

What Employers Should Know About the New Stimulus Package

On December 21, 2020, Congress released the text of the much anticipated COVID-19 Stimulus Package which was passed by the House as part of the [Consolidated Appropriations Act, 2021](#) (the “Act”). The Act has not reached President Trump’s desk as of the release of this HRW Client Alert and the President has indicated that he may insist on certain changes, particularly with respect to the direct payment stimulus checks. However, it is anticipated that regardless of any changes suggested by the President, much of the Act will remain intact. Hirsch Roberts Weinstein has identified the following key takeaways for employers from the Act, in its current form:

- **FFCRA Tax Credits Extended (But No New Leave Entitlement).** The Families First Coronavirus Response Act (“FFCRA”) payroll tax credits are extended until March 31, 2021. These tax credits are available for leaves permitted by the employer if the leave is consistent with either the Emergency Paid Sick Leave (“EPSL”) or Emergency Family and Medical Leave Expansion (“EFML”) portions of the FFCRA. In short, a covered employer may choose to voluntarily continue providing FFCRA leave and continue to take the tax credit through the end of March. However, the Act does not appear to expand the total amount of FFCRA leave afforded to employees. Thus, if an employee has already taken 80 hours of EPSL, and the employer chooses to permit them to take additional time off, the employer may not take a tax credit for that time. Similarly, the most FMLA leave (including EFML) that an employee can take is 12 weeks per benefit year. Once an employee uses up that 12 weeks (and assuming that their FMLA benefit year is not reset under the terms of the employer’s FMLA policy), any additional time off taken would not qualify as EFML, and thus would not qualify for the tax credit.
- **Additional PPP Funding, Allowable Use Expansion.** The Act provides for approximately \$284 billion in additional funding for the Paycheck Protection Program (“PPP”), and expands the allowable use of PPP funds to include (a) covered operations expenditures; (b) covered property damage costs; (c) covered supplier costs; and (d) covered worker protection expenditures (e.g., PPE). Each newly covered use is defined in the Act and funds expended on these newly designated covered uses are eligible for loan forgiveness.
- **PPP Eligibility Threshold.** In general, the Act limits eligibility for PPP loans to businesses that (a) employ not more than 300 employees; and (b) have experienced at least a 25% reduction in gross quarterly receipts in 2020 when compared to 2019, with certain exceptions and formulae built in for businesses that may not have been operating in each quarter of 2019.

- **PPP Covered Period.** The covered period for PPP loans received under the Act shall range from the date the loan originates to a date of the borrower's choosing between 8 and 24 weeks after origination.
- **Unemployment Extension.** The Pandemic Unemployment Assistance ("PUA") program, initially introduced as part of the CARES Act, has been extended through March 14, 2021, and includes a transition period through April 5, 2021, for those who have not exhausted their right to benefits as of March 14. The Act also extends PUA from 39 weeks to 50 weeks, effectively granting an extra 11 weeks of PUA after its original expiration date of December 26, 2020.
- **Federal Unemployment Benefit.** The Federal Pandemic Unemployment Compensation has also been extended until March 14, 2021, with the same transition period available as under PUA. Eligible individuals may receive \$300 per week after December 26, 2020, a reduction from the \$600 per week that was previously provided for under the CARES Act.
- **Employer Reporting of Refusal to Return to / Accept Work.** States that enter into an agreement with the federal government concerning unemployment benefits will have to establish a procedure for employers to report claimants who refuse to return to work or to accept an offer of suitable work without good cause. The procedure must include a method for employers to make such reports through a phone line, email, or online portal.
- **Stimulus Checks (\$600).** Individuals earning less than \$75,000 annually (\$150,000 for joint returns) based on income earned in 2019 are eligible for a \$600 payment (\$1,200 for eligible joint returns) from the federal government, plus \$600 for each qualifying child of the individual.

In its current form, the Act is over 5500 pages long. This HRW Client Alert is only intended to highlight key provisions.

For Questions/More Information

Employers should consult with their legal and financial representatives with specific questions about the Act. If you do have questions concerning the Act, please do not hesitate to contact:

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