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Business Options for Survival and Employee Retention During the COVID-19 Crisis

H.R. 748 – the CARES Act – provides a variety of options for businesses seeking to remain viable during the COVID-19 outbreak and resulting economic disruption. Certain other options also have become available due to the presidential disaster declarations.

Economic Impact Disaster Loans (EIDL) Emergency Grant Advance

The Small Business Administration (SBA) provides disaster loans to businesses suffering "economic impact" from a disaster. The entire nation is now deemed a qualifying area ("disaster area") for purposes of EIDL.

The CARES Act adds a significant new provision allowing for an emergency grant advance on an EIDL loan.

In response to an application for an application for an EIDL, the borrower may request an emergency advance and the SBA shall make such advance within three days. The advance can be used for any allowable EIDL purpose. The advance does not need to be repaid.

> Therefore, the emergency grant advance is *an immediate $10,000 tax-free grant from the government to your business.*

Self-employed persons and gig workers are also eligible to apply, as are most nonprofit employers. Employers too large to qualify as a "small business concern" by the SBA are excluded.

Application is made via the SBA website.

EIDL Disaster Loan

EIDL loans become available everywhere due to the expansion of the program to include public health emergencies in the CARES Act. EIDL loans had been available in certain designated states prior to the new legislation. The Act also makes sole proprietors and independent contractors (not ordinarily eligible) eligible for EIDL loans. Certain prerequisites, including personal guarantees, are waived during the covered period.

EIDL loans are intended to offset the cost of economic injury resulting from the disaster.

The limit for EIDL loans is $2 million per borrower.

Pursuant to the CARES Act, repayment of all SBA loans deferred for six months.

Application is made via SBA website.

Paycheck Protection Plan (PPP) Forgivable Loan

Eligible borrowers can receive qualifying loan amounts that can be used to pay operating expenses and are intended to cover eight weeks of operations.

If the borrower meets the requirements to maintain payroll, the eligible portion of the principal will be forgiven by the government. The forgiven debt will not be taxable.

> Employers can *use the PPP loan to meet payroll and other operating costs for eight weeks at the government's expense*.

The amount eligible for forgiveness includes payroll costs (including benefits), mortgage interest, rent and qualifying utilities. Obligations must have been entered into prior to February 15, 2020 to be eligible for forgiveness.

An EIDL loan related to COVID-19 can be refinanced by the PPP loan, but only the amounts eligible for forgiveness will be forgiven.

Eligibility is based on:

- SBA status as a "small business concern" (sometimes permitting more than 500 employees);
- Other employers with fewer than 500 employees (based on head count, not FTE);
- Individual franchise locations if the franchiser is recognized by the SBA and the franchisee has fewer than 500 employees;
- Individual locations of restaurant and hospitality chains if the location has fewer than 500 employees;
- Most private nonprofit 501(c)(3) organizations;
- Certain other organizations (such as tribal enterprises).

If payroll is retained to the end of the eight-week period, the eligible amounts will be forgiven and repaid by the government.

If payroll is reduced by more than 25 percent for an employee, the amount of forgiveness is reduced. Forgivable payroll costs are capped at $100,000 annualized per employee. There is also an incentive to re-hire laid off employees without penalty.

The maximum loan amount is based on the lesser of: (A) the borrower's historical average monthly payroll costs times 2.5, or (B) $10 million.

Application is to qualifying lenders such as banks and credit unions.

Enhanced Unemployment Benefits for Employees Laid Off or Furloughed

The CARES Act requires that workers who lose income due to layoffs, furloughs or qualifying reductions in hours will be immediately eligible for unemployment compensation without a waiting period.

In contrast to longstanding policies, independent contractors and gig workers will be eligible for compensation despite usual exclusions. During the covered period, an additional benefit of $600/week will be provided. Employer accounts will not be charged during the covered period.

Application is via state unemployment compensation programs.

Short-term Compensation Plan to "Share" Employment Cost

Many states permit "short-term compensation" or "work-share" programs under IRC Section 3306(v), in which workers with reduced hours and income (between 10% and 60%) can obtain an unemployment benefit to make up some or all of the lost pay. The CARES Act permits expansion of such programs and coverage of independent contractors and gig workers. The program is not for seasonal or intermittent workers, but only for regular workers with reduced income.

The nature of each program will vary depending on state law. States without such programs are permitted to adopt such.

Application is via state unemployment compensation programs.

Health Insurance Changes

The CARES Act expands on prior legislation to ensure that COVID-19 testing and diagnosis can be covered by health plans without co-pay or deductible requirements. There are also new provisions for coverage of a COVID-19 vaccine (once developed) without co-pay or deductible.

Coverage for telehealth services under health savings accounts (HSAs) is also permitted. Expanded coverage for certain over-the-counter products under HSAs is also adopted.

Student Loan Employer Payment

Employers can provide educational benefits to employees on a tax-advantaged basis, but payments assisting with student loan repayment have been taxable as compensation. During the covered period, employers may make payments assisting with student loan debt and include same within tax-free educational benefits.

The cap on total tax-free educational benefits remains $5,250 per employee per year.

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Section 139 Qualified Disaster Relief Payments

The presidential disaster declarations permit all U.S. employers to make tax-free payments to employees to address the economic impact of the outbreak without running afoul of usual tax limitations. To the extent that such payments qualify, they will not be taxed as compensation to the employee but are deductible expenses to the employer.

The payments are permitted under Section 139 of the Internal Revenue Code.

This is not a new program, but is now available due to the nationwide application of the presidential emergency orders.