



Key Takeaways- FFCRA Regulations- CARES Act

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Deciding to Retain v Lay Off

- ❖ For employers whose economic fortunes have diminished, several programs exist to keep employees working.
 - The Employee Retention Tax Credit reimbursed by tax credits on form 7200
 - The Emergency Paid Leave Programs shift financial burden to the federal government for at least two weeks pay and benefits reimbursed by tax credits on form 7200
 - Paycheck Protection Loans which may be forgivable if certain criteria are met
- ❖ The CARES Act provides additional support to employees, self employed and contract workers through UI expansion





If Attempting to Retain Staff

Employee Retention Tax Credit

- ❖ The CARES Act allows an employee retention tax credit that depends on the size of the employer's workforce,
 - Companies with more than 100 employees may claim the credit for employees who are on the payroll but not currently working due to the crisis.
 - Companies with 100 or fewer employees may claim the credit for all employee wages, regardless of whether the employer is fully operating, or partially or fully shut down.
- ❖ Employers are limited to \$10,000 in wages per employee, credited at 50%



Employee Retention Tax Credit

- ❖ **This credit is generally available to employers, including tax-exempt employers, who either:**
 - **Had operations fully or partially suspended during 2020 because of government orders limiting business activity, travel, or meetings (for commercial, social, religious, or other purposes) due to COVID-19 or**
 - **Whose gross receipts for a calendar quarter in 2020 were less than 50% of its gross receipts for the same calendar quarter in the prior year (until the business's gross receipts are equal to at least 80% of its gross receipts relative to the same quarter in the prior year).**



Employee Retention Tax Credit

- ❖ **Qualified wages are capped at \$10,000 per employee for all calendar quarters for wages paid after March 12th 2020**
 - **At 50%, the tax credit is worth \$5,000 per employee).**
 - **Employer can receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act, but not for the same wages.**
 - **The amount of qualified wages for which an eligible employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.**



Paycheck Protection Program

- ❖ The CARES Act provides \$349 billion in assistance through federally guaranteed loans to small businesses and nonprofit organizations.
- ❖ To encourage companies to bring back workers who have already been laid off, the program is retroactive to February 15, 2020, and extends to June 30, 2020.



Allowed Use of Loan Proceeds

- ❖ **The loan can be used broadly for business purposes, including:**
 - payroll costs, mortgage and rent payments, or utility payments, as well as:
 - payment for vacation, parental, family, medical, or sick leave;
 - dismissal or separation payments;
 - payment for group health care benefits, including insurance premiums; or
 - payment of retirement benefits.



Maximum Loan Amount

- ❖ The maximum loan amount is the lesser of
 - (i) \$10 million or
 - (ii) two-and-a-half months' payroll (salaries, leave, taxes, insurance, etc.),
- ❖ calculated by the business's average total monthly payments for payroll costs incurred during the previous one-year period.



Loan Eligibility

- ❖ While, generally, only small businesses that employ fewer than 500 employees (including sole proprietors, independent contractors, and other self-employed individuals) are eligible for this program, there are exceptions.
- ❖ Restaurants and hotels that employ not more than 500 employees per physical location are eligible to receive a single loan



Loan Forgiveness

- ❖ **Companies are eligible for loan forgiveness equal to the amount they spend over the eight-week period after the origination date of the loan.**
 - **Those “forgiven” amounts include payroll costs (up to \$100,000 of wages as prorated for the covered period), utility payments, and rent and mortgage interest payments in force or incurred before February 15, 2020.**
 - **The amount of loan forgiveness can be reduced if the loan recipient fails to substantially maintain existing employment and compensation levels**



Deferment of Tax Payments

- ❖ **The Act also gives additional cash flow relief by allowing employers and self-employed individuals to defer payment of their share of the Social Security tax on employee wages owed for 2020 until**
 - **December 31, 2021 (when half of the amount deferred must be paid), and**
 - **December 31, 2022 (when the remainder is due).**





Useful Clarifications from FFCRA Regulations

Definitions

- ❖ **A school is considered closed if it is physically closed regardless of any online instruction or programs**
- ❖ **“To care for a child” does not include scenarios where other caregivers are available**
- ❖ **“Unable to Work” does not include situations where Telework is available nor does it consider hours for which the employer has not made work available**



- ❖ **IRS guidance states that in order to obtain the FFCRA tax credit,**
 - the employer must retain documentation that includes, among other things,
 - the name and relation of an individual for whom the employee is caring,
 - the name of the school, place or care, or care provider that is unavailable due to COVID-19, as well as
 - the employee's representation that no other person will provide care for the child during the period for which the employee is receiving family medical leave.
 - The employee must also provide a statement documentation of “special circumstances” requiring the employee to provide care for a child older than age fourteen (14) during daylight hours.



- ❖ **Employers must be careful to “carve out” any leave payments made under the FFCRA from the wages they count for credits under the Employee Retention Credit.**
- ❖ **A company may not receive the Employee Retention Credit if the company obtains a Small Business Interruption Loan under the PPP.**





If Layoff is Necessary

Three New UI Programs

❖ The CARES Act creates three new UI programs:

- **For individuals who do not qualify for “regular” UI benefits**
 - Pandemic Unemployment Assistance, for individuals ineligible for UI
 - Pandemic Emergency Unemployment Compensation for Individuals who have exhausted UI benefits
- **For all UI recipients**
 - Pandemic Unemployment Compensation , a \$600 week UI Bonus, and
- **All three programs are fully federally funded.**



Pandemic UI Assistance (PUA)

- ❖ **PUA provides emergency unemployment assistance to workers who cannot get access to regular state UI or who have exhausted their state UI benefits.**
 - **Up to 39 weeks of PUA are available to workers who are immediately eligible to receive PUA. The program will expire on December 31, 2020, unless otherwise extended.**
 - **Eligible individuals include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long-enough work history to qualify for state UI benefits.**



PUA Eligibility

❖ Eligibility:

- Workers are not eligible for PUA if they can either telework with pay or are receiving paid sick days or paid leave.
- Applicants will need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work for COVID-19 related instances.
- Workers who are eligible for state UI are not eligible for the PUA program.

❖ Pays the amount based on Disaster Unemployment Assistance regulations in weekly benefit amount determined by the state



Pandemic UI Compensation (PUC)

- ❖ **Paid to individuals who qualify for regular unemployment compensation.**
 - **Paid as an additional \$600 to amounts that would otherwise be paid.**
 - **Can be paid with UI payment or separately on weekly basis**
 - **Available to individuals whose unemployment is due to the impact of COVID-19 (broadly defined).**
 - **Available beginning the week after US-DOL and the state sign an agreement and ending on or before July 31, 2020.**



Pandemic Emergency UI Comp (PEUC)

- ❖ Paid to individuals who have exhausted all rights to state and federal unemployment compensation for benefit years on and after July 1, 2019.
- ❖ Provides up to an additional 13 weeks of state UI benefits, which will become available after someone exhausts all their regular state UI benefits.



MT UI Expansion

- ❖ **An emergency rule expands UI eligibility in cases where for Covid-19 related reasons:**
 - **A claimant directed by the employer to leave work or not report for work**
 - **A claimant who is a caregiver of a family member who is the subject of a COVID-19 quarantine is deemed, in order to further the public health, safety, and welfare, to also be subject to a COVID-19 quarantine.**
 - **A claimant laid off as the result of being subject to a COVID-19 quarantine is ineligible for benefits if the claimant refuses work that can be performed while complying with the terms of the quarantine.**



Treasury Releases Form 7200

- ❖ IRS release form 7200 along with instructions.
- ❖ The form is used to claim tax credits or tax advances to pay emergency sick leaves or the Employee Retention Tax Credit





Thank You for Attending!

Please send questions to Emma@westaffmt.com