

**Subject:**  
**Date:**

Senate Passes the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)  
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Dear Extensis Client,

The CARES Act will help businesses and employees struggling with the economic impact of COVID-19 pandemic. The Coronavirus Aid, Relief and Economic Security (CARES) Act would allow small and medium sized businesses to receive federal loans, in some cases forgivable, to cover payroll and other expenses. The Act also expands unemployment benefits for workers impacted by the outbreak, while extending unemployment eligibility to many who are otherwise not regularly entitled to receive such benefits.

The CARES Act has made a few changes to the recently enacted Family First Coronavirus Response Act, (FFCRA). The provisions of that law establish new paid leave requirements as part of new Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave requirements. In summary, eligible employees are entitled to two weeks of sick leave (full pay for self, 2/3 pay for family care) and use of 12 weeks of Emergency Family and Medical Leave Act (EFMLA) leave (10 days unpaid and then up to 10 weeks at 2/3 pay) for several circumstances related to COVID-19.

The changes associated to FFCRA are as follows:

- The DOL recently announced that those new leave requirements will go into effect on April 1, 2020.
- The CARES Act adds new language to the EFMLA to address leave entitlement under that provision for “rehired employees.” The new language states that for purposes of the EFMLA, the term “employed for at least 30 calendar days” includes an employee who was laid off on or after March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to their layoff, and was rehired. Essentially, this provides that rehired employees who meet those criteria will be eligible for EFMLA without having to “restart the clock” on the 30-day requirement.
- The CARES Act also includes language facilitating the ability of employers to obtain an “advance” refunding of tax credits by withholding employment tax deposits (and not being penalized for doing so). The IRS recently announced that it would be issuing guidance on this point to help employers manage cash-flow challenges associated with the new leave requirements.

Please read below for more information on the Families First Coronavirus Response Act.

**Emergency FMLA Expansion**

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Please read below for more information on the Families First Coronavirus Response Act.

### **Emergency FMLA Expansion**

- Employers may, but are not required to, pay any more than \$200 per day and \$10,000 in the aggregate for each employee for public health emergency leave under the Emergency Family and Medical Leave Expansion Act.
- Eligible employees may take up to 12 weeks of job protected leave, the first 2 weeks are unpaid.
- For the purposes of public health emergency leave under the Emergency Family and Medical leave Expansion Act, an eligible employee is an employee who has been employed for at least 30 calendar days by an employer with respect to whom leave is requested. The employee must be employed for at least 30 calendar days which includes an employee who was laid off by that employer on or after March 1, 2020, had worked for the employer for not less than 30 of the last of the 60 calendar days prior to the employees layoff, and was rehired by the employer.

### **Emergency Paid Sick Leave**

- Employers may, but are not required to, pay any more than:
  - \$511 per day or \$5,110 in the aggregate for each employee when taking emergency paid sick leave if the employee is subject to a 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 due to concerns related to COVID-19, or the employee is experiencing symptoms of COVID-19 and seeking medical diagnosis; or
  - \$200 per day or \$2,000 in the aggregate for each employee when taking emergency paid sick leave if the employee is caring for an individual who is subject to a federal, state or local quarantine order; or is caring for an individual who has been advised to self-quarantine due to concerns related to COVID-19, the employee is caring for the employee's son or daughter, if the child's school or childcare facility has been closed or the child's care provider is unavailable due to COVID-19 precautions, or the employee is experiencing any other substantially similar condition specified by HHS in consultation with the Department of

the Treasury and the Department of Labor.

### **Medical Plan Expanded Coverage of Diagnostic Testing**

- Requires private health insurance to cover testing to determine and diagnose coronavirus without cost-sharing.
- Extends the coverage to include any items or services provided during a medical visit that results in coronavirus testing or screening. Medical visit can be in-person or telehealth.
- Broadens where testing can be performed to ensure consumers will not face cost-sharing based on the lab or organization that developed the test.
- Requires coverage for qualifying coronavirus preventive services (item, service or immunization to prevent or mitigate corona).

### **HSAs and Telehealth**

- Safe harbor for no-cost coverage for telehealth and other remote care services. HDHPs normally do not allow coverage (other than preventive) without first satisfying the deductible. This safe harbor would allow telehealth at no cost even if the member has an HDHP plan with an HSA.
- Bill eliminates requirement under ACA that the use of HSAs can be only on prescribed medications. IF passed, the bill would allow the use of HSAs for over the counter medications without a prescription.
- HSA funds could be used to pay for certain menstrual care products such as tampons and pads.
- HSA funds could be used to pay for direct primary care arrangements (a consumer pays a regular flat fee to have access to a primary care doctor).

### **Employee Retention Credit for Employers Subject to Closure Due to COVID-19**

**Eligible employers can take a tax credit against employer paid employment taxes (6.2% employer share of Social Security tax, but not the 1.45% of Medicare tax) that is equal to 50% of qualified wages per employee up to \$10,000 per calendar quarter.**

#### **What qualifies an employer for the employee retention credit?**

- An employer must have been in operation during the 2020 calendar year, and operations of their business are either fully or partially suspended due to governmental restriction on commerce, travel, or group meetings related to COVID-19.
- Employer has a reduction in gross receipts of at least 50% in a calendar quarter as compared to the same quarter in the prior year. Employers that qualify under this section will remain in place until the gross receipts exceed 80% in the calendar quarter as compared to the same quarter in the prior year or December 31, 2020.

Employers that received a Small Business Interruption Loan as describe is Section 1102 of the CARES Act are not eligible for employee retention credits.

- **What are the limits on these credits?**
  - Employer payroll tax credits are capped at \$5,000 (50% of \$10,000 of

- eligible wages)
  - o The employee retention credits are limited to the applicable employer paid employment taxes for the calendar quarter in which the wages are paid.
  - o Available employment taxes for the payroll tax credit are reduced by any credits taken under the Family First Coronavirus Response Act (Emergency Sick and Expanded FMLA).
  - o Overuse of credits shall be treated like a refund where employers can request from the IRS for the applicable quarter.
  - o Aggregation rules apply in related party employers.
  - o The payroll tax credit applies to wages paid after March 12, 2020 and before January 1, 2020.
- **What are Qualified Wages?**
  - o Qualified wages are defined based on the employer average employee count for 2019.
    - Employers with average employee count in 2019 of 100 or more, only those wages that are paid to employees that are unable to perform services due to full or partial business suspension are eligible for the payroll tax credit.
    - Employers with average employee count in 2019 of less than 100, all wages that are paid to employees by a qualified employer are eligible for the payroll tax credit.
  - o Wages Paid under the Family First Coronavirus Response Act (Emergency Sick and Expanded FMLA) are excluded.
  - o There is a 'by employee qualified wages limit' which limits qualified wages to not to exceed the average of the previous 30 days.
  - o Employees can only be counted once in relation to joint sharing relationships; no double benefit – wages applicable and used in this credit cannot be used in reducing taxable profits elsewhere in the IRS code
  - o Qualified Wages shall include the eligible employer's qualified health plan expenses as are properly allocable to such wages.
    - Qualified health plan expenses are paid or incurred by eligible employers to provide / maintain health plan.
    - Allocation method of medical plan expense can be based on pro rata employees or period coverage for related wages.
- Applicable to non-profits, excludes Federal Government employees and employer types.
- IRS payroll tax deposit penalties are waived in the event the employer in good faith anticipated use of payroll tax credit deferral which did not materialize.
- IRS to issue forms for calculating and reconciling deferred payroll tax credit as required.
- Third party payors, including Certified PEOS are authorized to submit documentation necessary to substantiate the eligible employer status.

### **Delay of Payment of Employer Payroll**

**Payment for applicable employer paid employment taxes (6.2% employer share of Social Security tax, but not the 1.45% of Medicare tax) for the payroll tax**

**deferral period shall not be due before the applicable date.**

- All Employers are eligible for this tax deferral, unless they have had indebtedness forgiven under the CARES act, primarily relating to SBA loans.
- The deferral of tax payments is effective from when the law is enacted through December 31<sup>st</sup>, 2020.
- Due date of eligible 2020 employment taxes:
  - 50% is due on or before Dec. 31, 2021.
  - The remaining 50% will be due on or before Dec. 31, 2022.
  - For self-employment taxes, the same deadlines apply.
- Agent or Certified PEO who processes documentation and payroll taxes deferral credit, are not liable for final related payroll taxes for the deferred period, client is solely liable.

Please click [here](#) to see the text of the bill.

If you have any questions, please reach out to your HR Professional.

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