Barley Snyder

How the CARES Act Stimulus Package Could Affect Your Business (UPDATE)

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UPDATE, March 31: This article has been updated with more specific information on retirement plans.

With Friday's passage of the historic and unprecedented Coronavirus Aid, Relief, and Economic Security Act (CARES Act), lawmakers are trying to help businesses and individuals across the country fight economic disaster.

The $2.2 trillion stimulus package has far-reaching effects that will touch different parts of the business community in a number of ways. Attorneys at Barley Snyder have examined the stimulus package and noted some of the notable ways they see this affecting businesses, schools and individuals.

Forgivable loans
Generally, the CARES Act will allow companies with fewer than 500 employees to obtain forgivable loans of up to $10 million from local small business administration lenders through the Small Business Administration's existing 7(a) loan guarantee program. Permissible uses for these loans include:

- Employee salaries
- Rent payments
- Mortgage payments
- Utilities
- Payroll expenses (including paid sick, medical or family leave, and costs related to the continuation of group health care benefits during those periods of leave)

The loan can be forgiven to the extent the loan proceeds are used to fund payroll expenses payment of a mortgage obligation, covered rent obligation, and covered utility payments, during the "covered period" of February 15, 2020, to June 30, 2020.

Additionally, a company's reduction in workforce will result in a reduction in the amount of forgiveness of the loan, however borrowers that rehire workers will not be penalized for this reduction in work force.

All forgiveness is subject to taxation as cancelation of indebtedness income. However for purposes of the CARES Act, the forgiveness amount will not be taken into account for calculation of gross income.

Economic injury disaster loans

The act provides funding for grants of up to $10,000 to provide immediate relief for small business operating costs.

Payroll tax deferral
This provision of the CARES Act allows employers to defer payments of the employer share of the Social Security Tax on behalf of their employees. Deferred payments must be paid over 2 years with half due by December 31, 2021, and the other half due by December 31, 2022.

Employee retention tax credits
This provides that all employers will receive a refundable payroll tax credit for 50% of wages paid by employers to employees during the existence of the COVID-19 emergency. This is available to all employers whose operations are fully or partially suspended due to the coronavirus or gross receipts declined by 50%. The credit will be available for the first $10,000 of compensation, including health benefits, paid to an eligible employee.

Existing SBA borrowers
The SBA will cover 6 months of payments for small businesses with existing SBA Loans.

Other tax measures benefitting business owners

- There will be a 5 year carryback of Net Operating Losses
- Business Interest limitation is increased to 50%
- Charitable contributions limitations have been increased from 10% to 25%
- Temporary exception from excise taxes on alcohol to produce hand sanitizer

-Timothy Malloy and Erica Townes

Enhanced Unemployment
The CARES Act provides what Sen. Chuck Schumer (D-New York) called "unemployment compensation on steroids." Unemployment has been extended from 26 weeks to 39, and anyone who is unemployed for reasons related to COVID-19 will receive an extra $600 in federally funded unemployment per week for up to four months (through the end of July 2020), in addition to their regular unemployment rate.

The act also expands the category of individuals eligible for unemployment to include those who are self-employed, who have already exhausted their entitlement, or who would not otherwise be eligible so long as they meet certain COVID-19-related criteria. The criteria include quarantine, business closure or childcare responsibilities due to school closure. The act specifically excludes from eligibility employees for whom telework is available with pay and those receiving sick leave or paid leave benefits.

Eligible individuals will continue to apply through the state unemployment website. Unemployment assistance is available retroactively to January 27. By state law, contributory employers are entitled to automatic relief from charges, as are reimbursable employers who have paid a solvency fee. Reimbursable employers who have not paid a solvency fee will still be charged half of an applicant's regular compensation rate. *-Joshua Schwartz*

Amendments to the Families First Coronavirus Response Act

The CARES Act made some minor amendments and clarifications to the coronavirus-related act signed last week that deal largely with the expansion of Family and Medical Leave Act and emergency paid medical leave. The amendments redefine "eligible employee" under the FMLA expansion to include employees who were laid off March 1 or later and were then rehired, so long as they were employed at least 30 days out of the 60 days prior to the layoff. In addition, the amendments clarify the maximum amounts an employer will be responsible to pay per employee for emergency sick leave and expanded family and medical leave. *-Joshua Schwartz*

Retirement plans

For retirees, the CARES Act provides a temporary waiver of the required minimum distribution (RMD) rules in 2020. Each year, individuals over 72 years old must withdraw a minimum amount from their retirement plans, converting tax deferred funds to taxable income. The RMD is based on age and account values as of December 31 of the prior year. The higher the account value and the older the individual, the larger the RMD. This year's RMDs are based on account values as of December 31, 2019, a time when the stock market thrvied in stark contrast to its current state. The 2020 RMD waiver will allow individuals to keep tax deferred funds in their retirement plans rather than taking funds out in a market devastated by the coronavirus. However, if you have available cash on hand and you anticipate a significant drop in your taxable income, 2020 might be a good time to make a Roth conversion. You should check with your investment adviser and your accountant before making a Roth conversion.

The CARES Act also provides welcomed relief for plan participants who are suffering financial distress due to a COVID-19 diagnosis or a coronavirus-related adverse employment change, such as being furloughed or unable to work due to the lack of child care (or other reasons as determined by the treasury secretary). Unfortunately, individuals who continue to work but incur a pay reduction under a coronavirus-related business contraction are not currently eligible for this CARES Act relief.

For eligible individuals, the CARES Act includes financial assistance with expanded access to retirement funds and plan loan relief with:

• A temporary increase of the plan loan limit to allow loans up to the lesser of the vested account balance under the plan or $100,000 for loans requested during the 180-day period following the signing of the act

• A one-year delay for any plan loan repayment due on or before Dec. 31, 2020

• The act also provides an opportunity to request a distribution of up to $100,000 under a qualified retirement plan and individual retirement account

• In addition, the act includes an exception to the otherwise applicable 10% penalty for an early distribution under a qualified retirement plan and individual retirement account

• The individual taking a distribution can spread the reported income over three years for tax purposes and any amounts distributed under these special rules may be repaid at any time over the three-year period commencing with the date of distribution to avoid taxation

-Randy Moyer and Mark Smith

Health Care

The CARES Act allocates a massive amount of funding to combat COVID-19 and to support the nation's health care system during the public health emergency. Of the billions allocated, the act provides $150 billion to states and $117 billion to hospitals during the health crisis. The act increases the payment to hospitals for treating patients with COVID-19 by 20% and permits states to make a similar adjustment in their Medicaid programs.

For commercial insurers, the act requires them to provide rapid coverage of "qualifying coronavirus preventative services," such as an item, service or immunization intended to prevent or mitigate coronavirus and to provide access to these services without cost-sharing. The act also requires commercial health plans (both ERISA and non-ERISA) to cover COVID-19 diagnostic testing.

Following the lead of the Families First Coronavirus Relief Act, the CARES Act further relaxes the regulatory requirements for telehealth services, as well as the use of patients' protected health information without violating HIPAA. The act is intended to increase patient access to treatment, and the sharing of patient information by health care providers, to improve the chances of containing COVID-19 without unnecessary regulatory restrictions. The act also includes numerous protections and financial support for the health care professionals, workers and volunteers who are putting themselves at risk to fight the virus. *-Christopher Churchill*

General education

The education provisions of the stimulus package apply to state educational agencies, local educational agencies and state institutions of higher education. All of those educational institutions may use the funds granted under the Education Stabilization Fund to continue payment to its employees and contractors during disruptions and closures.

In addition, U.S. Education Secretary Betsy DeVos has been granted authority to provide waivers of obligations under the Elementary and Secondary Education Act (ESEA), the Carl T. Perkins Career and Technical Education Act and the Higher Education Act (HEA). These requirements that may be waived relate to assessments, accountability, allocation of funds, and reporting. The law outlines waiver application requirements and gives DeVos 15 days to approve or disapprove the waiver request.

For K-12 schools, this waiver permits local and state education waivers for maintenance of effort funding requirements and the flexibility to exceed the 15% carryover limitation for Title I funding. These waivers are in place for the rest of the 2019-2020 school year, and throughout the next school year if necessary.

For colleges, the requirement that an institution matches federal funds with non-federal funds for programs authorized by the HEA has been waived.

The other educational provisions apply to either state institutions of higher education or to K-12 schools.

State higher education

A majority of the educational provisions are aimed at public institutions of higher education, including funding to support continued educational services throughout building closures and financial relief for current and former students.

For current students, credits that were attempted but not completed as a result of COVID-19 will be excluded when determining a student's satisfactory academic success. There are several provisions that allow for refunds or waive financial penalties related to enrollment and housing as well. For example, institutions may reserve allotments under Title IV, Part A, Section 3 for emergency financial aid grants in order to assist students for unexpected expenses or unmet financial need as a result of the emergency. This will waive the need-based calculation and will allow students to receive an amount not in excess of the highest federal Pell Grant received this year. In addition, students who could not fulfill their eligible work study obligations as a result of the emergency may be compensated for the work that was expected.

Financial aid and student loan programs have also been modified. For the purposes of subsidized loans, any semester that the student does not complete as a result of COVID-19 is excluded from the student's enrollment period. Similar provisions apply to Pell Grant recipients. In addition, student loan payments will be suspended without accrual of interest or consequences to the cancelation time period calculation. The initial period of suspension runs for three months, but DeVos may extend the suspension period for an additional three months.

K-12 education

The other relief initiatives in the K-12 education sector hone in on the challenges presented by the inability to host traditional in-person instruction, and the far-reaching consequences of that disruption.

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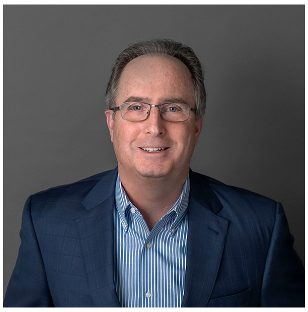

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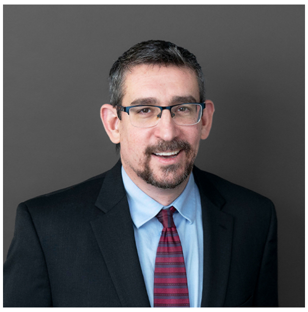

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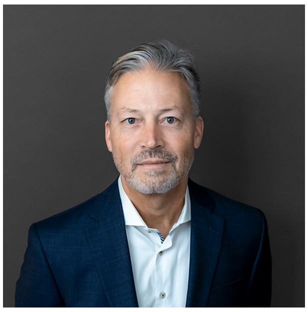

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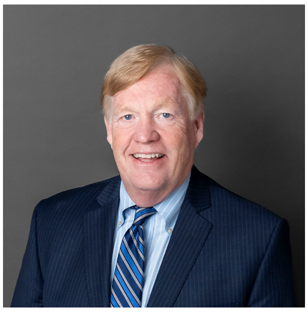

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