



MEMORANDUM

Date: March 26, 2020

To: McDermott Will & Emery LLP

Re: Coronavirus Aid, Relief, and Economic Security Act (“CARES”)

This legislation (which the Senate has approved unanimously and which is now proceeding through the House of Representatives) will provide emergency assistance for individuals, families and businesses affected by the 2020 coronavirus pandemic. It includes myriad provisions including the promised checks to individual citizens and relief for the airline industry.

In total, CARES is 880 pages of often hyper-technical provisions.

Let’s zoom in and look exclusively at those provisions that are *employment-specific*.

Title II of CARES expands unemployment insurance benefits:

- Unemployment benefits will be available for those unemployed as a result of COVID-19 between January 27, 2020 and December 31, 2020; this will include those who are not traditionally able to qualify for benefits, including the self-employed and independent contractors.
- There will be an extra \$600 per week in benefits through July 31, 2020.
- There will be funding to eliminate the traditional waiting period.
- 13 extra weeks of benefits will be added on to the existing number of weeks of benefits.
- \$100 million of funding to states to support “short-term compensation” programs, where employers reduce workers’ hours instead of laying off workers and those workers whose hours are reduced and are eligible to receive a pro-rated unemployment benefit. This funding is available through December 31, 2020.



Title II of CARES also effects payroll taxes (6.2% for Social Security + 1.45% for Medicare).

First, Section 2302 grants significant latitude to delay in paying those taxes. Employers may defer payments of those payroll taxes for 2020 over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. But, businesses that receive loan forgiveness under CARES (available under Sections 1106 or 1109) will be ineligible for these deferred tax payments.

Second, Section 2301 separately offers an “employee retention” tax credit: a 50% tax credit for wages paid [A] in a calendar quarter where revenues are less than 50% of the prior calendar year quarter or [B] in a calendar quarter where the business has been fully or partially suspended due to government orders limiting commerce, travel, or group meetings. These credits apply to wages paid after March 12.

These credits turn on the number of employees. For employers of 100 or more employees, the tax credit applies in either qualifying period but only to wages paid “for which the qualifying employee is not providing services” due to those circumstances. For employers of less than 100, however, the tax credit applies even when the employees are working.

For determining which entities should be aggregated for counting employer size for this purpose, “[a]ll persons treated as a single employer under ... the Internal Revenue Code of 1986 ... shall be treated as one employer for purposes of this section.”

Title III of CARES revisits the Families First Coronavirus Relief Act (FFCRA).

This law adds technical amendments. These amendments restate the limits on paid FMLA leave (but without appearing to change the \$200 per day/per employee and \$10,000 total per employee). These amendments also restate the limits on paid sick leave (but again without appearing to change the dollar limits).

More importantly, these FFCRA amendments grant paid FMLA leave to rehired employees: *i.e.*, employees laid off on or after March 1 but who are subsequently rehired. For all FFCRA payments, these amendments waive penalties for failure to deposit taxes, where employers anticipate taking the tax credits under the FFCRA for either the FMLA paid leave or the paid sick leave.

Title IV of CARES attaches employment-specific conditions to available loans.

Section 4003 makes \$500 billion of stimulus money available. It earmarks a portion for loans at no more than 2% interest to businesses with a workforce between 500 and 10,000 employees. There are, however, conditions attached to such loans that need to be carefully considered before applying.



These conditions include promises concerning union relationships: (1) to “remain neutral in any union organizing effort for the term of the loan” and (2) to continue existing collective bargaining agreements until two years after the loan is repaid.

These commitments also include other employment promises: i.e., “not to offshore or outsource jobs” until two years after the loan is repaid; to restore 90% of the February 1 workforce within 4 months following this public health emergency; and to retain 90% of the existing workforce at full wages/benefits through September 30.