.com/coronavirus-task-force>.

For information about Worker Adjustment Retraining and Notification Act ("WARN Act"), wage and hour, employee benefits, labor relations and H-1B visa considerations, please see our article, "NEW UPDATES: Conducting Layoffs and Furloughs Resulting from COVID-19 Business Impact," available here: <https://www.vedderprice.com/new-updates-conducting-layoffs-and-furloughs-resulting-from-covid-19-business-impact>.

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