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HCM Alert

CARES Act: Part 2 Limitations on Paid Leave

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DID YOU KNOW?

In [Part I of our CARES Act Series](#) we covered the Tax Free Student Loan Repayment Plans. Part II will cover the Further Limitations on Paid Leave.

Overview

On March 27, 2020 Congress passed [H. R. 748, \(CARES Act\)](#), and President Trump signed it, making it a new law. Called to be the “single-biggest economic relief package in American history,” the CARES Act amends the Internal Revenue Code (IRC) and is created to provide economic relief and stimulus to workers, families, and businesses of all sizes who are suffering from the effects of Coronavirus-19 (COVID-19).

The CARES Act encompasses many provisions including:

- Health and Welfare benefits expansions
- Retirement benefit expansions
- Unemployment Benefits expansion and tax credits
- Individual tax credits
- Social Security and payroll tax credits
- Small, Midsize, and Large Employers Business loans, including for non-profit and public entities
- Tax Free Student Loan Repayment Plans
- **Further Limitations on Paid Leave**

While guidance will be forthcoming on the applicability of the various components of the CARES Act by the IRS, the Small Business Administration (SBA), the Department of Treasury, and the Department of Labor, this HCM Alert is the second in a series about the CARES Act. This alert addresses additional limitations on paid leave.

Paid Leave for Rehired Employees

The recently enacted (March 18, 2020), [Families First Coronavirus Response Act](#) provides for a paid emergency family and medical leave for employees EFMLA (a health care provider or emergency responder employer may choose to exclude an employee from these provisions) who are dealing with life challenges related to COVID-19. This paid leave provision is in effect April 1, 2020 until December 31, 2020 and apply to employers with fewer than 500 employees. Additionally, an employer with fewer than 50 employees may qualify for an exemption if the paid leave would jeopardize their business.

Under the [Emergency Family and Medical Leave Expansion Act, \(EFMLA\)](#) Employers are to make paid leave available to both full-time and part-time employees who have been employed for at least 30 calendar days.

For EFMLA, an eligible employee (employee who has been employed at least 30 calendar days) is able to take up to 12 weeks leave when they are unable to work or perform telework (working away from the employers respective worksite such as at home) for the purpose of if:

- an elementary or secondary school or care center has been closed, or
- when a paid caregiver is unable to care for child due to a public health emergency.

The first 2 weeks of EFMLA is an elimination period and employees are not required to be paid. The remaining leave (10 weeks) requirement is an employee is paid at 2/3 the employees' regular rate of pay under EMFLA.

What the EFMLA Act did not provide for was a mechanism for which employees who were already laid off or terminated due to eligible reasons under EFMLA to be able to access EFMLA benefits.

While unemployment rates has been at a steady average of 3.5% since mid-2018, the Coronavirus-19 (COVID-19) has caused a surge in joblessness with 3.3. million filing claims for unemployment for the week ending March 21, 2020 and [economists](#) are projecting from 2.65 million to 3.5 million in unemployment claims for week ending March 28, 2020. Projections on unemployment rates are up to 32% according to the Federal Reserve.

A provision within the CARES Act under [Title IV, Subtitle C – Labor Provisions for Limitations on Paid Leave](#) could be viewed as a means to provide a stimulus to affect the jobless rate by putting employees back to work. Employees will be able to be rehired and if eligible, receive EFMLA benefits with the associated job protection benefits. [Sec. 3605 Paid Leave for Rehired Employees](#) allows for an employee who has (1) been laid off not earlier than March 1, 2020 and (2) is subsequently re-employed for at least 30 days of the last 60 calendar days prior to the layoff to be provided EFMLA if eligible.

Limitation on Payments for Emergency Paid Sick Leave

In addition, [Part IV, Subtitle C, Sections 3601 and 3602](#) places limitations on both the EFMLA and the Emergency Paid Sick Leave Act payments to employees.

For EFMLA, (leave for an elementary or secondary school or care center has been closed, or when a paid caregiver is unable to care for child due to a public health emergency) the CARES Act places a limitation that an employer shall not be required to pay more than \$200.00 per day and \$10,000.00 in aggregate for each employee for EFMLA.

Under [the Emergency Paid Sick Leave Act](#), which requires eligible employers (those with fewer than 500 employees) to provide paid sick leave of up to 80 hours to both full and part-time eligible employees (from date of hire) who, are unable to work (or telework) due to a need for leave for only one of the following reasons:

1. “The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the

Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.”

For determining calculation of Pay for Emergency Paid Sick Leave, employers would calculate the amount of benefit based upon the reason for the leave.

For leave reasons (1, 2 or 3):

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19, or
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19, or
- The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

Employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate over a 2-week period.

The CARES Act sets the maximum amount an employer is required to pay at \$511.00 per day and \$5,110.00 in the aggregate for each employee taking leave for reasons 1, 2 or 3.

For leave reason (4):

- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions

Employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (including time taken under the EFMLA for a period up 12-weeks).

For leave reasons (5,6):

- The employee is caring for an individual who has been diagnosed with COVID-19 or under quarantine for symptoms related to COVID-19 or
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

The CARES Act sets the maximum amount an employer is required to pay at \$200.00 per day and \$2,000 in the aggregate for each employee when taking leave for reasons 4, 5 or 6.

Employers of all sizes have crucial business decisions that they are making regarding the viability of their business. For the small-mid size employers, the Families First Coronavirus Response Act and the CARES Act, provide a way for employers to support their employees through paid leave for employees due to the COVID-19 crisis and have a means of sustainability in their cash flow through the credits that are being provided through the same Acts.

As we as employers come out of the other side of this crisis how we manage to support our employees will be a powerful retainage tool. Remembering as well that our workforce is substantially comprised of millennials who value organizations who care about them. Your trusted benefit advisor can provide you with solutions to guide you in decisions affecting your business for today and for tomorrow.

Part III in our CARES Act series will cover the Tax Credits available to employers.



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With more than 20 years of Human Resource Generalist & Executive Level HCM Management experience, Kloss serves as the Director for the Human Capital Management Department for Benefit Advisors Network (BAN). With a deep understanding of the increasingly complex and diverse HR industry, Kloss provides her expertise to BAN's employee benefit brokerage members as well as their employer clients. She oversees all HR-related functions for the association, initiating pro-active, strategic compliance practices, which limits exposure in all areas of potential liability for BAN members and their clients.

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