COBBS ALLEN

COMPLIANCE ALERT
COVID-19 STIMULUS BILL

APPROPRIATIONS AND COVID RELIEF PACKAGE SIGNED INTO LAW

On Sunday, Dec. 27, 2020, President Donald Trump signed the Consolidated Appropriations Act, 2021 into law. The $1.4 trillion spending package includes a stimulus package designed to deliver approximately $900 billion in COVID-19-related aid. Notably, the bill provides funding for unemployment benefits, small businesses, direct economic payments to individuals, vaccine distribution and rental assistance.

Employers will want to take note of certain workplace provisions included within the emergency relief bill.

TAX CREDITS FOR PAID LEAVE UNDER FFCRA

The Families First Coronavirus Response Act (FFCRA) provided a refundable payroll tax credit for mandated paid sick and family leave. The bill extends the tax credit for employers that choose to continue to voluntarily offer paid sick and family leave to their employees through March 31, 2021. However, employers are no longer required to provide federal FFCRA leave past Dec. 31, 2020.

While the tax credit will continue, the Families First Coronavirus Response Act (FFCRA) was not explicitly extended by the bill. Employers should keep in mind that some states and local jurisdictions have passed their own FFCRA-like laws that extend beyond Dec. 31, 2020, and others that were set to end may be extended well into 2021.

UNEMPLOYMENT BENEFITS FUNDING AND EXTENSION

The bill includes funding for unemployment benefits for out-of-work Americans. Specifically, this bill allows unemployed Americans to receive $300 per week in federal funding in addition to the existing unemployment aid they may be collecting from their state, if those state-level benefits have not already run out. The additional unemployment benefits and extensions included within this bill would provide aid for 11 weeks from their expiration at the end of December 2020 through at least March 14, 2021.

Initial COVID-19 relief for unemployment benefits was introduced by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was enacted on March 27, 2020. The CARES Act provided funding for states to waive any waiting week requirements for unemployment income (UI) benefits during the COVID-19 pandemic and to provide an additional $600 per week to all individuals receiving UI benefits for weeks of unemployment ending before July 31, 2020. President Trump signed a memorandum to extend a portion of unemployment wages after the initial $600 per week expired.

Additionally, the bill includes an extension of Pandemic Unemployment Assistance (PUA). PUA is a program that allows workers who are not traditionally eligible to receive unemployment benefits, including self-employed and gig workers, to do so. An 11-week extension in base benefits through this program is also included within the bill.

The Pandemic Emergency Unemployment Compensation (PEUC) program, which provides additional weeks of federally-funded unemployment benefits to individuals who exhaust their regular state benefits, is also extended by this bill. Additionally, it increases the maximum number of weeks an individual may claim benefits through regular state unemployment plus the PEUC program, or through the PUA program, to 50 weeks. The bill also provides an extra benefit of $100 per week for certain workers who have both wage and self-employment income but whose base UI benefit calculation doesn't take their self-employment into account.

DEFERRED PAYROLL TAXES

Earlier this year the President issued a memorandum allowing employers to defer withholding employees' portion of social security taxes for the remainder of 2020 and required employers to increase withholding and pay the deferred amounts proportionally from wages and compensation paid between January 1, 2021 and April 31, 2021. Penalties and interest would begin to accrue on deferred unpaid tax liability on May 1st.

Under this bill, the repayment period is extended through December 31, 2021. Penalties and interest won't begin to accrue until January 1, 2022.

AID FOR BUSINESSES

The bill includes approximately $325 billion in funding to the Small Business Administration (SBA) to assist U.S. businesses that have been affected by the COVID-19 pandemic.

Specifically, the bill allocates $284 billion in funding to replenish the Paycheck Protection Program (PPP), which provides forgivable small business loans to eligible applicants. Under the bill, certain firms that had already applied for, received and exhausted PPP funds will be eligible to apply for another PPP loan. To be eligible for a second PPP loan, a small business must have less than 300 employees and have sustained at least a 30% loss in revenue during any quarter of 2020. Additionally, small 501(c)(6) organizations with 150 or fewer employees that are not lobbying organizations would be eligible for a PPP loan with this round of funding.

The bill also provides the following with regard to the PPP:

- Expansion of expenses eligible for loan forgiveness to include supplier costs and investment costs related to modifying facilities and obtaining personal protective equipment for safety
- Simplified loan forgiveness process for businesses that have borrowed $150,000 or less in PPP loans
- Confirmation that business expenses paid for with PPP loan funds are tax deductible

Businesses interested in applying for a PPP loan should contact their lender for more information.

EMPLOYEE RETENTION TAX CREDIT (ERTC)

The bill also includes enhanced tax credits, including the employee retention tax credit for employers that keep employees on payroll and provide paid sick leave. The credit rate is increased from 50 percent to 70 percent of qualified wages; expands eligibility for the credit by reducing the required year-over-year gross receipts decline from 50 percent to 20 percent and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility; increases the 100-employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees, and allows businesses with PPP loans to qualify, among other changes. The bill extends the tax credit through June 30, 2021.

WORK OPPORTUNITY TAX CREDIT (WOTC)

WOTC is a federal tax credit available to employers that hire and retain individuals from certain groups facing barriers to employment, such as the long-term unemployed, the formerly incarcerated, individuals with disabilities and military veterans. Under the bill, the tax credit is extended for employers through December 31, 2025.

DEFINED CONTRIBUTION RETIREMENT PLANS

Employers who experience a reduction in workforce or high employee turnover will have additional time to restore their workforce and an adverse impact to the defined contribution retirement plan. The bill includes a temporary rule preventing partial plan termination. Usually, an IRS assessment of plan termination is triggered whenever employee turnover exceeds 20 percent. Under this provision, assessments are deferred until March 2021 to give employers time to restore at least 80 percent of their workforce and avoid termination, significant costs and administrative expenses.

EMPLOYER PROVIDED STUDENT LOAN REPAYMENT

The CARES Act passed earlier this year temporarily allowed employers to provide student loan repayment. The provision has now been extended through December 31, 2025.

Employers are permitted to contribute up to $5,250 annually toward an employee’s student loans, and such payment would be excluded from the employee’s income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law.

DIRECT ECONOMIC IMPACT PAYMENTS

The bill includes another round of economic impact payments—commonly referred to as stimulus checks. The CARES Act provided the first round of stimulus checks for eligible Americans. This bill follows the same eligibility guidelines as the CARES Act, but the amount of the stimulus check is less this time around. Qualifying taxpayers are eligible for a payment of $600 per individual or $1,200 per married couple. Parents will also be eligible to receive $600 for each qualifying child.

DIRECT ECONOMIC IMPACT PAYMENTS (ON-GOING)

Additionally, the earned income tax credit and child tax credit would become available to those who lost wages or their jobs during the COVID-19 pandemic and expand the low-income housing tax credit.

Discussions are continuing in Congress as legislation is reviewed that would increase stimulus checks to $2,000 per individual.

TEMPORARY SPECIAL RULES FOR FLEXIBLE SPENDING ACCOUNTS

Because of the COVID-19 pandemic, employees may be more likely to have unused amounts in health or dependent care FSAs. For plan years ending in 2020 and 2021, the Act allows employers to:

- Permit employees to carry over unused amounts remaining in these FSAs to the next plan year.
- Extend the grace period to 12 months after the end of such plan year.
- Permit employees who cease plan participation during 2020 or 2021 to continue to receive reimbursements from unused amounts through the end of the plan year in which their participation ended.

The Act also includes a special carry forward rule for dependent care FSAs where the dependent aged out during the pandemic. For purposes of determining dependent care assistance that may be paid or reimbursed, the maximum age is increased from 13 to 14 years of age.

Employees are also able to elect to prospectively modify the amount of their FSA contributions for plan years ending in 2021, even if they have not experienced a change in status. However, the applicable dollar limitations will continue to apply.

NO SURPRISES ACT TAKES EFFECT IN 2022

Surprise medical bills occur when patients unexpectedly receive care from out-of-network health care providers. For example, a patient may go to an in-network hospital for treatment, such as surgery or emergency care, but an out-of-network doctor may be involved in the patient's care.

The No Surprises Act applies to unexpected bills from doctors, hospitals and air ambulances. It will prohibit these providers from billing patients who have health coverage for unpaid balances. Rather, providers will have to work with the group health plan or health insurance issuer to determine the appropriate amount to be paid by the plan or issuer, under the methodology provided in the Act. The provisions of the No Surprises Act apply to plan or policy years beginning on or after Jan. 1, 2022.

The Depts. of Health and Human Services, Labor and the Treasury will work together to issue regulations regarding this methodology and other requirements of the Act.

OTHER PROVISIONS INCLUDED IN THE BILL

The bipartisan bill also provides funding for a variety of other issues, including:

- **U.S. Postal Service:** ***$10 billion***
- **Health Care Provider Relief Fund:** ***$35 billion***
- **COVID-19 Testing and Tracing and Vaccine Distribution:** ***$69 billion***
- **Transportation Industry Relief (Airlines, Airports, Buses, Transit and Amtrak):** ***$45 billion***
- **Education:** ***$82 billion***
- **Housing Assistance (Rental):** ***$25 billion***
  - Additionally, the bill extends the federal moratorium on evictions until the end of January 2021.

While the bill doesn't provide direct aid to state, local and tribal governments, it does extend the deadline for states and cities to use unspent money provided by the CARES Act. Under the CARES Act, states and cities had until the end of 2020 to spend their funds, and any unspent amount would have to be returned to the Department of Treasury. This bill extends the original CARES Act deadline for a full year.

Click here to view the full text and see what else is included within the bill.