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COVID-19 Client Alert – Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020 in response to the novel coronavirus (COVID-19). This unprecedented $2 trillion stimulus bill provides aid and financial relief to businesses, individuals, and state and local governments. While this is not a comprehensive review of the relief bill, below is a summary of the key programs and relief efforts provided in the CARES Act.

Programs Benefitting Small Businesses

Small Business Loans

The CARES Act provides $349 billion for the Payroll Protection Program to aid small businesses in making payroll and paying other expenses while economic conditions are strained. Businesses that are eligible for these loans are for-profit businesses and certain nonprofit organizations with 500 or fewer employees that were operational before February 15, 2020. There are some exceptions for larger businesses where the Small Business Administration (SBA) has expanded size standards applicable to specific industries and for businesses in the hospitality industry where the 500-employee limit is per location.

Businesses can borrow up to 2.5 times their average payroll costs, not to exceed $10 million. These loans can be used for payroll expenses (including costs related to continuation of group healthcare benefits including paid sick and family leave and payment of health insurance premiums), rent, utilities, mortgage interest, interest on any other debt obligations incurred before February 15, 2020.

The portion of the loans used for payroll expenses, mortgage interest, rent and utilities in the eight-week period following the loan will be eligible for forgiveness under Section 1106 of the CARES Act (such mortgage or lease must have been entered into before February 15, 2020; utility services must have begun before the same date). Forgiveness is not automatic—the borrower must apply to the lender for loan forgiveness with documentation supporting those expenses.

Forgiveness may be limited in circumstances where an employer has reduced the number of full-time employees in comparison to the number of full-time employees previously employed or where an employer has reduced the wages or salary of its employees making less than $100,000. If the employer reverses these reductions prior to June 30, 2020, the reduction to forgiveness can be avoided.

Loan amounts that are not forgiven will be subject to interest capped at 4% and are non-recourse to the borrower, meaning that no collateral or personal guarantees are required.

If a business previously applied for an SBA loan under the Disaster Loan Program, the Paycheck Protection Program loan can also include the outstanding amount of the Disaster Loan Program loan if it is refinanced as part of the Paycheck Protection Program.

A loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit made available under the CARES Act (discussed below). This only applies to the Employee Retention Tax Credit in the CARES Act and does not apply to any credits available under the Families First Coronavirus Response Act (FFCRA) (such as the paid sick leave tax credit) or other credits available under the CARES Act.

EMPLOYEE RETENTION TAX CREDIT

This portion of the CARES Act will provide refundable tax credits against Social Security or Railroad Retirement Tax Act taxes for businesses whose operations were partially or completely suspended due to government-mandated closures or whose gross receipts decreased by 50% or more from the corresponding quarter in 2019. The credit, applicable for all wages paid between March 12, 2020, and before January 1, 2021, is calculated quarterly and equals 50% of qualified wages up to $10,000 paid to each employee. For employers with fewer than 100 employees, all wages paid qualify for the credit. For employers with more than 100 employees, the credit applies to wages paid to employees who are retained but not currently working as a result of COVID-19.

This credit is not available if the applicant receives a loan under the SBA program pursuant to section 7(a) of the Small Business Act, including the Payroll Protection Program.

DEFERRAL OF SOCIAL SECURITY TAXES

Beginning on the date of passage, March 27, 2020, employers and self-employed individuals are able to defer payment of the 6.2% employer-paid portion of the social security payroll tax on all wages paid through December 31, 2020. These taxes will eventually be due and payable in two installments: half of the deferred taxes will be due December 31, 2021 with the remaining half due December 31, 2022.

Employers who receive SBA Payroll Protection Plan loans that are forgiven under the CARES Act are not eligible for this payroll tax deferral.

ECONOMIC INJURY DISASTER LOAN (EIDL)

Employers who apply for an EIDL loan provided for in the FFCRA may receive an advance of up to $10,000 on their loan to maintain payroll and provide sick leave. This advance is not required to be repaid, even if the recipient is ultimately denied the EIDL loan. Borrowers with existing EIDL loans *unrelated to COVID-19* may also apply for a Payroll Protection Program loan, although any advance on the EIDL loan would reduce the amount forgiven under the

Payroll Protection loan. Additionally, the CARES Act provides an option to refinance the EIDL loan into the Payroll Protection Program loan.

PROGRAMS BENEFITTING INDIVIDUALS

DIRECT PAYMENTS

Most Americans will receive a one-time direct payment of $1,200, which is structured as an advance credit to the recipient's 2020 taxes. The payments are based on the recipient's Adjusted Gross Income (AGI) for tax year 2019 if 2019 taxes have been filed; if the individual has not filed 2019 taxes, the payment will be based on the AGI reported on the recipient's 2018 return. The payments are reduced by $5 for every $100 of AGI above a certain threshold, the amount of which is dependent on the recipient's filing status:

- A recipient who did not file as "married filing jointly" who made $75,000 or less during the year will receive $1,200, which is reduced as income increases and phases out completely for those earning more than $99,000
- A couple who filed as "married filing jointly" who jointly made $150,000 or less during the year will receive $2,400, which is reduced as income increases and phases out completely for those couples earning more than $198,000

Additionally, Americans with children will receive a $500 for each child. These payments will not be considered taxable income. Nonresident aliens and trusts and estates are not eligible for these direct payments.

UNEMPLOYMENT INSURANCE (UI)

The CARES Act enhances UI by expanding both the benefits received and who is eligible to receive them. The Act provides an additional $600 benefit beyond UI provided by state programs for up to four months. Additionally, the federal government has allocated $250 billion to provide an additional 13 weeks of unemployment benefits through December 31, 2020 after workers have exhausted their state-provided UI. The Act also expands UI benefits to self-employed individuals, independent contractors, gig-workers, such as Uber drivers, and those with limited work history.

As a result, an individual is eligible to receive benefits so long as the individual self certifies that he or she is unable to work and available to work within the meaning of applicable state law, except that the individual is unemployed, partially unemployed or unavailable to work for any one of the COVID-19-related reasons below:

- They have been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for a family member or member of their household who has been diagnosed with COVID-19;
- A member of their household for whom they are the primary caregiver is unable to attend school or another facility that has been closed as a direct result of the

COVID-19 public health emergency, and because of this closure, they are unable to work;
- They are unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency;
- They are unable to work because they have been advised to self-quarantine by a healthcare provider;
- They were scheduled to start a job but are unable to do so as a result of the COVID-19 public health emergency;
- They have become a "major support for a household" because the breadwinner in the household has died as a direct result of COVID-19; or
- They quit their job as a direct result of COVID-19.

State UI programs are also addressed in the CARES Act. The Act incentivizes states to repeal their waiting period provisions for unemployment benefits by fully funding the first week of UI for states that suspend such waiting periods. It also provides that the federal government will pay portions of costs incurred by state in providing short-time prorated compensation to employees whose hours have been reduced even if employment has not been terminated.

The Department of Labor's Inspector General received $25 million to carry out audits, investigations, and other oversight of the provisions affecting UI.

CHANGES TO RETIREMENT ACCOUNT RULES

The CARES Act eliminates penalties for early withdrawal of up to $100,000 from retirement accounts, retroactive to January 1, 2020. Withdrawals can be taxes as income over the next three years rather than in the year of withdrawal. Retirement contribution caps will not apply to any amounts recontributed during the next three years. Individuals who make withdrawals or loans against their retirement accounts and wish to apply these changes must have been impacted directly by COVID-19, for example, by the individual or his or her spouse being diagnosed with COVID-19 or a loss or reduction in work due to COVID-19. In addition to these changes, required minimum distributions are suspended for 2020.

PROGRAMS BENEFITTING GOVERNMENTS AND SPECIFIC INDUSTRIES

The CARES Act allocated $500 billion for guaranteed, subsidized loans to larger industries, which is broken into two categories: $425 billion for the Federal Reserve to leverage for loans in order to help broad groups of distressed companies and $75 billion for industry-specific loans, including to airlines and hotels. The Secretary of the Treasury will determine the terms of the loans, but the loans will not exceed five years and will not be forgivable. These loans will have strict oversight in the form of a Treasury Department inspector general and a 5-person panel appointed by Congress. Companies that accept these funds must also agree to halt any stock buybacks for the duration of the loan plus an additional year and must retain at least 90% of their employees through September 30, 2020.

The healthcare industry, at the forefront of fighting COVID-19, is also directly supported by the CARES Act. The Act provides over $140 billion with specific allocations including the following: $100 billion for hospitals and other care centers; $27 billion for personal protective equipment (PPE) for health care workers, testing supplies, and new construction of facilities for patients; $4.3 billion in additional funding to the Centers for Disease Control; and $1.5 billion to other federal, state, and local health agencies. The Act also increases Medicare payments to all hospitals and providers.

State and local governments were allocated $150 billion dollars to offset the impact that COVID-19 has made on governmental expenditures at a local level and the impact on the collection of state and local taxes.

COVID-19 CLIENT ALERT – CARES ACT SUMMARY

This memorandum is provided by Wright, Lindsey & Jennings, LLP for educational and informational purposes only and is not intended and should not be construed as legal advice. Businesses and individuals with additional questions should contact Sidney Leasure, Daveante Jones, Cal Rose, Fred Perkins, Michelle Kaemmerling, Stuart Jackson or any other WLJ Business or Labor & Employment attorney.

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