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News & Types: 雇用／労働法／福利厚生関連情報

トランプ大統領、2兆ドルの景気対策法案に署名ー主要条項と雇用主への影響

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Practices: 雇用／労働法／福利厚生

EXECUTIVE SUMMARY

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act contains certain provisions that are applicable to employers. Specifically, small businesses with no more than 500 employees may take advantage of an expanded eligibility of Small Business Administration ("SBA") loans. In additional to several other provisions, the CARES Act contains changes to employee benefit plans and increases unemployment payments by $600 per week.

The following is a summary of certain provisions of the CARES Act applicable to employers, excluding a summary of the tax provisions of the CARES Act.

SBA LOANS

The CARES Act authorizes the Small Business Administration ("SBA") to increase SBA loan availability for certain small businesses (those that do not employ more than 500 employees) and organizations under Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) ("7(a) Loan") between March 1, 2020 and December 31, 2020.

Eligibility for a 7(a) Loan is expanded by requiring a lender to only consider that the borrower (1) was in operation on March 1, 2020; and (2) paid salaries and payroll taxes to employees.

SBA Loan proceeds can be used for:

1. payroll support, including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits during those periods of leave;
2. employee salaries;
3. mortgage payments;
4. rent (including rent under a lease agreement);
5. utilities; and

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6. any other debt obligations that were incurred before the covered period.

Other key points:

- collateral and personal guarantee requirements would be waived along with lender fees;
- complete deferment of 7(a) Loan payments would be allowed for up to one year; and
- loan forgiveness for 8 weeks after the loan is disbursed is possible for the amount spent by the borrower on qualifying expenses until June 30, 2020, but this is subject to reduction based on number of employees that remain employed according to a formula.

If you do not have more than 500 employees, you may want to reach out to your lender to see if you qualify for a Section 7(a) Loan. Masuda Funai is individually consulting with employers that are deciding on obtaining a 7(a) Loan and possible layoffs or reductions in force and the impact those decisions could have on the 7(a) Loan and loan forgiveness.

EMPLOYEE BENEFIT PLAN CHANGES

1. Employees participating in employer sponsored 401(k) plans ("Participants") can take distributions of up to $100,000 for coronavirus related expenses, without being subject to the additional 10% early withdrawal tax on distributions, if the withdrawal is due to COVID-19 ("COVID-19 Reasons"):

1. The Participant or the Participant's spouse or dependent(s) is diagnosed with the virus SARS-CoV-2 or COVID-19; or

2. The Participant experiences adverse financial consequences as a result of COVID-19, being quarantined, furloughed, laid off, having work hours reduced, unable to work due to lack of child care or closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Secretary of the Treasury.

2. Participants can either repay the amount taken over 3 years to the 401(k) plan or pay the income tax due ratably on the distribution over 3 years. Participants can self-certify to their employers that they are taking the distribution for COVID-19 Reasons.

3. Loans under 401(k) plans are increased from $50,000 to $100,000 for 180 days after the Act is effective. Participants can take up to 100% of their nonforfeitable accrued benefit instead of the prior 50% limit. In addition, 401(k) plan loans with repayment due dates between March 27, 2020 and December 31, 2020 are delayed for 1 year.

4. Required minimum distributions from 401(k) plans are waived for 2020.

5. Health Saving Accounts, Archer Medical Savings Accounts, flexible spending arrangements and health reimbursement arrangements would treat menstrual care products as over-the-counter reimbursable qualified medical care after December 31, 2019.

Regulations will be issued to clarify how these changes to employee benefit plans will be implemented.

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INCREASED UNEMPLOYMENT COMPENSATION BENEFITS

For States that elect to participate, and we believe all States will elect to participate, the CARES Act provides for an additional unemployment benefit payment of $600 per individual per week, in addition to the regular unemployment compensation benefits that are provided under State law. There is no waiting period for this benefit, and States that participate have to waive any minimum waiting period for unemployment benefits.

MASUDA FUNAI'S GUIDANCE

Even without changes it the existing laws, there are options for employers to cut costs during this time. For example, if the 401(k) plan you offer to your employees has a matching contribution, this matching contribution can usually be reduced or eliminated.

Employers should also remember that if they lay off 20% or more of their employees, this will result in a partial termination of the 401(k) plan, resulting in immediate full vesting for all participants.

Please contact your relationship attorney or a member of the Employment Group with any questions regarding the Families First Act, CARES Act, or other legislation including questions related to compliance with the Americans With Disabilities Act, OSHA, the Fair Labor Standards Act, wage and hour compliance, sick leave, working from home policies, immigration, delayed litigation, and any business contract issues, such as the application of force majeure provisions.

If you have questions regarding employee benefit plans, please contact Jennifer R. Watson at jwatson@masudafunai.com or Frank J. Del barto at fdelbarto@masudafunai.com.

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