COVID-19 UPDATE

Coronavirus Aid, Relief and Economic Security (CARES) Act and Your Business: What You Need To Know Now[1]

The CARES Act was signed by President Donald Trump on March 27, 2020, and was expanded and amended by the Paycheck Protection Program and Health Care Enhancement Act (CARES 2 Act), which was signed by President Donald Trump on April 24, 2020. The purpose of the CARES Act and CARES 2 Act is to help stabilize the economy and provide relief to America's small businesses expeditiously as the world battles the global COVID-19 pandemic. There are provisions that may apply to your specific industry or apply to individuals (such as the recovery rebate checks) that are not reviewed in this document. Included below is a summary of provisions of the CARES Act, CARES 2 Act and Families First Coronavirus Response Act (FFCRA) intended to help business owners maintain cash flow and liquidity as well as the retention of their employees.

PAYCHECK PROTECTION PROGRAM (S. 1102 and S. 1106)

PURPOSE: Help small business owners to keep workers on their payroll or rehire workers who were laid off or furloughed due to COVID-19 related disruptions.

HOW DOES IT WORK? The Paycheck Protection Program allows eligible small businesses to borrow an amount equal to 250% of their average monthly payroll costs determined as of a fixed calculation period depending on whether a business is an existing business, a seasonal business or a new business. The maximum loan amount under the program is $10 million. The loan proceeds may be used for (a) payroll costs; (b) costs related to continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums, (c) employee salaries, commissions or similar compensations, (d) payments of interest on any mortgage obligation incurred before February 15, 2020 (excluding prepayment of or payment of principal on a mortgage obligation), (e) rent under a lease agreement in force before February 15, 2020, (f) utilities for which service began before February 15, 2020, and (g) interest on any other debt obligations that were incurred before February 15, 2020. Loan amounts used for payroll, rent, mortgage interest or utility payments within 8 weeks of the origination of the loan may be forgiven, provided, non-payroll costs may not exceed 25% of the forgivable portion of the loan. The employer must also comply with employment retention and other requirements under the CARES Act.

ELIGIBILITY: Businesses with no more than 500 employees, some types of businesses with fewer than 1,500 employees, 501(c)(3) nonprofits with fewer than 500 workers, some veteran organizations with less than 500 employees, tribal businesses with less than 500 employees, and businesses (without regard to employee count) that have tangible net worth of less than $15

[1] Updated May 4, 2020.

million and average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of the application of not more than $5 million. People who are self-employed, sole proprietors, freelancers and gig economy workers also can apply. To be eligible, businesses must have been operational on Feb. 15, 2020 and must make a good faith certification that (a) the uncertainty of current economic conditions makes the loan request necessary to support ongoing operations; (b) the funds will be used for appropriate purposes, (c) the business does not have a loan application pending with the SBA for duplicative purposes, and (d) the business has not, and will not, receive loan proceeds from the SBA that are duplicative.

WHAT ELSE SHOULD I KNOW? This type of loan is only available until June 30, 2020. Personal guarantees and collateral are not required for this loan, which is made through the SBA 7(a) program, and the borrower is not charged any fees in connection with the loan. The loan will be disbursed in one lump-sum payment. Portions of loans not forgiven have a maturity of two years from the date of funding. The loan incurs interest at 1% per annum, however, all payments on the loan are deferred for six (6) months after initial funding. The loan does not have a prepayment penalty.

NEXT STEP: The SBA continues to provide updates regarding this program as it is rolled out. We will continue to update our guidance as necessary.

MAIN STREET LENDING PROGRAM (S. 4003(c)(3)(D)(ii))

PURPOSE: Support lending to small and mid-sized businesses.

HOW DOES IT WORK? The Federal Reserve is creating three separate credit facilities under which the Federal Reserve will purchase participations in qualifying loans issued by lenders. General terms of loans under the program are the following: (a) secured or unsecured, (b) for a four-year term, (c) with an adjustable interest rate of LIBOR + 300 basis points, and (d) prepayment allowed without penalty. Depending which credit facility a loan falls under, the minimum amounts of the loans are $500K or $10M, and the maximum size is $25M or $200M. In addition, individual loan maximum amounts are subject to a cap equal to four or six times the borrower's 2019 EBITDA. Loans under the Main Street Lending Program are not forgivable.

ELIGIBILITY: Borrower's business must (a) be established prior to March 13, 2020, (b) not be an ineligible business (as defined in the CARES 2 Act), (c) have no more than 15,000 employees or $5B in 2019 annual revenues, (d) be created in the United States, with significant operations in the United States and a majority of its employees based in the United States, (e) not receive more than one loan under the Main Street Lending Program, and (f) not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020.

WHAT ELSE SHOULD I KNOW? Borrower must commit to certain covenants relating to use of loan proceeds, cancellation of other credit facilities, not repurchasing securities and employee compensation.

NEXT STEP: The Federal Reserve has not finalized the details of the Main Street Lending Program and loans are not yet available under the program. As soon as lending is available under the Main Street Lending Program, you should reach out to your commercial banker if you are interested.

EMERGENCY EIDL (Economic Injury Disaster Loan) (s. 1110)

PURPOSE: Extend help to business owners through the end of 2020.

HOW DOES IT WORK? This program operates under 7(b) of the SBA. The maximum loan amount is $2 million. Maximum interest rate is 3.75% for small businesses and 2.75% for nonprofits. Loan terms may be as long as 30 years. Loans are issued directly by the SBA, not from a bank or other lending institution. The CARES Act permits a $10,000 emergency grant (within three days of submitting an application), which does not have to be repaid (even if the EIDL loan application is denied), but will reduce (i) the amount of any Emergency EIDL subsequently originated and (ii) the forgivable portion of any Paycheck Protection Program loan. Proceeds can be used to pay rent, payroll, accounts payable and other costs, but cannot be used to refinance existing debt, make loan payments on loans owed to another federal agency, pay tax penalties, repair physical damages or pay stockholder dividends.

ELIGIBILITY: Businesses with no more than 500 employees and some types of businesses with fewer than 1,500 employees.

WHAT ELSE SHOULD I KNOW? The CARES Act waives the previous SBA EIDL requirements for a personal guaranty for loans of less than $200,000, the requirement that the applicant needs to be in business for more than one year, and for an applicant to demonstrate that they are unable to obtain credit from other sources.

NEXT STEP: The CARES Act prohibits businesses from obtaining double benefits from available loan programs. The applicant should review all loan options, benefits and requirements carefully and should discuss such options, benefits and requirements with its advisors.

SUBSIDY FOR CERTAIN LOAN PAYMENTS (S. 1112)

PURPOSE: Help business owners with existing SBA loans maintain cash flow and liquidity.

HOW DOES IT WORK? The CARES Act requires the SBA to pay the principal, interest and fees on all existing SBA loan products (except the Paycheck Protection Program) for six months for businesses affected by the COVID-19 pandemic.

ELIGIBILITY: Businesses who already have SBA loans.

WHAT ELSE SHOULD I KNOW? Loans already on deferment will receive six months of payment starting with the first payment after the deferral period. Loans made in the first six months after enactment of the CARES Act will also receive six months of loan payments.

NEXT STEP: The SBA will coordinate implementation of this provision with its participating lender banks.

PANDEMIC UNEMPLOYMENT ASSISTANCE (s. 2102 – s. 2116)

PURPOSE: Provide federal resources to augment state unemployment compensation programs.

HOW DOES IT WORK? Unemployment benefits are extended from 26 weeks to up to 39 weeks with an extra $600 per week benefit for the first four months for eligible employees.

ELIGIBILITY: Unemployment Benefits for employees without available work or telework are being temporarily expanded to include contract workers, self-employed workers, freelancers and other workers who often lack unemployment insurance benefits, depending on differing state laws. The criteria for collecting unemployment also is expanded to include workers who may not have been laid off, but are unemployed, partially unemployed or unable to work because of COVID-19. This may include individuals who have had to self-quarantine because they or a household member has tested positive for the virus or are exhibiting symptoms associated with the virus, or people who have to stay home with children whose schools are closed due to the pandemic and who are not otherwise being paid pursuant to the FFCRA and/or otherwise.

WHAT ELSE SHOULD I KNOW? The one-week waiting period to start unemployment benefits also is being waived.

NEXT STEP: Unemployment compensation programs are administered at the state level. You should follow your state's guidelines for verifying information concerning employment and prior income for employees. Employees affected by the crisis should go to their state's unemployment insurance website for instructions on how to apply.

EMPLOYEE RETENTION CREDIT (S. 2301)

PURPOSE: Help businesses who have partially suspended or closed operations due to stay-at-home or similar orders arising from the COVID-19 keep employees on the payroll.

HOW DOES IT WORK? This section of the CARES Act provides a refundable payroll tax credit for 50% of wages paid during the crisis for the first $10,000 of compensation, including health benefits, up to $5,000 per employee, for wages paid or incurred from March 13, 2020 through December 31, 2020.

ELIGIBILITY: Employers whose operations were fully or partially suspended due to a COVID-19 shut-down order or employers whose gross receipts declined by more than 50% when compared to the same quarter last year.

- *For employers with greater than 100 employees*, qualified wages are those paid to employees who are unable to provide services due to the crisis.
- *For employers with 100 or fewer employees,* all wages qualify, up to the $10,000 maximum per employee.

WHAT ELSE SHOULD I KNOW? This provision includes rules that prohibit employers from receiving double benefits under other tax credit programs or from small business interruption loans.

NEXT STEP: Discuss with your tax or accounting professional whether this provision is applicable for your business, and if so, how to best implement the retention credit.

PAYROLL TAX PAYMENT DELAY (S. 2302)

PURPOSE: Help businesses who have partially suspended or closed operations due to stay-at-home or similar orders arising from the COVID-19 keep employees on the payroll.

HOW DOES IT WORK? This provision allows employers and self-employed individuals to postpone payment of their share of federal Social Security tax on wages due through Dec. 31, 2020. Employers generally must pay a 6.2% Social Security tax on wages. Employers and self-employed individuals must pay half of the deferred Social Security tax by Dec. 31, 2021, with the other half due by Dec. 31, 2022.

ELIGIBILITY: Employers whose business operations are fully or partially suspended due to governmental order as a result of the pandemic are eligible, including tax-exempt organizations, regardless of the status of their operations. In addition, employers whose gross receipts are less than 50% of what they were for the same quarter last year are also eligible, until receipts exceed 80% of what they were in the same calendar quarter last year.

WHAT ELSE SHOULD I KNOW? This is a *deferral* of payroll tax liability, which eventually must be paid. It is not a waiver or a grant.

NEXT STEP: Discuss with your tax or accounting professional whether this provision is applicable for your business, and if so, how to best implement this tax payment deferral benefit.

COVID-19 UPDATE

Families First Coronavirus Response Act (FFCRA),
Public Law 116–127, as Amended by the Cares Act Section 3601-3611.
(Emergency Family and Medical Leave Expansion Act Leave and Emergency Paid Sick Leave Act Leave)

PURPOSES:

Employee Leave: The FFCRA requires covered employers to provide certain employees with (i) emergency family and medical leave (Emergency Family Medical Leave Expansion Act) or (ii) paid sick leave for specified reasons related to COVID-19 (Emergency Paid Sick Leave Act).

Employer Funding Options: The FFCRA also provides qualifying businesses with tax credits to fund emergency paid sick and family leave for employees affected by the COVID-19 crisis as set out in the FFCRA as Amended by the Cares Act. See also: PAYCHECK PROTECTION PROGRAM.

Effective Dates: The Acts are effective from April 1, 2020 through December 21, 2020.

Coverage: The FFCRA generally applies to employers with less than 500 employees. The Secretary of the Department of Labor has the authority to exempt small businesses with fewer than 50 employees from the Emergency Family and Medical Leave Expansion Act when the imposition of such requirements would jeopardize the viability of the business as a going concern. See DOL Regulations regarding requirements for small business exemptions.

HOW DOES IT WORK?

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA):

Eligibility.

Employment Requirement. Employee must have been employed by employer for at least thirty (30) calendar days.

COVID19 Emergency. In order to qualify for Emergency Family and Medical Leave Expansion Leave, an employee must also have a qualifying need related to an emergency declared by a federal, state, or local authority with respect to COVID- 19.

Qualifying Need. This means the employee is unable to work (or telework) due to a need for leave to care for the employee’s son or daughter under 18 years of age because the school or place of care has been closed, or the childcare provider of such son or daughter is unavailable.

Leave. Employees may be eligible for up to 12 weeks of Emergency Family Medical Leave Act Expansion Leave for a qualifying reason.

Pay.
First Ten Days (TWO WEEKS) (Substituted or Unpaid). The first ten days may be paid or unpaid leave; employees may opt to use (substitute) any accrued paid time off, vacation time, sick leave, or other paid leave during this initial period (including sick leave under the Emergency Paid Sick Leave Act below).

After Ten Days (TWO WEEKS) (Paid at Partial Rate). After the two weeks, Emergency Family and Medical Leave Expansion grants 10 weeks of paid leave for a qualifying reason at two-thirds the employee's regular rate of pay for a qualifying employee, who has been employed for at least 30 calendar days.

Pay Caps. In no event, shall the employee's paid leave exceed $200 per day and $10,000 in the aggregate.

EMERGENCY PAID SICK LEAVE ACT (EPSLA):
The Emergency Paid Sick Leave Act requires employers to provide immediately available, paid sick leave time (up to two weeks) to all qualifying employees, regardless of how long the employee has been employed by the employer.

Qualifying Circumstances.
The Emergency Paid Sick Leave Act provides that an employee unable to work (or telework) be entitled to paid sick leave for the following circumstances:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine because of concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, because of COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Emergency Paid Sick Leave Act Leave.
Full-Time Employees. Full-time employees are entitled to up to 80 hours of paid sick leave.

Part-Time Employees. Part-time employees are entitled to up to sick leave equivalent to those hours the employee works, on average, over a 2-week period.

Emergency Paid Sick Leave Act Pay and Pay Caps.
Personal COVID19 Pay. (Qualifying Circumstances 1-3, 6). In the event qualified leave is taken for personal COVID19, one through three, the employee is entitled to paid leave at 100% of the employee's regular rate of pay. The FFCRA imposes a cap on daily and aggregate sick leave pay, not to exceed $511 per day and $5,110 in the aggregate for an employee's self-isolation, medical diagnosis, or treatment

Family Sick Leave Pay. (Qualifying Circumstances 4-5). In the event qualified leave is taken to care for a family member or child, employers only are required to provide two-thirds the employee's regular rate of pay. A cap of $200 per day and $2,000 in the aggregate applies to any sick leave taken by an employee to care for a family member or child.

FUNDING RELIEF FOR COVERED PRIVATE EMPLOYERS
Tax Credit. Under the FFCRA, covered private employers **may** qualify for reimbursement through refundable tax credits as administered by the Department of the Treasury, for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA, up to per diem and aggregate caps, and for allocable costs related to the maintenance of health care coverage under any group health plan while the employee is on the leave provided under the FFCRA. For information on the tax credits, *see* https://www.irs.gov/forms-pubs/about-form-7200 *see also* https://www.irs.gov/pub/irs-drop/n-20-21.pdf.

See also: **PAYCHECK PROTECTION PROGRAM.**

WHAT ELSE SHOULD I KNOW?
See DOL Regulations at:

- https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act
- https://www.dol.gov/agencies/whd/ffcra

NEXT STEP: Discuss with your accounting , human resources professionals and legal advisors how these provisions affect your business, how they interact with any current leave benefits your company offers, how they interact with CARES Act loans, and what steps you need to take to comply.

COVID-19 UPDATE

SPECIAL RULES FOR USE OF RETIREMENT FUNDS (S. 2202)

PURPOSE: Help people who are adversely affected by the COVID-19 crisis meet unexpected financial needs.

HOW DOES IT WORK?

- Affected individuals may be permitted to make *withdrawals* from a retirement plan or IRA of up to $100,000 from January 1, 2020 through Dec. 31, 2020. The 10% early withdrawal penalty does not apply, and standard 20% federal tax withholding is not required. The distribution is still taxable, but taxes can be paid over three years instead of during the year the distribution is made.
- Affected individuals may be allowed to *borrow* up to $100,000 from a retirement plan for the 180-day period beginning on the date the CARES Act was enacted. Loans can be taken up to 100% of the present value of the vested account balance (increase from the prior limit of 50%). Loan repayments can be delayed for 12 months.

ELIGIBLITY: Employers who offer employer-sponsored retirement plans are permitted to amend their plans to allow individuals to take advantage of these special rules, as must IRA plan administrators. (Note: IRAs do not permit loans.)

WHAT ELSE SHOULD I KNOW? Employees should be encouraged to talk to a financial advisor or their retirement plan specialist before withdrawing or borrowing money from their retirement account, as such actions can have a long-term effect on the potential for lost future earnings.

NEXT STEP: Discuss implementation of this provision with your retirement plan administrator.

We understand these are uncertain times for you, your family and your employees. BOK Financial has been working with business owners for more than a century to help them navigate their way through all economic cycles. If you have questions or concerns, let's talk. We're here to help.

BOK FINANCIAL