In the Families First Stimulus Bills

Employment Provisions

The Families First Coronavirus Response Act imposes new job protections for workers, paid leave mandates on employers, and a generous reimbursement scheme for employers that are designed to hold nonprofit and for-profit employers. The law provides two weeks of paid sick leave, a subsequent ten weeks of partially paid family leave for care of a child, and refundable tax credits in many cases will result in the Treasury Department writing checks to employers to cover some of the costs of the mandates.

Two Weeks of Emergency Paid Sick Leave: The law (at Sec. 5102) requires employers with fewer than 500 employees (including nonprofits) and government employers to provide their employees two weeks (10 days) of paid sick leave, paid at the employee’s regular rate, to quarantine or seek a diagnosis or preventive care for the coronavirus. It also requires payment at two-thirds the employee’s regular rate to care for a family member for those purposes or to care for a child whose school has closed or child care provider is unavailable due to the coronavirus. These provisions expire at the end of December 2020.

The Secretary of Labor is authorized to exclude health care providers and emergency responders from the definition of employees allowed to take leave, exempt small businesses, including nonprofits, with fewer than 50 employees, and ensure consistency between paid family and paid sick standards and tax credits. In general, employees are entitled to 80 hours of paid sick time, and are immediately eligible for the leave under this bill.

Twelve Weeks of Emergency Family and Medical Leave: The law (at Section 3102) expands the number of workers who can take up to 12 weeks of job-protected leave under the Family and Medical Leave Act for coronavirus-related reasons. After the two weeks of emergency paid leave (above), employees of nonprofit private employers with fewer than 500 employees will be eligible to receive at least two-thirds of each employee’s usual pay. Employees must have been employed for at least 30 days to qualify and meet a “qualifying need related to a public health emergency.” The qualifying reasons for the emergency paid leave are caring for a child if the child’s school or childcare center is closed due to coronavirus. The provisions would also expire at the end of 2020.
Generally, employees taking Emergency FMLA have job protection, but the bill provides an exception for employers with fewer than 25 employees if the position no longer exists following leave due to operation changes from the public health emergency. Health care providers and emergency responders are also excluded from the definition of employees allowed to take this leave, and the law exempts small businesses, including nonprofits, with fewer than 50 employees.

**Payroll Taxes:** Employers can delay the employer portion of the 6.2% Social Security tax imposed on employees’ wages between the date of enactment and 12/31/20. Fifty percent is due by 12/31/21 and the remainder by 12/31/22.

**Reimbursable Payroll Tax Credits Available:** Employers paying for the mandated paid leave are entitled to claim a refundable tax credit. Specifically, the tax credit is allowed against the employer portion of payroll taxes, and any paid leave costs that exceed the amount of payroll taxes owed will be refundable to the employer at the end of each quarter. This means the federal government will cover all or a portion of the costs of these paid leave mandates. The amounts depend upon what the employee is doing.

- **Under the Paid Sick Leave Mandate:** Employers paying for employees who must self-isolate, obtain a diagnosis, or comply with self-isolation recommendation with respect to coronavirus may receive tax credits of up to $511 per day. Payments to employees caring for a family member or for a child whose school or child care center is closed, qualified sick leave wages are capped at $200 per day. Both types of wages are capped at 10 days in the aggregate. (Section 7001)

- **Paid Family and Medical Leave Mandate:** The refundable tax credit for qualified family leave provision is capped at $200 per day and $10,000 each quarter. (Section 7003)
In the CARES Act Stimulus bill

Emergency Small Business Loans (SBA 7(a))

Provides funding for special emergency loans of up to $10 million for eligible nonprofits and small businesses, permitting them to cover costs of payroll, operations, and debt service, and provides that the loans be forgiven in whole or in part under certain circumstances. Title I, Section 1102.

Nonprofit Eligibility: Available for charitable nonprofits with 500 or fewer employees (counting each individual – full time or part time and not FTEs). The final bill does not include a provision in earlier drafts that would have disqualified nonprofits that are eligible for payments under Title XIX of the Social Security Act (Medicaid).

Loan Use: Loan funds could be used to make payroll and associated costs, including health insurance premiums, facilities costs, and debt service.

Loan Forgiveness: Employers that maintain employment between March 1 and June 30 would be eligible to have their loans forgiven, essentially turning the loan into a grant. Section 1106.

Assistance for Mid-Sized Businesses.

Instructs the Treasury Secretary, through the Federal Reserve, to ensure that nonprofit organizations and businesses between 500 and 10,000 employees have access to a specific loan facility with loans not higher than two percent per year and no payments due for the first six months. In order to qualify, the eligible borrower must self-certify, among other things, that the loan is necessary to support the borrower’s ongoing operations, the borrower will retain 90% of its workforce until September 30, 2020, and the borrower will not outsource or offshore jobs for a period of time ending two years after repayment of the loan.

Economic Injury Disaster Loans (EIDL)

Eliminates creditworthiness requirements and appropriates an additional $10 billion to the EIDL program so that eligible nonprofits and other applicants can get checks for $10,000 within three days. Section 1110.
Charitable Giving Incentive

Includes an above-the-line deduction (universal or non-itemizer deduction that applies to all taxpayers) for total charitable contributions of up to $300. The incentive applies to contributions made in 2020 and would be claimed on tax forms next year. Section 2204.

The bill also lifts the existing cap on annual contributions for those who itemize, raising it from 60 percent of adjusted gross income to 100 percent. For corporations, the bill raises the annual limit from 10 percent to 25 percent. Food donations from corporations would be available to 25 percent, up from the current 15 percent cap. Section 2205.

Employee Retention Payroll Tax Credit

The bill creates a refundable payroll tax credit of up to $5,000 for wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose operations were “fully or partially” suspended due to government orders related to COVID-19. The credit is available to private nonprofit colleges and universities and to their related entities if they are organized as 501(c)(3)s. We believe this would include a range of organizations such as university foundations, research institutions, alumni organizations, university presses, etc. Public institutions - if they or their related entities are deemed arms or subsidiaries of a state government - are ineligible. Employers that receive an Emergency Small Business Loan (SBA section 7(a)) are not eligible to receive the credit.

The bill does not define “partial” suspension. We think a reasonable interpretation of the provision would be that it applies to employees of offices, services or facilities (e.g. dining, dorms, athletic facilities) that have been “fully or partially” suspended would be covered but it would likely not cover for instance the faculty member who continues to teach on an online platform.

Expanded Unemployment Insurance

The bill enhances the state UI system and creates a parallel system called Pandemic Unemployment Assistance. The latter is for those who are not eligible for benefits under the state UI systems.
Both programs run from January 27 to December 31, 2020 and provide up to 39 weeks of coverage at regular state UI rates. Both programs also allow for an additional $600 per week in payments until July 31. The bill would also waive normal one-week waiting periods required for UI eligibility. In most cases, the Pandemic Unemployment Assistance would be implemented by the state via an agreement with DOL, but DOL could decide to administer the programs where it finds the state system inadequate (see Section 2102 (f)).

A few more details on the programs below.

**Enhanced UI**

The bill allows states to enhance their UI offerings by entering into agreements with the Federal Government. Presumably, every state will enter into these agreements. Under the enhanced systems, an individual eligible for benefits under the state system would receive the normal 26 weeks of UI regular state-set rates. Once the individual has exhausted that leave, they would be eligible for an additional 13 weeks at the normal state rate under Section 2107 of the bill. Under Section 2103, the Federal Government will fund 1/2 the cost of the 26 weeks for certain “self-insured” government entities and nonprofits, and, under Section 2107, it will fund the full cost of the additional 13 weeks. Under Section 2105, the Federal Government would also fully fund the first week of payment for those states that waive the normal one-week waiting period. Finally, under Section 2104, individuals qualifying for UI would receive an additional $600 per week until July 31. These Section 2104 payments would be funded by the Federal Government.

**Pandemic Unemployment Assistance**

Section 2102 creates a new program for individuals who are not eligible for UI under the state system, including the self-employed and those without sufficient work history. To qualify, the individual must provide self-certification that they are otherwise available to work but are unemployed, partially unemployed, or unable to work due to a host of COVID-related reasons (e.g., COVID-19 illness/symptoms, self-quarantine, caregiving (including as a result of school closure), unable to reach job, place of employment closed, etc.). Included among those reasons is “the individual has to quit his or her job as a direct result of COVID-19.” DOL will be tasked with putting parameters around this provision, but it appears that non FWS students who work on campus would be eligible.

This new program covers up to 39 weeks of unemployment for weeks between January 27 and December 31. The individual would receive payments equal to what they would be eligible for under the state
system if they qualified, including the Section 2104 payment of $600 through July 31. Any payments the individual received under the state UI system during the time period would be counted against the 39-week entitlement (in other words, the Pandemic Unemployment Assistance cannot be used to extend total entitlement beyond 39 weeks).

**Amendments to the New Paid Leave Mandates**

Lowers the amounts that employers must pay for paid sick and family leave under the Families First Coronavirus Response Act (enacted March 19) to the amounts covered by the refundable payroll tax credit – i.e., $511 per day for employee sick leave or $200 per day for family leave.

**Creates a one-year expansion of IRC Section 127**

The tax benefit under Sec. 127 that allows employers to provide up to $5,250 annually to employees for education assistance is expanded to allow employers to provide the same amount to employees for student loan repayment assistance. Available for 2020 only.