



BY EMAIL ONLY

To: Board of Trustees of the Pressmen 401(k) Plan

Date: March 27, 2020

From: Ellen O. Boardman, Dinah S. Leventhal and Diana R. Cohn

Re: CARES Act

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The Act addresses many issues including medical supply subsidies, Good Samaritan laws (covering volunteers), expedited clinical trials for new drugs, and massive assistance to "severely distressed industries," specifically the airline industry and national security contractors. The focus of this summary, however, are the provisions addressing enhanced unemployment insurance compensation benefits, "recovery rebates," small business protections, and changes that affect health plans and certain defined contribution pension plans.

This summary is organized in line with the four Titles of the CARES Act and specifically references the applicable section of the Act. Again, not every provision in each Title is covered in this memo. Please contact us with any questions.

**TITLE I: KEEPING AMERICAN WORKERS
EMPLOYED AND PAID ACT**

Paycheck Protection Program and Loan Forgiveness (Secs. 1102 and 1106)

- Businesses and nonprofit 501(c)(3) organizations with 500 or fewer employees may apply for a loan from the Small Business Administration ("SBA") if, as a result of COVID-19, they have experienced supply chain disruptions, staffing challenges, a decrease in sales or customers, or a closure during the covered period of February 15, 2020 to June 30, 2020. **Note: apprentice/training funds that are tax exempt under 501(c)(3) may be eligible for these loans.** The SBA may establish different size standards on an industry-basis.
- The maximum loan amount shall be the lesser of: (1) the average monthly payroll costs incurred by the applicant during the 1-year period preceding the date the loan application is made multiplied by 2.5, or (2) \$10 million. Employers that have not been in business for this length of time may use a shorter period of time to calculate the average monthly payroll cost.

- Loan payments may be used for payroll costs, group health care benefits, paid sick/family leave, insurance premiums, mortgage payments, rent, utilities, construction, materials, supplies, equipment, and interest on debt obligations incurred before the covered period.
- The amount of the loan that is used for payroll costs, mortgage and rent obligations, and utility payments may be forgiven. However, the amount of this forgiveness will be reduced if the employer reduces its number of employees during the covered period, or reduces an employee’s salary by more than 25% during the covered period (although the SBA may make exceptions to this rule).
- “Payroll costs” do not include: (1) the compensation of individuals earning in excess of \$100,000/year, as prorated for the covered period; (2) the compensation of employees whose principal place of residence is outside the U.S.; (3) the employer’s payroll tax; or (4) the amount of qualified family leave for which a credit is allowed under the Families First Coronavirus Response Act.

Bankruptcy (Sec. 1113)

- The CARES Act also allows more businesses to file for bankruptcy as a “Small Business Debtor,” giving these businesses procedural advantages in the bankruptcy process. A business can file for bankruptcy as a Small Business Debtor if it owes no more than \$7.5 million in liquidated secured and unsecured debt. Current law only allows businesses to file as a Small Business Debtor if they owe no more than \$2 million in such debt. This expanded definition will revert back to the current threshold one year after enactment of the CARES Act.

TITLE II: ASSISTANCE FOR AMERICAN WORKERS, FAMILIES AND BUSINESSES

SUBTITLE A—UNEMPLOYMENT INSURANCE PROVISIONS

The CARES Act contains several provisions that expand access to state unemployment insurance (“UI”) benefits and increase the amount and duration of UI payments. The CARES Act expands the unemployment insurance programs administered by the states in four ways. The CARES Act: (1) expands access to UI benefits; (2) increases the amount of UI payments; (3) extends the duration of UI benefits; and (4) eliminates waiting periods. A detailed description of each of the relevant UI provisions in the Act follows below.

Expanding Benefits to Individuals Who Are Typically Ineligible for UI: Pandemic Unemployment Assistance (Sec. 2102)

- **Covered individuals** are those who: (1) are not eligible for regular UI compensation or extended benefits under state or federal law or under section 2107, including individuals who have exhausted their rights to such benefits; and (2) self-certify that the individual is otherwise able to work and available for work but is unemployed or unavailable because of one of the following:

- (a) The individual is diagnosed with COVID-19, or has symptoms of COVID-19 for which the individual is seeking a diagnosis;
 - (b) A member of the individual's household has been diagnosed with COVID-19;
 - (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
 - (d) A child or other person in the household for whom the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility being open is required for the individual to work;
 - (e) The individual is unable to reach their place of employment because of a quarantine;
 - (f) The individual is unable to reach their place of employment because they have been asked to self-quarantine by a health-care provider;
 - (g) The individual was scheduled to commence employment but is unable to reach the job or no longer has the job because of COVID-19;
 - (h) The individual has become the breadwinner or major support for their household because the head of household has died as a result of COVID-19;
 - (i) The individual has to quit their job as direct result of COVID-19;
 - (j) The individual's place of employment is closed as a direct result of COVID-19; or
 - (k) The individual meets any other, additional criteria established by the Secretary of Labor for unemployment assistance.
- Individuals who are self-employed, seeking part-time employment, do not have sufficient work history, or otherwise would not qualify for regular or extended UI benefits are eligible for the benefits provided by this section so long as their unemployment or partial unemployment has been caused by COVID-19 in one of the ways listed above.
 - Individuals who have the ability to telework with pay or are receiving paid sick leave or other paid leave benefits are excluded. If an individual remains out of work after exhausting their paid leave, they could then apply for these benefits (assuming the eligibility requirements are satisfied).

- **Timing of benefits:** Covered individuals are eligible for up to 39 weeks of UI, starting on or after January 27, 2020 and ending on or before December 31, 2020, as long as the individual’s unemployment/inability to work continues to be caused by COVID-19.
 - These 39 weeks include weeks during which the individual received regular or extended UI not provided by this section.
 - However, if the duration of an individual’s extended UI benefits is extended after enactment of this Act, the 39-week period is extended by the length of that extension (through not past 12/31/20).
 - Extended UI benefits typically provide 13 additional weeks of benefits, but some states have enacted a voluntary program to pay up to 7 additional weeks of extended benefits in times of high unemployment. The above provision, regarding the extension of extended benefits, was likely included in anticipation of some states providing this additional 7 weeks of benefits.
 - State-mandated waiting periods are waived.

- **Amount of benefits:** The weekly benefit provided by this section shall be the sum of: (1) the weekly benefit amount authorized under the state’s UI laws; and (2) an extra \$600, as provided by section 2104 of the Act. This extra \$600/week ends on July 31, 2020. If a state increases its weekly benefit amount after the date of enactment of this Act, this benefit is increased by an equal amount.
 - For self-employed individuals, or individuals who otherwise would not qualify for UI under state law, the amount of (1) shall be determined by the provisions of 20 C.F.R. § 625.6. This regulation allows self-employed individuals to treat self-employment income as wages for purposes of calculating a weekly UI benefit. If the individual did not report income in the prior tax year, the state may use any documentation substantiating employment or self-employment as basis for establishing a weekly benefit. 20 C.F.R. § 625.6(e).
 - Individuals who are unable to provide sufficient documentation of wage history for a benefit determination to be made may instead receive a “minimum flat benefit” based on the average weekly payments made by the state.

- These benefits will be administered by the States. Each State will need to enter into an agreement with the federal government to provide the expanded coverage contained in this section. These agreements will require the federal government to provide funding equal to 100% of the benefits provided under this section, so states have no reason *not* to offer this expanded coverage.

Increased Amounts for Individuals Receiving UI: Federal Pandemic Unemployment Compensation (Sec. 2104)

- States may enter into an agreement with the Secretary of Labor to participate under this section.
- These agreements will provide that the weekly amount of unemployment benefits paid by the state to any individual after the state enters into the agreement will be increased by \$600.
- This additional weekly benefit of \$600 may be paid together with the regular weekly benefit or as a separate weekly benefit.
- Participating states must agree not to apply a method of determining benefits that will decrease the average weekly benefit amount compared to the weekly benefits that were available on January 1, 2020.
- The federal government will provide full reimbursement to states that enter into an agreement to provide the additional benefit provided by this section.
- These additional benefits must end on or before July 31, 2020.
- The Act establishes criminal penalties for those who use false statements to obtain pandemic unemployment compensation. States may also seek to recover payments that were made on false pretenses.

Extended Duration of UI: Pandemic Emergency Unemployment Compensation (Sec. 2107)

- **Eligibility:** Allows states to enter into agreements with the Secretary of Labor to provide additional unemployment compensation to individuals who are eligible for regular UI benefits but who: (1) have exhausted all their rights to regular UI under state law; (2) have no rights to regular compensation under state law; (3) are not receiving UI from Canada; and (4) are able to work, available to work, and actively seeking work. Essentially, this provision allows states to extend additional UI benefits to workers who qualify for regular UI benefits but have exhausted the benefits to which they are normally entitled.
- This extension of benefits is not available to individuals receiving benefits under section 2102's new expanded access rules.
- The amount of weekly benefits provided by this section is defined as the sum of: (1) the amount of regular UI compensation the individual would receive if eligible for regular UI compensation from the state; and (2) an extra \$600, as provided by section 2104 of the Act. This extra \$600/week ends on July 31, 2020.

- Participating states must agree not to apply a method of determining benefits that will decrease the average weekly benefit amount compared to the weekly benefits that were available on January 1, 2020.
- The maximum amount of benefits available to an individual under this section is 13 times the individual's average weekly benefit amount (i.e., in most cases, 13 weeks of additional UI benefits).
- The federal government will provide full reimbursement to states that enter into an agreement to provide the additional benefit provided by this section.
- The Act establishes criminal penalties for those who use false statements to obtain these benefits. States may also seek to recover payments that were made on false pretenses.

Elimination of Waiting Periods: Temporary Federal Funding of the First Week of Regular UI for States With No Waiting Period (Sec. 2105)

- States that do not apply a waiting week to receive UI may enter into agreements with the Secretary of Labor under which the federal government will provide 100% of the total amount of regular UI compensation paid by the states to individuals for their first week of regular unemployment.

Emergency Short-Time Compensation Provisions (Secs. 2108-11)

- The federal government will reimburse 100% of the payments made by states pursuant to short-time compensation programs. These are voluntary programs in which an employer reduces the number of hours worked by employees in lieu of layoffs. In those instances, the employees become eligible for reduced UI benefits. These benefits are not available to individuals employed on a seasonal, temporary, or intermittent basis.
- DOL guidance defines “temporary” as “employment where an employee is expected to remain in a position for only a limited period of time and/or is hired by a temporary agency to fill a gap in an employer’s workforce,” and “intermittent” as “employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work.” Because these definitions of “temporary” and “intermittent” seem broad enough to cover most construction work, such work is likely excluded from this relief in these short-term compensation programs.¹
- The maximum reimbursement for any individual under this provision is 26 times the amount of regular UI compensation payable to the individual under state law for a week of unemployment (i.e., 26 weeks of regular UI payments).

¹ DOL Employment & Training Administration, Unemployment Insurance Program Letter No. 22-12, available at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9382.

- This relief is available to states that enact short-term compensation programs after enactment of the CARES Act as long as they enter into an agreement with the Secretary of Labor. The Secretary shall award grants to states that enact short-time compensation programs for the purpose of promoting the new programs and enrolling employers.
- The Secretary of Labor shall develop and promulgate model legislation to help states develop short-time compensation provisions.

SUBTITLE B — REBATES AND OTHER INDIVIDUAL PROVISIONS

2020 Recovery Rebates (Sec. 2201)

- This provision provides tax credits equal to \$1,200.00 (\$2,400.00 for individuals filing a joint return) plus \$500.00 for each qualifying child. The amount of the credit is reduced by 5% of the amount of the taxpayer’s adjusted gross income (“AGI”) that exceeds \$75,000.00 (individuals), \$112,500.00 (head of household), or \$150,000.00 (joint return). The credit is completely phased-out for individual filers with incomes exceeding \$99,000.00, head of household filers with incomes exceeding \$146,500.00, and families with no children filing joint returns with incomes exceeding \$198,000.00.
- This provision also applies to individuals who have no income, or who only have income from social security. It does not, however, apply to nonresident aliens, an individual for whom a deduction is allowed, or to an estate or trust.
- Payments will be made to taxpayers as rapidly as possible as advanced refunds. Individuals with direct deposit set up with the IRS could receive these payments within a few weeks of the Act’s passage.

Special Rules for Use of Retirement Funds (Sec. 2202)

- **Tax-Favored Withdrawals from Retirement Plans (Section 2202(a))**
 - The Act eliminates the additional 10% tax on early distributions from qualified retirement plans for withdrawals for any coronavirus-related distribution, for withdrawals in the aggregate amount of up to \$100,000.
 - “Coronavirus-related distributions” mean distributions from an eligible retirement plan:
 - Made on or after January 1, 2020 and before December 31, 2020;
 - Made to an individual:
 - Who is diagnosed with COVID-19 by a CDC-approved test;
 - Whose spouse or dependent is diagnosed with COVID-19 by such a test; or
 - Who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or having work hours reduced due to

COVID-19; or being unable to work due to lack of child care, closing or reducing hours of a business, or other reasons related to COVID-19.

- Plan administrators may rely on employees' certification that the employee satisfies these conditions.
- Individuals who take coronavirus-related distributions may make one or more contributions back to eligible retirement plans, not to exceed the amount of the distribution received.
- Coronavirus related distributions are not treated as eligible rollover distributions.
- While these benefits (e.g., elimination of penalties) apply to most plans, plans are not automatically authorized to make distributions. Plans must follow rules currently in the tax law, so some types of plans could not make a distribution unless the employee has stopped all work, perhaps for some period of time, depending on the plan's rules. However, these changes will make such payments easier to administer and be more beneficial to employees.
- **Loans from Qualified Plans (Sec. 2202(b))**
 - The CARES Act increases the amount of loans participants may receive from a qualified plan that is not treated as a distribution for a period of 180 days after the Act's enactment.
 - The Act extends the amount of time an individual with an existing plan loan can repay the loan. If the due date of an existing loan falls between the date of the enactment of the Act and December 31, 2020, the due date of the loan is delayed for one year. Subsequent payments are also adjusted.
- **Plan Amendments Related to Use of Retirement Funds (Sec. 2202(c))**
 - Retirement plans are not required to permit withdrawals, provide for participant loans, or provide for loans in the maximum amounts allowed as stated in this Act, but plans that wish to do so must be amended to comply with these provisions on or before the last day of the plan year beginning on or after January 1, 2022. Before the plan is amended, the plan must operate as if such plan amendment was in effect, and the plan amendment must apply retroactively.

Temporary Waiver of Required Minimum Distribution Rules for Defined Contribution Plans, Eligible Deferred Compensation Plans, and IRAs (Sec. 2203)

- The Act allows defined contribution plans, eligible deferred compensation plans, and IRAs to suspend the required minimum distribution rules for calendar year 2020.

- Plans that wish to suspend RMD payments for 2020 must be amended on or before the last day of the plan year beginning on or after January 1, 2022. Before the plan is amended, the plan must operate as if such plan amendment was in effect, and the plan amendment must apply retroactively.

Exclusion for Certain Employer Payments of Student Loans (Sec. 2206)

- The Act expands the definition of “educational assistance” in the Internal Revenue Code to include payments by employers to employees or lenders for payment of the principal or interest on qualified education loans. In other words, this provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. An employer may contribute up to \$5,250 per year per employee. Employees do not need to include amounts received as educational assistance in their gross income. This provision applies to student loan payments made by employers after the enactment of the CARES Act and before January 1, 2021.

SUBTITLE C— BUSINESS PROVISIONS

Employee Retention Credit for Employers Subject to Closure Due to COVID-19 (Sec. 2301)

- The Act implements a credit against employer payroll taxes for employers affected by COVID-19. The credit is available to employers: i) whose operations are fully or partially suspended due to a COVID-19-related shut down order from a governmental authority; or ii) whose gross receipts for a quarter decline by more than 50 percent when compared to the prior year calendar quarter.
- The amount of the credit is 50% of employee wages per calendar quarter, not to exceed \$10,000 per employee per calendar quarter. The employer may include amounts paid to group health plans as “wages” as long as the amounts are not normally included as income to the employee. The credit applies to wages paid between March 13, 2020 and December 31, 2020.
- Tax exempt organizations are also eligible for the credit.

Delay of Payment of Employer Payroll Taxes (Sec. 2302)

- The Act allows employers to suspend payment of Social Security payroll taxes (i.e. the 6.2% tax paid by employers for old-age, survivors, and disability insurance taxes) from the date of enactment to January 1, 2021. 50% of the payroll taxes accrued during this time must be paid by December 31, 2021 and the remaining 50% must be paid by December 31, 2022.

TITLE III- SUPPORTING AMERICA’S HEALTHCARE SYSTEM IN THE FIGHT AGAINST THE CORONAVIRUS

SUBTITLE A- HEALTH PROVISIONS

Coverage of Diagnostic Testing for Covid-19 (Sec. 3201)

- This section amends the Families First Coronavirus Response Act’s (“Response Act”) 100% coverage of COVID-19 diagnostic testing. This provision applies to both grandfathered and non-grandfathered plans. The coverage provisions as originally enacted in the Response Act are narrow, essentially requiring 100% coverage of FDA-approved products. Section 3201 broadens the coverage to tests developed by states or otherwise receive expedited approval.

Pricing of Diagnostic Testing (Sec. 3202)

- The section clarifies that group health plans and health insurance issuers shall reimburse providers for diagnostic testing as follows:
 - If the plan has a negotiated rate with the provider, the plan must pay the negotiated rate; or
 - If there is no negotiated rate, the plan must pay the provider a cash price posted by the provider on a public internet website.

Rapid Coverage of Preventive Services and Vaccines (Sec. 3203)

- Section 3203 provides for expedited coverage by group health plans of COVID-19 related preventive services, including immunizations. These provisions apply exclusively to non-grandfathered plans. COVID-19 related preventive services must be covered without participant cost-sharing when rendered in-network. The preventive services list is dictated by several governmental entities, the most well-known of which is the United States Preventive Services Task Force. Under Section 3203, plans must cover COVID-19 related preventive services within 15 days of their designation as preventive. So, when vaccines come out, they will be designated as preventive and must be covered quickly.

SUBTITLE C -- LABOR PROVISIONS

Limitation on Paid Leave (Sec. 3601)

- This provision of the CARES Act makes a non-substantive, clarifying change to the Response Act and states that employees taking public health emergency leave shall not receive more than \$200.00 per day and \$10,000.00 in the aggregate.

Emergency Paid Sick Leave Act Limitation (Sec. 3602)

- Also amending the Response Act, this section clarifies that employers are not required to pay more than \$511.00 per day and \$5,110.00 in the aggregate for each employee when the employee takes paid sick time to care for themselves because the employee is sick or because she is subject to a quarantine order or is self-quarantining, or \$200.00 per day and \$2,000.00 in the aggregate for each employee when the employee takes leave to care for a family member or child.

Unemployment Insurance (Sec. 3603)

- This section provides that states should ensure applications for unemployment compensation and assistance with the application process are accessible by at least two of the following ways, to the extent practicable: in person, by phone, or online.

OMB Waiver of Paid Family and Paid Sick Leave (Sec. 3604)

- This provision gives OMB the authority to exclude categories of federal employees from the Response Act's paid sick and paid family leave provisions.

Paid Leave for Rehired Employees (Sec. 3605)

- The Response Act requires certain employers to provide employees who have worked for at least 30 calendar days with "public health emergency leave" in order to care for a child whose school or daycare is closed due to COVID-19. Employees who are eligible for public health emergency leave receive partial paid leave for a period of 12 weeks (with the first two weeks of that period being unpaid). Section 3605 of the CARES Act expands the scope of employees eligible for public health emergency leave under the Response Act to include employees who were laid off by an employer after March 1, 2020, worked for that employer for at least 30 of the last 60 days before the employees' layoff, and then rehired by the employer.

Advance Refunding of Credits (Sec. 3606)

- This section allows employers to receive an advance tax credit from the IRS of amounts paid for sick and emergency public health leave.

Expansion of DOL Authority to Postpone Certain Deadlines (Sec. 3607)

- This section amends section 518 of ERISA to permit DOL to postpone certain ERISA deadlines in the event of a public health emergency declared by HHS. Examples of deadlines that could be postponed under this provision are those relating to:
 - The filing of annual reports with the DOL;
 - The filing of terminal and supplementary reports;

- Providing notices to beneficiaries and participants of a failure to meet minimum funding standards; and
- The filing of plan funding notices with the PBGC.

Single-Employer Defined Benefit Plans (Sec. 3608)

- This section provides that any single-employer defined benefit plan that is required by IRC Section 430(a) and ERISA Section 303(a) to make a “minimum required contribution” in 2020 may delay making the payment until January 1, 2021.
- The amount of any payment that is delayed under this section must be increased by the interest that accrued between the original due date and the date on which the payment was made using the effective rate of interest for the plan in the plan year that includes the payment date.
- This section also allows a plan sponsor of a single-employer defined benefit plan to elect to treat the plan’s adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 as the adjusted funding target attainment percentage for the plan years that include any part of the calendar year 2020.

Federal Contractor Authority (Sec. 3610)

- This provision allows Federal agencies to reimburse federal contractors for any paid leave, including sick leave, the contractor provides to its employees to keep the employees in a “ready state.”
- Federal agencies can only enter into these agreements with contractors if the contractor’s employees or subcontractors are unable to perform work on a federally-owned or leased site because of reasons related to COVID-19. These agreements must end by September 30, 2020.
- Payments under this section may not provide reimbursement for more than 40 hours per week. These payments also must exclude any credits the contractors have been given for benefits under the CARES Act or the Response Act.

TITLE IV- ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE U.S. ECONOMY

Title IV of the CARES Act authorizes the Treasury to provide up to \$500 billion in assistance in the form of loans, loan guarantees, and other investments to eligible businesses, states, and municipalities related to losses incurred as a result of the current public health emergency. It specifically provides for \$25 billion for passenger air carriers, \$4 billion to cargo air carriers, and \$17 billion to businesses critical to maintaining national security. The remainder, up to \$454 billion, is allocated for other programs to be established by the Board of Governors of the Federal Reserve System to support lending to eligible businesses, states, or municipalities.

Among other types of loans, Title IV authorizes the Treasury to issue loans to mid-sized businesses with between 500-10,000 employees at an annual interest rate of no higher than 2 percent. **Mid-size businesses who receive such loans must, as a condition for receiving the loan, make a good faith certification that, among other things, the business: i) will not outsource or offshore jobs for two years after the loan repayment is made; ii) will not abrogate any existing collective bargaining agreements for the term of the loan and two years after repayment of the loan; and iii) will remain neutral in any union organizing effort for the term of the loan.**

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