

CARES ACT AND FFCRA - SUMMARY FOR CONTRACTORS

The following is a summary of provisions in the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security Act (CARES Act) that impact construction contractors and their workforces.

EMPLOYER RESPONSIBILITY - WAGE COVERAGE

Paid Sick Leave – the FFCRA created paid sick leave for employers with less than 500 employees. It is available to all employees, regardless of length of tenure with the employer. As of April 20, 2020, the employer is required to cover 80 hours (full-time employees) or average of part-time worker’s hours over a 2-week period. Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits (through Dec. 31, 2020). Important to note is that the FFCRA provides an option for employers in multiemployer bargaining units to satisfy their paid sick leave obligations by paying into a multiemployer benefit plan *if* the plan can pay employees the required benefits.

Paid Leave Through FMLA – the FFCRA also created paid leave, not paid sick leave, through the existing Family and Medical Leave Act. It only applies to employers with *fewer* than 500 employees. However, it is only available to employees who have been employed for 30 days with the employer from which they are requesting the leave. Specifically, it requires employers to provide 10 days *unpaid* leave and up to an additional 10 weeks of *paid* leave to care for son or daughter whose school or childcare facility is closed, or childcare provider is unavailable for COVID-19 related reasons. Employers may take a credit against payroll taxes worth 100% of the amount they pay in required paid leave benefits (through Dec. 31, 2020).

UI FOR INDEPENDENT CONTRACTORS

Pandemic Unemployment Assistance – the CARES Act establishes “pandemic unemployment assistance” for individuals who have exhausted their rights to regular UI or who would not otherwise qualify for UI under state law, including people who are self-employed or independent contractors, are seeking part-time work, or have insufficient work history. These individuals are entitled to benefits if they self-certify that they are otherwise able and available to work but can’t because of one of the following:

- the individual is diagnosed with COVID-19, or has symptoms of COVID-19 for which the individual is seeking a diagnosis;
- a member of the individual’s household has been diagnosed with COVID-19;
- the individual is providing care for a family member or a member of individual’s household who has been diagnosed with COVID-19;
- a child or other person in the household for whom the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility being open is required for the individual to work;
- the individual is unable to reach their place of employment because of a quarantine;
- the individual is unable to reach their place of employment because they have been asked to self-quarantine by a health-care provider;
- the individual was scheduled to commence employment but is unable to reach the job or no longer has the job because of COVID-19;
- the individual has become the breadwinner or major support for their household because the head of household has died as a result of COVID-19;
- the individual has to quit their job as direct result of COVID-19;
- the individual’s place of employment is closed as a direct result of COVID-19;
- the individual meets any other, additional criteria established by the Secretary of Labor for unemployment assistance.

For pandemic unemployment assistance:

- The benefit amount is the usual weekly amount authorized by state law (including any increases the state implements) *plus*, through July 31, 2020, \$600 per week.
- These benefits are available for a total of 39 weeks, which include any weeks the individual received regular UI.
- The benefits are available for weeks of unemployment between January 27, 2020 and December 31, 2020.
- The benefits are not available to individuals receiving paid sick leave or other paid leave benefits.
- Individuals, such as apprentices, unable to provide sufficient documentation of wage history may instead receive a “minimum flat benefit” based on the average weekly payments made by the state.
- There is no waiting period.

EXPANDED LOAN PROGRAMS FOR EMPLOYERS

Employee Retention Tax Credit – the CARES Act revives a tax credit that has been used before in the aftermath of natural disasters to for employers to retain employees. The amount of the credit is 50% of all employee wages per calendar quarter but won’t exceed \$10,000 per employee per calendar quarter. In applying for the tax credit, the employer may include amounts paid to group health plans as “wages” if the amounts are not normally included as income to the employee. To receive the credit, the employer must experience: 1) a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or 2) a significant decline in gross receipts. The credit only applies to wages paid between March 12, 2020 and January 1, 2021. Tax exempt organizations are eligible for the credit. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

Paycheck Protection Program – the CARES Act creates a new avenue for small businesses, veterans organizations, 501(c)(3) organizations or “any business concern” to receive a cash infusion if they do not employ more than 500 individuals. Specifically, it amends the Small Business Administration’s (SBA) Section 7(a) Loan Program. The core mission of this program is to provide SBA-guaranteed financial assistance to small businesses that lack access to capital. Private lenders partner with SBA by making loans directly to small businesses and the SBA guarantees a portion of each loan. The CARES Act amends the program to direct the SBA to guarantee the *entire* loan. The loans are capped at \$10 million, and interest shall not exceed 4%. Eligible loans may only be made between February 15, 2020 and June 30, 2020. Companies may use these loans for a wide range of purposes including acquisition of land, construction, materials, supplies, equipment, payroll costs, continuing group healthcare benefits, employee salaries, interest on mortgage, rent, and utilities. Additionally, SBA shall require lenders who make loans during the above-referenced period to provide payment deferment relief for not less than 6 months. The amount of loan forgiveness shall be reduced if the business laid off workers or reduced their wages. SBA, however, may grant exemptions to this rule. Finally, loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program. Depending on the definition of “any business concern” this could be an opportunity for Taft Hartley plans and unions to receive these loans.

Retaining Employees on Federal Job Sites – the CARES Act also opens up new authority for federal agencies to use existing funds to pay their contractors whose employees or subcontractors cannot perform work on a “site that has been approved by the Federal Government, including a federally-owned or leased facility, due to facility closures or other restrictions” and whose job duties cannot be performed remotely due to the COVID-19 public health emergency. This includes building trades workers. Payments to employees are limited to an average of 40 hours a week and exclude any credits the contractors are allowed for benefits they otherwise provide under the FFCRA or this Act. Applies only to paid leave or paid sick leave up to September 30, 2020.

Economic Injury Disaster Loans – the CARES Act would expand eligibility for entities suffering economic harm due to COVID-19 to access SBA’s Economic Injury Disaster Loans (EIDL), while also giving SBA more flexibility to process and disperse small dollar loans. The bill allows entities that apply for an EIDL expedited access to capital through an Emergency Grant—an advance of \$10,000 within three days to maintain payroll, provide paid sick leave, and to service other debt obligations. An amount of \$10 billion would be provided to support the expanded EIDL program.

RETIREMENT PROVISIONS

Single employer – the CARES Act provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan’s status for benefit restrictions as of December 31, 2019, will apply throughout 2020.

Expands DOL Authority to Postpone Certain Deadlines – the CARES Act amends ERISA to provide the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.

Special rules for use of retirement funds – the CARES Act also, consistent with previous disaster-related relief, waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year’s cap on contributions. The bill also provides flexibility for loans from certain retirement plans for coronavirus-related relief. A coronavirus-related distribution is one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Temporary waiver of required minimum distribution rules for certain retirement plans and accounts – the CARES Act waives the required minimum distribution rules for 401Ks, 403bs, SEPs and IRAs for calendar year 2020. This bill provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

PREVAILING WAGE

Temporary hospitals – while neither the FFCRA nor CARES Act addresses prevailing wage rates for the building of temporary hospitals, the building trades has obtained confirmation from the US Army Corps of Engineers (USACE) that prevailing wage will be paid on USACE federal contracts to build these structures.

Airport construction – the CARES Act provides \$10 billion dollars to airports, some of which may be used for construction and is already covered by prevailing wage.