

Summary of Pelosi's Phase 4 Proposal
"Health and Economic Recovery Omnibus Emergency Solutions Act" (HEROES Act)

AMENDMENTS TO FEDERAL PAID LEAVE REQUIREMENTS

Amends the Emergency Family and Medical Leave Expansion Act (EFMLE)

- Extends the leave benefits from December 31, 2020 to December 31, 2021.
- Removes the “fewer than 500 employee” threshold, extending coverage to both private and public sector employees, who have been employed by the employer for at least 30 days, regardless of the employer size.
- Extends the benefit beyond the sole reason for EFMLE (the employee’s caring for his/her child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19) to include all the reasons entitling an individual to take leave under the Emergency Paid Sick Leave Act, i.e., employee is subject (1) self-isolation because they were diagnosed with COVID-19; (2) obtain a medical diagnosis or to care for symptoms of COVID19; (3) comply with a recommendation or order to self-isolation because physical presence at work would jeopardize the health of the employee, other employees, or a person in the employee’s household, (4) care for a family member who is self-isolating; (5) care for a child whose school has closed or child care provider is unavailable due to COVID19; or (6) care for a family member who is individual with a disability or senior citizen whose place of care or direct care provider is unavailable.
- Relaxes notice requirements to allow documentation after the leave is taken; employers may require requests for leave to be supported by “basic documentation,” but not before five weeks *after* the employee has started the leave.
- Nullifies DOL’s implementing regulations to have no force and effect.
- Eliminates the “Safe Harbor” provision available to employers with fewer than 50 employees, by removing the Secretary of Labor’s regulatory authority to issue the exemption; and allows for a private right of action against employers with fewer than 50 employees.
- Removes the Secretary’s regulatory authority to exempt health care providers and emergency responders from the paid leave requirements; and eliminates provisions that allow employers of health care providers and emergency responders the ability to exclude their employees from EFMLA leave.
- Clarifies that EFMLA does not count towards an employee’s 12 weeks of regular (non-emergency) unpaid FMLA leave.
- Clarifies that employees who work under a multiemployer collective bargaining agreement and whose employers pay into a multiemployer plan are provided with leave.
- Extends the refundable payroll tax credits through the end of 2021; and increases the limit to allow employers to claim up to up to \$12,000 in refundable payroll tax credits, rather than \$10,000 under FFCRA.
- Restaurant impact: Expanding EFMLA for another year will increase compliance and labor costs and expose employers to additional legal risk.*

Amends the Emergency Paid Sick Leave Act (EPSL)

- Extends EPSL from December 31, 2020 to December 31, 2021.
- Eliminates the “fewer than 500” threshold.
- Clarifies that nonprofit organizations are covered employees.

- Allows eligible employees to use paid sick leave for the same reasons allowed under EFMLA.
- Relaxes notice requirements, employees required to provide “as soon as practicable” and clarifies that employers can require “basic documentation” but not before 7 days *after* the employee has returned to work.
- Requires employers to restore employees to their exact same position after returning from paid sick leave.
- Nullifies DOL’s implementing regulations to have no force and effect.
- Eliminates the “Safe Harbor” provision available to employers with fewer than 50 employees, by removing the Secretary of Labor’s regulatory authority to issue the exemption; and allows for a private right of action against employers with fewer than 50 employees.
- Removes the Secretary’s regulatory authority to exempt health care providers and emergency responders from the paid leave requirements; and eliminates provisions that allow employers of health care providers and emergency responders the ability to exclude their employees from EPSL.
- Extends the refundable payroll tax credits through the end of 2021.
- *Restaurant impact: Expanding EPSL for another year will increase compliance and labor costs and expose employers to additional legal risk.*

WORKFORCE DEVELOPMENT

- Provides \$3.1B to support workforce training and development related to COVID-19 job displacement.
- Support to states and intermediaries who are assisting employers that are participating in existing registered apprenticeships, including pre-apprenticeship and youth apprenticeship programs, to expand registered apprenticeship opportunities, and to pay for activities such as related instruction and supportive services.
- Clarifies that any funds for apprenticeships under this bill can only be used for Registered Apprenticeships. (funding amount not provided)
 - *This will also be a poison pill for Republicans who favor the Administration’s efforts to grow its IRAP program.*
- Provides \$250M for Second Chance Act grants to help facilitate the reintegration of ex-prisoners back into society and to prevent recidivism. Also, includes “Re-entry Employment Opportunities by authorizing funds to be used to support formerly incarcerated adults, and “justice-involved youth” during and following the crisis for employment related opportunities, including subsidized employment, transitional jobs, etc..
- Provides additional flexibilities under WIOA to state and local workforce systems; allows eligible individuals to receive individualized career services, such as individualized employment plans, career planning, counseling, financial literacy training, and comprehensive skills assessments; allows local workforce boards to use up to 40 percent of funds for incumbent worker training, and to take into account the COVID-19 national emergency when determining employer and participant eligibility; allows local workforce boards to use up to 40 percent of funds for transitional jobs, including for public sector employment; allows the Governor and local workforce boards to take the COVID-19 national emergency into account when determining whether to allow for up to 75 percent of wages to be reimbursed while an employee is participating in on the job training; allows the Governor to reserve an additional 10 percent of funds beyond their existing reservation of funds to support areas within their state most impacted by

COVID-19; and requires states to supplement their workforce development plan to include a strategy for use of additional funds received under this Act to recover from the COVID-19 national emergency.

- Authorizes funds under the National Dislocated Workers Grants to support training and temporary employment responding to the crisis including COVID-19 for health care, direct care and frontline workers, layoff response activities for employers and workers, and requires the Secretary to release no less than 50 percent of the funds to States within 60 days of enactment of this Act.
 - *This additional flexibility to WIOA and other workforce programs will give states the ability to tailor their workforce training and development needs in response to impacts of the crisis related to displacement, furloughs, layoffs, etc.*

UNEMPLOYMENT INSURANCE

- Extends the \$600 per week FPUC supplement to state and federal unemployment benefits through January 31, 2021.
- *Restaurant Impact: Detrimental to rehiring employees and meeting strict PPP payroll and FTE requirements and thresholds.*

COMMUNITY DEVELOPMENT BLOCK GRANTS

- Provides \$5 billion for CDBG coronavirus response to mitigate the impacts in communities to be distributed by formula to current grantees.
 - *Restaurant Impact: This could help restaurants in communities that are taking advantage of CDBGs.*

PAYCHECK PROTECTION PROGRAM (PPP) FIXES

- Extends “covered period” end date from June 30, 2020 to December 31, 2020.
- For rehires, the exemption is extended from June 30, 2020 to December 31, 2020.
- Loan forgiveness reductions will be “held harmless” for some employers who can demonstrate an inability to rehire or find “similarly qualified” employees before December 31, 2020.
 - *The above three PPP changes have been the centerpiece of Association advocacy efforts since the drafting of the CARES Act.*
- Some businesses receiving PPP loan forgiveness will be able to defer payment of payroll taxes.
 - *There has been concern of many PPP recipients that payroll taxes will be overwhelming when “hiring back” full-time equivalent employees.*
- \$10 billion in grants to small businesses that have suffered financial losses as a result of the coronavirus outbreak.
 - Additional detail was not included in the HEROES Act.

TAX CREDITS

Employee Retention Tax Credit (ERTC): Expansion of the COVID-19 Eligibility & Amounts

- Employers could claim up to 80% of \$15,000 for up to three quarters, rather than the current 50% of \$10,000. This raises the ERTC amount from \$5,000 to a maximum credit of \$36,000.

- *Restaurant impact: the Association successfully requested the ERTC in the CARES Act, and this provision continues that progress. This language is from Congresswoman Stephanie Murphy's bipartisan legislation, the JOBS Credit, which was introduced as a standalone bill in on May 8.*
- The legislation clarifies that the cost of health care is covered.
- Under this provision, large employer can access the ERTC, including for retained employees that are working, if it has less than 1,500 full time employees.

Business Interruption: Payroll Credit for Rent, Mortgages, and Utilities

- Businesses with less than 1,500 full-time equivalent employees can access a 50% refundable payroll tax credit for rent, mortgage, and utility payments paid or accrued from March 12, 2020 until December 31, 2020.
 - *Restaurant impact: this may be a correction to the PPP's mandates on only 25% of loan funds available for non-payroll costs, per the rule issued by the Department of Treasury and the Small Business Administration.*
- For each quarter, qualified expenses eligible for this credit are limited to 25% of qualified wages and capped at \$50,000.

State and Loan Taxes

- The limitation on the deduction of state and local taxes would be eliminated beginning January 1, 2020 and on or before December 31, 2021.

HEALTH INSURANCE

- New subsidies for employees to cover COBRA monthly premiums so that former or furloughed employees can maintain their employer-sponsored coverage.

STATE AND LOCAL GOVERNMENT ECONOMIC RELIEF

- \$500 to help state governments with economic impact of COVID-19, and \$375 for local governments.
 - *Under the CARES Act, states and localities are able to create programs for closed businesses to aid economic disruption. Restaurants should check how their State/City/County utilizes these funds.*

NUTRITION

- **Supplemental Nutrition Assistance Program (SNAP)** - Provides \$10 billion to support increases in participation and program cost increases. Increases the SNAP benefit level by 15% and increases the minimum benefit to \$30 per month. Waives all work requirements for SNAP and provides additional funding to States for SNAP administration to meet the increased need.
 - *Restaurant Impact – while our SNAP CARRY Act language was not included, more money to SNAP could mean more use of SNAP dollars in places where an RMP exists.*
- Directs USDA to allow the use of SNAP to purchase hot foods or hot food products ready for immediate consumption from authorized retail food stores.
- **Child Nutrition** - The Appropriations title includes \$3 billion to provide emergency financial relief to school meal providers and USDA's Child and Adult Care Food

Program. Child nutrition programs would receive a \$3 billion boost, and food banks would get an additional \$150 million.

- *Restaurant Impact - In places where restaurants are running non-congregate school meals programs this could mean more reimbursement.*

AGRICULTURAL PROVISIONS

Restaurant Impact: All of the below provisions help our farmers and supply chain members as they struggle with supply disruptions and surplus food due to restaurant closures.

- Ensures livestock producers are paid for their animals by requiring dealer trusts, for the benefit of all unpaid cash sellers of livestock.
- Provides assistance to support livestock producers who are forced to euthanize livestock due to plant disruptions because of COVID-19.
- Establishes a direct dairy donation program to prevent dumped milk and facilitate donations of displaced dairy products directly to feeding programs.
- Provides cash flow assistance to small and mid-sized dairies.
- Authorizes an USDA recourse loan program for dairy processors, packagers, merchants, marketers, wholesalers, and distributors.
- Provides \$100 million to address supply chain issues at the state level via Specialty Crop Block Grant Program.
- Provides \$50 million to support local farmers, farmers markets, and other local food outlets who are impacted by COVID-19 market disruptions.
- Provides \$50 million to support beginning farmers and ranchers with financial, operational, and marketing advice in this difficult market.

FEDERAL FUNDING TO FEED VULNERABLE POPULATIONS

- Includes provisions of the FEED Act, which the Association supported.
- Provides funding to states and localities which would allow them to partner with restaurants, non-profits, and producers to distribute meals. Any costs that would be eligible for reimbursement would have to be directly tied to responding to the COVID-19 crisis in whatever program that state has stood up.
- Provides that under major disaster declarations, the federal government pay 100 percent of the cost share for state and local governments to work with restaurants and nonprofits to prepare meals for vulnerable populations and clarifies that the costs of procuring and distributing food through these networks, including restaurants and farms, is an eligible expense.

ESSENTIAL EMPLOYEE PREMIUM PAY

- Provides employers grants to be used for pandemic premium pay for essential workers and defines essential work as:
 - Restaurant work, including carry out, drive-thru, or food delivery work, requiring physical interaction with individuals or food products.
- Provides for premium pay and retroactive pay for those who are working during COVID-19. It provides for caps and retroactive pay as well.