



## Coronavirus Aid, Relief, and Economic Security Act (CARES Act): Employer Tax, Retirement, Paid Leave and Unemployment

President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, "CARES Act") on March 27, 2020. The CARES Act is the third stimulus bill aimed at providing relief to employers and individuals affected by COVID-19. This expansive 880-page bill is intended to be another round of federal government support to individuals, businesses, hospitals, and specific industries in dealing with the COVID-19 pandemic and its associated economic consequences.

Below is a high-level summary of the CARES Act employer tax, retirement, paid leave and unemployment insurance provisions, as well as the direct payment to individuals provision.

As ADP® continues to review and analyze this new bill, we will update and provide additional information, including a summary of the provisions in the Keeping Workers Paid & Employer Act, such as the Paycheck Protection Program.

### I. Tax Provisions

#### A. Tax Exclusion for Employer Student Loan Repayment Benefits. (Section 2206)

Employers are permitted to provide a student loan repayment benefit to employees, contributing up to \$5,250 annually toward an employee's student loans. Such payments would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit and educational assistance under Section 127 of the Internal Revenue Code (IRC). The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

#### B. Employee Retention Credit for Employers Subject to Closure Due to COVID-19. (Section 2301)

Private-sector employers are allowed a refundable tax credit against employer Social Security tax equal to 50 percent of wages paid by employers to employees during the COVID-19 crisis, up to \$10,000 per employee. The credit is available to employers whose operation is fully or partially suspended due to orders from a governmental authority limiting commerce, travel, or meetings due to COVID-19, or who experienced a 50 percent decline in gross receipts when compared to the same quarter of the prior year. The credit may be increased by the proportionate share of the employer's health costs related to such wages.



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- For employers with more than 100 full-time employees (as defined under the Affordable Care Act Section 4980H), this credit is available for wages paid to employees that provided no services during the shutdown.
- For employers with fewer than 100 full-time employees, all wages qualify for the credit, without regard to whether the employer was in operation.

Aggregation rules will apply in determining the number of employees of the employer. Wages paid may not exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period. Wages also do not include paid family and/or sick leave under the Families First Coronavirus Response Act for which a credit is taken. This section applies to wages paid after March 12, 2020, and before January 1, 2021.

### C. Deferral of Employer Social Security Taxes. (Section 2302)

Employers may defer payment of the employer share of the Social Security tax, beginning after the effective date of the CARES Act through December 31, 2020. Deferred tax amounts would be paid over two years, in equal amounts due on December 31, 2021 and December 31, 2022.

## II. Retirement Provisions — Defined Contribution Plan Changes

**A. Distributions (Section 2202).** A new distribution option available from retirement plans or IRAs to "impacted" individuals of up to \$100,000 not subject to the 10 percent early-withdrawal penalty from January 1, 2020 and through the end of the 2020 calendar year.

1. The distribution may be taxed over three years instead of 100 percent in 2020.
2. Standard 20 percent federal tax withholding is not required.

3. These distributions can also be repaid at any time during the three years after they took the distributions.

**B. Loans (Section 2202).** For "impacted" individuals, an increased loan amount from \$50,000 to \$100,000 is available for the 180-day period beginning on the date of enactment of the CARES Act.

1. Loans can be taken up to 100 percent of the present value (increased from 50 percent) of the individual's vested account balance.
2. Impacted individuals may also take advantage of a 12-month delay for loan repayments due through date of enactment through the end of the 2020 calendar year.
3. Interest on plan loans is still payable into the individual's retirement plan account, and remains taxable upon withdrawal.

**C. "Impacted" Individuals for Distributions and Loans (Section 2202).** Anyone who is diagnosed with SARS or COVID-19, has a spouse or dependent test positive, or who experiences adverse financial consequences because of SARS or COVID-19. A plan administrator may rely on an individual's "self-certification" that they meet any of these eligibility criteria.

**D. Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts (Section 2203).** Required Minimum Distributions are not required for 403(b), 401(k), and IRAs for calendar year 2020.

**E. Plan Amendments (Section 2202).** Retirement plans have through the end of the 2022 plan year to adopt plan amendments related to these CARES Act provisions.

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### III. Paid Leave and Department of Labor Filing Provisions

- A. Paid Leave Limitation Provisions (Sections 3601 and 3602).** The Families First Coronavirus Response Act (H.R. 6201, "FFCRA") set the rates for paid leave under the Emergency Paid Leave Act and under the amendments to the Family and Medical Leave Act ("FMLA"). The CARES Act clarifies that an employer's requirement to provide two full weeks of emergency paid leave under the Emergency Paid Leave Act does not exceed \$511 per day and \$5,100 in the aggregate for an individual or \$200 per day and \$2,000 in the aggregate for an employee to care for a quarantined individual or child. Under the FMLA, the CARES Act clarifies that an employer's requirement to provide 10 full weeks of paid leave does not exceed \$200 per day and \$10,000 in the aggregate for each employee.
- B. Paid Leave for Rehired Employees (Section 3605).** Under the FFCRA, employees who have been employed by the employer for at least 30 calendar days are eligible for expanded FMLA leave. The CARES Act amends the FMLA (as expanded by the Emergency Family and Medical Leave Expansion Act) to extend paid leave to employees who (1) were laid off after March 1, 2020, (2) had worked for the employer for at least 30 of the last 60 days, and (3) were rehired by the employer.
- C. Advance Refunding of Payroll Credit Required for Paid Sick Leave (Section 3606).** The FFCRA allows an employer to claim a refundable tax credit for paid leave granted under the expanded FMLA requirement. The CARES Act expands those provisions by: (1) providing for an advance of the payroll tax credit; (2) requiring the Secretary of the Treasury to prescribe regulations necessary to permit the advancement of the credit; and (3) requiring the Secretary of Treasury to waive penalties associated with the failure to deposit certain payroll taxes.

### IV. Unemployment Insurance Provisions

- A. Pandemic Unemployment Assistance (Section 2102).** Certain individuals who are not eligible for benefits under other state or federal laws (such as self-employed workers, part-time workers and those with limited work histories) who are unable to work as a result of COVID-19 are eligible for temporary unemployment benefits assistance during their period of unemployment ending on or before December 31, 2020. Benefits are limited to 39 weeks. The provision allows for a partnership between the federal government and states for purposes of paying out benefits.
- B. Emergency Increase in Unemployment Compensation Benefits (Section 2104).** Provides for a federal-state partnership to make payments of regular compensation to individuals in amounts determined under state law plus \$600. States will be fully reimbursed by the federal government for the extra payments.
- C. Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States With No Waiting Week (Section 2105).** States that do not impose a waiting week for unemployment benefits will be fully reimbursed by the federal government.
- D. Pandemic Emergency Unemployment Compensation (Section 2107).** States may enter into a partnership with the federal government for an additional 13 weeks of federally funded unemployment compensation to individuals who have exhausted all rights to unemployment benefits under state and federal law for that benefit year (excluding benefits that ended before July 1, 2019) and are not otherwise receiving unemployment compensation under any state, federal, or Canadian law. Individuals must be able to, and be actively seeking, work.

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## V. 2020 Recovery Rebates for Individuals (Section 6428)

The CARE Act provides for direct financial assistance to Americans in the form of a one-time direct payment in the amount of \$1,200 for individuals earning \$75,000 or less, \$2,400 for individuals filing a joint return earning \$150,000 or less, \$1,200 for heads of household earning \$112,500 or less, and \$500 per child. The amount of the payment is reduced by 5 percent for earnings over those dollar amounts and would go away at \$99,000 for individuals and \$198,000 for married people. Treasury Secretary Steven Mnuchin stated that the administration expects to begin direct payments to individuals within three weeks of the CARE Act being signed into law.

## ADP Compliance Resources

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