

**THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT AND
THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT:
PROVISIONS RELEVANT TO LABOR-MANAGEMENT TRAINING COMMITTEES**

Congress has passed two major pieces of legislation to address the coronavirus crisis gripping our country: The Families First Coronavirus Response Act (“FFCRA”) and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). Both laws contain important provisions for labor-management training programs and for your employees and trainees. This document will summarize the provisions relevant to your programs. One cautionary note: The legislation is new, and the relevant government agencies are still developing guidance and regulations. We will update this as new information becomes available.

The CARES Act: Loans, Grants and Tax Relief

The CARES Act provides relief for small businesses and certain nonprofit organizations, although some of the relief depends upon whether the nonprofit is a 501(c)(3) organization. Below is a list of relief programs for which your organization may be eligible.

1. Paycheck Protection Program (“PPP”): The CARES Act creates a Small Business Administration (SBA) loan program, called the Paycheck Protection Program, for companies struggling to maintain operations and keep employees on the payroll. Under the PPP, private lenders make zero-fee loans of up to \$10 million directly to small businesses and other organizations, and SBA guarantees 100% of each loan. The interest rate is currently fixed at 0.5% (the Act states that it shall not exceed 4%). The program will last through June 30, 2020. As discussed in detail below, PPP loans may be fully or partially forgiven.

Eligible borrowers include small business concerns, “any business concern,” 501(c)(3) nonprofit organizations, and veterans organizations with no more than 500 employees. The term “any business concern” is not defined in the Act, but existing SBA regulations define a “business concern” as a for-profit organization. 13 C.F.R. §121.105. Therefore, this program would apply to joint labor-management training committees only if they are 501(c)(3) organizations.

PPP loans may be used for various purposes, including payroll costs, continuation of group health care benefits, employee salaries, interest on any mortgage, rent, utilities, and interest on any other debt obligation incurred before February 15, 2020. The Act suggests that borrowers may also use PPP loans for construction, expansion, and acquiring land, material, supplies, or equipment. We will have to wait for SBA to issue guidance to determine whether loans may, in fact, be used for such additional purposes.

Additional Information on PPP:

- No personal guarantee is required for the loan
- No collateral is required for the loan

- SBA has no recourse against any individual shareholder, member or partner for nonpayment
- Borrower need not show it is unable to secure credit elsewhere
- No prepayment penalty
- All payments, including principal and interest, shall be deferred for a period of between 6 months and 1 year

Starting April 3, 2020, eligible entities may apply for loans through any existing SBA lender, federally insured depository institution or federally insured credit union that is participating. Application forms are available here: [PPA Application Info](#)

(Source: Sec. 1102 of CARES Act, amending 15 U.S.C. § 636(a))

2. PPP Loan Forgiveness: A borrower may be eligible for forgiveness of the PPP loan in an amount equal to the sum of the following costs incurred during the 8-week period beginning on the date of loan origination: (1) payroll costs, (2) interest on a mortgage obligation incurred before February 15, 2020, (3) rent under a lease in force before February 15, 2020, and (4) utilities for which service began before February 15, 2020. The amount of loan forgiveness may not exceed the principal amount of the loan, which means borrowers must pay the accrued interest even if the loan is completely forgiven. The Act reduces the amount of loan forgiveness if an employer reduces its number of employees or reduces their compensation by more than 25% eight weeks after getting the loan. The SBA may make limited exceptions to that rule.

(Source: Sec. 1106 of CARES Act, amending 15 U.S.C. § 636(a))

3. Economic Injury Disaster Loan (“EIDL”) Program: The Act amends the SBA’s existing EIDL program by expanding the list of entities eligible for such loans and waiving certain requirements.

Like PPP loans, EIDL loans are issued by private lenders and backed by the SBA. According to SBA’s website, the program offers loans of up to \$2 million. EIDL loans are available to eligible entities that have “*suffered a substantial economic injury*” as a result of the COVID-19 crisis. We will have to wait for SBA to issue guidance on what constitutes a “substantial economic injury.”

Eligible borrowers include small business concerns, private nonprofit organizations, independent contractors, sole proprietorships, and cooperatives or other businesses with no more than 500 employees. The Act does not define the term “private nonprofit organizations,” but the current SBA application form suggests that the term includes not only 501(c)(3) organizations, but also 501(c)(4), (5), and (6) organizations.

According to SBA’s website, EIDL loans may be used to pay fixed debts, payroll, accounts payable and other bills that can’t be paid because of the current crisis. The interest rate for nonprofits is 2.75%. The interest rate is 3.75% for small businesses. The expanded EIDL program is available through December 31, 2020.

Additional Information on Expanded EIDL Loans:

- No personal guarantee is required for loans capped at \$200,000
- Borrower may be approved for a loan solely on credit score
- Borrower had to be in operation by at least January 31, 2020
- Borrower need not show it is unable to secure credit elsewhere
- Payments of principal and interest may be deferred for up to four years
- Not subject to loan forgiveness program

Eligible entities may apply for EIDL loans here: [EIDL Application Form](#)

(Source: Sec. 1110 of CARES Act, amending 15 U.S.C. § 636(b)(2))

4. Emergency Grants: Those entities that apply for an EIDL loan – e.g., small business concerns, private nonprofit organizations – may request from SBA an immediate advance of up to \$10,000 in the form of a grant. Such grants may be used for providing sick leave, payroll to retain employees, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses. Such grants will be available through December 31, 2020. EIDL grants do not need to be repaid even if the applicant is ultimately denied an EIDL loan.

(Source: Sec. 1110(e) of CARES Act)

5. Employee Retention Tax Credit: The CARES Act revives a tax credit previously used in the aftermath of natural disasters to encourage employers to retain employees. Eligible employers can take a payroll tax credit against the employer’s share of Social Security payroll taxes. The credit is worth 50% of up to \$10,000 of wages paid to each eligible employee, or a maximum credit of \$5000 per employee. “Wages,” for this purpose, includes amounts the employer pays to group health plans.

Employers of all sizes – including all 501(c) tax-exempt organizations – may be eligible for these credits. For an employer to qualify, it must experience either (1) a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or (2) more than a 50% decline in gross receipts, as compared to the same quarter in the previous year. We will have to await guidance from the Treasury Department of what constitutes a “full or partial” suspension of operations.

Employers with *more than 100 full-time employees* can take these credits for wages paid to employees who are not providing services due to the COVID-19-related circumstances described above. Employers with *100 or fewer full-time employees* can take the credit for wages paid to *all* employees, regardless whether they are providing services for the employer. The credit applies to wages paid between March 12, 2020 and January 1, 2021.

The legislation provides that employers will not be penalized if they deduct the amount of the allowed credit from their otherwise-required employment tax deposits. In other words, employers opting to take these credits may simply deduct them from their payroll taxes.

Note that an employer may take *either* a PPP loan *or* the employee retention tax credit, but not both.

(Source: Sec. 2301 of CARES Act)

The CARES Act and the FFCRA: Provisions Providing Economic Protection for Workers

In addition to the loan and tax relief programs just described, the CARES Act and the FFCRA include important protections for workers affected by the current crisis. The following sections summarize the provisions providing: (1) unemployment benefits, (2) paid leave benefits, and (3) cash payouts.

1. Unemployment Compensation under the CARES Act: The CARES Act provides states with the opportunity to expand their unemployment insurance (“UI”) programs in four ways to: (1) expand access to UI benefits; (2) increase the amount of UI payments; (3) extend the duration of UI benefits; and (4) eliminate waiting periods. These changes only go into effect if a state enters an agreement with the federal government agreeing to certain terms. However, because the federal government will pay for 100% of the CARE Act’s changes, we anticipate that most, if not all, states will offer these expanded benefits.

The CARES Act provides the following:

For workers who qualify for regular UI benefits:

- All weekly UI benefits will be increased by \$600 through July 31, after which the regular UI benefit continues.
- State-law mandated “waiting periods” are waived.
- Benefits can be received for an additional 13 weeks beyond the period that state laws typically allow. Most states provide 26 weeks of unemployment benefits,¹ which are often extended by another 13 weeks; this adds 13 weeks to the state’s total.
- These enhancements are for unemployment for any reason – not just COVID-19.

(Source: Secs. 2104, 2105 and 2107 of CARES Act)

For workers who typically would not qualify for regular UI benefits – including individuals who have exhausted their benefits, independent contractors, sole proprietors, those – like

¹ All but eight (8) states offer 26 weeks of UI benefits. Arkansas, Alabama, Florida, Idaho, Kansas, Missouri, and South Carolina offer less than 26 weeks of regular UI benefits. Georgia expanded to 26 weeks on March 26, 2020.

apprentices -- without a wage history, and others who usually would not qualify for UI benefits:

- Benefits available for up to 39 weeks of unemployment between January 27 and December 31, 2020 (excluding any weeks of benefits the worker received under regular UI).
- The weekly benefit amount is the same as for those who qualify for regular UI: The regular UI under state law plus – for weeks of unemployment between January 27 and July 31 -- \$600.
- An individual may receive these benefits if available for work, but unemployed or unavailable to work because:
 - the individual’s place of employment is closed as a direct result of COVID-19;
 - the individual is diagnosed with COVID-19, or has symptoms of COVID-19 for which the individual is seeking a diagnosis;
 - a member of the individual’s household has been diagnosed with COVID-19;
 - the individual is providing care for a family member or a member of individual’s household who has been diagnosed with COVID-19;
 - a child or other person in the household for whom the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility being open is required for the individual to work;
 - the individual is unable to reach their place of employment because of a quarantine;
 - the individual is unable to reach their place of employment because they have been asked to self-quarantine by a health-care provider;
 - the individual was scheduled to commence employment but is unable to reach the job or no longer has the job because of COVID-19;
 - the individual has become the breadwinner or major support for their household because the head of household has died as a result of COVID-19;
 - the individual has to quit their job as direct result of COVID-19;
 - the individual’s place of employment is closed as a result of COVID-19;
 - the individual meets any other, additional criteria established by the Secretary of Labor for unemployment assistance.

(Source: Secs. 2102 and 2104 of CARES Act)

2. Paid Leave Under FFCRA: The Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA): These two laws, passed as part of the FFCRA, provide paid leave to employees who cannot work for COVID-19-related reasons. As described below, they provide different, but somewhat complementary benefits. Both, however:

- Apply to employers with *fewer than 500* employees.
- Are effective on April 1, 2020.

- Apply while the employer is open for business. If the employer has closed down before April 1, or if the employer closes down once the employee is on paid leave, employee's recourse is to seek unemployment compensation under the programs described above.
- Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits (through Dec. 31, 2020).
- Employers in multiemployer bargaining units have the option of satisfying their obligations by paying into a multiemployer benefit plan *if* the plan provides employees with the required benefits.
- Either the Department of Labor or the employer may deny these benefits to health care workers or emergency responders.

a. Emergency Paid Sick Leave Act ("EPSLA"): This Act provides employees with 2 weeks of paid leave if they have to be out of work for various COVID-19 related reasons. The benefits are available to all employees, regardless of how long they have worked for the employer. Employers are required to pay, for up to 80 hours (pro-rated for part-time):

- Regular wages, capped at \$511/day (\$5110 maximum) for employees unable to work because:
 - The employee is subject to a public COVID-19-related quarantine or isolation order;
 - A health care provider has advised employee to self-quarantine; or
 - The employee is experiencing COVID-19 symptoms and seeking diagnosis.
- 2/3 of regular wages, capped at \$200/day (\$2000 maximum) for employees unable to work because the employee is:
 - Caring for an individual subject to a public quarantine or isolation order or who has been advised to self-quarantine;
 - Caring for a son or daughter if the school or childcare facility is closed or childcare provider is unavailable; or
 - Experiencing similar conditions, as specified by HHS.

(Source: Secs. 5102-5111 of FFCRA)

b. Emergency Family and Medical Leave Expansion Act ("EFMLEA"): Congress expanded the Family and Medical Leave Act ("FMLA") to provide paid leave to employees who cannot work because they need to care for their children whose schools are closed or childcare providers are unavailable due to the COVID-19 crisis. These benefits are available to employees who have been employed for 30 days or more by the employer from which they are seeking the leave. The first two weeks are unpaid, although employees can opt to finance that time with the paid leave available under the EPSLA or any accrued leave available from their employer. The employee is then entitled to an additional 10 weeks of paid leave. Under the EFMLEA:

- Employers must provide 10 days *unpaid* leave and up to an additional 10 weeks of *paid* leave to care for son or daughter whose school or childcare facility is closed or childcare provider is unavailable for COVID-19 related reasons.
- Paid leave is 2/3 of regular wages, capped at \$200/day (\$10,000 maximum).
- According to guidance from DOL, although this Act expands the reasons for which employees are entitled to leave under the FMLA and, for the first time, requires employers to pay for a portion of that leave, it does not expand the overall amount of FMLA time. In other words, employees who have already used some of their FMLA leave will have that amount of time deducted from the 12 weeks provided under the EFMLEA.
- DOL can exempt employers with fewer than 50 employees from both the EFMLEA and the childcare provision of the EPSLA if the employer demonstrates that complying with these requirements would jeopardize the employer's business.

(Source: Sec. 3103-3105 of the FFCRA, amending Secs. 102 and 104 of the FMLA, 29 U.S.C. §§ 2612 and 2614)

3. Direct Cash Payments under the CARES Act

The CARES Act also provides for direct payments – or “recovery rebates” – of \$1,200 per individual (\$2,400 per couple filing jointly), plus \$500 for each qualifying child, for individuals earning up to \$75,000 (or \$150,000 per couple). The payments gradually phase out above those income levels, with no payments to individuals making \$99,000 or more, or to couples making \$198,000 or more.

This benefit is available to all U.S. residents or citizens with incomes below the cap, even those who have no income or whose income comes entirely from non-taxable benefit programs, such as Social Security or veterans disability benefits, as long as no other taxpayer is claiming them as a dependent. According to congressional reports, most recipients will not have to take any action to receive their checks, as the IRS will use either the 2019 tax return, if filed, or the 2018 tax return to identify the recipient. The bill instructs the IRS to engage in a public campaign to inform the public of their eligibility for the rebate and how to apply if they have not filed a 2018 or 2019 return.

(Source: Sec. 2201 of CARES Act)