



Overview of Key CARES Act Relief Provisions for Employers and Their Employees

Atkinson's Fact Sheets: The CARES Act Series

In order to help companies understand the key features of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), including what is available, who is eligible, and how to obtain relief, Atkinson, Andelson, Loya, Ruud & Romo's ("AALRR") COVID-19 Task Force has assembled a series of CARES Act Fact Sheets. AALRR's CARES Act Fact Sheets represent a summarization of complex, difficult law into approachable and tactile reference guides.

These Fact Sheets are provided by AALRR for reference and general informational purposes and should not be substituted for individualized legal guidance in your specific case. Please contact the experienced counsel at AALRR for assistance in evaluating and obtaining CARES Act relief in your specific case.



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Summary of Eligibility Criteria Based on Size of Employer's Workforce

Size of Business	Available CARES Act Relief Programs
≤100 Employees	<ul style="list-style-type: none"> Choose one: PPP Loan -OR- Employee Retention Credit for <u>all</u> hardship wages Choose one: PPP Loan Forgiveness -OR- Social Security Payroll Tax Deferral FFCRA Tax Credits (but not for same wages as Employee Retention Credit) EIDL Disaster Loan Emergency EIDL Advance (deducted from amount of loan forgiveness under PPP) Increased Business Interest Deduction Net Operating Loss Modification Expanded Unemployment Insurance Employee Individual Tax Rebate, 401k Relief, Mortgage Relief
101-499 Employees	<ul style="list-style-type: none"> Choose one: PPP Loan -OR- Employee Retention Credit for pay to EEs <u>not working</u> Choose one: PPP Loan Forgiveness -OR- Social Security Payroll Tax Deferral FFCRA Tax Credits (but not for same wages as Employee Retention Credit) EIDL Disaster Loan Emergency EIDL Advance (deducted from amount of loan forgiveness under PPP) Increased Business Interest Deduction Net Operating Loss Modification Expanded Unemployment Insurance Employee Individual Tax Rebate, 401k Relief, Mortgage Relief
500 Employees	<ul style="list-style-type: none"> Choose one: PPP Loan -OR- Employee Retention Credit for pay to EEs <u>not working</u> Choose one: PPP Loan Forgiveness -OR- Social Security Payroll Tax Deferral EIDL Disaster Loan Emergency EIDL Advance (deducted from amount of loan forgiveness under PPP) Direct Lending to Mid-sized Business Increased Business Interest Deduction Net Operating Loss Modification Expanded Unemployment Insurance Employee Individual Tax Rebate, 401k Relief, Mortgage Relief
501-10,000 Employees	<ul style="list-style-type: none"> Employee Retention Credit for pay to EEs <u>not working</u> Social Security Payroll Tax Deferral Direct Lending to Mid-sized Business Increased Business Interest Deduction Net Operating Loss Modification Expanded Unemployment Insurance Employee Individual Tax Rebate, 401k Relief, Mortgage Relief
Over 10,000 Employees	<ul style="list-style-type: none"> Employee Retention Credit for wages to EEs <u>not working</u> Social Security Payroll Tax Deferral Increased Business Interest Deduction Net Operating Loss Modification Expanded Unemployment Insurance Employee Individual Tax Rebate, 401k Relief, Mortgage Relief

Fact Sheet No. 1: SBA Loans and Loan Forgiveness Under the CARES Act Paycheck Protection Program

General Overview

- The Paycheck Protection Program (“PPP”) is a loan designed to provide a direct incentive for small businesses to keep their workers on the payroll.
- The PPP provides small business loans of up to the lesser of \$10 million or 2.5 times average total monthly costs to cover payroll and certain other expenses.
- If a business maintains its workforce, SBA will forgive the portion of the loan proceeds that are used to cover the first 8-weeks of payroll and certain other expenses following loan origination.

Who Is Eligible for the Loan?

- Any small business with **500 or fewer employees** (including sole proprietorships, independent contractors and self-employed persons), private non-profit 501(c)(3) organization or 501(c)(19) veterans organizations affected by Coronavirus.
 - Businesses in certain industries may have more than 500 employees if they meet the [SBA's size standards](#) for those industries.
- Small businesses in the hospitality and food industry with more than one location could also be eligible at the store and location level if the store employs 500 or fewer workers.
- Business must have been operating as of February 15, 2020.

When Can You Apply for a Loan?

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply.

Where Can You Apply for a Loan?

- You can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.
- You should consult with your local lender as to whether it is participating.
 - If you wish you wish to begin preparing your application, you can find it [here](#).

What Is the Maximum Amount of a Loan?

- The maximum amount of the loan is equal to the lesser of —
 - \$10 million; or
 - 2.5 times the average total monthly payments for payroll costs incurred during the one-year period before the date on which the loan is made.
- Measuring period for maximum loan differs for seasonal employees (12-wk period beginning February 15 or March 1, 2019, and ending June 30, 2019).

What Expenses Should the Loan Cover?

- The loan is meant to cover the following expenses incurred between **Feb 15 and Jun 30, 2020**:
 - Payroll;
 - Health care benefits and related insurance premiums;
 - Employee compensation (some limitations for employees with salaries over \$100k);
 - Mortgage interest obligations (but not principal);
 - Rent and utilities; and
 - Interest on debt incurred prior to the loan that were incurred before February 15, 2020.

Loan Forgiveness

- Loans may be eligible for forgiveness up to the amount spent by the business during an 8-week period after origination date of the loan on:
 - Payroll Costs;
 - Interest payments on any mortgage incurred prior to February 15, 2020;
 - Payment of rent on any lease in force prior to February 15, 2020; and
 - Payment on any utility which services began prior to February 15, 2020.
- The amount forgiven is excluded from gross income but may not exceed the principal.

Expenses Not Eligible for Loan Forgiveness

- The following are expenses that may not be included in the amount which is forgiven:
 - Social Security and Medicare taxes;
 - Taxes assessed under the Railroad Retirement Tax Act;
 - Federal income tax required to be deducted from employment income paid to employees;
 - Compensation paid to employees who live outside the U.S.;
 - Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act ("FFCRA"); or qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA.

Loan Forgiveness Reduction (Offset for Reductions in Force or Layoffs)

- The amount of loan forgiveness is reduced in proportion to a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees
- *Exceptions* —
 - This reduction penalty does not apply to reductions in employment or wages that occur(ed) during the period beginning on February 15, 2020, and ending 30 days after March 27, 2020, if by June 30, 2020 the business restores the reduction in employees or reduction in wages.

Deferment of Loan Payments

- All payments are deferred for 6 months.

When Is the Loan Due?

- 2 years; businesses may also pay off the loan earlier without any prepayment penalties or fees.

No Personal Liability and No Collateral for Loan

- No collateral and personal guarantee is required to receive the loan.

Reduction in Work Force

- A business that reduced its work force, furloughed or otherwise laid off employees is still eligible to receive the loan, but may have reduced loan forgiveness as described above.

Certifications

- When applying for a loan, a business must certify as to all of the following:
 - The loan is necessary to support the ongoing operations of the business;
 - The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; and
 - The business has not received a loan for the same purpose between February 15 and December 31, 2020, and does not have any other application pending for such a loan.

How Long Does the PPP Last?

- Businesses applying for a loan under the PPP will be available to do so through June 30, 2020.

Interaction with Other CARES Act Provisions

- A business that claims an Employee Retention Credit is not eligible to receive a loan under the PPP.
- A business may qualify for a PPP loan and a loan under the SBA Disaster Loan Program, or EIDL, but emergency advances granted under the Disaster Loan Program will be deducted from the amount of loan forgiveness under the PPP.

For more information, please visit the AALRR Coronavirus Alert page [found here](#).

Fact Sheet No. 2: EIDL Loans and Emergency Advances Under the CARES Act

General Purpose

- The CARES Act temporarily expands eligibility for Economic Injury Disaster Loans (“EIDL”) administered through the U.S. Small Business Administration (“SBA”).
- Provides an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by the COVID-19 pandemic.
- Eligible small businesses can apply for working capital loans of up to \$2 million and an emergency advance of \$10,000.

Eligible Small Businesses

- Businesses with 500 or fewer employees
- Also applies to sole proprietorships (with or without employees) and independent contractors; cooperatives and employee-owned businesses with 500 or fewer employees; tribal small businesses; and private non-profits (any size).
- EIDLs and emergency advances are only available to businesses which were operational as of January 31, 2020. (Differs from Paycheck Protection Loan requirement of February 15, 2020.)

Applicable Timeframe

- The advance is only available until December 31, 2020.

Loan Terms

- Loan amounts up to \$2,000,000.
- Interest rates are 3.75 % for small businesses and 2.75 % for non-profit organizations.
- Loan terms up to 30 years.
- Funds may be used for payroll, pay for sick leave and to fund other business obligations, such as inventory costs, and payment of business debts, rent and mortgage.
- CARES Act simplifies approval process and waives some rules that normally apply to EIDLs, e.g., certain rules regarding personal guarantees on advances, the “1 year in business prior to disaster” rule, and the requirement that an applicant be unable to find credit elsewhere.

Applying for an EIDL

- Apply online with the SBA at <https://covid19relief.sba.gov/#/>
- Although the loan application process has been streamlined for the COVID-19 disaster, some financial documentation will be required. Applicants should have the following documents:
 - 2020 year-to-date profit and loss statement.
 - 2019 business tax return if filed (or 2019 year-end profit and loss statement, most recently filed business tax return, and balance sheet).

Emergency Advance

- Small businesses can request an emergency advance (i.e., grant) of \$10,000.
- The SBA will provide the advance within 3 days of receiving the EIDL and advance request.
- Advance need not be repaid (i.e., it functions as a grant), even if loan application is denied.

Requesting the Advance

- To request the emergency advance, the small business must first apply for an EIDL online with the SBA.

Interaction with Other CARES Act Provisions

- Small businesses that apply for an EIDL and the advance may still apply for a Paycheck Protection loan. However, the amount forgiven under a Paycheck Protection loan will be decreased by the amount of the \$10,000 advance.

Fact Sheet No. 3: Direct Lending to Midsized Businesses Under the CARES Act

General Purpose

- The CARES Act authorizes \$454 billion in subsidized business loans aimed towards various industries and midsized businesses

Appropriation

- The CARES Act appropriates \$500 billion for business stimulus channeled through lenders:
 - \$46 billion is earmarked towards special industries (air, cargo, and national security)
 - \$454 billion is appropriated for the purpose of providing liquidity to financial institutions to support lending for any kind of business
 - Special consideration given to midsized businesses

What Is a Mid-Sized Business?

- Employers between 500 to 10,000 employees.

Loan Mechanics

- The \$454 billion cap will fund a “program or facility” to be designed by the Federal Reserve for the purpose of providing liquidity to the financial system that supports lending to businesses.
- Authorized funding activities by the Treasury include making loans, buying debt from banks, or buying debt on the secondary market as part of supporting the program or facility.
- The Treasury Secretary is directed to endeavor to implement a program or facility for midsized businesses with special considerations as follows:
 - Loans should be no more than 2% interest.
 - Loans should not accrue interest or require payment for first 6 months.
- Loans to businesses will come from banks subject to this program and backed by the \$454 billion in liquidity injected by the Treasury.

Eligibility and Required Certifications

- Applicants for a loan through program must make a good-faith certification of the following:
 - Uncertainty of economic conditions make the loan necessary.
 - Funds will be used to retain 90% of the workforce, at same pay, through Sept 30, 2020.
 - Borrower will restore at least 90% of the February 1, 2020, workforce and will restore their compensation and benefits within 4 months after COVID is declared over by HHS.
 - Borrower is not foreign.
 - Borrower is not bankrupt.
 - Borrower will not make stock buybacks until one year after loan is no longer outstanding.
 - Borrower will not pay common stock dividends until one year after loan is no longer outstanding.
 - Borrower will not outsource jobs until two years after the loan is no longer outstanding.
 - Borrower will not abrogate existing collective bargaining agreements.
 - Borrower will remain neutral toward union organizing during term of the loan.
 - Borrower will adhere to limitations on executive compensation increases:
 - For employees whose 2019 compensation was > \$425,000: No compensation in excess of officer's 2019 compensation.
 - For employees whose 2019 total compensation was > \$3,000,000: No compensation in excess of \$3,000,000 total + 50% of whatever 2019 compensation exceeded \$3,000,000
 - Severance benefits may not exceed 2x maximum total 2019 compensation

Obtaining a Midsized Business Loan.

- Expect Treasury guidance on terms and process of the program soon.

Fact Sheet No. 4: Payroll Tax Deferral Under the CARES Act

General Purpose

- Allows employers to defer paying the employer portion of 6.2% social security taxes due through the end of 2020. Operates similarly to an interest-free loan on these social security taxes.

Applicable Employment Taxes

- For payroll tax deposits due to be made between March 27 and December 31, 2020, employers can defer paying their share of:
 - The social security portion of FICA tax.
 - The social security portion of RRTA (Railroad Retirement Tax Act) tax.
- Deferral does not apply to Medicare taxes or income tax withholding, which remain due as normal.

Applicable Timeframe – Payroll Tax Deferral Period

- Deferral pertains to applicable employment taxes due to be deposited from March 27 to December 31, 2020.
- Note that wage payments late in 2020 may trigger a deposit requirement based on the employer's usual deposit schedule, because the deferral is not triggered by the liability date (e.g., a payroll on December 31), but by the deposit deadline (e.g., January 2, 2021). The deadline for depositing the employer share of social security tax for wage payments made in late December 2020 is not deferred if the deposit deadline occurs in early 2021.

Relief Granted

- Employees may defer the deposit of Applicable Employment Taxes accrued between March 27 and December 31, 2020, so long as the employer ultimately deposits the amount by the following deadlines:
 - 50% of the amounts by December 31, 2021.
 - Remainder by December 31, 2022.
- Abide by these terms, and the deposits will be considered "timely."

Effect of Other CARES Act Provisions

- Employers cannot defer if they received loan forgiveness under Paycheck Protection Program.
- Otherwise, deferral is notwithstanding any other provision of law.

Claiming the Deferral

- Currently, there are no IRS guidelines as to how an employee claims the deferral. Best practice would be to report the applicable taxes and refrain from depositing with the IRS the amount of money represented by the deferrable taxes.
- IRS is expected to revise Form 941, Employer's Quarterly Federal Tax Return, to track the employer's decision to defer tax deposits.

Fact Sheet No. 5: Obtaining Tax Credits for FFCRA Leave

Qualifying Reasons and Applicable Credit

Qualifying Reason	Wages	Maximum Wages
<i>For Leave Under Emergency Paid Sick Leave Act ("EPSLA")</i>		
Government quarantine order	100%	10 days, \$511/day, \$5,110 total
Healthcare provider quarantine order	100%	10 days, \$511/day, \$5,110 total
Seeking diagnosis for COVID-19 symptoms	100%	10 days, \$511/day, \$5,110 total
Caring for individual under quarantine order	2/3	10 days, \$200/day, \$2,000 total
Child care due to school or provider closure	2/3	10 days, \$200/day, \$2,000 total
Similar condition specified by US HHS	2/3	10 days, \$200/day, \$2,000 total
<i>For Leave Under Emergency Family and Medical Leave Expansion Act ("EFMLA")</i>		
Child care due to school or provider closure	2/3	10 weeks, \$200/day, \$10,000 total

Timing and Amount of Credit

- Credit is only for paid leave under FFCRA (i.e., only for employers with fewer than 500 employees who actually pay FFCRA leave to employees).
- Only valid for FFCRA leave taken between April 1 and December 31, 2020.
- Amount of credit = 100% of paid FFCRA leave wages + employer's share of Medicare payroll tax on paid FFCRA leave wages + "allocable healthcare expenses."

Calculating Allocable Healthcare Expenses

- Daily credit for prorated portion of costs of qualified healthcare plan to FFCRA leave.
- Includes employee contribution if pre-tax. Does not include HSA contribution.
- Several methods to allocate costs, but easiest is "average premium rate" per employee:

Total annual health insurance premium ÷ No. of employees ÷ average annual workdays
(E.g.: \$5,200,000 premium ÷ 400 FTEs ÷ 260 workdays = \$50 credit per employee per day)

Claiming the Credit

- No need to pay federal payroll taxes (income tax withholding and employee share of payroll taxes) on FFCRA wages, except Medicare (credit given for Medicare taxes anyway).
- Claim total amount as a credit Employer's Quarterly Federal Tax Return (IRS Form 941).
- If amount of credit exceeds quarterly payroll taxes due, employer gets a refund.
- Credit treated as business income, but FFCRA wages are treated as business expense.
- No need to wait for credit. Employer can use withheld funds it would have deposited with IRS to fund FFCRA payments in anticipation of receiving credit.
- Starting in April, employer can request an advance from the IRS to fund FFCRA leave using IRS Form 7200 and faxing to 855-248-0552.

Recordkeeping

- Document eligibility for leave, including:
 - Written employee request; employee name; date; qualifying reason for leave; inability to work; and, as applicable, copy of government or physician quarantine order, school or child care provider closure, or quarantine order regarding third party needing care.
- Document calculation of FFCRA wages paid:
 - Pay rate calculation (per DOL, use avg regular rate over 6 months prior to FFCRA leave).
 - Allocable health expenses calculation.
- Maintain proper tax forms (e.g., IRS Form 941, IRS Form 7200, any applicable IRS filings).
- Maintain records for four years.

Fact Sheet No. 6: Net Operating Loss Modifications Under the CARES Act

General Overview; 5-year Carryback of NOLs

- The CARES Act grants taxpayers a five-year carryback period for Net Operating Losses (“NOLs”) arising in calendar years 2018, 2019, and 2020.
 - This carryback right can be extremely valuable as the maximum corporate tax rate applicable to tax years ending before 2018 was 35%, compared to the current corporate tax rate of 21%. A similar rule applies to NOLs of non-corporate pass-through taxpayers.
 - This will allow for an immediate claim for refund for taxpayers who had taxable income during the 5-year carryback period.
- Taxpayers may elect to relinquish the entire five-year carryback period with respect to a particular year’s NOL, with the election being irrevocable.

Suspension of NOL 80% of taxable income limitation for 2018-2020

- The CARES Act temporarily suspends the 80% of taxable income limitation on the use of NOLs for tax years beginning before January 1, 2021, thereby permitting taxpayers to use NOLs to fully offset taxable income in these years regardless of the year in which the NOL arose.

Reinstatement of NOL 80% taxable income limitation in 2021

- The CARES Act reinstates the NOL 80% taxable income limitation for tax years beginning after December 31, 2020. This limitation will apply with respect to NOLs arising in tax years beginning after December 31, 2017, and carried to tax years beginning after December 31, 2020.
- In addition, the CARES Act makes two changes to this limitation —
 - *First*, it makes a technical correction to specify that the limitation is to be calculated based on 80% of taxable income after giving effect to the use of pre-2018 NOLs; and
 - *Second*, taxable income for purposes of section 172(a) is determined without giving effect to the deductions for qualified business income under sections 199A and 250.

Technical correction for filers with NOLs arising in 2017-18 straddle year

- NOLs arising in a tax year beginning before Jan 1, 2018, and ending after Dec 31, 2017, are eligible for the two-year carryback period and 20-year carry forward period under Pre-TCJA rules.
- Affected taxpayers are given 120 days after March 27, 2020, to file an application for a carryback of that loss, or to elect to forgo the carryback.

Section 965 Inclusion

- For taxpayers subject to a section 965 inclusion of untaxed foreign earnings of specified foreign corporations in any of the carryback years, taxpayer will be treated as having made an election under section 965(n) in that year to “waive off” use of NOL against its transition tax inclusion.
- Thus, if one or more years in the carryback period reflect section 965 income, the taxpayer may elect to exclude that year from the carryback period.
 - E.g.: If a taxpayer had a NOL in 2019 and taxable income in 2014-2018, the NOL would be carried back to 2014, then 2015, etc. But if the taxpayer had 965 income, the taxpayer could elect to exclude 2017 from the carryback period, skip the NOL for 2017 and apply it to 2018.

After the CARES Act, there are now three buckets of federal NOLs:

NOL in Tax Years	Eligible Carryback	Eligible Carryforward	Eligible % to offset taxable income
Beginning before 1/1/18 and ending after 12/31/17	Two tax years	20 tax years	100%
Beginning after 12/31/17 and before 1/1/21	Five tax years	Indefinite	100% of taxable income prior to 2021; 80% of taxable income after 2020
Beginning on or after 1/1/21	Generally, none	Indefinite	80%

Fact Sheet No. 7: Increase in Business Interest Deductions Under the CARES Act

General Overview

- The CARES Act temporarily increases the business interest deduction limitation under Internal Revenue Code section 163(j) to 50% of adjusted taxable income ("ATI") for 2019 and 2020 (though for partnerships, this only applies to tax year 2020).
- A taxpayer may elect to use its 2019 ATI to calculate the business interest deduction limitation for the year 2020.

Partnership Business Interest Deduction

- The business interest deduction limit is increased to 50% of ATI only for a tax year beginning in 2020.
- For a tax year beginning in 2019, the limit remains at 30% of ATI. However, any excess business interest for 2019 is allocated to the partners as follows:
 - 50% of the excess business interest is treated as being paid or accrued in 2020 only if it is not otherwise subject to the [section 163\(j\) limit](#) for that year; and/or
 - 50% of the excess business interest is treated as being paid or accrued in the next succeeding tax year where there is excess taxable income or excess business interest income.
- A partner may elect not to have this allocation apply.

Electing Out of the Increased Limitation

- A (non-partnership) taxpayer may elect not to have the increased limitation apply in 2019 or 2020 (the time and manner for this election will be determined by the IRS). If the election is made it can only be revoked with the consent of the IRS.
- For partnerships, the election to not have the increased limitation apply in the 2020 tax year is made by the partnership, not the individual partners.

Election to Use 2019 ATI in 2020

- A (non-partnership) taxpayer may elect to use its ATI from 2019 to calculate the 163(j) limitation for the tax year 2020.
- For partnerships, the election is made by the partnership, not the individual partners.
- The time and manner for the election for the 2020 tax year will be determined by the IRS.
- Choosing to use 2019 ATI is meant to counteract anticipated lower incomes in 2020 due to the Coronavirus (assuming that 2019 had high revenues).

Effective Date

- These new rules apply to tax years beginning after December 31, 2018.

Fact Sheet No. 8: Employee Retention Credit Under the CARES Act

General Purpose

- The Employee Retention Credit is a tax credit in the amount of 50% of “qualified wages.” available to employers who satisfy specific employee retention requirements in the CARES Act.
- Eligible small employers (≤ 100 FTEs) can pay workers at 50% discount up to max credit cap.
- Eligible large employers (101+ FTEs) can pay furloughed workers at 50% discount up to cap.

Eligible Employers

- Employers qualify for the credit if one of the following two economic hardship conditions applies:
 - Government Order: Employer fully or partially suspended operations in any 2020 calendar quarter due to a government order re COVID-19 limiting commerce, travel, or gatherings.
 - Significant Decline: Employer experiences a “significant decline” in gross receipts during any 2020 calendar quarter (i.e., less than 50% of receipts vs. corresponding 2019 quarter).

Applicable Timeframe

- Credit applies to “qualified wages” paid on or after March 13 through December 31, 2020.
- “Significant Decline” ends in first qtr where gross receipts $> 80\%$ of corresponding 2019 quarter.

Calculating Qualified Wages

- Maximum of \$10,000 per employee.
- Includes employer’s qualified health plan expenses properly allocable to the wages.
- For employers who employed average of 101+ full time employees in 2019:
 - “Qualified wages” are wages paid to an employee who is not actually working for the company due to qualifying “Government Order” or “Significant Decline” conditions.
 - May not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.
- For employers who employed average of ≤ 100 employees in 2019:
 - “Qualified wages” are all wages paid to any employee during any period of economic hardship due to qualifying “Government Order” or “Significant Decline” conditions.

Credit Amount

- 50% of qualified wages (i.e., maximum of \$5,000 per employee)
 - *Example 1*: Employer pays \$10,000 in qualified wages to Employee A in Q2 2020. The Employee Retention Credit for qualified wages paid to Employee A is \$5,000.
 - *Example 2*: Employer pays Employee B \$8,000 in qualified wages in Q2 2020 and \$8,000 in qualified wages in Q3 2020. The credit for qualified wages paid to Employee B is \$4,000 in Q2 and \$1,000 in Q3 (total cap is \$5,000).

Claiming the Credit

- The credit is allowed against the employer portion of social security taxes (or, for railroad employers, the corresponding portion of taxes under the Railroad Retirement Tax Act).
- IRS will refund employer if credit exceeds employer liability for social security tax.
- No need to wait for credit. Employer can use withheld funds it would have deposited with IRS to fund qualified wages in anticipation of receiving credit.
- Starting in April, employer can request an advance from the IRS to fund FFCRA leave using IRS Form 7200 and faxing to 855-248-0552.

Interaction with FFCRA and Other CARES Act Provisions

- Employer may receive both FFCRA tax credits and Employee Retention Credits, but not for the same wages. Qualified wages for Employee Retention Credit do not include amount of qualified FFCRA paid leave wages for which employer receives tax credits under FFCRA.
- Employer may not receive and should not claim Employee Retention Credit if employer receives a Small Business Interruption Loan under the CARES Act Paycheck Protection Program.

Fact Sheet No. 9: Expanded Unemployment Insurance Under the CARES Act

General Purpose

- The CARES Act injects \$250 billion dollars into the unemployment insurance system.
- The Act expands benefits by raising the maximum payment across the board by \$600 per week.
- The Act also extends benefits for 13 weeks beyond what states already allow.
- The Act adds five key features to the existing UI system:
 - Expands the eligibility for UI benefits for COVID-19 reasons.
 - Adds 13 additional weeks of eligibility (for up to 39 weeks of benefits).
 - Adds a flat \$600 to the weekly benefit amount.
 - Encourages states to loosen certain restrictions on UI such as waiting periods and looking-for-work requirements.
 - Supports both existing and the creation of new work-share programs (also called “short-term compensation” programs).

Applicable Time Period

- January 27 through December 31, 2020.
- 39-week cap on benefits (up from 26 weeks).
- One week waiting period waived by California.

Eligibility Criteria

- Individuals must self-certify that they fit one or more of 10 categories listed in the table below.
- Nearly anyone who is able and available to work, but unemployed, or *partially unemployed*, because of COVID-19 is general eligible for UI benefits, including those who were self-employed, did not have sufficient work history in the base period to qualify for benefits, and individuals who had not started working.
- This also includes individuals on temporary leave, e.g., if:
 - Employer temporarily ceases operations due to COVID-19.
 - Individual is quarantined, but expects to return to work afterwards.
 - Individual must care for family member or takes leave from work due to exposure risk.
- The ten categories are broad and the CARES Act provides virtually no parameters or guidance on how the categories will work in practice.
- Two exceptions to eligibility:
 - The individual can telework with pay; or
 - The individual is receiving paid leave benefits, even if he or she would otherwise qualify.

California Summary Table

- The following page contains a table summarizing the UI system’s key features before and after the CARES Act in the context of the California Unemployment Insurance system.

(Continued on following page)

Category	Before CARES Act	After CARES Act
Eligibility criteria	<ul style="list-style-type: none"> Totally or partially unemployed. Unemployed through no fault. Physically able and available to work. Ready and willing to accept work. Actively looking for work. Earned enough wages in base period (\$1,300 in highest quarter or \$900 in highest quarter and total earnings at least 1.25 times highest quarter). 	<p>Same eligible categories as before CARES Act, plus the following additional eligible categories:</p> <ul style="list-style-type: none"> Not eligible for regular unemployment, including because one is not an employee (e.g., graduated students). Self-certify that individual is able and available to work except cannot because of COVID-19 and: <ol style="list-style-type: none"> COVID-19 diagnosis or symptoms and seeking medical diagnoses. Household member diagnosed. Caring for diagnosed family or household member. Caring for child due to school or caregiver closure. Subject to government quarantine. Subject to healthcare provider quarantine. Scheduled to start, unable to because of COVID-19 pandemic. Has become breadwinner or major support because head of household has died. Has to quit work because of COVID-19 pandemic. Workplace closed due to COVID-19 pandemic. Satisfies other criteria established by Labor Secretary. <p>CARES Act excludes those able to telework with pay and those receiving paid sick leave or other paid leave benefits, even if otherwise meet the expanded eligibility requirements.</p>
Weekly Benefit Amount (“WBA”) until July 31, 2020	<p>Based on highest wage quarter in base period:</p> <ul style="list-style-type: none"> Ex. 1: WBA for CA minimum wage (\$13/hr) = \$240 Ex. 2: WBA for \$52,000/yr = \$450 (maximum benefit) 	<p>Based on highest wages quarter in base period, plus flat \$600:</p> <ul style="list-style-type: none"> Ex 1: WBA = \$240 + \$600 = \$840 Ex. 2: WBA = \$450 + \$600 = \$1,040
WBA after July 31, 2020	<p>Same amounts as initial WBA:</p> <ul style="list-style-type: none"> Ex. 1: WBA for CA minimum wage (\$13/hr) = \$240 Ex. 2: WBA for \$52,000/yr = \$450 (maximum benefit) 	Same as before CARES Act
Availability of Benefits	26 weeks	26 weeks plus 13 additional weeks if leave is exhausted (39 total).

Fact Sheet No. 10: Miscellaneous Tax Benefits to Employees Under the CARES Act

Individual Tax Rebate

- The CARES Act provides a tax rebate of \$1,200 for single, \$2,400 for joint taxpayers for 2020 taxpayer year.
 - Plus \$500 per qualifying child. Children 17 and older do not qualify.
 - Rebate tapers off beginning at \$75,000 AGI for single, \$112,500 head of household, \$150,000 joint
- Nonresident alien individuals, individuals who are dependents of another taxpayer, estates and trusts, and taxpayers without valid Social Security numbers are not eligible for the credit.
- The IRS may use taxpayers' 2019 returns, if filed, to determine eligibility for the credit and calculate an amount to pay. If 2019 returns are not yet filed, then the IRS may look to taxpayers' 2018 returns for eligibility and calculation. If no returns are filed for either year, the IRS may look to Social Security payment information.
 - *Planning Tip – Taxpayers who have not yet filed their 2019 tax return should consider if the rebate may be larger by filing their return as soon as possible, or by delaying filing so the calculation can be based on their 2018 tax return.*
- Advance credits available

401k Loans and Distributions

- The CARES Act provides special 401k distribution rules for those experiencing adverse financial consequences due to COVID-19.
- Employees may take up to \$100,000 (less the amount of any currently outstanding loans) in Coronavirus Related Distribution from a qualified retirement account without 10% early withdrawal penalty.
- Employee has three years from distribution to replenish the qualified retirement account and be returned to status quo before taking distribution.
- From March 27 to September 23, 2020, employee can take a loan of up to \$100,000 against retirement account and not be treated as distributing account.
- Employer plans must be amended to provide for these changes.

Mortgage Relief

- A person experiencing financial hardship due to COVID-19 is entitled to forbearance on federally backed mortgage.
- Forbearance period of 180 days + 180 day renewal, also places pause on interest, fees, and penalties.
- Borrower makes request directly to the lender.
 - No documentation other than attestation of hardship due to COVID-19.
- Hard moratorium on foreclosure from March 18 to May 17, 2020.
 - Automatic. No requests needed by borrower for foreclosure relief.
- Similar eviction moratorium for apartment dwellings if building is encumbered by a federally backed mortgage loan.
 - No fees, penalties, interest, or eviction actions from March 27 to July 25, 2020.

Charitable Contributions

- Among other changes to tax treatment of charitable contributions, the CARES Act changes the individual deduction for cash contributions to public charities from a limit of 60% of the individual's adjusted gross income (computed without regard to the charitable contribution and any NOL carrybacks) to 100% of AGI for "qualified contributions"—defined as cash contributions made during the 2020 calendar year to public charities other than supporting organizations and donor-advised funds.