



TO: NAW Direct Members

FROM: NAW Government Relations Team

Now that the CARES Act has been signed into law, our focus has turned to implementation of the law and, for our purposes, access to the business-focused provisions. There are four sections of the law that are most relevant: (1) the small business loan and grant programs, (2) Economic Stabilization Act (the “sustainability” fund) to provide access to loans to companies with more than 500 employees, (3) the business tax provisions, and (4) the family medical and sick leave mandates. Related, there is a massive expansion of unemployment insurance that will be significant for those of you who have already had to reduce payroll and lay off some of your associates.

This update is intended to briefly cover each of these areas primarily by providing you with the resources necessary to take advantage of the provisions most useful to your business. There is an excellent analysis of the entire CARES Act prepared by the Nixon Peabody law firm, which you can access here:

https://www.nixonpeabody.com/en/ideas/articles/2020/03/27/stimulus-provides-relief-for-businesses-during-coronavirus-crisis?utm_medium=alert&utm_source=interaction&utm_campaign=cronavirus-stimulus-relief

Taking the issues above in order:

(1): **Paycheck Protection Program** for employers with 500 or fewer employees. This is primarily a loan program for smaller businesses to be administered by the current Small Business Administration lending program with additional lenders to be quickly approved to participate. In general, eligible small businesses may borrow 250% of their average monthly payroll up to a maximum of \$10 million; part of all of the loan may be forgiven if the business meets certain conditions; the loan can be used to cover payroll and most usual operating expenses; an employer may not take out both a PPP loan and an SBA Economic Injury Disaster Loan (EIDL) for the same purpose.

Much more detailed information on the small business provisions can be found in a fact sheet prepared by the Senate Small Business Committee here:

https://www.rubio.senate.gov/public/_cache/files/ac3081f6-14ae-4e6f-9197-172ede28badd/71AB6CB05A08E369E0D488A80B3874A5.faqs---paycheck-protection-program-faqs-for-small-businesses.pdf

The Seyfarth law firm is doing a webinar next week that you can register for at no cost here: <https://www.seyfarth.com/news-insights/webinar-accessing-small-business-stimulus-dollars-under-the-cares-act.html>

And you can apply for loans now on the SBA website:

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

(2): **Economic Stabilization Act (often referred to as the Sustainability Fund)**: This section of the law provides \$500 billion for loans to businesses which are distressed and have not received relief from any other section of the law, including from the SBA program. \$46 billion of the fund is set aside for airlines, air cargo, and business related to national security; the remaining \$454 billion will be used for direct loans and loan guarantees to businesses in other industries. Of particular importance to many of you, the law recognizes the needs of employers with 500-to-10,000 employees, and the Treasury Department is directed to “endeavor to seek the implementation of” a loan program through the Federal Reserve for those companies. There are a number of conditions attached to the loans under these programs, including barring recipient companies from (among other things)

- Stock buy backs or payment of dividends
- Laying off significant numbers of employees
- Increasing most executive salaries
- Off-shoring jobs
- Abrogating collective bargaining agreements
- Violating neutrality in union organizing campaigns

The Nixon Peabody analysis mentioned above has a very good summary of how this loan program will work and all the conditions required of employers who choose to participate in it.

(3): **Business Tax Relief:** The law has several tax provisions designed to increase liquidity and cash flow for businesses, including deferral of tax payments and a temporary net operating loss carryback. The McGuire Woods law firm has prepared a good summary of the tax provisions, which you can find here:

<https://news.mcguirewoods.net/15/1442/march-2020/business-tax-relief-in-the-cares-act.asp?sid=6718ac52-e2d2-459a-8528-68f8cd76ee2c>

(4): **Family/Medical Leave and Sick Leave Mandate:** The first COVID-19 relief bill, the Families First Coronavirus Response Act (FFCRA) imposed family and sick leave mandates on employers with 500 or fewer employees; the CARES Act modified those mandates by putting caps on the amount employers would be required to pay. Notably, the final bill did *not* include the significant expansion of these programs that was included in Speaker Pelosi's bill, but we will almost certainly see a renewed effort to expand the program if/when COVID-19-4 is considered in Congress.

The Department of Labor has been issuing regulations to implement the new leave mandate, and we have provided links to those DoL publications in our previous updates.

Unemployment Insurance: The CARES Act includes a massive expansion of UI, including increased benefits and extending coverage to employees not normally eligible. A good summary of the UI and other employee benefit programs has been prepared by the Akin Gump law firm, which you can access here:

<https://www.akingump.com/en/experience/industries/national-security/covid-19-resource-center/cares-act-summary-employees-unemployment-insurance-and-assistance-to-state-and-local-governments.html>

An additional issue of note: During negotiations on the CARE Act, significant oversight of the Economic Stabilization fund was imposed on the Administration. This oversight included the appointment of an Inspector General to conduct audits of the loan program; the establishment of a Congressional Oversight Committee authorized to hold hearings, take testimony and secure information from Federal agencies involved in the loan program, and reports to Congress every 30 days. The bill also requires the Secretary of the Treasury to publish the details of each transaction on its website within 72 hours of execution.

The Administration resisted much of that oversight during the negotiations, and its acceptance of the "guard rails" remains in question. When the President signed the bill into law, he also issued a "Signing Statement" in which he argued that many of the oversight provisions violate the separation of powers and said that his Administration will not comply with some of those mandatory reporting and disclosure requirements.

While it is unclear to what extent the oversight obligations in the law will be enforced, companies participating in the loan program should be aware of them. They are summarized in the Nixon Peabody analysis linked-to above.

Many thanks—

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