Employment & Labor Alert

COVID-19 Relief Package Provides Employers Additional Benefits

By: James M. Scears, Paula M. Williams, and Scott Kiplinger
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The President has signed a second round of COVID-19 relief which includes the extension, modification, and creation of many tax benefits to employers, including a continuing tax credit for what will now be voluntary leave under the Families First Coronavirus Response Act ("FFCRA") if taken after December 31, 2020.

The FFCRA was adopted earlier this year and provided Emergency Paid Sick Leave ("EPSL") as well as an Expansion of the Family and Medical Leave Act ("EFMLA"). This year, employers which fall under FFCRA have been able to claim refundable tax credits in order to offset payments to employees for EPSL and EFMLA. The FFCRA expires on December 31, 2020, and was not extended by the bill.

This second round of COVID-19 relief does, however, allow covered employers to voluntarily continue to provide EPSL or EFMLA leave and still claim the FFCRA tax credit through March 31, 2021. However, if an employee has already exhausted their allotted 80 hours of EPSL under the FFCRA, employers will not be allowed the EPSL tax credit should the employer choose to grant additional leave (that is not EFMLA leave).

In addition to the extension of the availability of FFCRA tax credits, the new legislation also includes the following:

- Expenses paid with forgiven Paycheck Protection Program ("PPP") loans are now fully deductible under the regular tax rules, despite prior IRS guidance to the contrary. Similar treatment is also provided for other debt relief available under both the CARES Act and the newly enacted legislation (e.g., EIDL advances).

- Several favorable changes to PPP loan rules that impact both existing loans and new loans, including streamlined loan forgiveness for loans under $150,000, additional qualified expenses for use of loan funds, and the flexibility to choose a forgiveness covered period of between 8 weeks and 24 weeks.

- Reopening of PPP loan program ("PPP1") for those that have not yet participated or returned unused loans, with a downward adjustment to the maximum available loan and addition of IRC section 501(c)(6) organizations and "destination marketing organizations" as eligible borrowers.

- Creation of second round of PPP loans ("PPP2") for those who have used or will use PPP1 loan in full and qualify under new eligibility rules. Borrowers in the hospitality industry who qualify will be permitted to borrow more than those in other industries, but subject to the same maximum loan amount.

- Extension and expansion of employee retention tax credits for certain wages paid to employees, which most importantly retroactively repeals the prior rule that prohibited employers who took PPP loans from also claiming these tax credits, meaning these tax credits should now be available to many more employers in 2020 and the first half of 2021.

- Creation of new SBA grant program for shuttered venue operators.

- Creation of special rules for health and dependent care flexible spending arrangements ("FSAs"), including the option to permit unlimited carryover of unused amounts from 2020 plan year to 2021, and from 2021 plan year to 2022, as well as to extend the grace periods for use of these amounts for 2020 and 2021 plan years to 12 months after the end of the plan years.

- Extension of rules allowing employers to pay up to $5,250 per year of employee student loans in tax-favorable manner under IRC section 127 programs through 2025.

- Extension of due date for repayment of optional deferral of employee payroll taxes pursuant to August 2020 Presidential memorandum from April 30, 2021 to December 31, 2021.

- Modification of existing rules to allow business meals provided by restaurants to be 100% deductible in 2021 and 2022.

GableGotwals' Tax Law and Employment & Labor teams remain on the cutting edge of employment and tax-related legal developments and is committed to helping employers navigate the nuances of emerging issues they face. Please contact any member of the team for further assistance.

James M. Scears
918-595-4879
jscears@gablelaw.com

Paula M. Williams
405-568-3302
pwilliams@gablelaw.com

Scott Kiplinger
405-568-3317
skiplinger@gablelaw.com