



## EMPLOYMENT LAW ALERT – MARCH 31, 2020

### What You Need to Know About the Federal CARES Act:

On Friday March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) became law, providing two trillion dollars in relief to aid both employees and employers during the ongoing COVID-19 crisis. The CARES Act is a comprehensive economic relief package that will provide, among many other things, low interest and/or forgivable loans to businesses and significant increases in availability of unemployment benefits for workers affected by COVID-19. The key provisions for employers and employees are detailed below:

### Key Changes in Employment Laws for Employers

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One of the most important provisions of the CARES Act is the Paycheck Protection Program (“PPP”). As an expansion of the Small Business Association’s loan program, the Act provides access to \$350 billion in loans to small businesses.

#### How Does it Work?

- This program is available to businesses, non-profits, veteran organizations, and tribal businesses with 500 or fewer employees (or which meets the applicable size standard for the industry as provided by SBA’s existing regulations). It also extends to sole proprietors, independent contractors, and eligible self-employed individuals. It provides eight weeks of cash-flow assistance to small businesses.
- The loan can be used for “covered expenses” which includes payroll, rent, utilities, mortgage obligations, costs associated with group healthcare benefits and insurance premiums, and interest on other debt obligations that were incurred before February 15, 2020.
- Eligible businesses may have their loans forgiven. A loan will be eligible for partial forgiveness in an amount equal to the sum of payroll costs, rent, utility expenses, and interest payments on mortgages so long as such expenses were incurred before February 15, 2020 and paid during the 8-week period commencing on the date of the loan.
- The loan forgiveness amount will be reduced if the employer has reduced the number of full-time employees or has reduced employees’ salary or wages by 25% during the covered period (February 15, 2020 – June 30, 2020).
- However, since many businesses have already had to make significant staffing reductions, Congress included a key exemption. The PPP allows businesses to qualify for loan forgiveness if they re-hire employees back to pre-crisis employment levels by June 30, 2020.

## Emergency EIDL (Economic Injury Disaster Loan) Grant

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- The CARES Act expands eligibility for borrowers applying for an EIDL grant. This provision provides emergency funds for small businesses to cover immediate operating costs. Emergency EIDLs are available for businesses with 500 employees or less, sole proprietors, and independent contractors. Borrowers may receive a \$10,000 emergency advance of funds within three days after applying for an EIDL grant.
- The funds can be used for payroll, rent, mortgage payments, increased material costs, or for repaying other obligations that cannot be met due to revenue losses from COVID-19.
- Borrowers may apply for an EIDL grant *in addition* to a loan under the PPP described above. However, the funds cannot be used for the same purpose.

## Key Changes in Unemployment Laws

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A key feature of the CARES Act is the Pandemic Unemployment Assistance Program. This program extends unemployment eligibility to include those workers who are not traditionally eligible for unemployment benefits under existing state law.

### Who is Eligible?

- Under this program, “gig” workers, self-employed, independent contractors, and those with limited work history are now considered a covered individual and would be eligible to collect unemployment benefits.

### Who is considered a “covered individual?”

- The CARES Act defines a “covered individual” as anyone who self-certifies that they are able to work but are unemployed or partially unemployed due to any of the following:
  - The individual has been diagnosed with COVID-19 or is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  - A member of the individual’s household has been diagnosed with COVID-19;
  - The individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID-19;
  - The individual has primary caregiving responsibility for a child or other person in the household who is unable to attend school or other facility that is closed as a direct result of the COVID-19 public health emergency;
  - The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
  - The individual is unable to work because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns;
  - The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
  - The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19;
  - The individual has to quit their job as a direct result of COVID-19; or
  - The individual’s place of employment is closed as a direct result of COVID-19.

- A “covered individual” does **not** include:
  - An individual who has the ability to telework with pay; or
  - An individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualifications described above.

## **Emergency Increase in Unemployment Compensation Benefits and Duration**

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- The CARES Act provides an additional \$600 per week payment to each recipient collecting unemployment benefits or benefits under the Pandemic Unemployment Assistance Program for up to four months. The \$600 will be in addition to an employee’s weekly unemployment benefit amount.
- The CARES Act extends the duration of unemployment benefits by up to 13 weeks. In Massachusetts, the maximum number of weeks an employee can receive unemployment benefits is capped at 26 weeks. This means an employee will have an additional 13 weeks after they have reached 26 weeks collecting unemployment benefits.

## **Other Key Provisions**

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- The CARES Act extends support for “Short-Term Compensation Programs” which provides full reimbursement to states with existing short-term unemployment compensation programs (programs by which employees who have their hours reduced can receive partial unemployment benefits).
- Massachusetts offers this type of “short-term compensation program” through its WorkShare program.

**For more guidance on COVID-19 related issues contact  
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