



# The CARES Act

PRESENTED BY  
Steven L. Baron, Natalie A. Harris  
and Brendan J. Healey  
Baron Harris Healey

- “A billion here, a billion there, and pretty soon you’re talking real money.”

—Everett McKinley Dirksen

- This event isn’t just a black swan, Nassim Nicholas Taleb’s parlance for an unexpected happening that forever alters the course of history. For dailies — in the U.S., in Canada, in the U.K., and really globally — it’s a flock of black swans.”

—Ken Doctor



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# Agenda

# AGENDA

1. Overview of Stimulus Packages and CARES Act
2. Loans
3. Employment Benefits
4. Tax Benefits
5. Future Legislation

# Three Stimulus Packages (with a fourth on the way?)

- **Phase One:** March 6, \$8.6 billion for extra funding for CDC, FDA and other agencies, \$4 billion for testing and \$1 billion for loans
- **Phase Two:** March 18, \$100 billion for free testing, two weeks paid family and sick leave, increased Medicaid and SNAP and increase unemployment benefits
- **Phase Three:** March 27, \$2.2 trillion (CARES Act) (World War 2, by comparison, cost \$4.1 trillion)
- **Phase Four:** ????????

# Summary of CARES Act

- Lending facilities
  - SBA loans for small businesses (\$349 billion)
  - Treasury loans for larger businesses (\$454 billion)
- Expanded unemployment benefits (\$260 billion)
- Business tax cuts (\$280 billion)
- Industry-specific loans (airlines, \$25 billion; cargo air carriers, \$4 billion; national security businesses (i.e., Boeing), \$17 billion; \$75 million for Corporation for Public Broadcasting)



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# Loans

# Qualifying for SBA Loans

- Businesses with fewer than 500 employees are eligible (but newspapers can go up to 1,000)
- This includes all employees—full-time, part-time, and other status
- Must be operational as of February 15, 2020
- No exemption for multiple locations under 500 but company over 500 employees



# Two SBA Loan Programs

- Paycheck Protection Loan Program ("PPP")
- Economic Injury Disaster Loan Program ("EIDL")
- Loans *and grants* are available under each

# SBA Paycheck Protection Program

- 100% federally guaranteed loans for small businesses
- Loans will come from private banks
- Max loan is lesser of \$10 million or 2.5 times average monthly payroll costs for preceding 12 months
- CARES Act states that interest rate can be up to 4%, but initial PPP guidance is that it will be .5%
- CARES Act states that term can be up to 10 years, but initial PPP guidance is two-year term
- No personal guarantee or collateral is required
- Lenders encouraged to defer payments at least six months and up to a year
- No prepayment penalties

# How Do I Apply For The Paycheck Protection Program?

- Check with your local bank
- SBA loan portal: <https://www.sba.gov/funding-programs/loans>
- You can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating
- Other regulated lenders will be available to make Paycheck Protection loans once they are approved and enrolled in the program.
- Lenders can begin processing applications **April 3**, and the deadline to apply is June 30—we recommend applying as soon as possible
- Lenders that are already SBA-approved should be able to loan money more quickly

# Application Certification

- Complete a certification stating:
  - (1) the “uncertainty of current economic conditions makes necessary the loan request” to support ongoing operations
  - (2) Loan proceeds will be used to make payroll and/or pay mortgage/ rent/utilities
  - (3) You do not have an application pending for a duplicative loan (state bridge loans are OK)
- Note: You cannot take out an EIDL and Paycheck Protection loan for the same purpose, but you can roll EIDL into Paycheck Protection, and you can use them for different purposes

# What Are “Payroll Costs”?

- Included costs
  - Salaries for employees (does not appear to include independent contractors)
  - Payment of group health care
  - State and local payroll taxes (but not federal)
  - Vacation payments/retirement payments/termination payments
- Excluded costs
  - Compensation of individual employee in excess of \$100,000
  - Credits under Families First Coronavirus Response Act for sick leave or family leave

# Forgiveness of Paycheck Protection Loans

- Some or all of the loan may be forgiven
- Forgiveness calculated on amount spent in eight weeks after origination of loan for:
  - "Payroll costs"
  - Mortgage interest
  - Rent
  - Utilities
- Forgiveness cannot exceed the original loan amount

# Forgiveness of Paycheck Protection Loans (cont.)

- You must continue paying employees at normal levels during the eight weeks following the origination of the loan
- The amount forgiven will be the combined costs of payroll, mortgage interest, rent payments and utility payments—probably 75% will need to be payroll
- Loan forgiveness reduced if there is a reduction in the number of employees or a reduction of more than 25% of wages paid to any employee making less than \$100,000 in 2019 (compared to most recent quarter)
- Not reduced if wages and employees restored by June 30, 2020 for changes made from February 15, 2020 to April 26, 2020
- You will submit a request to your lender with documentation

# Economic Injury Disaster Loan Program

- Pre-existing SBA program, expanded by CARES Act (\$10 billion in additional funding)
- For small businesses suffering economic injury from federally declared disasters
- Loans come directly from the SBA
- Generally up to \$2 million
- Interest rate 3.75%
- Term can be up to 30 years
- Collateral for loans over \$25,000 is required
- No personal guarantee for loans under \$200,000



# Eligibility for EIDL

- Business must be in existence as of Jan. 31, 2020
- No need to satisfy "credit elsewhere" test
- Subject to "economic injury" test
- Loan should take two to three weeks for approval, five days for funding
- Application form is at [https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20\(SBA%20Form%205\).pdf](https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20(SBA%20Form%205).pdf)

# EIDL \$10,000 Emergency Advance

- The EIDL has a \$10,000 Emergency Advance feature that does not need to be repaid
- Businesses are expected to get the \$10,000 within three days of applying
- Application form is at <https://covid19relief.sba.gov/#/> (application process is live now)
- To get the advance, you must apply for an EIDL

# \$10,000 Emergency Advance Application

- Submitted under penalty of perjury
- Must meet seven eligibility criteria (e.g., not a lobbyist, not more than 1/3 of income from legal gambling)
- Other qualifying questions (criminal offenses, etc.)
- Asked to check a box if you seek \$10,000 advance
- Grants available Jan. 31, 2020 to Dec. 31, 2020
- The advance need not be repaid, even if the loan is subsequently denied

# Permissible Uses for Emergency Advance

- Providing paid sick leave to employees unable to work due to the direct effect of the COVID-19
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns
- Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains
- Making rent or mortgage payments
- Repaying obligations that cannot be met due to revenue losses.

# Loans For Mid-Size & Larger Businesses

- This is the so-called “slush fund”
- \$454 billion for two loan funds
  - Direct loans from Treasury to large businesses
  - Financing to lenders that in turn make loans to eligible mid-sized businesses
- These loans are available only to mid-size/larger businesses, and they come with lots of strings attached

# Direct Loans from Treasury

- No share buybacks or dividend payments until 12 months after loan is paid off
- Recipient must comply with the employee compensation limits set forth under Section 4004 of the CARES Act
- Meeting any requirements applicable under Section 13(3) of the Federal Reserve Act, including, but not limited to: (i) loan collateralization, (ii) taxpayer protection; and (iii) borrower solvency
- Business must meet following requirements: (i) created or organized in the United States or under US law, (ii) maintains significant operations in the United States, and (iii) has a majority of its employees based in the United States

# Financing for Mid-Sized Loans

- Targeted for companies with 500 to 10,000 employees
- Must certify business is based in U.S., not a debtor in bankruptcy, and that uncertainty makes loan necessary to support ongoing operations
- 2% interest rate

# Financing for Mid-Sized Loans (cont.)

- No compensation limits, but . . .
- Business must maintain 90% of workforce at full comp and benefits through September 30, 2020
- Intend to restore 90% of workforce as of February 2020 and all benefits within four months of end of public health emergency
- Not pay dividends on common stock or re-purchase stock while loan is outstanding
- Not outsource or offshore jobs for two years after completing repayment
- Not abrogate CBA for two years after repayment
- Remain neutral on any union organizing during term of loan





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# Employment Benefits

# Enhanced Unemployment Insurance

- Now to 7-31-2020 an extra \$600 to each unemployment check
- Expanded eligibility, incl. independent contractors, self-employed
- Additional 13 weeks after state unemployment runs out
- Provides funding to states for “short time compensation,” *i.e.* reduced hours
- <https://www2.illinois.gov/ides/News%20%20Announcements%20Doc%20Library/Federal-Stimulus-UI-FAQ-March2020.pdf>
- File a claim online with IDES - <https://www2.illinois.gov/ides/aboutides/Pages/10%20Things%20You%20Should%20Know.aspx>

# Enhanced Unemployment Insurance

- For many workers who are furloughed or laid off, the \$600 per week supplement may provide complete income replacement or even exceed the weekly amount earned while working.
- In Illinois, the regular weekly unemployment benefit amount is approximately 47 percent of a worker's prior average weekly wage, with a maximum weekly benefit of \$471 per week for an individual with no dependents.
- An Illinois worker making \$17 per hour and working full-time earning \$680 per week ( $\$17 \times 40 = \$680$ ) is eligible for an unemployment insurance benefit of \$320 per week, without any dependent allowances, provided sufficient base period earnings, and assuming no offsets. The Act's \$600 per week supplement increases the weekly unemployment benefit for this typical worker from \$320 to \$920 through July 31, 2020.

# The Emergency Family and Medical Leave Expansion Act

- To qualify, employee must have been employed for at least **30 calendar days** by the employer.
- Covers employers with **fewer than 500 employees**.
- Qualifying need: "the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."

# The Emergency Family and Medical Leave Expansion Act

- Provides a total of **12 weeks of job protected leave**. First 10 days of leave under this Act are unpaid.
- Employee permitted to use previously accrued paid time off during initial 10-day period.
- After first 10 days, employer must pay full-time employees **two-thirds of an employee's regular rate of pay** for the number of hours the employee would otherwise be normally scheduled to work.
- For **part-time employees**, or employees with schedules that change from week to week, the employee must be paid according to the average number of hours the employee was scheduled per day over the past 6-month period.

# Emergency Paid Sick Leave Act

- Available to any employee who is covered under the Fair Labor Standards Act.
- Covers employers with fewer than 500 employees.
- Extends protections to employees regardless of how long they have been employed by employer.
- Eligible employee may take paid sick leave due to a number of COVID-19 related reasons, including being subject to a local quarantine order, being advised by a health care provider to self-quarantine, or caring for an individual who is subject to a local quarantine order.

# Emergency Paid Sick Leave Act

- Employer must provide full-time employee **80 hours of paid** emergency sick leave.
- For part-time employees, employer must provide employee a number of hours equal to the **average number of hours** employee works over a 2-week period.
- Employer **cannot require an employee to search** or find a replacement employee to cover the hours during which employee is using paid sick time.
- Employer may **not require employee to use other paid leave** provided by employer before the employee uses the paid sick time under this Act.

# Notice Criteria For Sick and Family Leave

- If need is foreseeable, employee must provide employer with notice as soon as practicable; and employer may require reasonable notice procedures to receive paid sick leave.
- While DOL may clarify with guidelines or regulations, presently employer may not require any documentation to prove the employee is caring for an individual or child.



# Effective Date for Emergency Leave

- **April 1**
- Will apply to leave taken between April 1 and December 31, 2020.



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# Tax Benefits

# Tax Deadline Extended

- Tax returns and any income taxes owed will not be due until **July 15**
  - Applies to both federal and Illinois taxes
  - Applies to individuals and businesses

# Employee Retention Payroll Tax Credits

- **Payroll tax credit** for payments made to employees or businesses forced to close or reduce operations due to government mandates or that have suffered a significant loss in revenues due to the coronavirus pandemic.
- Employers claim the credit against the employer's share of FICA taxes on **wages paid from March 12, 2020, through December 31, 2020.**
- The tax credit is in **addition to the tax credits** available for sick pay or FMLA leave under the Family First Coronavirus Recovery Act (FFCRA Credits).
- If the amount of the credit for the quarter exceeds the employer's FICA tax due (after reduction by FFCRA Credits), then the amount is treated as an overpayment and may be refunded. However, the total amount of the tax credit available is capped at **\$5,000** per employee for all quarters.

# Employee Retention Payroll Tax Credits

- Credit is available to employers:
  - 1) whose **operations were fully or partially suspended** due to a COVID-19-related governmental order, or
  - 2) whose **gross receipts** during a calendar quarter within the relevant period **declined by more than 50%** when compared to the same quarter in the prior year.

# Employee Retention Payroll Tax Credits

- “Qualified wages” differs by employer size.
- For eligible employers whose average number of full-time employees during 2019 was greater than 100, “qualified wages” are wages paid to employees when they are not working due to the circumstances described in (1) or (2) on prior slide.
- For smaller employers, virtually all wages paid during the applicable period are considered “qualified wages,” whether the employer is open for business or closed as a result of a governmental order.

# Defer Payroll Taxes

- Employers may **defer payment** of the 6.2% Social Security tax on employee wages that would otherwise be payable during 2020.
- The amounts deferred will be due in two equal installments on **December 31, 2021** and **December 31, 2022**.
- Employer that obtains a loan through PPP and has the loan forgiven may not defer payment.

# Net Operating Loss Carryback

- Taxpayers may use net operating losses (NOL's) to offset taxable income for taxable years beginning before Jan. 1, 2021, and NOL's arising in tax years beginning in 2018, 2019 and 2020 may be carried back five years.
- Taxpayers should consider amending returns for open prior tax years to take advantage of these changes and possibly obtain refunds.



# Increase Interest Deduction

- For the 2019 and 2020 tax years, business may deduct interest expense up to 50% of taxable income (with adjustment).
- This amount drops back to 30% of taxable income in 2021.



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# Future Legislation

# Future Legislation

- There likely will be a "Phase Four"
- On March 30, NMA and America's Newspapers sent letter to leaders regarding importance of local news
- Likely no floor vote until mid April, House and Senate in recess until April 20
- Canada doing \$30 million Covid-19 awareness advertising campaign and considering tax credits for newspapers

# Q & A

- For additional information, please contact:
  - Steven L. Baron
    - Tel: 312-741-1027
    - Email: sbaronbhhlawfirm.com
  - Natalie A. Harris
    - Tel: 312-741-1028
    - Email: nharris@bhhlawfirm.com
  - Brendan J. Healey
    - Tel: 312-741-1029
    - Email: bhealey@bhhlawfirm.com