

# CARES Act: Revisions to the FFCRA, Expansion of Unemployment Benefits and Coverage

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March 27, 2020

The much anticipated “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” was signed into law on March 27, 2020, revising some provisions of the March 18, 2020, Families First Coronavirus Response Act, as well as providing for a federal expansion of state unemployment benefits.

## **Revisions to the Family First Coronavirus Response Act (“FFCRA”)**

### *1. Revisions to the Emergency Family and Medical Leave Expansion Act*

The CARES Act clarifies that a covered employer is not required to pay more than \$200 per day and \$10,000 in the aggregate for each eligible employee who takes leave provided by the Emergency Family and Medical Leave Expansion Act (i.e., leave to care for children due to school closures or unavailability of childcare as a result of COVID-19).

Pursuant to the revisions, in addition to current employees who have worked for the employer for the last 30 days, expanded family and medical leave is now available to employees who (1) were laid off by that employer not earlier than March 1, 2020, (2) had worked for the employer for at least 30 of the last 60 calendar days prior to the layoff, and (3) were rehired by the employer.

### *2. Revisions to the Emergency Paid Sick Leave Act*

The CARES Act clarifies the obligations imposed on employers who are required to provide paid sick leave:

- An employer is not required to pay more than \$511 per day and \$5,110 in the aggregate for each employee who takes paid sick leave because the employee:
  - Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  - Has been advised by a healthcare provider to self-quarantine related to COVID-19; or
  - Is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
- An employer is not required to pay more than \$200 per day and \$2,000 in the aggregate for each employee who takes paid sick leave because the employee:
  - Is caring for an individual who is experiencing symptoms of and seeking diagnosis for COVID-19 or is subject to a governmental order or medical recommendations to quarantine or self-isolate;
  - Is caring for a child whose school, place of care, or childcare provider is inaccessible because of COVID-19 related reasons; or
  - Is experiencing any substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

### *3. Revisions to Provisions Concerning Tax Credit Allowed for Paid Leave*

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With the enactment of the CARE Act, the anticipated refundable amount of the tax credit allowed for paid leave under the FFCRA, calculated through the end of the most recent payroll period in the quarter, can now be advanced in accordance with forms and instructions that will be provided by the Department of Treasury. Additionally, a covered employer will not be penalized for failure to make a deposit of payroll tax if such failure was in anticipation of the tax credit generated from payment made to employees who take paid leave under the FFCRA.

#### *4. Revisions to Emergency Unemployment Insurance Stabilization and Access Act of 2020*

To receive immediate additional emergency administrative grants in fiscal year 2020 to state Unemployment Trust Fund accounts under the Emergency Unemployment Insurance Stabilization and Access Act of 2020, the states must, among other things, ensure that unemployment compensation claimants have at least two ways to apply for benefits (e.g., in-person, by phone, or online), but only to the extent practicable.

### **Federal Expansion of State Unemployment Benefits**

The CARES Act provides Federal funding to each state's unemployment insurance agency and requires that states pay out additional unemployment benefits to individuals who become unemployed for COVID-19 related reasons.

#### *1. Who is Covered?*

The CARES Act expands the definition of a "covered individual," to provide unemployment benefits to those who:

- Have already exhausted their state's unemployment benefits;
- Have or are seeking a diagnosis for COVID-19;
- Have a household member who has been diagnosed with COVID-19;
- Are providing care for a household member, relative, or relative's household member who has been diagnosed with COVID-19;
- Have a child who is unable to attend school or daycare due to a COVID-19 closure order;
- Cannot go to work because they have been quarantined or because their place of work is closed due to a closure order (it does not include those who can telework);
- Had to quit their job as a direct result of COVID-19; or
- Are self-employed, seeking part-time employment, or would not have a sufficient work history under State law to otherwise qualify.

#### *2. What Benefits Are Provided?*

Each covered individual will be entitled to the amount they normally would have received under their State's unemployment law, plus an additional \$600 per week for up to four months in Federal Pandemic Unemployment Compensation.

The CARES Act unemployment benefits will extend for the time period during which the individual remains unemployed for a COVID-19 related reason up to 39 weeks. The inability to work for a COVID-19 related reason must be between Jan. 27, 2020, and Dec. 31, 2020.

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### 3. How Will Payments Get Distributed?

Existing state-based unemployment agencies will be required to issue the additional payments. The states will have the option of adding Federal Pandemic Unemployment Compensation to an already-existing unemployment benefit check, or processing two separate checks to the covered individual. The federal funding for this expansion is not a loan to the States and includes funding for a state agency's expanded administrative duties.

### 4. As an Employer, What Does This Mean for My Unemployment Tax Liability?

While not addressed in the CARES Act, Michigan Gov. Gretchen Whitmer issued Executive Order 2020-24, which includes a provision that employers who ordinarily would be charged for benefits due to a lay-off or leave of absence for COVID-19 related reasons will not be charged. That executive order also extends the time-period for expanded Michigan unemployment benefits from the prior order's cut-off of April 14 to April 22, 2020.

This is part of a series of Miller Canfield **COVID-19 alerts** providing clients with practical advice on measures they can take to navigate through these challenging times. If you have questions about the Department of Labor guidance, please contact your Miller Canfield attorney or any of the authors of this alert.

*This information is based on the facts and guidance available at the time of publication, and may be subject to change.*