CARES Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was passed to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic. The Act itself is extensive and covers each relief section in detail. To help provide our clients with up-to-date guidance, we have summarized some of the sections of the Act we feel will have the greatest immediate impact on businesses and individuals generally. If you have any questions about how the CARES Act affects you or your business, please contact our office, and one of our attorneys will be able to assist you and provide some comfort and clarity during these unprecedented times.

Title I – Keeping American Works Paid and Employed Act

Title I of the CARES Act contains many provisions, including everything from entrepreneurial development, to business loan forgiveness, to direct appropriations, to bankruptcy. Below is a summary of the provisions most likely to have the largest effect on our clients and the community. Should you have any questions about the provisions below, or other provisions in the Act that might affect you, please contact our office.

Paycheck Protection Program

The Paycheck Protection Loan Program covers the period from February 15, 2020, through June 30, 2020, and greatly expands eligibility for SBA loans. Under this Program, eligible businesses may borrow an amount to be the lesser of $10 million dollars, or two-and-a-half times the average total of the business' payment obligations, based on a formula tied to average monthly payroll costs based on the year prior to the date of the loan being made. For businesses that were not in operation between February 15, 2019 and June 30, 2019, then the calculation will use the average payroll costs between January 1, 2020 and ending on February 29, 2020. The loan may be used for qualified costs related to employee compensation and benefits, including (i) payroll costs, (ii) continuation of health care benefits, (iii) employee salaries, commissions or other compensation, (iv) payments of interest on mortgages (but not payment or prepayment of any principal on the mortgage), (v) rent; (vi) utilities, and (vii) interest on other debt obligations incurred before February 15, 2020. Any amount of the loan remaining after applying loan forgiveness will have a maximum maturity period of 10 years from the date of applying for loan forgiveness, with interest rates no greater than 4%.

A business may be eligible for this new loan if they employ no more than 500 employees (or a greater number based on the size standard applicable to the industry). Individuals who operate as a sole proprietorship, an independent contractor, or a self-employed individual may be eligible for this Program. Other companies in the Accommodation and Food Services Industry

(NAICS Code 72) may be eligible if they do not have more than 500 employees per physical location. The usual SBA loan restrictions on credit available elsewhere, personal guarantee and collateral requirements are waived for this Program. Businesses will be able to apply for loans from local lenders as well as through the SBA.

Loan Forgiveness

In order to be forgiven, the SBA Payroll Protection loans must be used for payroll support, salaries, mortgage payments, rent, utilities, or other debt obligations. The loan recipient may then be eligible for forgiveness in an amount equal to maintaining payroll and other allowable costs during the covered period. Businesses will need to submit a certification that they are using the loans because of the COVID-19 pandemic, as well as other documentation including payroll tax filings, state income, payroll, and unemployment insurance filings, and other financial statements and necessary documentation. Importantly, the amount of any loan forgiveness will be reduced by any reductions in employee wages (decreases greater than 25%) or a reduction of employees during the covered period, ranging from March 1, 2020, to June 30, 2020. No reduction in forgiveness will be required for a reduction in workforce if the employees who were laid off or furloughed between February 15, 2020 and April 26, 2020 are rehired before June 1, 2020.

Information on additional small business loans available for businesses affected by COVID-19 is available here.

Amendments to the Bankruptcy Code

The CARES Act modifies some provisions of the United States Bankruptcy Code, most notably the newly-enacted subchapter V of Chapter 11, dealing with small business reorganizations. The Act increases the debt limit to qualify for subchapter V to $7.5 million, up from the original $2,725,625.

Additionally, the CARES Act amends the definition of current monthly income under section 101(10A) to exclude payments a debtor receives as a result of the Covid-19 pandemic from the means test calculation, and further excludes those payments from the disposable income calculation for the purposes of confirming a Chapter 13 plan. These amendments apply to any case commenced before, on, or after the Act becomes effective.

For Chapter 13 debtors with already confirmed plans, the Act allows for modifications based on a material financial hardship related to the Covid-19 pandemic and for extensions of plan payments up to seven years from the date of the first payment.

All of the above changes are only effective for one year after the CARES Act becomes effective, absent further action from Congress.

Title II – Assistance for American Workers, Families, and Businesses

Title II of the CARES Act includes many provisions regarding unemployment assistance, rebates, retirement benefits, and other tax-related subjects. Should you have any questions about the provisions below, or others in the Act that might affect you, please contact our office.

Unemployment

A temporary Pandemic Unemployment Assistance program has been created to provide payments to "Covered Individuals" who would (i) not normally be eligible for unemployment compensation, or have already exhausted regular unemployment compensation, and (ii) are unemployed, partially unemployed, or unable to work as a direct result of the COVID-19 emergency.

Who is covered:

- To be eligible for Pandemic Unemployment Assistance program, an individual must:
    - not be otherwise eligible for regular unemployment compensation or have exhausted regular unemployment compensation;
    - and self-certify that they are otherwise able to, and available for, work except that the individual is unemployed, partially unemployed, or unable to work because of COVID-19 related reasons, including:
        - a diagnosis of COVID-19 or experiencing symptoms of COVID-19 and seeking a medical diagnosis;
        - member of individual's household has been diagnosed with COVID-19;
        - providing care for a member of the individual's household or family who has been diagnosed with COVID-19;
        - primary caregiving duties for a child in the household who is unable to attend school or another facility as a direct result of the COVID-19 emergency;
        - unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 emergency;
        - unable to reach the place of employment because the individual has been advised to self-quarantine by a health care provider;
        - previously scheduled to begin employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 emergency;

- has become the breadwinner or major support for a household because the previous head of household died as a direct result of COVID-19;

- had to quit his or her job as a direct result of COVID-19;

- his or her place of employment is closed as a direct result of COVID-19 emergency;

- he or she meets additional criteria to be established by the Secretary of Labor for unemployment assistance.

- Self-employed individuals and those seeking part-time employment or those without sufficient work history are also eligible for this benefit.

Who is not covered: A person is not eligible for this program if they have the ability to telework with pay, is receiving paid sick leave, or is receiving any other paid leave benefit, regardless of whether that person would otherwise meet the eligibility requirements.

Amount of Benefits:

- Covered individuals are entitled to receive the amount of compensation that they would otherwise be entitled to under state unemployment compensation law. This benefit is available for a total of up to 39 weeks. If, after the CARES Act is enacted, the duration of benefits is extended, then the duration of these benefits will be extended by that period as well.

- An additional amount of $600 per week on top of what a worker would normally receive from unemployment funds is also available to (i) covered individuals receiving the pandemic assistance and (ii) those receiving regular state unemployment compensation. The additional amount is available from the time period that an applicable state enters into an agreement with the federal government to provide this additional aid until July 31, 2020 (up to four months maximum).

- States may agree to waive the one week waiting period for unemployment compensation. A process for making unemployment assistance available for weeks beginning on or after January 27, 2020, and before the date of enactment.

Changes to Retirement Planning

The CARES Act makes dramatic changes to several rules governing retirement plans and IRAs. In particular, the Act waives the 10% early distribution penalty (imposed on distributions received before age 59½) for distributions of up to $100,000 related to a participant being diagnosed with COVID-19, a participant's spouse or dependent being diagnosed with

COVID-19, or a participant experiencing other adverse financial consequences as a result of being quarantined, laid off, experiencing a reduction in work, or a closing or reduction of business relating to COVID-19. Amounts distributed may be repaid at any time over the three-year period commencing on the date the distribution was received; repayment may be made in installments. To the extent that the amounts are not repaid, the income inclusion with respect to any coronavirus distribution can be included ratably over the three taxable years beginning with the taxable year in which the distribution was received. These distributions will be deemed to satisfy the hardship distribution rules applicable to 401(k) plans. These distributions are exempted from income tax withholding.

The Act increases the maximum amount a participant may request as a loan from the plan to the lesser of $100,000 or 100% of the participant's vested account balance, a doubling of the current limits. Moreover, participants with outstanding loan balances would be allowed to delay loan payments for up to one year.

The Act adds permits a one-year delay in required minimum distributions (RMDs) for §401(a) defined contribution plans, §403(a) and (b) defined contribution plans, §457(b) plans and IRAs. The change does not appear to apply to defined benefit plans. The delay applies to both 2019 RMDs that needed to be taken by April 1, 2020 and 2020 RMDs. The Act also adds a special rollover rule allowing amounts subject to the RMD rules in 2020 to be rolled over.

The Act delays minimum funding contributions for qualified plans (defined benefit plans and certain defined contribution plans), including quarterly contributions, until January 1, 2021. The amount of each delayed minimum required contribution is increased by interest accruing for the period between the original due date and the payment date, at the effective rate of interest for the plan for the plan year in which the payment is made.

The Act delays the due date for amendments to plans provided that the plan is operated as if the amendment is in effect and that any amendment is made retroactive:

- Amendments required because of the Act must be made by the last day of the plan year beginning on or after January 1, 2022; and

- In the case of governmental plans, that date is the last day of the plan year beginning on or after January 1, 2024.

- Treasury has the authority to delay these dates.

The Act's amendments to the Code apply for calendar years beginning after December 31, 2019. This means that participants who have already taken plan distributions will get the benefit of these provisions.

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Title III – Supporting America's Health Care System in the Fight Against the Coronavirus

Title III of the CARES Act includes provisions regarding efforts to fund and prioritize health care production and financial assistance to health care centers and providers. Title III also includes guidance regarding coverage of COVID-19 testing, telehealth medicine, and efforts to expand and provide for the nation's health care workforce. Should you have any questions about the provisions below, or others in the Act that might affect you, please contact our office.

Amendments to the Families First Coronavirus Response Act

The FMLA provisions of the FFCRA are amended to clarify that the payment caps of $200 per day and $10,000 in the aggregate are per employee, not per business. The CARES Act also clarifies that an employee who was laid off by an employer on or after March 1, 2020, who had worked for the employer for at least 30 of the last 60 calendar days prior to that layoff, and is subsequently rehired by the employer shall be eligible for the expanded FMLA leave. The FFCRA Paid Sick Leave provisions are similarly amended to clarify that the caps are per employee, not per business. There is no change to the amount of the caps, which are $511 per day or $5,110 total under certain circumstances, and $200 per day or $2,000 total under other circumstances.

The FFCRA unemployment provisions are also amended to read ''Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating, or, subject to the succeeding sentence, personnel standards on a merit basis, on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law." And by adding, ''[t]he emergency flexibility for personnel standards on a merit basis shall only apply through December 31, 2020, and is limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.''

Certain amendments have also been made to the payroll credits employers will be eligible to receive as reimbursement for paid sick leave and FMLA provided for under the FFCRA.

For more information on the FFCRA please see our earlier update here.

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy

Title IV of the CARES Act includes provisions regarding financial, lending, and hiring assistance for individuals and important sectors of the U.S. economy, such as aviation and other transportation industries. Title IV also provides further guidance on congressional oversight of business assistance and protection of collective bargaining agreements. Should you have any questions about the provisions below, or others in the Act that might affect you, please contact our office.

Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

Borrowers on a federally-backed, multifamily mortgage may request up to a 90 day forbearance on payments if experiencing hardship due, directly or indirectly, to the COVID-19 emergency. In order to be eligible for this forbearance, the borrower must be current on payments as of February 1, 2020. The request may be oral or written and should affirm that the individual is experiencing a financial hardship due to the COVID-19 emergency. A multifamily mortgage is considered to be a mortgage on a residential property designed principally for the occupancy of five or more families, the proceeds of which are used to pay off the mortgage secured by the property.

Borrowers who receive a forbearance may not, during the term of the forbearance, evict or initiate the eviction of any tenant for nonpayment of rent or charge any late fees for the late payment of rent.

Temporary Moratorium on Eviction Filings

For 120 days following the enactment of the CARES Act, landlords are prohibited from initiating any eviction actions or charging late fees, penalties, or other charges to tenants as a result of non-payment of rent for any mortgaged property that is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.

Regulations Forthcoming

There are still numerous questions relating to how this new legislation will be implemented, and additional rules and regulations are expected to be produced by the applicable government agencies within the next fifteen days. We will continue to provide updates as new information becomes available.