

M3 Blog

Overview of the CARES Act

March 30, 2020 | Compliance, COVID-19, Employee Benefits

On Friday, March 27, 2020, President Trump signed the bipartisan **Coronavirus Aid, Relief and Economic Security Act (CARES Act)** into law. This legislation included financial stimulus and relief provisions for business, government entities and individuals.

Here is an overview of provisions of the CARES Act which relate to employer obligations:

PAYCHECK PROTECTION (Section 1102)

This provision makes loans available to businesses (any business concern, non-profit, veterans organization or Tribal business concern) no greater than 500 employees or the standard size in number of employees set by the Administration for specific industries. The loans are available to cover the following:

- Salaries, wages, commissions and tips for employees residing in the US – this does not include compensation in excess of \$100,000 annually, pro-rated by the covered period.
- Paid leave (other than leave provided by the EPSLA or EFMLEA)
- Allowances made for dismissals
- Payments for group health care benefits including premiums
- State and local taxes
- Payments to independent contractors

The covered period for the loans is: February 15, 2020 – June 30, 2020.

In addition to the payroll costs, eligible employers may also use the loan proceeds to cover interest on mortgage obligations, rent, utilities and interest on debt incurred before the covered period.

Eligible employers are required to provide a certification attesting “that the uncertainty of current economic conditions makes necessary the loan request to support on-going operations of the eligible recipient”. Eligible employers must also acknowledge that the funds will be used to retain workers and maintain payroll or make mortgage, lease or utility payments.

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19 (Section 2301)

This provision allows for a credit against applicable employment taxes for each calendar quarter an amount equal to 50% of the qualified wages with respect to each employee of such employer for such calendar quarter.

Employers eligible to take this credit are employers that:

- Conduct trade or business during calendar year 2020, and
- The operation of the trade or business is fully or partially suspended during any calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID- 19)

The guidelines within the CARES Act for the credit include:

- **Wages:** The amount of qualified wages with respect to any employee which may be taken into account under subsection by the eligible employer for all calendar quarters shall not exceed \$10,000.

The credit is limited to employment taxes and shall not exceed the applicable employment taxes on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

- **Applicable Employment Taxes:** These are the taxes imposed under section 3111(a) of the Internal Revenue Code of 196 and the amount of the taxes imposed under

section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

- **Health Plan Expenses:** The “qualified wages” that may be eligible for a credit will include the qualified health plan expenses allocable to such wages. Health plan expenses for this purpose include amounts paid or incurred by the employer to provide and maintain a group health plan but only to the extent such amounts are excluded from the gross income of employees under IRC Section 106(a).
- **Governmental Employers:** The credit does not apply to the Government of the United States, the government of any state or political subdivision thereof, or any agency or instrumentality thereof.

Note: Employers receiving a loan under the Small Business Act and the provisions of the CARES Act are not eligible for this credit.

RAPID COVERAGE OF PREVENTIVE SERVICES AND VACCINES FOR CORONAVIRUS (Section 3203)

This provision of the CARES Act requires any group health plan and health insurance issuer to cover (without cost-sharing) any qualifying coronavirus preventive services.

Qualifying coronavirus preventive services means an item, service or immunization that is intended to prevent or mitigate the coronavirus disease with an evidence-based item or service that has in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force. Coverage must put into effect within 15 business days after the date on which a Task Force recommendation is made.

PAID LEAVE FOR REHIRED EMPLOYEES (Section 3605)

Under the Employer Family and Medical Leave Act (EFMLEA), the law allows for expanded paid leave due to school closures. This requirement states that an eligible employee is employed at least 30 calendar days which includes an employee that was laid off by that employer not earlier than

March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to the employee's layoff, and was re-hired by the employer.

EXEMPTION FOR TELEHEALTH SERVICES (Section 3701)

For plan years beginning on or before December 31, 2021, high deductible health plans may provide telehealth and other remote care services without cost-sharing effective March 27, 2020.

INCLUSION OF CERTAIN OVER-THE-COUNTER MEDICAL PRODUCTS AS QUALIFIED MEDICAL EXPENSES (Section 3702)

Health Savings Accounts, Archer Medical Savings Accounts, Medical Flexible Spending Accounts and Health Reimbursement Arrangements are now allowed to reimburse for over-the-counter medications, including menstrual care products.

The CARES Act defines a menstrual care product as a tampon, pad, liner, cup, sponge, or similar product used by individuals with respect to menstruation or other genital-tract secretions.

This provision applies to expenses incurred after December 31, 2019.

Takeaway:

The majority of the CARES Act is focused on financial relief for individuals and employers. However employers would be well-served to review these provisions of the CARES Act to understand the implication for their employment practices. With the signing of two major laws in the past two weeks (**Families First Coronavirus Relief Act** and the CARES Act), we anticipate multiple federal agencies to develop further interpretative rules and implementation processes to answer questions about this new law.

M3 is committed to helping you stay current with COVID-19 information that impacts your business. Click here to access **M3's dedicated COVID-19 Business Resources** page.

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