



2020 Coronavirus Pandemic Stimulus Package

Resource Guide

as of April 10, 2020

Disclaimer – This resource guide is for informational purposes only and not for the purpose of providing legal or tax advice.

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SUMMARY INFORMATION

Families First Coronavirus Response Act (FFCRA)

Summary: The Families First Coronavirus Response Act (FFCRA) makes substantial changes to sick and FMLA leave for businesses and employees in 2020.

Date signed into law: March 18, 2020

Date law goes into effect: April 1, 2020

Date law sunsets: December 31, 2020

Key Points of the Act:

- Emergency Family and Medical Leave Expansion Act:
 - Until the end of 2020, employers with fewer than 500 employees will now be required to provide employees with up to 10 weeks of paid FMLA leave. The first two weeks of the normal 12-week FMLA leave may be provided unpaid.
 - If an employee is taking expanded family and medical leave, they may take paid leave under the Emergency Paid Sick Leave Act for the first ten days of that leave period, or they may substitute any accrued vacation leave, personal leave, or medical or sick leave they have under their employer's policy.
 - An employer may supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under a paid leave policy, but only if the employee chooses to use their existing leave.
 - A business is not required to permit an employee to use existing paid leave to supplement the amount their employee receives from paid sick leave or expanded family and medical leave.
 - The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.
 - Available to any employee who has been employed for at least 30 days. *The CARES Act addition - "(ii) RULE REGARDING REHIRED EMPLOYEES.—For purposes of clause (i), the term 'employed for at least 30 calendar days', used with respect to an employee and an employer described in clause (i), includes an employee who was laid off by that employer not earlier than March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff, and was rehired by the employer."*
 - Paid leave begins on the eleventh day of leave and employees are compensated at two-thirds of their regular rate. ~~Paid leave cannot exceed \$200 per day and \$10,000 total for the full 10 weeks.~~ *Updated with the CARES Act - An employer **shall not be required to pay more than \$200 per day and \$10,000 total for the full 10 weeks.***
 - The 12 weeks of emergency FMLA leave available under the FFCRA is not in addition to the standard entitlement under the FMLA for up to 12 weeks of unpaid leave for non-COVID-19 reasons. Accordingly, any unpaid FMLA leave used by an employee during the previous 12 months for non-COVID-19 reasons reduces the period of time the employee is eligible to receive paid FMLA leave under the FFCRA.

- Emergency Paid Sick Leave Act:
 - Until the end of 2020, employers with fewer than 500 employees must offer paid sick leave to those who meet criteria associated with the public health emergency.
 - The new FFCRA paid sick leave is available to any employee if they are unable to work (in-house or remotely) because they are:
 - Subject to federal, state, or local quarantine or isolation related to COVID-19;
 - Have been advised by their doctor to self-quarantine due to COVID-19;
 - Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - Caring for a family member subject to a quarantine order or self-quarantine;
 - Caring for children if schools are closed or their caregiver is unavailable because of the COVID-19 health emergency; or
 - Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services
 - Full-time employees can receive up to 80 hours of paid sick leave, while part-time employees can receive pay based on the number of hours they would work during an average two-week period.
 - ~~In no event shall such paid sick time exceed~~ — Updated with the CARES Act - An **employer shall not be required to pay more than either** -
 - \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and
 - (II) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).
 - Emergency paid sick leave is offered in addition to any existing sick leave and/or paid time off that is already offered by an employer or is required by state or local laws.
 - An employer may supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under a paid leave policy, but only if the employee chooses to use their existing leave.
 - A business is not required to permit an employee to use existing paid leave to supplement the amount their employee receives from paid sick leave or expanded family and medical leave.
 - Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.
 - Posting of the notice is required by April 1, 2020.
 - Required notices, FAQ's, and more can be found at the following websites -
 - [U.S. Department of Labor Adds to Guidance for Workers and Employers Explaining Paid Sick Leave and Expanded Family and Medical Leave Benefits Under the Families First Coronavirus Response Act](#)
 - [COVID-19 and the American Workplace](#)
 - [Families First Coronavirus Response Act Notice – Frequently Asked Questions](#)
 - An employer with fewer than 50 employees can elect to be exempt from the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act providing the required guidelines are all followed.
- Required Documentation for Paid Sick Leave and Expanded Family and Medical Leave:
 - An employer must document the following:
 - The name of the employee requesting leave;
 - The date(s) for which leave is requested;
 - The reason for leave; and

- A statement from the employee that they are unable to work because of one of the allowed reasons.
 - An employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.
- Tax Credits for Paid Sick Leave and Paid FMLA:
 - Private sector employers eligible for reimbursement.
 - Applies to those wages paid for the period from April 1, 2020, to December 31, 2020.
 - Employers receive 100% reimbursement for paid leave pursuant to the Act.
 - Health insurance costs are also included in the credit.
 - Employers face no payroll tax liability.
 - Self-employed individuals receive an equivalent credit.
 - An immediate dollar-for-dollar tax offset against payroll taxes will be provided.
 - To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the IRS in payroll taxes.
 - An employer paying Qualified Leave Wages may seek an advance payment of the related tax credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.
- Emergency Unemployment Insurance Stabilization and Access Act of 2020
 - The FFCRA added a total of \$1 billion in funds for state unemployment programs. An initial grant will be available to all states to help administer unemployment insurance, so long as the state requires employers to provide notification of the availability of unemployment compensation at the time of separation from work.

Coronavirus Aid, Relief, and Economic Security (CARES) Act

Summary: The Coronavirus Aid, Relief, and Economic Security (CARES) Act seeks to provide economic support to the business sector, employees, individuals, and families. Key areas of interest for employers relate to business loans, unemployment benefits, retirement plans, tax credits and executive compensation.

Date signed into law: March 27, 2020

Date law goes into effect: Varies by section

Date law sunsets: Varies by section

Key Points of the Act:

- Changes to the Families First Coronavirus Response Act:
 - The limitation or cap on payments was updated for the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. An employer shall not be required to pay more than the amount stated for each but can pay more if they wish.
 - The CARES Act added clarification on advance refunding of credits and treatment of deposits. It is now clearly stated that businesses can keep money that they would have deposited for payroll taxes in anticipation of refunds from the Treasury Department for paid sick leave and paid FMLA leave as outlined by FFCRA, including amounts that would have been refunded later.
- U.S. Small Business Administration Coronavirus Relief Options Funding Programs
 - In addition to traditional SBA funding programs, the CARES Act expanded on select current offerings and established several new temporary programs to address the COVID-19 outbreak.
 - Paycheck Protection Program - provides loan forgiveness for retaining employees by temporarily expanding the traditional SBA 7(a) loan program.
 - Economic Injury Disaster Loan Emergency Advance - provides up to \$10,000 of economic relief to businesses that are currently experiencing temporary difficulties.
 - Economic Injury Disaster Loan - to cover small business operating expenses after a declared disaster.
 - Express Bridge Loan Pilot Program - Enables small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly.
 - Small Business Debt Relief Program - financial reprieve for small businesses during the COVID-19 pandemic.
- Paycheck Protection Program:
 - Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loan to cover their payroll and other certain expenses through existing SBA lenders.
 - Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
 - The Paycheck Protection Program will be available through June 30, 2020.
 - Loan maturity of 2 years.
 - Interest rate of 1%.
 - Loan recipients will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on the loan during this six-month deferment.

- A business or individual may be eligible if they are:
 - A small business with fewer than 500 employees.
 - The 500-employee threshold includes all employees: full-time, part-time, and any other status.
 - A small business that otherwise meets the SBA's size standard.
 - A 501(c)(3) with fewer than 500 employees.
 - An individual who operates as a sole proprietor.
 - An individual who operates as an independent contractor.
 - An individual who is self-employed who regularly carries on any trade or business.
 - A Tribal business concern that meets the SBA size standard.
 - A 501(c)(19) Veterans Organization that meets the SBA size standard.
- In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll.
- Lenders will also ask the borrower for a good faith certification that:
 - 1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
 - 2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.
- Lenders will not be considering:
 - That the borrower sought and was unable to obtain credit elsewhere.
 - A personal guarantee is not required for the loan.
 - No collateral is required for the loan.
- Maximum loan amounts are equal to the lesser of:
 - The sum of: 2.5 x the average total monthly payments by the applicant for payroll costs incurred during the one-year period prior to the date on which the loan is made.
 - Or \$10,000,000
- Loan proceeds must be used for allowable purposes including:
 - Payroll costs (using the same definition of payroll costs used to determine loan eligibility).
 - Interest on the mortgage obligation incurred in the ordinary course of business.
 - Rent on a leasing agreement.
 - Payments on utilities (electricity, gas, water, transportation, telephone, or internet).
- Loan Forgiveness
 - Loan recipients are eligible for loan forgiveness equal to the amount the borrower spent on eligible items during the eight-week period that begins on the date the lender makes the first disbursement to the borrower.
 - The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.
 - Not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs.
 - The amount of debt forgiven under this program is not to be counted as taxable income.
- Economic Injury Disaster Advance Loan
 - The SBA will provide emergency grants in the amount of \$10,000 to certain businesses with less than 500 employees that were in operation on January 1, 2020 who have applied for an SBA economic injury disaster loan.
 - Funds will be made available within three days of a successful application.
 - This loan advance will not have to be repaid.
 - Applications are accepted at - <https://covid19relief.sba.gov/#/>.

- Economic Injury Disaster Loans (EIDLs)
 - Economic Injury Disaster Loans offer up to \$2 million in assistance.
 - The interest rate is 3.75% for small businesses.
 - The interest rate for non-profits is 2.75%.
 - A recipient can only use EIDLs to cover certain costs. Traditionally, EIDLs are only expressly permitted for:
 - Working capital necessary to carry the business concern until resumption of normal operations.
 - Expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business concern could have provided had the injury not occurred.
 - The CARES Act expands the allowable uses of EIDLs to include:
 - Providing paid sick leave to employees unable to work due to the direct effect of COVID-19.
 - Maintaining payroll to retain employees.
 - Meeting increased costs to obtain materials unavailable from the applicant's original source because of interrupted supply chains.
 - Making rent or mortgage payments.
 - Repaying obligations that cannot be met due to revenue losses.
 - EIDLs can be approved by the SBA based solely on an applicant's credit score.
 - EIDLs that are smaller than \$200,000 can be approved without a personal guarantee.
 - Small businesses can get both an EIDL and a Paycheck Protection Program loan as long as they do not pay for the same expenses.

- The Express Bridge Loan Pilot Program
 - Allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly.
 - If a small business has an urgent need for cash while waiting for decision and disbursement on an Economic Injury Disaster Loan, they may qualify for an SBA Express Disaster Bridge Loan.
 - Will be repaid in full or in part by proceeds from the EIDL loan.
 - EBL loans can only be made up to six months after the date of an applicable Presidential Disaster Declaration.
 - For the COVID-19 Emergency Declaration, EBL loans can be approved through March 13, 2021.

- Debt Relief Program
 - The SBA will automatically pay the principal, interest, and fees of current 7(a), 504, and microloans for a period of six months.
 - The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.
 - For current SBA Serviced Disaster (Home and Business) Loans:
 - If a disaster loan was in "regular servicing" status on March 1, 2020, the SBA is providing automatic deferments through December 31, 2020.
 - Interest will continue to accrue on the loan.
 - Monthly payment notices will continue to be mailed out which will reflect the loan is deferred and no payment is due.
 - After this automatic deferment period, borrowers will be required to resume making regular principal and interest payments.

- Unemployment Insurance Provisions – Enhancement of Benefits and Covered Individuals
 - All states have executed agreements with the U.S. Department of Labor for the Pandemic Unemployment Assistance (PUA) Program as of March 28, 2020. As states begin providing this payment, eligible individuals will receive retroactive payments back to their date of eligibility or the signing of the state agreement, whichever came later.
 - Extends unemployment insurance by 13 weeks and provides a four-month enhancement of benefits.
 - Makes unemployment compensation available for those not traditionally eligible for regular unemployment benefits, including those with limited work history or those who have exhausted their state unemployment compensation benefits.
 - Provides an additional \$600 per week payment to each recipient of unemployment insurance for up to four months (expires on July 31, 2020).
 - The total amount of benefits will be equal to the amount determined under state law, plus an additional amount of \$600 per worker per week.
 - Provides an additional 13 weeks of unemployment benefits to those who remain unemployed after state unemployment benefits are exhausted (expires on December 31, 2020).
 - Provides funding to pay the cost of the first week of unemployment benefits for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits (expires on December 31, 2020).

- Short-time Work/ Workshare Plans
 - A workshare plan looks at the hours of work and provides individuals a pro-rate share of weekly benefits based on the reduction in weekly hours of work.
 - Employers must submit an STC/workshare plan to the state for approval.
 - Under the CARES Act, the employer will pay the state an amount equal to half of the amount of short-time compensation paid under such plan. These payments will be deposited in the state’s unemployment fund but will not be used for purposes of calculating an employer’s contribution rate in the future.

- Employee Retention Credit
 - Eligible employers providing emergency paid and sick leave to their employees affected by COVID-19 are allowed payroll tax credits.
 - This credit is in addition to the payroll tax credit provided under the Families First Coronavirus Response Act (FFCRA).
 - Credit against the employer component of employment tax (Social Security tax and Railroad Retirement tax).
 - Equal to a maximum of 50 percent of qualified wages paid after March 12, 2020, through and including December 31, 2020, for each employee.
 - The total wages attributed to an employee is capped at \$10,000 (including health benefits), resulting in a maximum credit of \$5,000 per employee.

- Delay of Employer Payroll Taxes
 - Allows employers and self-employed individuals to postpone deposits of their share of federal Social Security tax on employees’ wages paid as of the enactment date through and including December 31, 2020.

- The deferral also applies to 50% of the equivalent taxes incurred by self-employed persons.
 - Act allows employers to deposit 50 percent of the deferred taxes on or before December 31, 2021, and the remaining 50 percent by December 31, 2022.
 - Medicare tax or other applicable employment taxes (for example, federal income tax) do not apply.
- Social Security Tax Credit for Employers Subject to Full or Partial Suspension of Business Due to COVID-19
 - Employer tax credit equal to 50 percent of “qualified wages” paid to employees from March 13, 2020 through December 31, 2020.
 - The tax credit applies against the employer portion of Social Security taxes payable on W-2 wages paid to all employees (after first applying the tax credits for payment of required sick leave and required FMLA leave).
 - The tax credit is available to employers who meet either of the following conditions (“eligible employer”).
 - The employer’s operations are either fully or partially suspended by a government order relating to COVID-19.
 - OR
 - The employer’s gross receipts during a calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter during 2019.
 - The total amount of qualified wages that can be counted for an individual employee during the entire COVID-19 period cannot exceed \$10,000.
- Single-Employer Funding Rules
 - Relaxes the requirements by extending the due date for contributions that would otherwise be due in 2020 until January 1, 2021.
 - Any extended contributions are adjusted for accrued interest.
- Tax-Free Employer Payment of Student Loans
 - From March 27, 2020 through December 31, 2020, the CARES Act expands tax code Section 127 to allow employers to reimburse employees up to \$5,250 for most student loan payments, which can be excluded from taxable income.
 - The \$5,250 limit is the amount that employers may currently contribute, tax-free, for tuition assistance under Section 127. Through the end of 2020, it becomes the combined limit for loan repayment assistance or other education-assistance payments employees receive.
 - The law also allows most holders of federal student loans to suspend their monthly payments through September 30, 2020, without any interest accruing.
- Business Tax Changes
 - Businesses that have net operating losses (NOLs) have some limitations relaxed. If a business had an NOL in a tax year beginning in 2018, 2019, or 2020, that NOL can now be carried back five years instead. This may improve cash flow and liquidity for some businesses. Pass-through businesses and sole proprietors will also be able to take advantage of the relaxed NOL limitations. Guidelines were released by the IRS on April 8 and 9, 2020. [Guidance for Net Operating Losses](#)

- Businesses that were due to receive corporate alternative minimum tax (AMT) credits at the end of 2021 can instead claim a refund now, in order to improve cash flow during the COVID-19 emergency.
- Businesses will be able to increase their business interest expense deductions on their tax returns. For 2019 and 2020, the amount of interest expense businesses are allowed to deduct on their tax returns is increased to 50% from 30% of taxable income.
- Businesses, especially in the hospitality industry, may immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.
- Recovery Rebate for Individual Taxpayers
 - Provides a \$1,200 refundable tax credit for individuals and \$2,400 for joint taxpayers. Additionally, taxpayers with children will receive a flat \$500 for each child (defined as a dependent under the age of 17).
 - If an eligible individual's 2020 income is higher than the 2018 or 2019 income used to determine the rebate payment, the eligible individual will not be required to pay back any excess rebate.
 - However, if the eligible individual's 2020 income is lower than the 2018 or 2019 income used to determine the rebate payment such that the individual should have received a larger rebate, the eligible individual will be able to claim an additional credit generally equal to the difference of what was refunded and any additional eligible amount when they file their 2020 income tax return.
 - The rebates will not be counted as taxable income for recipients, as the rebate is a credit against tax liability and is refundable for taxpayers with no tax liability to offset.
 - The CARES Act exempts the rebates from offset to pay debts owed to other federal agencies, state income tax obligations, and unemployment compensation debts.
 - The exception is past due child support payments that states have reported to the U.S. Treasury Department and IRS. Those support payments will be offset.
 - 2018 or 2019 Tax Return Filing Status was/is Single
 - For every \$100 in AGI above \$75,000, the payment reduces by \$5.00, up to a maximum AGI of \$99,000.
 - 2018 or 2019 Tax Return Filing Status was/is Married
 - For every \$100 in AGI above \$150,000, payments will reduce up to a maximum AGI of \$198,000.
 - 2018 or 2019 Tax Return Filing Status was/is Head of Household filing status or single parents with children
 - For every \$100 in AGI above \$112,500, payments will reduce up to a maximum AGI of \$136,500.
 - There is no qualifying or other income requirement for the rebate. Even if the adjusted gross income or income is \$0.00, an individual is eligible for the rebate.
 - If an eligible individual's address has changed and it is different than what is on their latest IRS Tax Return, they need to submit Form 8822 to the IRS.
 - The IRS will send the rebate to the direct bank deposit account entered on your 2019 Tax Return due by July 15, 2020.
 - If no direct bank deposit information was entered, the IRS will mail a check based on the address on the 2019 tax return.
 - On April 10, 2020 the IRS, together with the Department of Treasury, launched the web site where taxpayers can provide information to receive their rebate. [Non-Filers: Enter Payment Info Here](#)

- Checks will be distributed automatically to most people beginning next week (the week of April 12, 2020).
- Taxpayers can check the IRS.gov tool - [Do I Need to File a Tax Return?](#) - to see if they have a filing requirement.
- For security reasons, the IRS plans to mail a letter about the economic impact payment to the taxpayer's last known address within 15 days after the payment is paid. The letter will provide information on how the payment was made and how to report any failure to receive the payment. If a taxpayer is unsure that they are receiving a legitimate letter, the IRS urges taxpayers to visit [IRS.gov](#) first to protect against fraud and scams.

Income Tax Filing Date

- March 21, 2020 federal income tax filing due date is automatically extended from April 15, 2020, to July 15, 2020.
- Taxpayers do not need to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief.
- Taxpayers can defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed.
 - Applies to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate tax filers as well as those who pay self-employment tax.
 - Existing Installment Agreements payments due between April 1 and July 15, 2020 are suspended and the agreement will not default as a result; interest will continue to accrue on any unpaid installment balances.
 - 2019 IRA contribution deadline from April 15, 2020 to July 15, 2020.
- Notice issued on April 9, 2020 expands relief to additional returns, tax payments and other actions. Extensions generally now apply to all taxpayers that have a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020.
 - Individual taxpayers who need additional time to file beyond the July 15 deadline can request an extension to October 15, 2020, by filing Form 4868.
 - Businesses who need additional time file Form 7004.
- Estimated Tax Payments
 - Extends relief to estimated tax payments due June 15, 2020. Any individual or corporation that has a quarterly estimated tax payment due on or after April 1, 2020, and before July 15, 2020, can wait until July 15 to make that payment, without penalty.

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Families First Coronavirus Response Act (FFCRA)

The Families First Coronavirus Response Act (FFCRA) makes substantial changes to sick and FMLA leave for businesses and employees in 2020. The FFCRA was signed by President Trump on March 18, 2020. This new law goes into effect on April 1, 2020, and it will remain in effect until December 31, 2020.

There are four provisions of the law that apply specifically to businesses - Emergency Family and Medical Leave Expansion Act, Emergency Paid Sick Leave Act, Tax Credits for Paid Sick Leave and Paid FMLA, and the Emergency Unemployment Insurance Stabilization and Access Act of 2020.

Paid leave provisions apply only to businesses with fewer than 500 employees. If a business has fewer than 50 employees, they may be able to apply for an exemption from the Secretary of Labor if providing either of the types of paid leave could “jeopardize the viability” of the business, according to the U.S. Department of Labor.

- If providing childcare related paid sick leave and expanded family and medical leave at a business with fewer than 50 employees would jeopardize the viability of the business as a going concern, a business may take advantage of the small business exemption.
 - To elect this small business exemption, a business should document why their business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations. *You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.*

Emergency Family and Medical Leave Expansion Act

The first section of the FFCRA that applies to businesses pertains to an expansion of the U.S. Family and Medical Leave Act (FMLA). Until the end of 2020, employers with fewer than 500 employees will now be required to provide employees with up to 10 weeks of paid FMLA leave. The first two weeks of the normal 12-week FMLA leave may be provided unpaid, but an employee may be able to be paid through the paid sick leave provision or other paid leave the employee has available.

The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes only leave taken because the employee must care for a child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

- If an employee is taking expanded family and medical leave, they may take paid leave under the Emergency Paid Sick Leave Act for the first ten days of that leave period, or they may substitute any accrued vacation leave, personal leave, or medical or sick leave they have under their employer’s policy.
- Paid FMLA will be available to any employee who has been employed for at least 30 days and must care for children whose schools have closed due to the coronavirus health emergency. The eligible employee must not be able work (or work remotely) while caring for children. Was amended to add in rule regarding rehired employees:
 - *The CARES Act addition - “(ii) RULE REGARDING REHIRED EMPLOYEES.—For purposes of clause (i), the term ‘employed for at least 30 calendar days’, used with respect to an employee and an employer described in clause (i), includes an employee who was laid off by that employer not earlier than March 1, 2020, had worked for the employer for*

not less than 30 of the last 60 calendar days prior to the employee's layoff, and was rehired by the employer.”.

- Paid leave begins on the eleventh day of leave and employees are compensated at two-thirds of their regular rate. ~~Paid leave cannot exceed \$200 per day and \$10,000 total for the full 10 weeks.~~ *Updated with the CARES Act* - An employer **shall not be required to pay more than** \$200 per day and \$10,000 in the aggregate for each employee for paid leave under this section.

A part-time employee is entitled to leave for their average number of work hours in a two-week period. Hours of leave are calculated based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, the company may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that the employer and employee agreed that the employee would work upon hire. If there is no such agreement, a business may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of their employment.

The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week. However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

- Please note that pay does not need to include a premium for overtime hours under either the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act.

Other provisions of note include:

- The 12 weeks of emergency FMLA leave available under the FFCRA is not in addition to the standard entitlement under the FMLA for up to 12 weeks of unpaid leave for non-COVID-19 reasons. Accordingly, any unpaid FMLA leave used by an employee during the previous 12 months for non-COVID-19 reasons reduces the period of time the employee is eligible to receive paid FMLA leave under the FFCRA.
- Businesses with fewer than 25 employees are not required to reinstate an employee to their position after they return from leave but all businesses with more than 25 employees must do this.
- Businesses with fewer than 50 employees are exempt from civil actions brought by employees for violations regarding emergency paid FMLA.
- If an employer provides paid sick leave or expanded family and medical leave under the act, employees are not eligible for unemployment insurance.
- An employer may supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under a paid leave policy, but only if the employee chooses to use their existing leave.

- A business is not required to permit an employee to use existing paid leave to supplement the amount their employee receives from paid sick leave or expanded family and medical leave.
- Healthcare and emergency response organizations may exclude employees from paid FMLA expansion due to the coronavirus crisis.
- The Department of Labor (DOL) said it would not bring an enforcement action against employers for any violations of the new leave requirements within the first 30 days the law is in effect, so long as the employer is acting in good faith to comply. Good faith is shown when violations are remedied "as soon as practicable," the violations are not willful and the DOL receives a written commitment from the employer to comply with the FFCRA in the future.

Please also note that all existing certification requirements under the FMLA remain in effect if an employee is taking leave for one of the existing qualifying reasons under the FMLA.

- For example, if they are taking leave beyond the two weeks of emergency paid sick leave because of a medical condition for COVID-19-related reasons that rises to the level of a serious health condition, they must continue to provide medical certifications under the FMLA if required by the employer.
- If an employee takes expanded family and medical leave to care for their child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, an employer may also require an employee to provide any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or childcare provider.

Emergency Paid Sick Leave Act

The second leave provision of the FFCRA that affects businesses is emergency paid sick leave. Until the end of 2020, employers with fewer than 500 employees must offer paid sick leave to those who meet criteria associated with the public health emergency.

The new FFCRA paid sick leave is available to any employee if they are unable to work (in-house or remotely) because they are:

- Subject to federal, state, or local quarantine or isolation related to COVID-19;
- Have been advised by their doctor to self-quarantine due to COVID-19;
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Caring for a family member subject to a quarantine order or self-quarantine;
- Caring for children if schools are closed or their caregiver is unavailable because of the COVID-19 health emergency; or
- Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services

Full-time employees can receive up to 80 hours of paid sick leave, while part-time employees can receive pay based on the number of hours they would work during an average two-week period.

~~In no event shall such paid sick time exceed —~~ *Updated with the CARES Act -* **An employer shall not be required to pay more than either -**

- \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and
- (II) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

Emergency paid sick leave is offered in addition to any existing sick leave and/or paid time off that is already offered by an employer or is required by state or local laws.

Other provisions of note include:

- Employers must provide conspicuous notice in the workplace of the emergency paid sick time requirements and the Department of Labor must provide publicly available models of such notice not later than seven days after the enactment of this division.
 - As of March 26, 2020, the Department of Labor’s Wage and Hours Division has compiled a growing list of compliance assistance materials, including the English and Spanish language versions of a Fact Sheet for Employees, a Fact Sheet for Employers, and two new required posters—one for federal workers and one for all other employees, as well as Questions and Answers about posting requirements, and a Field Assistance Bulletin describing WHD’s 30-day non-enforcement policy.
 - Each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or posting this notice on an employee information internal or external website.
 - Posting of the notice is required **by April 1, 2020**.
- Required notices, FAQ’s, and more can be located at the following websites -
 - [U.S. Department of Labor Adds to Guidance for Workers and Employers Explaining Paid Sick Leave and Expanded Family and Medical Leave Benefits Under the Families First Coronavirus Response Act](#)
 - [COVID-19 and the American Workplace](#)
 - [Families First Coronavirus Response Act Notice – Frequently Asked Questions](#)
- Employers are prohibited from taking adverse actions against employees who take leave under this division or take actions to enforce the requirements of this division.
- Employers who violate the emergency paid sick time requirements are subject to fines and imprisonment pursuant to the Fair Labor Standards Act of 1938.
- Employers subject to multiemployer bargaining agreements may make contributions to a multiemployer fund to fulfill the employer's obligations under this division and employees may secure compensation from such fund for emergency paid sick time used subject to this division.
- This division does not affect employer rights or benefits under any other law, collective bargaining agreement, or existing employer policy. Employers are not required to pay employees for unused emergency paid sick time if an employee resigns, retires, or is terminated.
- Paid sick time under this section may not carry over from one year to the next.
- An employer may supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under a paid leave policy, but only if the employee chooses to use their existing leave.
- A business is not required to permit an employee to use existing paid leave to supplement the amount their employee receives from paid sick leave or expanded family and medical leave.

Required Documentation for Paid Sick Leave and Expanded Family and Medical Leave

Regardless of whether an employer grants or denies a request for paid sick leave or expanded family and medical leave, they must document the following:

- The name of the employee requesting leave;
- The date(s) for which leave is requested;
- The reason for leave; and
- A statement from the employee that they are unable to work because of one of the allowed reasons.
 - If your employee requests leave because they are subject to a quarantine or isolation order or to care for an individual subject to such an order, the employer should additionally document the name of the government entity that issued the order.
 - If the employee requests leave to self-quarantine based on the advice of a health care provider, or to care for an individual who is self-quarantining based on such advice, the employer should additionally document the name of the health care provider who gave the advice.
 - If the employee requests leave to care for their child whose school or place of care is closed, or childcare provider is unavailable, the employer must also document:
 - The name of the child being cared for;
 - The name of the school, place of care, or childcare provider that has closed or become unavailable; and
 - A statement from the employee that no other suitable person is available to care for the child.

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If the employer intends to claim a tax credit under the FFCRA for the payment of the sick leave or expanded family and medical leave wages, the employer shall retain appropriate documentation in your records. An employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

Exemptions to the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act providing:

- (a) paid sick leave due to school or place of care closures or childcare provider unavailability for COVID-19 related reasons and
- (b) expanded family and medical leave due to school or place of care closures or childcare provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern.

A small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- Employer employs fewer than 50 employees;
- Leave is requested because the child’s school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- If an authorized officer of the business has determined that at least one of the three conditions described below is satisfied.
 - The provision of paid sick leave or expanded family and medical leave would result in the small business’s expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
 - The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Tax Credits for Paid Sick Leave and Paid FMLA

Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. The employer tax credits for qualified sick leave wages and qualified family leave wages apply to those wages paid for the period from April 1, 2020, to December 31, 2020.

An employer paying Qualified Leave Wages may seek an advance payment of the related tax credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

- An eligible employer can file the form for an advance payment of the credits anticipated for a quarter at any time before the end of the month following the quarter in which they paid the qualified wages.
- If necessary, an eligible employer can file Form 7200 several times during each quarter.
- Do not file Form 7200 after filing Form 941 for the fourth quarter of 2020, or file Form 943, 944, or CT-1 for 2020.
- Do not file the form to request an advance payment for any anticipated credit for which you already reduced your deposits.
- The IRS expects to begin processing these requests in April 2020.
- To File - Fax the completed Form 7200 to 855-248-0552.

Employers receive 100% reimbursement for paid leave pursuant to the Act.

- Health insurance costs are also included in the credit.
- Employers face no payroll tax liability.
- Self-employed individuals receive an equivalent credit.
- An immediate dollar-for-dollar tax offset against payroll taxes will be provided.
- Where a refund is owed, the IRS will send the refund as quickly as possible.
 - Employers can choose to either make an adjustment or claim a refund. Employers correcting an overpayment must use the corresponding “X” form (for example – Form 941X).

Coronavirus Aid, Relief, and Economic Security (CARES) Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act seeks to provide economic support to the business sector, employees, individuals, and families. Key areas of interest for employers relate to business loans, unemployment benefits, retirement plans, tax credits and executive compensation. The CARES Act was signed by President Trump on March 27, 2020.

Changes to Paid Sick Leave and Paid FMLA Leave From the Families First Coronavirus Response Act

The CARES Act makes small changes to the Families First Coronavirus Response Act (FFCRA) regarding paid sick leave, paid FMLA and more.

These changes include:

Emergency Family and Medical Leave Expansion Act

- The limitation or cap on payments was updated.
 - The CARES Act - An employer **shall not be required to pay more than** \$200 per day and \$10,000 in the aggregate for each employee for paid leave under this section
 - FFCRA - **In no event shall such paid leave exceed** \$200 per day and \$10,000 in the aggregate.
- Was amended to add in rule regarding rehired employees:
 - “(A) ELIGIBLE EMPLOYEE
 - “(i) IN GENERAL.—In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii), the term ‘eligible employee’ means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).
 - **The CARES Act addition** - “(ii) RULE REGARDING REHIRED EMPLOYEES.—For purposes of clause (i), the term ‘employed for at least 30 calendar days’, used with respect to an employee and an employer described in clause (i), includes an employee who was laid off by that employer not earlier than March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff, and was rehired by the employer.”.

Emergency Paid Sick Leave Act

- The limitation or cap on payments was updated.
 - The CARES Act - An **employer shall not be required to pay more than** either—
 - (1) \$511 per day and \$5,110 in the aggregate for each employee, when the employee is taking leave for a reason described in paragraph (1), (2), or (3) of section 5102(a); or
 - (2) \$200 per day and \$2,000 in the aggregate for each employee, when the employee is taking leave for a reason described in paragraph (4), (5), or (6) of section 5102(a).”.
 - FFCRA - That **in no event shall such paid sick time exceed**—
 - (l) \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and

- (II) \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

Advance Refunding of Credits

The CARES Act added clarification on advance refunding of credits and treatment of deposits. It is now clearly stated that businesses can keep money that they would have deposited for payroll taxes in anticipation of refunds from the Treasury Department for paid sick leave and paid FMLA leave as outlined by FFCRA, including amounts that would have been refunded later.

- Payroll Credit for Required Paid Sick Leave
 - by striking “(A) In general. —If the amount” and inserting “(A)(i) Credit is refundable. — If the amount;” and
 - (B) by adding at the end, the following:
 - “(ii) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under clause (i), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under subsection (b), both calculated through the end of the most recent payroll period in the quarter.”;
 - by inserting after subsection (h) the following new subsection:
 - “(i) TREATMENT OF DEPOSITS.—The Secretary of the Treasury (or the Secretary's delegate) shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of the tax imposed by section 3111(a) or 3221(a) of such Code if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.”.
- Payroll Credit for Required Paid Family Leave
 - by striking “If the amount” and inserting “(A) Credit is refundable. —If the amount;” and
 - (B) by adding at the end, the following:
 - “(B) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under subsection (b), both calculated through the end of the most recent payroll period in the quarter.”
 - (c) by inserting after subsection (h) the following new subsection:
 - “(i) TREATMENT OF DEPOSITS.—The Secretary of the Treasury (or the Secretary's delegate) shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of the tax imposed by section 3111(a) or 3221(a) of such Code if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.”.

U.S. Small Business Administration Coronavirus Relief Options Funding Programs

In addition to traditional SBA funding programs, the CARES Act expanded on select current offerings and established several new temporary programs to address the COVID-19 outbreak. These new funding options include:

- Paycheck Protection Program
 - loan program provides loan forgiveness for retaining employees by temporarily expanding the traditional SBA 7(a) loan program.
- Economic Injury Disaster Loan Emergency Advance
 - loan advance will provide up to \$10,000 of economic relief to businesses that are currently experiencing temporary difficulties.
- Economic Injury Disaster Loan
 - loan to cover small business operating expenses after a declared disaster.
- Express Bridge Loan Pilot Program
 - Enables small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly.
- Small Business Debt Relief Program
 - A financial reprieve for small businesses during the COVID-19 pandemic.

Support for preparing applications for these, and other Small Business Administration programs to address COVID 19 related challenges, is provided by some local Small Business Development Centers (SBDC) and/or local SCORE chapters.

The SBA Disaster Assistance Customer Service Center can be reached at 1.800.659.2955 (7 AM to 9 PM - seven days a week) or at disastercustomerservice@sba.gov.

Paycheck Protection Program

This new program sets aside \$350 billion in loans, which are backed by the SBA. A business can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Lenders may be found at - [Find Eligible Lenders](#). Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. In some cases, these loans can be converted to grants, which means that if the requirements are met the borrower will not need to pay the loan back.

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loan to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- The Paycheck Protection Program will be available through June 30, 2020.
- Loan maturity of 2 years.
- Interest rate of 1%.
- Loan recipients will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue on the loan during this six-month deferment.

A business or individual may be eligible if they are:

- A small business with fewer than 500 employees.
 - The 500-employee threshold includes all employees: full-time, part-time, and any other status.
- A small business that otherwise meets the SBA's size standard.
- A 501(c)(3) with fewer than 500 employees.

- An individual who operates as a sole proprietor.
- An individual who operates as an independent contractor.
- An individual who is self-employed who regularly carries on any trade or business.
- A Tribal business concern that meets the SBA size standard.
- A 501(c)(19) Veterans Organization that meets the SBA size standard.

In addition, some special rules may make a business or individual eligible:

- If the borrower is in the accommodation and food services sector (NAICS 72), the 500-employee rule is applied on a per physical location basis.
- If the borrower is operating as a franchise or receive financial assistance from an approved Small Business Investment Company, the normal affiliation rules do not apply.

In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.

Lenders will also ask the borrower for a good faith certification that:

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.
3. The borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here.
4. From February 15, 2020 to December 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between January 31, 2020 and the date this loan program becomes available into a new loan.).

If the borrower is an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.

A business is ineligible for a PPP loan if, for example:

- It is engaged in any activity that is illegal under federal, state, or local law;
- It is a household employer (individuals who employ household employees such as nannies or housekeepers). The Administrator, in consultation with the Secretary of the Treasury (the Secretary), determined that household employers are ineligible because they are not businesses. 13 CFR 120.100;
- An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction;
- or has been convicted of a felony within the last five years; or
- It is, or any business owned or controlled by any owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

Lenders will not be considering:

- That the borrower sought and was unable to obtain credit elsewhere.
- A personal guarantee is not required for the loan.
- No collateral is required for the loan.

Maximum loan amounts are equal to the lesser of:

- The sum of:
 - 2.5 x the average total monthly payments by the applicant for payroll costs incurred during the one-year period prior to the date on which the loan is made plus
 - Any outstanding amount of a loan made during the period beginning on January 31, 2020.
 - Non-Seasonal Employers: Maximum loan = 2.5 x Average total monthly payroll costs incurred during the year prior to the loan date.
 - For businesses not operational in 2019: 2.5 x Average total monthly payroll costs incurred for January and February 2020.
 - Seasonal Employers: Maximum loan = 2.5 x Average total monthly payments for payroll costs for the 12-week period beginning February 15, 2019 or March 1, 2019 (decided by the loan recipient) and ending June 30, 2019.
 - Or \$10,000,000

Calculation of the Maximum Amount

No eligible borrower may receive more than one PPP loan. This means that if an applicant applies for a PPP loan they should consider applying for the maximum amount.

The following methodology, which is one of the methodologies contained in the Act, will be most useful for many applicants.

- Step 1: Aggregate payroll costs (defined in detail below) from the last twelve months for employees whose principal place of residence is the United States.
- Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.
- Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.
- Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

Loan proceeds must be used for allowable purposes including:

- Payroll Costs
 - INCLUDED Payroll Costs:
 - The sum of payments of any compensation with respect to employees that is a:
 - salary, wage, commission, or similar compensation;

- payment of cash tip/s or equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
- payment for vacation, parental, family, medical, or sick leave
- allowance for dismissal or separation
- payment required for the provisions of group health care benefits, including insurance premiums
- payment of any retirement benefit
- payment of state or local tax assessed on the compensation of the employee
 - The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period.
- EXCLUDED Payroll Costs:
 - Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, to June 30, 2020.
 - Payroll taxes, railroad retirement taxes, and income taxes.
 - Any compensation of an employee whose principal place of residence is outside of the United States.
 - Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-127).
 - or
 - Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116-127).
 - Independent contractors do not count for purposes of a borrower's PPP loan calculation as employees, as they have the ability to apply for a PPP loan on their own.
- Costs related to the continuation of group health care benefits during period of paid sick, medical or family leave, and insurance premiums.
- Employee salaries, commissions, or similar compensation.
- Payments of interest on any mortgage obligation.
- Rent
- Utilities
- Interest on any other debt obligations incurred before the covered period.

Other things to note include:

- Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form. Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable.
- It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates.

- For any owners who have more than a 50% ownership interest, obtain a complete listing of other entities in which they also hold more than a 50% ownership interest. This ownership information will assist in evaluation of the impact of affiliate entities.
- The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
 - employer contributions to defined-benefit or defined-contribution retirement plans;
 - payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
 - payment of state and local taxes assessed on compensation of employees.
- In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019.
 - For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.
 - An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.
- Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard.
 - Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).
- The SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider.
 - In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation.
 - Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes.
 - In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.
- Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees.
 - As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax.

- For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.
- Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. Borrowers who previously submitted loan applications that have not yet been processed may revise their applications based on clarifications reflected in newly revised guidance.

Loan Forgiveness

Loan recipients are eligible for loan forgiveness equal to the amount the borrower spent on the following items during the eight-week period that begins on the date the lender makes the first disbursement of the PPP loan to the borrower. (The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.):

- Payroll costs (using the same definition of payroll costs used to determine loan eligibility).
 - Interest on the mortgage obligation incurred in the ordinary course of business.
 - Rent on a leasing agreement.
 - Payments on utilities (electricity, gas, water, transportation, telephone, or internet).
 - An eligible recipient with tipped employees described in section 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)(A)) may receive forgiveness for additional wages paid to those employees.
- Or
- The principal amount of loan.

Not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs.

- While the Act provides that borrowers are eligible for forgiveness in an amount equal to the sum of payroll costs and any payments of mortgage interest, rent, and utilities, the Administrator has determined that the non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll. The Administrator has determined in consultation with the Secretary that 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed.

Reduction Relating to Salary and Wages —

IN GENERAL—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

- (B) EMPLOYEES DESCRIBED —An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.

Under certain circumstances, loan forgiveness will be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of one or more employees of the eligible recipient during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this statute.

- For a reduction in employees, the eligible employer has eliminated the reduction in the number of full-time equivalent employees by June 30, 2020.
- For a reduction in salary or wages, the eligible employer has eliminated the reduction in the salary or wages by June 30, 2020.

To substantiate an application for loan forgiveness, the loan recipient is required to:

- Provide verifying documentation of the number of full-time equivalent employees on payroll and pay rates.
- Certify that documentation is true and accurate, and
- The amount for which forgiveness is requested was used to retain employees or to make mortgage, rent, or utility payments.

Other provisions of note include:

- The act directs the SBA to collect no fees, or reduce the fees, for these loans to the maximum extent possible.
- Interest rates may be no higher than 4%.
- If a covered loan has a remaining balance after reduction based on the loan forgiveness amount under section 1106 of the CARES Act:
- The remaining balance shall continue to be guaranteed by the Administration under this subsection; and
- The covered loan shall have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.
- The amount of debt forgiven under this program is not to be counted as taxable income.

Economic Injury Disaster Advance Loan

The SBA will provide emergency grants in the amount of \$10,000 to certain businesses with less than 500 employees that were in operation on January 1, 2020 who have applied for an SBA economic injury disaster loan.

- This advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue.
- Funds will be made available within three days of a successful application.
- This loan advance will not have to be repaid.

Applications are accepted at - <https://covid19relief.sba.gov/#/>.

The estimated time for completing the entire application is two hours and ten minutes, although an applicant may not need to complete all parts.

Under the CARES Act, an applicant is not required to repay any amounts of an advance provided under the Act even if the applicant is subsequently denied the EIDL grant. If an applicant receives an advance under the CARES Act but is approved for a Paycheck Protection Program loan instead, the advance amount is reduced from the amount of the loan eligible for forgiveness under the Paycheck Protection Program.

Economic Injury Disaster Loans (EIDLs)

The SBA's Economic Injury Disaster Loans offer up to \$2 million in assistance and can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. Once a borrower submits an application, the approval timelines depends on volume. The typical timeline for approval is 2-3 weeks and disbursement can take up to 5 days.

- The interest rate is 3.75% for small businesses.
- The interest rate for non-profits is 2.75%.
- Loans can have long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.

A recipient can only use EIDLs to cover certain costs. Traditionally, EIDLs are only expressly permitted for:

- Working capital necessary to carry the business concern until resumption of normal operations.
- Expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business concern could have provided had the injury not occurred.

The CARES Act expands the allowable uses of EIDLs to include:

- Providing paid sick leave to employees unable to work due to the direct effect of COVID-19.
- Maintaining payroll to retain employees.
- Meeting increased costs to obtain materials unavailable from the applicant's original source because of interrupted supply chains.
- Making rent or mortgage payments.
- Repaying obligations that cannot be met due to revenue losses.

Proceeds of EIDLs may not be used for certain expenses. Recipients cannot use EIDLs to:

- Refinance indebtedness incurred prior to the disaster event.
- Make payments on loans owned by another federal agency (including the SBA) or an SBIC.
- Pay, directly or indirectly, any obligations resulting from a federal, state, or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter.
- Repair physical damage.
- Pay dividends or other disbursements to owners, partners, officers, or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

The changes included in the CARES Act are:

- EIDLs are now also available to Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees. They are also available to all non-profit organizations, including 501(c)(6)s, and to individuals operating as sole proprietors or independent contractors.
- EIDLs can be approved by the SBA based solely on an applicant's credit score.
- EIDLs that are smaller than \$200,000 can be approved without a personal guarantee.

- Borrowers can receive a \$10,000 emergency grant cash advance that can be forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue losses.

Other provisions of note include:

- Small businesses can get both an EIDL and a Paycheck Protection Program loan as long as they do not pay for the same expenses.
- Small business owners in all U.S. states and territories are currently eligible to apply for a low-interest loan due to Coronavirus (COVID-19).
- The following business concerns are excluded:
- Public nonprofit organizations
- Business concerns that appear small but do not meet the requirements due to affiliation rules set out by the SBA
- Unlike the CARES Act waiver of affiliation rules for certain business concerns in the Paycheck Protection Program, there is not a similar waiver of the affiliation rules for EIDLs.
- EIDLs are not eligible for loan forgiveness.
- The CARES Act does not address deferments for EIDLs.

The Express Bridge Loan Pilot Program

The Express Bridge Loan Pilot Program allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly. These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be a term loans or used to bridge the gap while applying for a direct SBA Economic Injury Disaster loan. If a small business has an urgent need for cash while waiting for decision and disbursement on an Economic Injury Disaster Loan, they may qualify for an SBA Express Disaster Bridge Loan.

- Up to \$25,000
- Fast turnaround
- Will be repaid in full or in part by proceeds from the EIDL loan.
- EBL loans can only be made up to six months after the date of an applicable Presidential Disaster Declaration.
- For the COVID-19 Emergency Declaration, EBL loans can be approved through March 13, 2021.

EBL loans can only be made by SBA Express Lenders that had a valid SBA Form 2424, "Supplemental Loan Guaranty Agreement SBA Express Program," in effect as of the date of the applicable disaster. (For the COVID-19 Emergency Declaration, the date of the applicable disaster is March 13, 2020.)

SBA Express Lenders may only make EBL loans to eligible small businesses with which the Lender had an existing banking relationship on or before the date of the applicable disaster.

For EBL loans made under the COVID-19 Emergency Declaration, the Lender must document in the credit memorandum that the EBL applicant had an operating business as of March 13, 2020 and that the applicant has demonstrated that it has been adversely impacted by the COVID-19 emergency.

- The maximum EBL loan term is 7 years.

- For the COVID-19 Emergency Declaration, EBL loan proceeds must be used exclusively to support the survival and/or reopening of the small business and must be disbursed as working capital.
- The interest rate throughout the term of the loan cannot exceed the maximum SBA Express interest rate allowed of Prime + 6.5%.

Small Business Debt Relief Program

A financial reprieve for small businesses during the COVID-19 pandemic.

- The SBA will automatically pay the principal, interest, and fees of current 7(a), 504, and microloans for a period of six months.
- The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.

For current SBA Serviced Disaster (Home and Business) Loans:

- If a disaster loan was in “regular servicing” status on March 1, 2020, the SBA is providing automatic deferments through December 31, 2020.

What does an “automatic deferral” mean to borrowers?

- Interest will continue to accrue on the loan.
- Monthly payment notices will continue to be mailed out which will reflect the loan is deferred and no payment is due.
- The deferment will NOT cancel any established Preauthorized Debit (PAD) or recurring payments on a loan. Borrowers that have established a PAD through Pay.Gov or an OnLine Bill Pay Service are responsible for canceling these recurring payments. Borrowers that had SBA establish a PAD through Pay.gov will have to contact their SBA servicing office to cancel the PAD.
- Borrowers preferring to continue making regular payments during the deferment period may continue remitting payments during the deferment period. SBA will apply those payments normally as if there was no deferment.
- After this automatic deferment period, borrowers will be required to resume making regular principal and interest payments. Borrowers that cancelled recurring payments will need to reestablish the recurring payment.

For questions about a current loan and whether or not it is automatically deferred, please contact the applicable Loan Servicing Office directly.

Unemployment Insurance Provisions – Enhancement of Benefits and Covered Individuals

Title II, Subtitle A of the CARES Act provides an estimated \$260 billion in enhanced and expanded unemployment insurance benefits to millions of workers throughout the country who are unemployed or underemployed because of the COVID-19 pandemic.

The Pandemic Unemployment Act (PUA) program is administered through voluntary agreements between states and the U.S. Department of Labor. The program is available in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of

the Marshall Islands, and the Republic of Palau, provided the state/territory signs an agreement with the Department. As of March 28, 2020, all states have executed agreements with the department. As states begin providing this payment, eligible individuals will receive retroactive payments back to their date of eligibility or the signing of the state agreement, whichever came later.

Under the Act, states may begin making PUA payments after their agreement with the Secretary is signed. Once the agreement is signed, PUA must be paid starting with weeks of unemployment beginning on or after January 27, 2020, if the individual meets the eligibility requirements.

- In states where the week of unemployment ends on Saturday, the first week for which PUA may be paid is the week ending February 8, 2020.
- In states where the week of unemployment ends on Sunday, the first week for which PUA may be paid is the week ending February 9, 2020.
 - Thus, PUA claims may be backdated to February 2, 2020, the first week of the Pandemic Assistance Period (PAP), if the individual otherwise meets the eligibility requirements.

The program also:

- Extends unemployment insurance by 13 weeks and provides a four-month enhancement of benefits.
- Makes unemployment compensation available for those not traditionally eligible for regular unemployment benefits, including those with limited work history or those who have exhausted their state unemployment compensation benefits.
- A “covered individual” eligible for benefits includes anyone who provides self-certification that they are able and available to work, but are unemployed or partially unemployed due to any of the following:
 - Has been diagnosed with COVID-19 or is experiencing symptoms and 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 household member who has been diagnosed with COVID-19.
 - The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility as a direct result of COVID-19.
 - The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19.
 - 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.
 - The individual’s place of employment is closed as a direct result of COVID-19.
 - Individuals are not eligible if they are able to work remotely.
 - Individuals are not eligible if they are receiving paid sick leave or paid family leave under the Act.

- State unemployment insurance providers will determine eligibility. However, states may not restrict the coverage to a more limited group of individuals than provided under federal law (Supremacy Clause). Therefore, all states are required to expand eligibility to those affected by COVID-19 as defined by the Act.
- Provides an additional \$600 per week payment to each recipient of unemployment insurance for up to four months (expires on July 31, 2020).
- The total amount of benefits will be equal to the amount determined under state law, plus an additional amount of \$600 per worker per week.
- Provides an additional 13 weeks of unemployment benefits to those who remain unemployed after state unemployment benefits are exhausted (expires on December 31, 2020).
- All but eight states (Arkansas, Alabama, Florida, Idaho, Kansas, Missouri, North Carolina, and South Carolina) offer 26 weeks of unemployment insurance benefits.
- Receipt of assistance under the unemployment provisions shall not exceed 39 weeks, unless otherwise extended.
- Provides funding to pay the cost of the first week of unemployment benefits for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits (expires on December 31, 2020).
- Nonprofits, government agencies and Indian tribes will be reimbursed for half of the costs they incur related to unemployment.

The Secretary of Labor has the ability to issue operating instructions or other guidance as necessary in order to implement these provisions. The U.S. Department of Labor released the Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions for State Workforce Agencies on April 5, 2020.

Short-time Work/ Workshare Plans

States are also encouraged to expand workshare or short-time compensation (STC) programs. States with work share include: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin. The CARES Act encourages the remaining states to adopt workshare programs as a complement to unemployment programs.

Like the partial benefit provisions of state unemployment laws, short-time compensation or shared work programs allow an individual who is employed for a portion of the week to collect unemployment benefits on top of his or her regular pay. The purpose of the plans are to encourage an employer to avoid layoffs by reducing the number of regularly scheduled hours of work for all, or a group of, individuals during disruptions to regular business activity. Whereas partial benefit formulas look at an individuals' earnings, a workshare plan looks at the hours of work and provides individuals a pro-rata share of weekly benefits based on the reduction in weekly hours of work.

Employers must submit an STC/workshare plan to the state for approval.

- The employer's plan must be consistent with employer's obligations under applicable federal and state laws.

- Further, the affected employees' workweeks must have been reduced by at least 10 percent, and by not more than the percentage, if any, that is determined by the state to be appropriate, but in no case more than 60 percent.
- Moreover, the STC/workshare plan must provide that employers will maintain health benefits and retirement benefits for affected employees, despite the reduced hours.

Under the CARES Act, the employer will pay the state an amount equal to half of the amount of short-time compensation paid under such plan. These payments will be deposited in the state's unemployment fund but will not be used for purposes of calculating an employer's contribution rate in the future.

Employee Retention Credit

Section 2301 of the CARES Act provides an employee retention credit for employers that are impacted due to the COVID-19 pandemic. It is pertinent to note that this credit is in addition to the payroll tax credit provided under the Families First Coronavirus Response Act (FFCRA).

Under the CARES Act, eligible employers, including tax-exempt organizations, are allowed a refundable credit against the employer component of employment tax (Social Security tax and Railroad Retirement tax) equal to a maximum of 50 percent of qualified wages paid after March 12, 2020, and before January 1, 2021, for each employee. The total wages attributed to an employee is capped at \$10,000 (including health benefits), resulting in a maximum credit of \$5,000 per employee.

Eligible employers include any employer carrying on a trade or business during the 2020 tax-year whose business operations are fully or partially suspended due to orders from a governmental authority limiting commerce, travel, or group meetings due to the COVID-19 pandemic. Tax-exempt organizations are deemed to meet this eligibility condition.

Additionally, employers with gross receipts that are less than 50 percent of their gross receipts for the same quarter in the prior year are also eligible to claim the employment tax credit, until their gross receipts exceed 80 percent of their gross receipts for the same calendar quarter in the prior year.

Further, for eligible employers with 100 or fewer full-time employees, all employees' wages up to \$10,000 for each employee are eligible for credit. For employers with more than 100 full-time employees, qualified wages are limited to wages paid to employees who are unable to provide services due to the COVID-19 pandemic.

The employee retention provision provides special rules that prohibit an employer from obtaining both the retention credit under the CARES Act and either a "Work Opportunity Tax Credit" under Internal Revenue Code (IRC) Section 51 or an "Employer Credit for Paid Family and Medical Leave" under IRC Section 45S. Essentially, this precludes an employer from receiving a double benefit.

An employer paying Qualified Retention Wages may seek an advance payment of the related tax credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

- An eligible employer can file the form for an advance payment of the credits anticipated for a quarter at any time before the end of the month following the quarter in which they paid the qualified wages.

- If necessary, an eligible employer can file Form 7200 several times during each quarter.
- Do not file Form 7200 after filing Form 941 for the fourth quarter of 2020, or file Form 943, 944, or CT-1 for 2020.
- Do not file the form to request an advance payment for any anticipated credit for which you already reduced your deposits.
- The IRS expects to begin processing these requests in April 2020.
- To File - Fax the completed Form 7200 to 855-248-0552.

Delay of Employer Payroll Taxes

Section 2302 of the CARES Act allows employers and self-employed individuals to postpone deposits of their share of federal Social Security tax on employees' wages paid as of the enactment date through and including December 31, 2020.

Employers are generally responsible for paying a 6.2 percent Social Security tax on employees' wages. The CARES Act allows employers to deposit 50 percent of the deferred taxes on or before December 31, 2021, and the remaining 50 percent by December 31, 2022. The deferral also applies to 50% of the equivalent taxes incurred by self-employed persons.

Employers utilizing either payroll agent arrangements under IRC Section 3504 or certified professional employer organizations arrangements under IRC Section 3511 will ultimately be liable for the taxes if such taxes were delayed at the request of the employer.

If taxpayers received loans under the Small Business Act and such loans were forgiven under the Paycheck Protection Program of the CARES Act, then such taxpayers are not eligible for this relief.

Note that relief from Medicare tax or other applicable employment taxes (for example, federal income tax) does not apply to either the Employee Retention Credit or the Delay of Employer Payroll Taxes.

Special Business Provisions

Social Security Tax Credit for Employers Subject to Full or Partial Suspension of Business Due to COVID-19 (Section 2301)

- Employer tax credit equal to 50 percent of "qualified wages" paid to employees from March 13, 2020 through December 31, 2020.
- The tax credit applies against the employer portion of Social Security taxes payable on W-2 wages paid to all employees (after first applying the tax credits for payment of required sick leave and required FMLA leave).
- The tax credit is available to employers who meet either of the following conditions ("eligible employer").
 - The employer's operations are either fully or partially suspended by a government order relating to COVID-19.
 - OR
 - The employer's gross receipts during a calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter during 2019.

- The tax credit is based on the qualified wages paid by an eligible employer during the calendar quarter.
 - More than 100 average number of full-time employees during 2019 – qualified wages includes ONLY wages that continue to be paid to employees who are NOT providing services due to a COVID-19 suspension of business operations or the greater than 50 percent reduction in gross receipts.
 - 100 or less average number of full-time employees during 2019 – qualified wages include ALL wages paid to employees regardless of whether or not the employee is providing services.
 - In all cases, the total amount of qualified wages that can be counted for an individual employee during the entire COVID-19 period cannot exceed \$10,000.
 - Wages refers to W-2 wages used to determine FICA (Social Security and Medicare) taxes BUT NOT counting FFCRA required sick leave payments and FFCRA required FMLA leave payments.

Delayed Payment of Employer Social Security Taxes (Section 2302)

- ALL employers – whether or not affected by COVID-19 - are permitted to delay payment of 2020 employer Social Security taxes.
 - 50 percent of the deferred 2020 employer Social Security tax is payable by 12/31/2021.
 - The remaining 50 percent of the deferred tax is payable by 12/31/2022.

DOL Authority to Relax Filing Deadlines (Section 3607)

- Section 518 of ERISA authorizes the DOL to extend certain filing deadlines under certain circumstances.
- The CARES Act extends this authority to include public health emergencies such as the COVID-19 pandemic.

Single-Employer Funding Rules (Section 3608)

- Single-employer defined benefit plans must generally satisfy minimum funding rules by making certain minimum required contributions.
- The CARES Act relaxes these requirements by extending the due date for contributions that would otherwise be due in 2020 until January 1, 2021.
- Any extended contributions are adjusted for accrued interest.
- For purposes of applying the benefit restrictions imposed by Section 436 of the Code, a plan may use the adjusted funding target attainment percentage (AFTAP) for the last plan year ending before January 1, 2020.

Tax-Free Employer Payment of Student Loans (Section 2206)

- From March 27, 2020 through December 31, 2020, the CARES Act expands tax code Section 127 to allow employers to reimburse employees up to \$5,250 for most student loan payments, which can be excluded from taxable income.
 - The \$5,250 limit is the amount that employers may currently contribute, tax-free, for tuition assistance under Section 127. Through the end of 2020, it becomes the combined limit for loan repayment assistance or other education-assistance payments employees receive.

- The payments must be for a student loan incurred for the education of the employee (i.e., they cannot be for an employee's child's or spouse's student loans).
- The rules for education-assistance programs under Section 127 will apply. For instance, an employer must adopt a written plan describing the benefit and communicate the terms of the program to eligible employees, and the program cannot favor highly compensated employees.
- The law also allows most holders of federal student loans to suspend their monthly payments through September 30, 2020, without any interest accruing.

Executive Compensation Limitations (Section 4004)

If a company accepts certain emergency direct lending relief under the CARES Act, the company must agree to certain limitations on the compensation (including salary, bonuses, equity, and other financial benefits) paid to its officers and employees that remain in effect until one year after the loan or loan guarantee ceases.

These limitations are as follows:

- No officer or employee whose total compensation in 2019 exceeded \$425,000 (excluding certain collectively bargained employees)
 - May receive compensation during any 12-month period greater than the amount received in 2019
 - or
 - May receive severance pay or benefits upon termination which exceed two times the maximum total compensation received in 2019.

Additionally, no officer or employee whose total compensation in 2019 exceeded \$3,000,000 may receive compensation during any 12-month period greater than \$2,000,000 plus 50 percent of the amount greater than \$3,000,000 received in 2019.

Business Tax Changes

The CARES Act makes select changes to taxes and tax policies in order to ease the burden on businesses impacted by COVID-19.

These changes include:

- Businesses that were due to receive corporate alternative minimum tax (AMT) credits at the end of 2021 can instead claim a refund now, in order to improve cash flow during the COVID-19 emergency.
- Businesses will be able to increase their business interest expense deductions on their tax returns. For 2019 and 2020, the amount of interest expense businesses are allowed to deduct on their tax returns is increased to 50% from 30% of taxable income.
- Businesses, especially in the hospitality industry, may immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.
- The government will make a temporary exception from the excise tax normally applied to alcohol, if that alcohol was used to produce hand sanitizer in 2020.

Tax Relief Under the CARES Act for Taxpayers with Net Operating Losses

Businesses that have net operating losses (NOLs) have some limitations relaxed. If a business had an NOL in a tax year beginning in 2018, 2019, or 2020, that NOL can now be carried back five years instead. This may improve cash flow and liquidity for some businesses. Pass-through businesses and sole proprietors will also be able to take advantage of the relaxed NOL limitations.

On April 8 and 9, 2020 the Internal Revenue Service issued guidance providing tax relief under the CARES Act for taxpayers and partnerships with NOLs.

Taxpayers with net operating losses that are carried back under the CARES Act now have procedures for:

- waiving the carryback period in the case of a net operating loss arising in a taxable year beginning after Dec. 31, 2017, and before Jan. 1, 2021,
- disregarding certain amounts of foreign income subject to transition tax that would normally have been included as income during the five-year carryback period, and
- waiving a carryback period, reducing a carryback period, or revoking an election to waive a carryback period for a taxable year that began before Jan. 1, 2018, and ended after Dec. 31, 2017.

Additionally:

- The IRS granted a six-month extension of time to file Form 1045 or Form 1139, as applicable, with respect to the carryback of a net operating loss that arose in any taxable year that began during calendar year 2018 and that ended on or before June 30, 2019. Individuals, trusts, and estates would file Form 1045 (PDF), and corporations would file Form 1139 (PDF).
- Eligible partnerships are now allowed to file amended partnership returns using a Form 1065, U.S. Return of Partnership Income, by checking the “Amended Return” box and issuing amended Schedules K-1, Partner’s Share of Income, Deductions, Credits, to each of its partners. Partnerships filing these amended returns should write “FILED PURSUANT TO REV PROC 2020-23” at the top of the amended return.

Recovery Rebates

The CARES Act includes a Recovery Rebate for individual taxpayers. The Act will provide a \$1,200 refundable tax credit for individuals and \$2,400 for joint taxpayers. Additionally, taxpayers with children will receive a flat \$500 for each child (defined as a dependent under the age of 17). There is no qualifying or other income requirement for the rebate. Even if the adjusted gross income or income is \$0.00, an individual is eligible for the rebate.

The refund is determined based on the taxpayer’s 2020 income tax return but is advanced to taxpayers. The IRS will use the taxpayer’s 2019 tax return, if filed, or in the alternative, their 2018 return to calculate an individual’s Recovery Rebate.

If an eligible individual’s 2020 income is higher than the 2018 or 2019 income used to determine the rebate payment, the eligible individual will not be required to pay back any excess rebate. However, if the eligible individual’s 2020 income is lower than the 2018 or 2019 income used to determine the rebate payment such that the individual should have received a larger rebate, the eligible individual will

be able to claim an additional credit generally equal to the difference of what was refunded and any additional eligible amount when they file their 2020 income tax return.

- The rebates will not be counted as taxable income for recipients, as the rebate is a credit against tax liability and is refundable for taxpayers with no tax liability to offset.
- The CARES Act exempts the rebates from offset to pay debts owed to other federal agencies, state income tax obligations, and unemployment compensation debts.
 - The exception is past due child support payments that states have reported to the U.S. Treasury Department and IRS. Those support payments will be offset.
- If your 2018 or 2019 Tax Return Filing Status was/is Single and your AGI or Adjusted Gross Income was below \$75,000, your Recovery Rebate will be \$1,200.
 - For every \$100 in AGI above \$75,000, the payment reduces by \$5.00, up to a maximum AGI of \$99,000.
- Married couples with an AGI below \$150,000 would receive \$2,400.
 - After that, payments will reduce up to a maximum AGI of \$198,000.
 - Married couples will also receive \$500 per child under age 17.
- The Head of Household filing status or single parents with children with an AGI below \$112,500 Recovery Rebate will be \$1,200.
 - After that, payments will reduce up to a maximum AGI of \$136,500.
 - Head of Household will receive \$500 per child under age 17.
- Eligible individuals do not include:
 - nonresident aliens,
 - individuals who may be claimed as a dependent on another person's return. For example, this would include a child, student or older dependent who can be claimed on a parent's return.
 - estates, or trusts.
- Eligible individuals and qualifying children must all have a valid social security number.
- For married taxpayers who filed jointly with their most recent tax filings (2018 or 2019) but will file separately in 2020, each spouse will be deemed to have received one half of the credit.
- A qualifying child is:
 - a child,
 - stepchild,
 - eligible foster child,
 - brother,
 - sister,
 - stepbrother,
 - stepsister,
 - or a descendent of any of them,
 - under the age of 17,
 - one who has not provided more than half of their own support, and
 - one who has lived with the taxpayer for more than half of the year, and

- one who has not filed a joint return (other than only for a claim for refund) with the individual's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

Other items to note include:

- On April 10, 2020 the IRS, together with the Department of Treasury, launched the web site [Non-Filers: Enter Payment Info Here](#). This site is for:
 - A person who did not file a 2018 or 2019 return because they were under the normal income limits for filing a tax return. This may include single filers who made under \$12,200 and married couples making less than \$24,400 in 2019.
 - A person who receives veterans' disability compensation, pension, or survivor benefits from the Department of Veterans Affairs, who did not file a tax return for the 2018 or 2019 tax years. The IRS has not extended automatic direct deposit to those in this category as of yet. but they are working on it. In the meantime, the IRS says you can use the tool now or wait.
 - A person who is a Social Security, SSDI, and Railroad Retirement beneficiary with qualifying dependents. They will automatically receive their \$1,200 Economic Impact Payment, but if they have qualifying children under age 17, they can use the tool to claim the \$500 payment per child.
- To register on the [Non-Filers: Enter Payment Info Here](#) site, one will need to have -
 - Full name, current mailing address and an email address
 - Date of birth and valid Social Security number
 - Bank account number, type and routing number, if they have one
 - Identity Protection Personal Identification Number (IP PIN) received from the IRS earlier this year, if they have one
 - Driver's license or state-issued ID, if they have one
 - For each qualifying child: name, Social Security number or Adoption Taxpayer Identification Number and their relationship to the person or their spouse
 - They will then receive an e-mail from Customer Service at Free File Fillable Forms that either acknowledges that they have successfully submitted their information, or that tells them that there is a problem and how to correct it. Free File Fillable forms will use the information to automatically complete a Form 1040 and transmit it to the IRS to compute and send out a payment.
- If an eligible individual's address has changed and it is different than what is on their latest IRS Tax Return, they need to submit Form 8822 to the IRS.
- Receiving the Recovery Rebate from the IRS:
 - 1. The IRS will send the rebate to the direct bank deposit account entered on your 2019 Tax Return due by July 15, 2020.
 - 2. If no direct bank deposit information was entered, the IRS will mail a check based on the address on the 2019 tax return.
 - 3. Guidance is being sought in the case an eligible individual had selected to pay their tax preparation fees via their tax refund, e.g. e-Collect etc., and as a result of that, their tax return would show the banks direct deposit information and not their own. Currently, the IRS and banks are in communication to figure out the details regarding these rebates.
 - 4. If a 2019 tax return is not yet filed, the IRS will look at the information on the 2018 tax return and either transfer to an individual's bank account or mail a check to the address on that return.

- Checks will be distributed automatically to most people beginning next week (the week of April 12, 2020).
- Social Security income recipients and veterans are eligible to receive the rebate as long as their total income does not exceed the limit as stated. If an individual had only Social Security income, they do not need to file a tax return as long as they received the Social Security benefit statement via Form SSA-1099.
 - The Social Security administration will send the rebate via the usual way an individual receives their current Social Security payment.
 - Both retirees and people on disability are also eligible for the rebate.
- The IRS is also building an additional tool expected to be available by April 17. The new tool, Get My Payment, will provide payment updates, including the date the payment is scheduled to be deposited into a person's bank account or mailed.
 - Get My Payment will also allow one to provide their bank account information so that they can receive their payment more quickly instead of waiting for a paper check. Unfortunately, this feature will be unavailable if the Economic Impact Payment has already been scheduled for delivery.
- For security reasons, the IRS plans to mail a letter about the economic impact payment to the taxpayer's last known address within 15 days after the payment is paid. The letter will provide information on how the payment was made and how to report any failure to receive the payment. If a taxpayer is unsure that they are receiving a legitimate letter, the IRS urges taxpayers to visit [IRS.gov](https://www.irs.gov) first to protect against fraud and scams.

Charitable Contributions

Above-the-line deductions:

- Under the CARES Act, an eligible individual may take a qualified charitable contribution deduction of up to \$300 against their AGI (Adjusted Gross Income) in 2020.
 - An eligible individual is any individual taxpayer who does not elect to itemize his or her deductions. A qualified charitable contribution is a charitable contribution (i) made in cash, (ii) for which a charitable contribution deduction is otherwise allowed, and (iii) that is made to certain publicly supported charities.
 - This above-the-line charitable deduction may not be used to make contributions to a non-operating private foundation or to a donor advised fund.

Modification of limitations on cash contributions:

- Currently, individuals who make cash contributions to publicly supported charities are permitted a charitable contribution deduction of up to 60% of their AGI. Any such contributions in excess of the 60% AGI limitation may be carried forward as a charitable contribution in each of the five succeeding years.
- The CARES Act temporarily suspends the AGI limitation for qualifying cash contributions, instead permitting individual taxpayers to take a charitable contribution deduction for qualifying cash contributions made in 2020 to the extent such contributions do not exceed the excess of the individual's contribution base over the amount of all other charitable contributions allowed as a deduction for the contribution year. Any excess is carried forward as a charitable contribution in each of the succeeding five years. Taxpayers wishing to take advantage of this provision must make an affirmative election on their 2020 income tax return.

- This provision is useful to taxpayers who elect to itemize their deductions in 2020 and make cash contributions to certain public charities.
- As with the aforementioned above-the-line deduction, contributions to non-operating private foundations or donor advised funds are not eligible.

For corporations:

- The CARES Act temporarily increases the limitation on the deductibility of cash charitable contributions during 2020 from 10% to 25% of the taxpayer's taxable income. The CARES Act also increases the limitation on deductions for contributions of food inventory from 15% to 25%.

Group Health Plans

Expanded use of HSAs:

- The CARES Act allows high-deductible health plans paired with health savings accounts (HSAs) to cover telehealth services before a patient has met the plan deductible. Normal cost-sharing can still be imposed for telehealth visits, such as through co-pays that the plan may require after the deductible is paid. This provision is temporary and will sunset December 31, 2020, unless Congress extends it or makes it permanent.
- The law also lets account holders use their HSAs, health reimbursement arrangements (HRAs) or flexible spending accounts (FSAs) to buy over-the-counter medical products, such as drugs and surgical masks, without a prescription. Further, it allows HSAs, HRAs and FSAs to pay for certain menstrual care products, such as tampons and pads, as eligible medical expenses.
 - These are permanent changes and apply retroactively to purchases beginning January 1, 2020.

Retirement Plans

Coronavirus-related 401(k) distributions:

- Through the end of 2020, the CARES Act allows a new type of hardship withdrawal for participants in 401(k)-type defined contribution plans or individual retirement accounts (IRAs) who are affected by COVID-19. The new coronavirus-related distribution (CRD) is not subject to the 10 percent early-distribution penalty and may be repaid over three years. Distributions may not exceed \$100,000 per eligible participant.
 - Income taxes will still be owed on withdrawn amounts, but the law also lets individuals pay tax on the CRD income over a three-year period. Those repayments would not be subject to annual retirement plan contribution limits.

Waiving of the 10 percent penalty applies retroactively to withdrawals beginning January 1, 2020, for account holders if:

- They have received a diagnosis of COVID-19.
- A spouse or dependent has received a diagnosis of COVID-19.
- They experience, due to COVID-19, adverse financial consequences as a result of being quarantined, furloughed or laid off; having work hours reduced; or being unable to work due to lack of childcare, or other factors as determined by the Treasury secretary.

Loans from 401(k) plans:

- Through December 31, 2020, the CARES Act doubles the current retirement plan loan limits to the lesser of \$100,000 or 100 percent of the participant's vested account balance for the next six months. Generally, loans are limited to the lesser of \$50,000 or 50 percent of the participant's vested balance and must be paid back within five years.
- Individuals with an outstanding loan from their plan with a repayment due between March 27, 2020, and December 31, 2020, can delay their loan repayments for up to one year.

Plan amendments for withdrawals and loans:

- Distributions, waiving of the 10 percent penalty, and loans from 401(k) plans are available now, even without the need to immediately adopt authorizing plan amendments. Even plans that do not currently authorize participant loans or in-service distributions will be able to use these provisions.
- The deadline to adopt the amendments for withdrawals and loans is extended to December 31, 2022 (or, for non-calendar year plans, the end of the plan year that starts in 2022).

Minimum distributions suspended

- For retirees, the law suspends, in 2020, the required minimum distributions (RMDs) that account holders must take from tax-deferred 401(k)s and IRAs starting at either age 70 1/2 or 72 (for those who turned 70 on July 1, 2019, or later). This provision provides relief to those who would otherwise be required to withdraw funds from their retirement accounts during the stock market decline linked to COVID-19.
- Unlike other retirement plan provisions in the CARES Act, the 2020 RMD suspension is not limited to participants affected by the coronavirus.

Other Benefit Changes

Among other employee benefit provisions, the CARES Act also stipulates the following:

- An employee who was laid off by an employer on or after March 1, 2020, can have access to paid family and medical leave in certain instances if rehired by the employer. The employee would have had to have worked for the employer at least 30 days prior to being laid off. This is in addition to paid-leave benefits required under the Families First Coronavirus Response Act.
- Section 518 of the Employee Retirement Income Security Act (ERISA) will be amended to let the Department of Labor postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- Single employer defined benefit pension plan sponsors can have more time to meet their funding obligations by delaying any contribution otherwise due during 2020 until January 1, 2021. At that time, delayed contributions will be due with interest.
- Federal contractors that, due to COVID-19, can't perform work at their duty station nor telework because of the nature of their jobs will continue to get paid.

Income Tax Filing Date

The Treasury Department and Internal Revenue Service announced March 21, 2020 that the federal income tax filing due date is automatically extended from April 15, 2020, to July 15, 2020. Taxpayers do

not need to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief.

Taxpayers can also defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed. This deferment applies to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate tax filers as well as those who pay self-employment tax.

Other items to note include:

- Existing Installment Agreements
 - payments due between April 1 and July 15, 2020 are suspended and the agreement will not default as a result; interest will continue to accrue on any unpaid installment balances.
- 2019 IRA contribution deadline from April 15, 2020 to July 15, 2020.
- 2019 HSA or Archer MSA contribution deadline change from April 15, 2020 to July 15, 2020.
- Earned Income Tax Credit - EITC - and Wage Verification Reviews Deadline
 - In order to receive the EITC Credit, taxpayers have until July 15, 2020, to verify that they qualify for the Earned Income Tax Credit or to verify their income. If not completed by July 15, 2020, taxpayers might no longer qualify for the EITC.

A new notice was issued on April 9, 2020 that expands this relief to additional returns, tax payments and other actions. As a result, the extensions generally now apply to all taxpayers that have a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020. Individuals, trusts, estates, corporations and other non-corporate tax filers qualify for the extra time. This means that anyone, including Americans who live and work abroad, can now wait until July 15 to file their 2019 federal income tax return and pay any tax due.

Extension of Time to File Beyond July 15

- Individual taxpayers who need additional time to file beyond the July 15 deadline can request an extension to October 15, 2020, by filing Form 4868 through their tax professional, tax software or using the Free File link on IRS.gov. Businesses who need additional time must file Form 7004. An extension to file is not an extension to pay any taxes owed. Taxpayers requesting additional time to file should estimate their tax liability and pay any taxes owed by the July 15, 2020, deadline to avoid additional interest and penalties.

Estimated Tax Payments

- Besides the April 15 estimated tax payment previously extended, today's notice also extends relief to estimated tax payments due June 15, 2020. This means that any individual or corporation that has a quarterly estimated tax payment due on or after April 1, 2020, and before July 15, 2020, can wait until July 15 to make that payment, without penalty.

2016 Unclaimed Refunds – Deadline Extended to July 15

- For 2016 tax returns, the normal April 15 deadline to claim a refund has also been extended to July 15, 2020. The law provides a three-year window of opportunity to claim a refund. If taxpayers do not file a return within three years, the money becomes property of the U.S. Treasury. The law requires taxpayers to properly address, mail and ensure the tax return is postmarked by the July 15, 2020, date.

State Specific Resources

- [AICPA - Coronavirus Resource Center](#)
 - AICPA State Tax Filing Relief Chart for Coronavirus (PDF) updated 04/08/2020
- [Bench - COVID-19 Financial Resources for Small Businesses, State by State](#) as of March 30, 2020
- [CareerOneStop - Unemployment Benefits by State](#) undated - accessed 03/31/2020
- [Gusto - COVID-19 Unemployment Benefits for Every State in the U.S.](#) as of 04/02/2020
- [Step toe - Coronavirus \(COVID-19\) Resource Center](#)
 - State Regulatory Responses to COVID-19 (PDF) updated 04/09/2020

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