

The CARES Act: An employer's perspective

Lockton Companies

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Introduction & agenda

- 01 Overview of the CARES Act
- 02 Business liquidity and employee retention provisions
- 03 Health plan provisions
- 04 Retirement plan provisions
- 05 Unemployment and other considerations
- 06 Phase four: What's next?

Overview of the CARES Act



The CARES Act

\$607.3B

INDIVIDUALS

- \$300B recovery rebates
- \$260B unemployment
- \$43.7B student loans, other

\$500B

LARGE EMPLOYERS

- \$425B loans
- \$58B airlines
- \$17B national security

\$377B

SMALL EMPLOYERS

- \$350B new loans
- \$17B relief for existing loans
- \$10B grants

\$339.8B

STATE & LOCAL GOV'T

- \$274B COVID-19 response
- \$32.3B education & family programs
- \$33.5B Other

\$179.5B

PUBLIC SERVICES

- \$100B hospitals
- \$20B Veterans' healthcare
- \$24.75 food security
- \$16B stockpiled equipment
- \$18.75 other

Business liquidity & employee retention



Overview

Program	Program type	Eligibility (exceptions apply)	Employee retention component?
Treasury Exchange Stabilization Fund	Loan or loan guarantee	500+ employees	Yes, with possible exceptions
Payroll Protection Program	Loan, with possible forgiveness	<500 employees	Yes, for loan forgiveness
Payroll tax deferral	Loan	All	No
Employee retention credit	Tax credit	All	Yes



Treasury Exchange Stabilization Fund

Treasury Exchange Stabilization Fund

- Generally, all types of employers are eligible, including governmental employers and non-profits.
- Program terms may vary based on size.

Employers with 10,000 or more employees and maybe others

- *Eligibility*: Business must have been created or organized in the U.S., have significant U.S. operations, and the majority of employees must be based in the U.S.
- *Terms*: Treasury has discretion to set loan terms
- *Restrictions*: Limitations on executive compensation, stock buybacks and other terms defined by Treasury

Treasury Exchange Stabilization Fund

Employers with 500 – 10,000 employees

- *Eligibility:*
 - Business must have been created or organized in the U.S., have significant U.S. operations, and the majority of employees must be based in the U.S.
 - Not a debtor in bankruptcy
 - Uncertainty of economic conditions make loan necessary to support ongoing operations
- Generally, all employers are eligible, including governmental employers and non-profits.
- Program terms may vary based on size.

Treasury Exchange Stabilization Fund

Employers with 500 – 10,000 employees, cont.

- *Terms:*
 - Interest rate not to exceed 2% per year
 - Principal and interest deferred for the first six months
- *Conditions:*
 - Commits to retaining 90% of workforce (at full compensation and benefits) until Sept. 30, 2020
 - Certifies intent to restore not less than 90% of workforce as of Feb. 1, 2020, and to restore all compensation and benefits within four months after the coronavirus emergency declaration ends
 - Agrees to not outsource or offshore jobs for the loan's duration plus two years
 - Will not abolish collective bargaining agreements for the duration of the loan plus two years
 - Will remain neutral in any union organizing effort for the term of the loan



Payroll Protection Program

Payroll Protection Program

Eligibility:

- Employers, including nonprofits, with fewer than 500 employees, including all employees of affiliated employers
- Self-employed, independent contractors and sole-proprietors
- Includes non-profits, veterans organizations and tribal units

All employees of affiliated employers are counted except:

- Hospitality and food service employers with an NAIC code starting with 72
- Franchises
- A business that receives financial assistance from an approved Small Business Investment Company

Maximum loan amount

The greater of **\$10 million or:**

- *Non-seasonal employers in existence in 2019:* 2.5x average total monthly payroll costs incurred during the year prior to the loan date
- *Non-seasonal employers not in existence in 2019:* 2.5x the average total monthly payroll costs incurred for Jan. and Feb. 2020
- *Seasonal employers:* 2.5x the average total monthly payments for payroll costs for the 12-week period beginning Feb. 15, 2019 or Mar. 1, 2019 (decided by the loan recipient) and ending Jun. 30, 2019

‘Payroll costs’

Included:

- Salary, wages, commissions or similar compensation
- Cash tips or their equivalent
- Payment for vacation, parental, family, medical or sick leave
- Severance pay
- Group health care benefit premiums
- Retirement plan contributions
- State or local taxes assessed on the employee’s compensation

Excluded:

- Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period Feb. 15, to Jun. 30, 2020
- Payroll taxes, railroad retirement taxes and income taxes
- Compensation to an employee whose principal place of residence is outside of the United States
- Qualified sick or family leave wages for which a credit is allowed under the Families First Act

Included payroll costs for sole proprietors, independent contractors and self-employed individuals: The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in one year, as pro-rated for the covered period.

CAUTION!

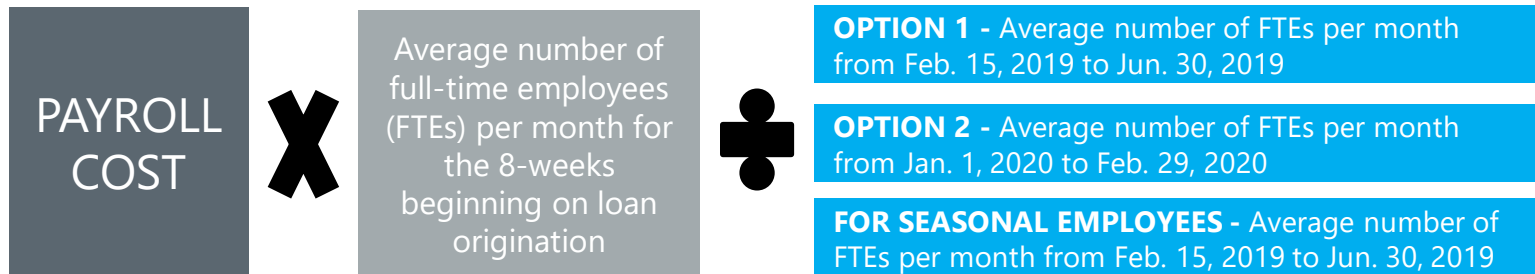
“Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.”

Loan uses

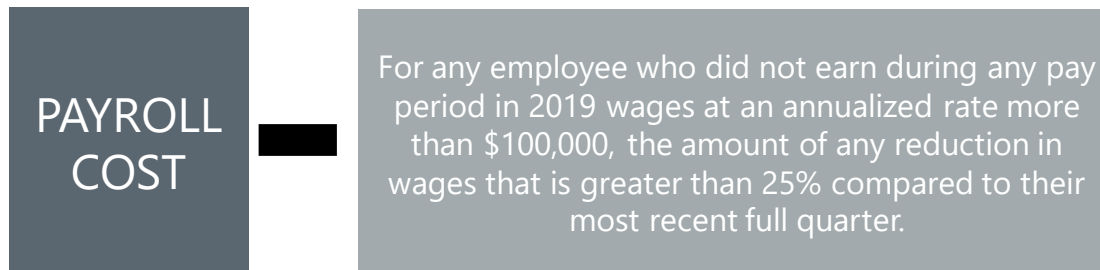
- Payroll costs (as defined above)
- Interest on mortgage obligations incurred before Feb. 15, 2020
- Rent, under lease agreements in force before Feb. 15, 2020
- Utilities, for which service began before Feb. 15, 2020

Loan forgiveness

Reduction based on reduction number of employees



Reduction based on reduction in salaries



What if I bring back employees or restore wages?

Reductions in employment or wages that occur during the period between on Feb. 15, 2020, and April 26, 2020, will not reduce the amount of loan forgiveness IF the employer eliminates the reduction in employees or reduction in wages by June 30, 2020.



Payroll tax deferral

Payroll tax deferral

Eligible employers: Generally, all, but limitations to prevent double dipping (e.g., employers with payroll protection program loans that were forgiven).

Program basics: Employers can defer payment over two years of the 6.2% employer share of social security payroll taxes on 2020 employee wages paid on or after Mar. 27, 2020, with half required to be paid by Dec. 31, 2021 and half by Dec. 31, 2022.

CAUTION!

Employers taking advantage of this program must assess the financial strength of the organization. Directors and officers may be personally liable if these amounts are not repaid and might not have D&O insurance coverage.



Employee retention credits

Employee retention credit

Eligible employers

Generally, all employers in existence in 2020 (with limitations to prevent double dipping (e.g., employers with payroll protection program loans that were forgiven) that either:

- Suspended operations: Were required to fully or partially suspend operations as a result of orders from an appropriate governmental authority due to the COVID-19 outbreak.
- Significant decline in receipts: Had gross receipts that are less than 50% of their gross receipts for the same quarter in the prior year.

Program basics

Refundable credit is taken against payroll taxes up to 50% of the first \$10,000 of each employee's wages including health benefits (up to \$5,000 per employee) paid between March 12, 2020, and before Jan. 1, 2021.

- For employers with more than 100 average full-time employees: the credit is only allowed for wages paid to an employee who is not performing services as a result of either the suspension or decline in gross revenue.

Health plan provisions



Required COVID-19 coverage

Previous COVID-19 legislation

- CV1 stated that any vaccines would be made available to group health plans at a reasonable rate.
- CV2 (FFCRA) mandated all group health plans must cover COVID-19 *testing* and associated provider visit, without cost-sharing or other restrictions.
 - Applies to insured, self-insured and grandfathered plans
 - Does not require *treatment* of COVID-19 without cost-sharing (more later)

CARES Act

- Even if the test type is not FDA-approved, COVID-19 testing must be covered without cost-sharing.
- The amount the plan pays for a COVID-19 test is either the provider negotiated rate OR a cash price, which the provider must publicize on a public website.
- If a preventive measure becomes available to prevent or mitigate COVID-19, all group health plans must cover those measures without cost-sharing or other restrictions.
 - Preventive measure: “item, service, or immunization that is intended to prevent or mitigate” COVID-19

Proactive COVID-19 treatment from insurers

- Cigna, Aetna, Humana and UHC are already going beyond the federal mandate to cover *testing* and are pledging to cover *treatment* without cost-sharing as well.
 - Other regional carriers have made similar announcements. See more [here](#) from AHIP.
- Fully-insured groups who contract with Cigna, Aetna and Humana will have this coverage change implemented automatically.
- Self-funded groups who use these entities as claims administrators will have the option to include similar provisions in their plan, if they wish. An affirmative opt-in or opt-out may be required so check with your administrator.

SPOILER ALERT!

Some legislators have their eyes on mandating coverage of COVID-19 treatment without cost sharing as a priority in the next legislative package ...

CARES additional flexibilities

- Individuals may now use money from pretax accounts (HSA, FSA or HRA) to purchase over-the-counter drugs and menstrual products.
- Participants in high-deductible health plans can now receive telemedicine services at reduced cost (or no cost) prior to reaching their deductible.
 - Previously, telemedicine services were required to be charged at fair market value, typically \$40 - \$60 per visit, before participants reached their deductible
 - Applies to all plan years beginning through Dec. 31, 2021
- The Department of Labor was given authority to delay filing deadlines, which may include a Form 5500 filing delay.

Reminders and clarification on previous guidance

HOW CAN WE PROVIDE COVID COVERAGE BEFORE THE DEDUCTIBLE IN OUR HDHP?

IRS Notice 2020-15, released March 11th, allows for HDHPs to pay for COVID-19 related testing and treatment before the deductible, without jeopardizing that status.

An enrollee's ability to make HSA contributions may also continue based on this guidance.

IF SUBJECT TO FFCRA PAID SICK LEAVE AND FMLA+, MUST WE NOTIFY OUR EMPLOYEES?

Yes.

The DOL has a model poster available on its website, or one can be obtained from your Lockton account service team. This notice should be posted no later than today, in the same place and manner as other employment related posters.

DID THE DOL CLARIFY THE CALCULATION METHODOLOGY RELATED TO PSL AND FMLA+?

Yes.

Based on confusion and feedback, the DOL corrected its previous guidance in a revised FAQ.

The FMLA's "*integration test*" can now be used to determine applicability for both the paid sick leave and FMLA+ components of the FFCRA.

Retirement provisions



Retirement provisions: COVID-19 distributions

What is it?

- Permits Covid-19 related in-service distributions
- An individual, or the individual's spouse or dependent is diagnosed with the virus by a CDC approved test
- An individual experiences adverse financial consequences due to the virus such as:
 - Being quarantined
 - Being furloughed or laid off
 - Having work hours reduced
 - Being unable to work due to lack of childcare
 - Closing or reducing hours of a business owned or operated by the individual

How it helps

- Immediate source of funds
- Exempts from 10% early distribution penalty
- Exempts from mandatory 20% tax
- Spread out income over 3-year tax period
- May recontribute the distribution to a plan or IRA within three years
- Limited to aggregate distributions of \$100,000

How to implement

- Optional plan design
- Work with plan provider to amend the plan (due by Dec. 31, 2022)
- Work with plan provider on participant notices and communications
- Plan sponsor may rely on the participant's certification

Retirement provisions: Special loans

What is it?

- An individual, or the individual's spouse or dependent is diagnosed with the virus by a CDC approved test
- Increases participant loan limit to \$100,000 (from \$50,000) or greater of \$10,000 or 100% (from 50%) of vested balance
- Applies to existing loan repayments due from Mar. 27, 2020 (the enactment of CARES) through Dec. 31, 2020

How it helps

- All 2020 payments due on these or any outstanding loans can be extended by one year
- While interest will accrue, the delay is disregarded for purposes of the 5-year limit on participant loan repayments

How to implement

- Optional plan design
- Work with plan provider to amend the plan (due by Dec. 31, 2022)
- Work with plan provider on participant notices and communications

Retirement provisions: RMD relief

What is it?

- Waives 2020 RMDs for all types of DC plans (including 401(k), 403(b), and governmental 457(b) plans) and IRAs
- Waives 2019 RMDs due in 2020.

How it helps

- RMDs are calculated using the balance on Dec. 31 of the year prior to the date it must be distributed.
- The Dow closed at 28,538 on Dec. 31. On Mar. 21, 2020 the Dow closed at 21,636.78
- An RMD calculated based on Dec. 31, 2019 value could lead to a disproportionate RMD relative to today's account values, forcing a disproportionately large taxable distribution

How to implement

- Optional plan design
- Work with plan provider to amend the plan (due by Dec. 31, 2022)
- Work with plan provider on participant notices and communications.
- If an RMD has already been received during 2020, then the participant may roll it over and defer paying taxes, including rolling back into the plan. We expect the IRS to extend the 60-day rollover period

Retirement provisions: DB funding

What is it?

- Any contribution due in calendar year 2020 (including quarterly contributions) now has a delayed due date Jan. 1, 2021
- A plan's status for benefit restrictions as of Dec. 31, 2019 will apply throughout 2020

Considerations

- As a result, plan sponsors may use the plan's adjusted funding target attainment percentage for the last plan year ending before Jan. 1, 2020 for plan years that include calendar year 2020
- Note that the employer must pay interest on delayed contributions, from the original due date to payment date, using the effective rate of interest for the plan for the plan year that includes the payment date

How to implement

- Optional plan design
- Work actuaries and service providers to determine financial impact

Unemployment & additional considerations



Other provisions: Unemployment

Who is eligible?

- If you've been diagnosed, experiencing symptoms or are seeking a diagnosis — and you're unemployed, partially unemployed or cannot work as a result — you would be covered
- The same goes if you must care for a member of your family or household who has received a diagnosis
- Includes part time, gig, self employed and even those who quit because of COVID-19

Who is not eligible?

- Workers who are able to work from home
- Those receiving paid sick leave or paid family leave would not be covered
- New entrants to the work force who cannot find jobs would also be ineligible

Benefits & timing?

- Provides an extra \$600 per week benefit to all eligible for an additional 13 weeks
- Participants in states with 26 weeks would be eligible for a total of 39 weeks
- Available to workers who were newly eligible for unemployment benefits for weeks starting on Jan. 27, 2020 and through Dec. 31, 2020

Other provisions: Student loans

What is it?

Extends Code Section 127 (which currently allows for tuition reimbursement up to \$5,250/year) to apply to student loan repayments for employees, with no tax implications.

How does it help?

For many years, employers have sought ways to help their employees repay their student loans in a tax-favored manner. Despite the CARES Act's very limited scope, some employers may view this as a steppingstone for future expansion.

How to implement

To be excluded, the payments must be made after Mar. 27, 2020 and before Jan. 1, 2021. The income exclusion, including the loan payments, remains capped at \$5,250 per year.

Phase 4: What's next?



Is there a next?

- Speaker Pelosi has made clear a desire to quickly move to phase four:
 - Forgiveness of student loans
 - Expanded paid leave
 - Rolling back the limitations on state and local tax deductions
 - Infrastructure
 - Coverage of treatment
- Leader McConnell and Minority Leader McCarthy have indicated a desire to see how phase three plays out before moving to phase four.

Will business interruption insurance coverage questions be considered?

Questions?

Coronavirus Advisory Practice Resources



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