What Small Businesses Need to Know about the Coronavirus Aid, Relief, and Economic Security Act

In an effort to stabilize the economic impact of the COVID-19 pandemic, on Friday, March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). This relief package is unprecedented and is the largest of its kind in United States history.

The CARES Act is 880 pages long. This article summarizes those provisions of the Act that may be relevant to small businesses, including certain provisions relating to individuals. Such provisions are in Division A (“Small Business Interruption Loans”), Division B (“Relief for Individuals, Families, and Businesses”), Title 1 of Division C ("Coronavirus Economic Stabilization Act of 2020") and Title III of Division D ("Labor Provisions").

GENERAL OVERVIEW

At the heart of the CARES Act, from a private business perspective, are the provisions dealing with forgivable loans to employers (if they keep their employees on the payroll), and the heightened unemployment compensation benefits that laid-off employees can receive. These separate provisions may create difficult decisions for employers.

DIVISION A – KEEPING WORKERS PAID AND EMPLOYED, HEALTH CARE SYSTEM ENHANCEMENTS, AND ECONOMIC STABILIZATION

TITLE I – KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

Section 1102. Paycheck Protection Program.
Between February 15, 2020 and June 30, 2020, a small business or other eligible organization employing 500 or less employees (or standards otherwise set by the Small Business Administration for a specific industry), is eligible to receive a loan under section 7(a) of the Small Business Act. Please note that such loans also are available to sole proprietors, independent contractors, and eligible self-employed individuals. Additional availability applies to certain businesses with more than 1 physical location where a single location does not employ more than 500 employees.
Basically, the maximum loan amount is 2.5 times the average total monthly payroll incurred by the borrower for the previous 12-month period, excluding compensation to any employee in excess of $100,000. There are special rules for seasonal employers and businesses that just recently began operating.

An eligible business can use a section 7(a) loan to cover the following expenses: payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave; insurance premiums; employee salaries, commissions, or similar compensation; payments of interest on any mortgage obligations; rent; utilities; other debt obligations incurred prior to February 15, 2020; or any other purpose allowed under section 7(a).

No collateral or personal guarantees are required for such loans. Payment of any principal, interest, and fees associated with such loans is deferred for a period equal to no less than 6 months, and not more than 1 year, from loan origination. Interest on these loans is capped at 4%. Any amounts forgiven will not be included in the employer's gross income.

As with other section 7(a) loans, applications will be processed by banks. We have contacted several lenders, and they have told us that they are gearing up to handle loan requests, but probably will not start processing applications until Friday, April 3 (at the earliest). According to Treasury Secretary Mnuchin, the loan process is intended to be very streamlined.

**Section 1106. Loan Forgiveness.**

A recipient of a section 7(a) loan is eligible for forgiveness with respect to some or all of that loan. Such forgiveness amounts include expenses incurred during the 8-week period beginning when the loan is made for payroll costs, interest payments on mortgage obligations, rent payments, or utility payments. Additional wages paid to employees generally described as “tipped employees” are also eligible for loan forgiveness.

However, there is a reduction to any principal amounts eligible for debt forgiveness if there is a decrease in the number of full-time employees for the 8-week period commencing upon loan origination when compared to certain delineated previous periods (for example, February 15, 2019 through June 30, 2019). With regard to a potential debt forgiveness reduction based on recently furloughed employees, an exception exists when such layoffs occurred between February 15, 2020 and 30 days after enactment of the CARES Act and are subsequently cured (by re-hire) no later than June 30, 2020.

There also is a reduction in the loan forgiveness amount if wages are reduced in excess of 25%, with the exception that decreasing the salary of an employee making more than $100,000 per year will not affect the forgiveness amount.

Finally, loan forgiveness may be impacted by compensation paid to an employee that is in excess of the first $100,000 (on an annualized basis).
Any borrower seeking to apply for forgiveness must maintain certain documentation to be included with an application for forgiveness. Applications for debt forgiveness will be processed within 15 days of receipt.

Section 1110. Emergency EIDL Grants.
Between January 31, 2020 and December 31, 2020, a business with 500 or less employees, sole proprietorship, independent contractor, ESOP with 500 or less employees, or other eligible business is eligible to receive a loan (which is apparently really just a grant) under section 7(b)(2) of the Small Business Act. Each “grant” is limited to $10,000 per business and may be used for any purpose allowable under section 7(b)(2), including providing paid sick leave related to COVID-19, maintaining payroll to retain employees, meeting increased costs related to supply chain interruptions, making rent or mortgage payments, and repaying other obligations that cannot otherwise be met due to revenue losses.

A recipient is not required to repay the amounts received. However, if the recipient also receives a loan under section 7(a), then the amount of any section 7(b)(2) “grant” is subtracted from any section 7(a) forgiveness amount related to payroll costs.

TITLE II – ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

Subtitle A – Unemployment Insurance Provisions (“Relief for Workers Affected by Coronavirus Act”)

Section 2102. Pandemic Unemployment Assistance.
The CARES Act provides temporary “unemployment” assistance to those individuals not traditionally eligible for unemployment benefits, such as the self-employed, independent contractors, etc. Eligibility appears very broad (i.e., individuals affected by COVID-19), and the benefit amount is based upon the amount a person would have otherwise received under state law, plus $600. It appears that in Ohio the benefit would be payable for 39 weeks.

2104. Emergency Increase in Unemployment Compensation Benefits.
This section provides for an additional $600 per week in unemployment compensation for up to 4 months (assuming the applicable state participates in this program). The traditional 1 week waiting period is waived. This section has been somewhat controversial, since some employees may be able to make the same (or even more) on unemployment than they were making while working. We are assuming that the costs of these additional benefits will be mutualized throughout the system.

Subtitle B – Rebates and Other Individual Provisions

Section 2201. Recovery Rebates for Individuals.
An eligible individual or individuals will receive relief checks, worth up to $1,200 (single filers) and $2,400 (married filing joint filers), to provide immediate relief to individuals and families. These amounts are increased by $500 per dependent child. Relief payments are
available to those individuals with adjusted gross income of $75,000 (single filers) and $150,000 (married filing joint filers), based on their 2018 federal income tax returns. The rebates start phasing out for filers with income above these levels, with single filers whose income exceeds $99,000 and joint filers whose income exceeds $198,000 being phased out completely.

Section 2202. Special Rules for Use of Retirement Funds.
With respect to withdrawals of $100,000 or less, the 10% early withdrawal penalty is waived, provided that such funds are used for COVID-19 purposes. Income attributable to such distributions will be subject to income tax over a 3-year period. A taxpayer can repay a distribution of funds back into an eligible retirement plan during the 3-year period following the initial distribution (ignoring the usual contribution limits).

Section 2203. Temporary Waiver of Required Minimum Distribution Rules.
Section 401(a)(9) of the Internal Revenue Code is amended to suspend the minimum distribution requirements for defined contribution plans described in section 401(a), section 403(a), 403(b), 457(b) (with certain limitations), or any other individual retirement plan for calendar year 2020.

Section 2205. Modification of Limitations on Charitable Contributions.
The general limitations on charitable contribution deductions for itemizing individuals and corporations are adjusted as follows: (a) the 50% of adjusted gross income limitation for individuals is suspended for 2020 and a deduction is allowed to the extent contributions do not exceed the contribution base; and (b) the 10% of taxable income limitation is increased to 25% for corporations. Carryover provisions exist for both individuals and corporations. Also, the deduction limitation for food inventory contributions is increased from 15% to 25%.

Subtitle C – Business Provisions

Section 2301. Employee Retention Credit for Employers Experiencing Closures.
An eligible employer (i.e., an employer whose business has been partially or completely shut down or an employer whose gross receipts have significantly declined) will receive a credit against applicable employment taxes (6.2 percent employer portion) for each calendar quarter in an amount equal to 50 percent of the qualified wages paid after March 12, 2020 and before January 1, 2021. Qualified wages for which such credit applies is limited to $10,000 per employee for all calendar quarters. The credit is reduced by any credits allowed under section 3111(e) or (f) of the Internal Revenue Code and sections 7001 and 7003 of the Families First Coronavirus Response Act for a relevant calendar quarter. An employer that receives a loan under section 7(a) of the Small Business Act is not eligible for this credit.
Section 2302. Delay of Payment of Employer Payroll Taxes.
Employers and self-employed individuals can defer payment of the employer share of Social Security tax otherwise owed with respect to their employees. This deferral does not apply to the 6.2 percent Social Security tax owed by employees. The deferred amounts are required to be paid in equal one-half shares by December 31, 2021 and December 31, 2022. This deferral does not apply to a taxpayer that has indebtedness forgiven under sections 1106 of the CARES Act.

Section 2303. Modifications for Net Operating Losses.
Prior to the CARES Act, a Net Operating Loss (NOL) was subject to a taxable income limitation and could not be carried back to reduce income in a prior tax year. NOLs from 2018, 2019, or 2020 can now be carried back 5 years, allowing companies to amend prior year returns to increase cash flow. Additionally, the taxable income limitation to allow a NOL to fully offset income is temporarily removed.

Section 2304. Modification of Limitation on Losses for Taxpayers Other Than Corporations.
Partnerships and sole proprietorships may be able to utilize business losses, without regard to excess business loss rules, by delaying the application of the excess losses to tax years after December 31, 2020. Such taxpayers may also amend previous returns and request a refund to recapture losses that were not allowed for tax years 2018 and 2019.

TITLE III – SUPPORTING AMERICA’S HEALTH CARE SYSTEM IN THE FIGHT AGAINST THE CORONAVIRUS

Subtitle C – Labor Provisions
The following provisions are intended to clarify some of the provisions in the Families First Coronavirus Response Act.

Section 3601. Limitations on Paid Leave.
An employer is not required to pay more than $200 per day and $10,000 in the aggregate for each employee for paid leave under the Emergency Family and Medical Leave Expansion Act.

An employer is not required to pay more than $511 per day and $5,110 in the aggregate for each employee when the employee takes leave under paragraphs (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act and $200 per day and $2,000 in the aggregate for each employee when the employee takes leave under paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA.
Section 3605. Paid Leave for Rehired Employees.
Section 3012 of the Emergency Family Medical Leave Expansion Act is clarified with respect to rehired employees. More particularly, those individuals laid-off by an employer not earlier than March 1, 2020 that worked for the employer for not less than 30 of the last 60 calendar days prior to the employee’s layoff, and who were subsequently rehired by the employer, are “eligible employees.”

Section 3606. Advance Refunding of Credits.
This section provides for the advancement of certain payroll credits under sections 7001 and 7003 of the Families First Coronavirus Response Act.

CONCLUSION

This article covers certain portions of a mammoth Bill upon which no formal guidance has yet been issued. We strongly advise you to consult with your professional advisors regarding the details. We at Isaac Wiles are ready to help in any way we can.

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