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# FAMILIES FIRST CORONAVIRUS RESPONSE ACT, 2020

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### Emergency Family and Medical Leave Expansion Act (EFMLEA)

1. Employers with <500 employees must provide both paid and unpaid public health emergency leave to employees who have been employed at least 30 days who are unable to work due to the need to care for a son or daughter under age 18 because a school or place of care is closed or a care provider is unavailable, due to a federal-, state-, or local- declared emergency with respect to the COVID-19 virus.
2. Amount of leave time available:
  - a. The first 10 days may be unpaid.
  - b. Beyond 10 days must be paid; based on at least 2/3 of the employee's regular rate of pay and number of hours normally scheduled to work, not to exceed \$200 per day and \$10,000 in total.
3. The DOL is permitted to issue regulations that exclude health care providers and emergency responders, and/or exempt businesses with <50 employees.
4. Employers may elect to exclude health care providers and emergency responders.  
The mandate expires December 31, 2020.
5. EFMLEA tax credit against the OASDI portion of the FICA tax for employers:
  - a. A credit for each employee equal to the amount of leave pay, up to a maximum of \$200 per day (\$10,000 total).

### Emergency Paid Sick Leave Act (EPSLA)

1. Private employers with <500 employees and public employers of any size must provide employees unable to work due to certain virus-related reasons with paid sick leave, regardless of the employee's length of employment:
  - a. Full-time employees: 80 hours of leave time.
  - b. Part-time employees: leave time based on average hours worked over a 2-week period.
2. Maximum amount payable:
  - a. If employee is subject to quarantine or isolation order, advised by a health provider to self-quarantine, or experiencing symptoms and seeking diagnosis: compensation at regular rate up to a maximum of \$511 per day or \$5,110 total.
  - b. If employee caring for an individual who is subject to quarantine or isolation order, advised by a health provider to self-quarantine, or experiencing symptoms and seeking diagnosis; or who is caring for a son or daughter (as defined under section 101 of the Family and Medical Leave Act of 1993) whose school is closed or child care provider is unavailable: 2/3 of regular compensation rate up to a maximum of \$200 per day or \$2,000 total.
3. Employers are prohibited from requiring the employee to find a replacement worker or use other sick leave prior to use of this sick leave.
4. The DOL is permitted to issue regulations that exclude health care providers and emergency responders, and/or exempt businesses with <50 employees.
5. Wages paid under EPSLA are not subject to the 6.2% OASDI portion of the FICA tax.
6. The mandate expires December 31, 2020.

7. EPSLA tax credit against the OASDI portion of the FICA tax for employers:
  - a. A quarterly credit up to the lesser of the amount of leave pay or \$511 per day per employee caring for himself (\$200 per day per employee caring for someone else),
  - b. Up to a maximum of 10 days per employee (reduced by the aggregate number of days taken into account for all preceding calendar quarters).

### **Additional Rules for the EFMLEA and EPSLA Tax Credits for Employers**

1. The credits are increased by the employer's qualified health plan expenses that are allocable to qualified sick leave wages or qualified family and medical leave wages, and by the 1.45% hospital tax portion of FICA on qualified sick leave wages or qualified family and medical leave wages.
2. The credits are refundable to the extent they exceed the employer's OASDI portion of the FICA tax.
3. The credits are not available if the employer is also receiving the credit for paid family and medical leave under IRC Sec. 45S (no double tax benefit).
4. Comparable credits are available to the self-employed against their self-employment tax.
  - a. EPSLA: Up to the lesser of the average daily self-employment income<sup>1</sup> or \$511 per day (for self care, 67% of average self-employment income or \$200 per day to care for family member), for up to 10 days.
  - b. EFMLEA: Up to the lesser of \$200 or 67% of the average daily self-employment income<sup>1</sup>, for up to 50 days.

### **Group Health Plans and Health Insurance Issuers**

1. Group health plans and health insurance issuers offering group or individual health insurance coverage must provide coverage, and cannot impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for the following items and services furnished during any portion of the emergency period:
  - a. Diagnostic tests for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19.
  - b. Items and services furnished to an individual during health care provider office visits (including in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19.

### **Medicare and Medicare Advantage**

1. Medicare and Medicare Advantage cost-sharing payments are waived with respect to a specified COVID-19 testing-related services.

<sup>1</sup> Average daily self-employment earnings is defined as net earnings from self-employment for the taxable year, divided by 260.

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# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES Act), 2020

## SUMMARY

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### TAX-RELATED PROVISIONS

#### 2020 Recovery Rebates (Sec 2201)

1. Refundable tax credit under new IRC Sec. 6428; valid only through December 31, 2020.
2. \$1,200 per eligible individual (\$2,400 for married couples), plus \$500 per qualifying child.
  - a. An eligible individual is any individual other than a nonresident alien, an estate, a trust, or an individual who may be claimed as a dependent on another taxpayer's return (based on ability to claim, not whether actually claimed).
  - b. Qualifying child is based on the definition for the child tax credit.
  - c. Each individual or child must have a valid SSN or adoption TIN.
3. Phase out: credit reduced by 5% of AGI in excess of \$150,000 MFJ, \$112,500 HH, or \$75,000 single or MFS; making phaseout ranges:
  - a. \$150,000 - \$198,000\* for MFJ, with no children
  - b. \$112,500 - \$146,500\* for HH, with one qualifying child
  - c. \$75,000 - \$99,000\* for single or MFS, with no children

\* The range is extended by \$10,000 for each qualifying child
4. Advance refund of credit
  - a. The credit is treated as an overpayment of tax for 2019, which will be refunded to the individual in 2020. Individuals with no income, no taxable income, or only means-tested income are also eligible for the credit.
  - b. Refund will be direct deposited into account established for direct deposit on the 2019 tax return (if filed, or the 2018 tax return if 2019 has not yet been filed). Individuals receiving only nontaxable Social Security or RR retirement benefits will automatically receive their refund via direct deposit or paper check (in the same form as these benefits are received) without further action.
  - c. Individuals receiving payment will be notified by mail within 15 days that the payment has been distributed and the method by which the payment was made.
  - d. Those who are ineligible in 2019 because they may be claimed as a dependent in 2019, but who may not be claimed as a dependent in 2020, are eligible for 2020 and will claim the credit on their 2020 tax return.

#### Above-the-Line Deduction or Charitable Contributions (Sec 2204)

1. For tax years beginning in 2020, taxpayers who do not itemize deductions are permitted to take an above-the-line deduction up to \$300 for qualified charitable contributions.
2. Qualified charitable contributions are cash contributions made during 2020 to a qualified charity (a charity to which a below-the-line deduction would be available for those who itemize). Contributions to donor advised funds and certain private foundations, and carryovers from previous years, however, do not qualify.

## Increased Ceiling for Deduction of Charitable Contributions (Sec 2205)

1. Qualified contributions are disregarded in applying the 60% cash contribution limit for individuals. Qualified contributions, in combination with all other charitable contributions, are deductible up to 100% of the taxpayer's contribution base (AGI).
2. Qualified contributions are cash contributions made during 2020 to a qualified charity (certain private foundations and donor advised funds are excluded), for which the taxpayer has elected to apply this provision.
3. For corporations, qualified contributions can be deducted up to 25% of taxable income (in combination with all other deductible contributions).
4. Excess contributions may be carried forward up to 5 years.
5. The limit on contributions of food inventory to a charity is increased from 15% to 25% of taxable income for a non-corporate taxpayer (without regard to the taxpayer's other charitable contributions for the year), and increased from 15% to 25% of a corporation's taxable income.

## Exclusion for Employer Payment of Student Loans (Sec 2206)

1. Eligible payments from an employer's educational assistance program that are excluded from the employee's gross income will include eligible student loan repayments made after March 27, 2020 (the date of enactment of the CARES Act) and before January 1, 2021.
2. The payments may be made to the employee or to the lender, and are subject to the overall education assistance limit of \$5,250 per employee for all eligible payments.
3. Eligible student loans are qualified higher education loans of the employee. Loans of spouses or dependents do not qualify.
4. Interest paid by the employer under this provision does not qualify for the above-the-line deduction for student loan interest.

## Employee Retention Tax Credit for Businesses Subject to Closure Due to the COVID-19 Crisis (Sec 2301)

1. Refundable payroll tax credit (against the employer portion of Social Security taxes) for 50% of wages paid between March 13, 2020 and December 31, 2020 by eligible employers (those whose operations have been fully or partially suspended due to government order or whose gross receipts are less than 50% of the gross receipts for the same calendar quarter in the prior year) during the COVID-19 crisis.
2. Not available to businesses that receive small business interruption loans under section 1102 of the CARES Act (see Paycheck Protection Program below).
3. For employers with  $\leq 100$  employees in 2019, wages of all employees are eligible, even if the employee is not furloughed. For employers with  $> 100$  employees, only wages of employees who are furloughed or whose hours are reduced are eligible.
4. Wages include qualified health plan expenses, and are capped at \$10,000 per employee (total for all calendar quarters in aggregate). Wages do not include amounts taken into account for payroll credits or required sick leave or paid family leave under the Families First Coronavirus Act.
5. IRS FAQs: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

## Modifications to NOLs (Sec 2303)

1. The 80% of taxable income limitation is temporarily removed, allowing net operating losses to fully offset income for tax years beginning after December 31, 2017 and before January 1, 2021.
2. NOLs arising in tax years beginning after December 31, 2017 and before January 1, 2021 may be carried back up to 5 years.

## Modification of Limitation on Excess Business Losses for Pass-Through Businesses and Sole Proprietors (Sec 2304)

1. Business losses for taxpayers other than corporations can be deducted without limitation for 2018, 2019, and 2020.

## Modification of Limit on Deductible Business Interest (Sec 2306)

1. The limit on deductibility of business interest is increased from 30% to 50% of adjusted taxable income for tax years beginning in 2019 and 2020.
2. Taxpayers may elect to calculate their 2020 deductible interest limit using their 2019 adjusted taxable income. For a partnership, this election must be made by the partnership.
3. For partnerships, the increase applies only to 2020; however, 50% of the excess business interest from 2019 will be allocated to 2020 and is deductible without limit.

# PROVISIONS RELATED TO RETIREMENT FUNDS

## 2020 Required Minimum Distributions (Sec 2203)

1. 2020 Required Minimum Distributions from IRAs, Qualified Defined contribution plans, 403(b)s, and governmental 457 plans are waived for the calendar year 2020.
  - a. The waiver applies to RMDs under Sec. 401(a)(9), which includes lifetime RMDs as well as beneficiary RMDs after the death of the participant.
    - For beneficiaries receiving distributions under the 5-year distribution period (for deaths before the required beginning date), the 5-year period will disregard calendar year 2020.
  - b. The waiver also applies to distributions for which the required beginning date is April 1, 2020 (those who turned age 70 ½ in 2019 and did not take the 2019 distribution during 2019).

## Early Distribution Penalty Exception and Ability to Repay Distribution (Sec 2202(a))

1. Exception to the 10% early distribution penalty for up to \$100,000 in aggregate distributions from a qualified plan, IRA, 403(b) or 457 plan between January 1, 2020 and December 31, 2020 to a qualified individual. A qualified individual is an individual:
  - a. who has been diagnosed with SARS-CoV-2 or COVID-19 (by a test approved by the Centers for Disease Control and Prevention), or
  - b. whose spouse or dependent has been diagnosed with SARS-CoV-2 or COVID-19, or
  - c. who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of a business owned or operated by the individual due to such virus or disease.
  - d. The plan administrator may rely on the employee's certification that the above conditions have been met.
2. The distribution will be taxed ratably over a period of three years beginning with the year of distribution (unless the taxpayer elects otherwise). If the distributee dies within the 3-year period, the remaining untaxed amount will be included in income in the year of death; however, a surviving spouse electing to treat the retirement account as her own will continue to be taxed over the 3-year period.

3. The 20% withholding from distributions from qualified plans does not apply.
4. The Coronavirus-related distribution may be paid back to the retirement plan within the 3-year period beginning on the day after the distribution is received.
  - a. Repayments are treated as eligible rollover contributions (do not count against annual contribution limits).

### **Loans from Qualified Plans (Sec 2202(b))**

1. During the 180 period beginning on March 27, 2020 (the date of enactment of the CARES Act), the maximum loan from a qualified plan, when made to a qualifying individual, is increased to the lesser of 1) \$100,000 (increased from \$50,000), or 2) 100% (increased from 50%) of the vested accrued benefit of the employee.
2. For a qualified individual with an outstanding loan on or after March 27, 2020 (the date of enactment of the CARES Act), payments which would ordinarily be due (under the 5-year and equal amortization requirements) between March 27 and December 31, 2020 are delayed for one year.
  - a. Interest continues to accrue during the delay.
  - b. The 5-year required repayment period will disregard the period from March 27 – December 31, 2020.
3. A qualifying individual is one described above in the section regarding the 10% penalty exception for early distributions from an IRA or qualified plan.

## **HEALTH-CARE RELATED PROVISIONS**

### **HDHP with HSA Can Cover Telehealth Services Prior to Reaching Deductible (Sec 3701)**

1. For plan years beginning on or before December 31, 2021, a health plan may offer telehealth and other remote care services without requiring a deductible, and the plan will continue to qualify as an HDHP.
2. Effective as of March 27, 2020 (the date of enactment of the CARES Act).
3. Note: IRS Notice 2020-15 also allows coverage, prior to meeting the deductible, for COVID-19 related testing and treatment without loss of HDHP qualification.

### **HSA, HRA, and FSA Funds Funds May be Used for Certain Over-the-Counter Medical Products Without Prescription (Sec 3702)**

1. For expenses incurred after December 31, 2019, the definition of qualified medical expenses for HSAs, FSAs, and HRAs is expanded to include over-the-counter menstrual care products.

### **Expanded Use of Telehealth for Medicare (Sec 3703)**

1. During the COVID-19 emergency period, the requirement that the physician has treated the patient in the last 3 years is eliminated for telehealth services, expanding the ability to receive services from a broader range of providers.

### **No Medicare Part B Cost Sharing for COVID-19 Vaccine (Sec 3713)**

1. Medicare and Medicare Advantage cost-sharing payments are waived for the COVID-19 vaccine. The Part B deductible is not required to be met prior to application of this provision.

### **Medicare Part D and Medicare Advantage Prescription Drug Refills (Sec 3714)**

1. During the COVID-19 Public Health Emergency Period, Medicare Part D and MA-PD beneficiaries may obtain up to a 90-supply of prescription drugs in a single refill.

# EDUCATION-RELATED PROVISIONS

## Supplemental Educational Opportunity Grants (Sec 3504)

1. Emergency financial aid grants up to the maximum Federal Pell Grant amount are permitted to assist undergraduate or graduate students for an unexpected expense and unmet financial need due to a qualifying emergency.
2. A qualifying emergency is:
  - a. a public health emergency related to the coronavirus declared by the Secretary of Health and Human Services,
  - b. an event related to the coronavirus for which the President declared a major disaster or emergency under section 401 or 501 respectively of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or
  - c. a national emergency related to the coronavirus declared by the President under section 201 of the National Emergencies Act.

## Subsidized Loan and Pell Grant Limits (Sec 3506-3508)

1. Subsidized Loan and Pell Grant Limits do not count the term if the student dropped out as a result of COVID-19.
2. Students are not required to repay the loan or return the grant if it is the result of a qualifying emergency (as described above for emergency SEO grants).

## Federal Student Loan Deferral for Student Borrowers (Sec 3513)

1. Payments and accrual of interest on Direct loans and FFEL loans from the Department of Education are suspended through September 30, 2020.
2. During the suspension period, suspended payments are treated as if regularly scheduled payments have been made for purposes of credit reporting and for purposes of any loan forgiveness program.

## Year of Service for TEACH Grant (Sec 3519)

1. For teachers who could not complete their year of teaching service as a result of COVID-19, their partial year of service will be counted as a full year of service toward TEACH grant obligations or Teacher Loan Forgiveness eligibility.

# OTHER PROVISIONS

## Paycheck Protection Program (Sec 1102)

1. The federal government will guarantee 100% of loans made for the Payment Protection Program under section 7(a) of the Small Business Act through December 31, 2020. After that time the guarantee will be reduced to 75% for loans > \$150,000, or 85% for loans ≤ \$150,000.
2. The covered loan period is February 15, 2020 through June 30, 2020.
3. Eligible businesses include small businesses with no more than 500 employees, sole proprietors, independent contractors, and other self-employed individuals.
4. The loan amount is tied to payroll costs, up to a maximum of \$10 million.
5. Loans may be used to provide payroll support, including employee salaries, paid sick or medical leave, insurance premiums, interest on mortgages and other debt, rent, and utility payments.
6. Borrowers receiving this assistance cannot also receive an economic injury disaster loan from SBA for the same purpose.

7. No collateral or personal guarantees are required of the borrower. Loan payments may be deferred at least 6 months, but no longer than 1 year.
8. Any remaining loan balance not forgiven under section 1106 of the CARES Act will have a maximum term of 10 years, and the guarantee for that portion of the loan will remain in tact. The maximum interest rate is 4%.
  - a. Loan forgiveness for eligible payroll costs under section 1106 of the Act applies to loan payments used during the 8 week period after the origination of the loan for eligible expenses including employee salaries, paid sick or medical leave, insurance premiums, interest on mortgages and other debt, rent, and utility payments.
  - b. Amounts forgiven may not exceed the original principal amount of the loan.
  - c. The amount forgiven will be reduced proportionately for any reduction in employees retained compared to the prior year.
  - d. Cancelled indebtedness will not be included in the borrower's taxable income.

### **Expansion of Unemployment Insurance (Sec 2102)**

1. Expansion of unemployment insurance to include self-employed and independent contractors.
2. Applies for up to 39 weeks of unemployment or inability to work due to COVID-19 between January 27, 2020 and December 31, 2020.

### **Increased Unemployment Benefits (for states that elect to participate) (Sec 2104, 2105, and 2107)**

1. The regular maximum unemployment benefit is increased by \$600 per week of Federal Pandemic Unemployment Compensation, through July 31, 2020.
2. Unemployment benefits are available without a waiting week, through December 31, 2020.
3. Unemployment benefits extended an additional 13 weeks after regular benefits have been exhausted, through December 31, 2020.

### **Credit Protection (Sec 4021)**

1. For the period from January 31, 2020 through 120 days after the end of the COVID-19 emergency period, if a financial institution makes an accommodation with respect to one or more payments on a credit obligation or consumer account, the financial institution must continue to report the account as current if the consumer fulfills the terms of the accommodation.

### **Foreclosure Moratorium and Consumer Right to Request Forbearance on Federally-Backed Mortgage Loans (Sec 4022)**

1. Foreclosures on all federally-backed mortgage loans are prohibited for a 60-day period beginning on March 18, 2020.
2. Through the earlier of the termination of the national emergency concerning coronavirus or December 31, 2020, a borrower with a federally-backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance on the loan for up to 180 days, and may request that the period of forbearance be extended an additional 180 days.
  - a. No additional fees, charges or interest beyond the amount that would be due had the borrow paid on time may be charged.