

# The CARES Act and the Connecticut Workplace

Robert Noonan & Associates  
April 2, 2020

1

1

---

---

---

---

---

---

---

---

## Preliminary Regulations on FFCRA Issued Wednesday

- On Wednesday, April 2<sup>nd</sup> the U.S. DOL issued new regulations on Emergency Paid Sick Leave and Emergency Family Medical Leave.
- Among provisions:
  - Definition of a quarantine or isolation order has been expanded to include certain shelter-in-place rules that have been issued in states.
  - Employees who have been advised by their physician that they are particularly vulnerable to COVID-19 because of an underlying health condition and thus unable to work, may also be eligible for paid leave if certain other conditions have been met.

2

2

---

---

---

---

---

---

---

---

## The Coronavirus Aid, Relief and Economic Security Act ("Cares")

- Signed into law on March 27, 2020;
- Provides 2.2 trillion-dollar aid package designed to help the economy;

3

3

---

---

---

---

---

---

---

---

### Major Components

- Makes Changes to the FFCRA;
  - Expands UC collection period;
  - Increases UC benefits
- Provides Avenues to put money into people's pockets by
  - Direct payment to tax-registered people by US government;
  - Allowing employers to get business loans; with provisions for forgiveness
  - Allowing employees to get loans from retirement plans without a penalty;
  - Allows employers to pay some of an employee's student loans;
  - Delays individuals having to take money of retirement as Required Minimum Distributions.

4

4

---

---

---

---

---

---

---

---

### Cares and FFCRA

- Provides an extra \$600 on top of state unemployment compensation benefits;
- Provides an additional 13 weeks of unemployment comp (from 26 weeks to 39 weeks).
- Clarifies that Emergency Leave and EFMLA together provide a maximum of 12 weeks of leave;
- Requires employers to maintain "appropriate documentation".
- States that intermittent leave is available for both Emergency Leave and EFMLA (for child care only).
- Does not apply if the worksite has been closed or the employee has been furloughed.

5

5

---

---

---

---

---

---

---

---

### CARES and FFCRA

- Provides that an employer with fewer than 50 employees can be exempted if:
  - Provision would result in expenses exceeding revenue;
  - Absence of the employee would result in a substantial risk to the business;
  - There are not enough employees available to operate the business.
- Business self-designates by "authorized officer's" determination.

6

6

---

---

---

---

---

---

---

---

### A Survey of CARES Provisions

7

7

---

---

---

---

---

---

---

---

### Direct Payment to Taxpayers

- Provides a cash payment to individuals of \$1200 (\$2400 for joint filers); \$500 for each dependent child;
- Payments expected within 3 weeks;
- Direct deposit into person's checking account if listed on the 2018 or 2019 tax return;
- Payment reduced out by 5% (of excess amount) for AGI of \$75,000 for single filers and \$112,500 for head of household and \$150,000 for married/filing jointly.

8

8

---

---

---

---

---

---

---

---

### Waivers of 2020 Required Minimum Distributions (RMD)

- Act defers RMD for 401 (k) and (a) plans, IRA's and 457 (b) plans for the 2020 calendar year.
- Deferred by one year.

9

9

---

---

---

---

---

---

---

---

Payroll Tax Relief

- Employer's 6.2% portion of Social Security Tax due from the date of enactment (March 27, 2020) to Dec. 31,2020 may be deferred and paid in two installments:
  - 1<sup>st</sup> December 31, 2021
  - 2<sup>nd</sup> December 31, 2022.

10

---

---

---

---

---

---

---

---

10

Charitable Giving

- For Tax Year 2020, allows individuals who do not itemize to take a \$300 deduction against gross income for charitable contributions;
- For those who itemize, the 60% of AGI cap for charitable contributions is increased to 100%.

11

---

---

---

---

---

---

---

---

11

HDHP's and Telehealth

- A HDHP that provides telehealth benefits which would be below the deductible will not violate the requirement to have a high deductible.
  - Recognition that access to health care is anticipated to be an issue.

12

---

---

---

---

---

---

---

---

12

### OTC Medicines

- OTC medicines may be reimbursed from FSA's, HRA's and HSA's without a prescription for purchases after December 31, 2019.

13

13

---

---

---

---

---

---

---

---

### Paying Student Loans

- Currently IRC 127 allow an exclusion from an employee's gross income of \$5,250 per calendar year for "education assistance"
  - i.e. tuition, books supplies, fees etc. but not payments of student loans.
- Cares expands that definition to include and employer payments directly to the employee or to the employee's student lending service of any principal or interest of "qualified education loan" to the employee, employee's spouse or dependents.

14

14

---

---

---

---

---

---

---

---

### Assistance to Business

- A Tax Credit for Wages Paid.

15

15

---

---

---

---

---

---

---

---

### Employee Retention Credit for Employers Forced to Close

- The act provides a 50% federal payroll tax credit for paying up to \$10,000 in wages paid in 2020. (this does not include FFCRA benefits) for
  - For businesses completely or partially suspended by government order limiting commerce, travel or group meetings due to the Coronavirus, or
  - Business with 50% reduction in gross receipts in Q1 2020 compared with Q1 2019,
- The credit ends when any suspension is lifted or the business' gross receipts for a quarter reach 80% of the prior year's quarter.

16

16

---

---

---

---

---

---

---

---

### Special Rule

- For businesses with 100 or more full time equivalent employees, only wages paid when the employee was not providing services are eligible for the credit.
- Business < 100 or fewer FTE's may take credit on any wages during the period.

17

17

---

---

---

---

---

---

---

---

### COVID Affected Employee Withdrawals from 401 (k) et al.

18

18

---

---

---

---

---

---

---

---

### Retirement Plan Relief

- Sponsors (employers) and administrators of qualified retirement plans, 403 (b) plans, 457 (b) plans, and IRA's may allow "corona virus-related plan distributions up to \$100,000 in the aggregate in the 2020 calendar year without incurring the 10% early withdrawal penalty and despite the plan's current distribution requirements.
- The eligible individuals are:
  - Person diagnosed with COVID-19;
  - Person married to a person diagnosed with COVID-19;
  - Or a person laid off, furloughed, business closed, hours reduced or inability to work because minor child's school or day care closed.
- Repayment must be made within 3 years.
- Income to the employee will be prorated over 3 years.

19

19

---

---

---

---

---

---

---

---

### SBA Loans

20

20

---

---

---

---

---

---

---

---

### SBA Business Loans

- \$349 million available for businesses to use until June 30<sup>th</sup>.
- Incentives to keep employees on the payroll;
- Loans are forgivable if used for certain purposes;
- Note: Business cannot take Employee Retention Tax Credits if the business takes SBA 7(a) loan.
- Waiver of SBA and lender fees.
- No prepayment penalties
- Maximum interest of 4%

21

21

---

---

---

---

---

---

---

---

### SBA Loan Types

- 7(a) Loans-have been the common loan for starting a business, buying a business or keeping a business going.
  - The coronavirus 7(a) loans are being called the "Paycheck Protection Program Loans" or "PPP";
- 7(b) Loans-these have typically been the loans business will get following a flood, tornado, or similar disaster.
  - The coronavirus 7(b) loans are called the "Economic Injury Disaster Loan".

22

22

---

---

---

---

---

---

---

---

### Loans Available

- For small employers:
  - Expanded SBA 7(a) Loans ("Payroll Protection Program")
  - Expanded SBA 7(b) Loans ("Economic Injury Disaster Loan") and Emergency Grants
- For midsize employers
  - Midsize loan program

23

23

---

---

---

---

---

---

---

---

### Paycheck Protection Program (SBA 7(a) Loans)

- SBA backs small-business loans through local lenders.

24

24

---

---

---

---

---

---

---

---



### Paycheck Protection Program

- Particulars:
  - Offered to small businesses with fewer than 500 employees, select types of business with fewer than 1,500 employees, 501(c)(3) non-profits with fewer than 500 workers and some 501(C)(19) veteran organization (have to be in operation before February 15, 2020)
  - Self-employed, sole proprietors, freelance and gig economy workers are also eligible to apply
  - Maximum loan amount is the lesser of \$10 million, or 2.5 times the average monthly payroll costs – including wages for employees making under \$100,000, as well as expenses for paid sick leave, healthcare and other benefits - during the 1-year period before the date on which the loan was made.
  - The maximum interest rate under this program is 4%
  - The loan term is up to 10 years
  - No personal guarantee or collateral is required for the loan
  - Payments are deferred up to six to 12 months
  - Part of this loan may be forgiven and not counted as income to you, if it's spent during the first eight weeks and used for operating expenses.

25

25

---

---

---

---

---

---

---

---

### Paycheck Protection Program

- Loans are forgiven when the proceeds are used for any of these costs:
  - Payroll costs, excluding prorated amounts for individuals with compensation greater than \$100,000
  - Rent pursuant to a lease in force before February 15, 2020
  - Electricity, gas, water, transportation, telephone, or internet access expenses for services which began before February 15, 2020
  - Group health insurance premiums and other healthcare costs.

26

26

---

---

---

---

---

---

---

---

### Paycheck Protection Program

- In order for the amounts to be forgiven:
  - Must maintain the same average number of employees for the first eight-week period beginning on the origination date of the loan as you did from February 15, 2019 - June 30, 2019 or from January 1, 2020 until February 15, 2020.
  - If employer doesn't meet this requirement, the amount forgiven is reduced.
  - Employer won't be penalized for a reduction in employment or wages during the period from February 15, 2020 to April 26, 2020, if employer rehires employees that were previously laid off or restores any decreases in wages or salaries by June 30, 2020.

27

27

---

---

---

---

---

---

---

---

### Economic Injury Disaster Loan (SBA 7(b) Loan)

- Terms:
  - Loans are up to \$2M
  - The term is 30 years
  - Interest Rates are 3.75% for small business and (2.75% for non-profits)
  - The first month's payments are deferred a full year from the date of the promissory note.

28

28

---

---

---

---

---

---

---

---

### EIDL Terms Expanded by CARES Act

- Can be approved by the SBA based solely on an applicant's credit score (not repayment ability and no tax return is required).
- EIDLs smaller than \$200,000 can be approved without a personal guarantee. Also not requiring real estate as collateral and will take a general security interest in business property.
- Borrowers can receive \$10,000 in an emergency grant cash advance that can be forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue loss.
- Expands access to sole proprietors or independent contractors, as well as tribal businesses, cooperatives, and ESOPs with fewer than 500 employees and all non-profits including 501(c)(6)s.

29

29

---

---

---

---

---

---

---

---

### A Closer Look

30

30

---

---

---

---

---

---

---

---

### Paycheck Protection Program (SBA 7(a))

|               |  |
|---------------|--|
| Employer Size | <ul style="list-style-type: none"> <li>500 or fewer employees from 2/15/20; <b>or</b></li> <li>Hospitality and restaurant industries NAICS Code 72 with more than 1 physical location and no more than 500 employees <u>per location</u>; <b>or</b></li> <li>Entities eligible under standard 7(a) program rules that allow participation of companies in NAICS Code with greater than 500 employees.</li> </ul> |
| Loan Amount   | Lesser of \$10 million or 2.5 times the average total monthly payroll costs from the one-year period prior to date of application.   |
| Loan Use      | Payroll costs (up to \$100k per employee), state and local taxes, mortgage interest payments, rent, utilities, and interest on prior debt during 8-year period following loan origination.   |

31

31

---

---

---

---

---

---

---

---

|                          |  |
|--------------------------|--|
| Loan Terms               | 4% interest rate; first 6 months of payments (principal and interest automatically deferred. Max 10 years.   |
| Loan Forgiveness         | <ul style="list-style-type: none"> <li>Full forgiveness of loan if 75% of loan used for payroll. Remaining 25% forgiven if used for payroll costs, interest on mortgages, rent, and utilities.</li> <li>Employers must maintain employment for the 8 weeks after origination of loan, or rehire employees by June 30. (FTE's v. Same Period in 2019 or 2020).</li> <li>Forgiveness reduced if full-time headcount declines or if salaries or wages decrease (dollar by dollar).</li> </ul> |
| Loan Processors          | Local institutions: SBA7(a) lender or federally insured depository institution, credit union, and Farm Credit System institution that is participating.  |
| Application Available At | <a href="https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf">https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf</a>  |
| When to Apply            | <ul style="list-style-type: none"> <li>April 3 for small businesses and sole proprietorships.</li> <li>April 10<sup>th</sup> for independent contractors and self-employed individuals.</li> </ul>   |

32

32

---

---

---

---

---

---

---

---

### SBA 7(b) Loan-Economic Injury Disaster Loan

33

33

---

---

---

---

---

---

---

---

### SBA Section 7(b) Economic Injury Disaster Loan (As Modified by the CARES Act)

|                  |   |
|------------------|---|
| Employer Size    | <ul style="list-style-type: none"> <li>500 or fewer employees; <b>or</b></li> <li>Entities eligible under standard 7(a) program rules that allow participation of companies in NAICS Code with greater than 500 employees or based on revenue not exceeding a certain amount</li> </ul> |
| Loan Amount      | \$2 million for EIDL<br>\$10,000 advance grant paid within 3 days.  |
| Loan Use         | Working capital, including payments of fixed debts, payroll and accounts payable.   |
| Loan Terms       | EIDL: 3.75% for-profit; 2.75% nonprofit<br>Advance: \$10,000 advance potentially forgiven (see below)   |
| Loan Forgiveness | \$10,000 emergency grant cash advance forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue loss.  |

34

---

---

---

---

---

---

---

---

|                          |   |
|--------------------------|---|
| To Apply                 | Small Business Administration Starting Friday, (4/3/20)   |
| Application Available At | <a href="https://www.sba.gov/funding-programs/disaster-assistance">https://www.sba.gov/funding-programs/disaster-assistance</a> |

35

35

---

---

---

---

---

---

---

---

### Mid-Size Loan Program

|                  |  |
|------------------|--|
| Employer Size    | Between 500 and 10,000 employees.  |
| Loan Amount      | Unspecified  |
| Loan Use         | To retain 90% of workforce at full wages and benefits through 9/30/20 and intention to restore 90% of workforce in place on 2/21/20. |
| Loan Terms       | Capped at 2% with no principle or interest paid for first 6 months.  |
| Loan Forgiveness | Expressly prohibited in statute.   |
| Loan Servicer    | Local institutions   |

36

36

---

---

---

---

---

---

---

---

### Payroll Tax Relief

- Concept: Business was down but employer continued to pay employees after March 12, 2020.

37

37

---

---

---

---

---

---

---

---

### Employee Retention Credit for Employers Subject to Closure Due to COVID-19

- Eligibility:
  - Employers that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either:
    - Fully or partially suspend operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
    - Experience a significant decline in gross receipts during the calendar quarter.

38

38

---

---

---

---

---

---

---

---

### Employee Retention Credit

- Benefit:
  - Fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employee up to \$10,000 in wages.
  - Applies to qualified wages paid after March 12, 2020, and before January 1, 2021.
  - Maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is \$5,000.

39

39

---

---

---

---

---

---

---

---

### Employee Retention Credit

- Credit allowed against the employer portion of social security taxes under section 3111(a) of the Internal Revenue Code (the "Code").
- Wages paid due to new requirement for sick pay or paid leave under FFCRA not eligible for credit.
- Credit allowed against payroll tax.
- Eligibility ends when business is no longer suspended or gross receipts for quarter reach 80% of the prior year.
- Employers with more than 100 FTE employees only wages paid when employee was not providing services are eligible for credit.
- Employers with 100 or fewer FTE employees eligible to take the credit on any wages during the eligibility period.

40

40

---

---

---

---

---

---

---

---

### Tax Delay

41

41

---

---

---

---

---

---

---

---

### Deferral of Employer Portion of Social Security Tax

- Allows employers to defer payments of the 6.2% employer portion of social security tax due from March 27<sup>th</sup> to end of 2020.
- Required to repay the deferred amount in two equal payments.
  - First is due by December 31, 2021
  - Second due December 31, 2022.

42

42

---

---

---

---

---

---

---

---

Retirement Benefits

43

43

---

---

---

---

---

---

---

---

Penalty-Free Coronavirus Plan Withdrawals

- Permissive, not mandatory.
- Permits sponsors and administrators of qualified retirement plans to provide for eligible individuals to receive “coronavirus related distributions”.

44

44

---

---

---

---

---

---

---

---

Penalty-Free Coronavirus Plan Withdrawals

- **Who is eligible? An individual**
  - Who is diagnosed with, or whose spouse or dependent is diagnosed with, SARS-CoV-2 or COVID-19 by a test approved by CDC.
  - Who experiences, as a result of COVID-19, adverse financial consequences as a result of:
    - Being quarantined, furloughed, laid off, having work hours reduced, or unable to work due to lack of child care, or
    - Closing or reducing hours of a business the individual owns or operates
- **May rely on an employee’s certification that he or she is eligible.**

45

45

---

---

---

---

---

---

---

---

### Penalty-Free Coronavirus Plan Withdrawals

- Distributions of up to \$100,000 in the 2020 calendar year.
  - (Aggregate limit for all plans within a control group or affiliated service group)
- Distributions not subject to 10% early withdrawal penalty under 72(f)
- Default is income inclusion spread ratably over 3-year period following distribution.
- Taxpayer may retribute amount to an eligible retirement plan within 3 years of distribution (no 402(g) limit, etc.)

46

46

---

---

---

---

---

---

---

---

### Penalty-Free Coronavirus Plan Withdrawals

- Applies to distributions made on after after January 1, 2020 and before December 31, 2020.
- Not treated as eligible rollover distributions under Sec. 401(a)(31, 402(f), and 3405
  - Don't need to worry about notices
  - Not subject to mandatory 20% withholding.
- Plan Amendments-Sponsors and administrators choosing to provide this must update plan by January 1, 2022.

47

47

---

---

---

---

---

---

---

---

### Temporary Coronavirus-Related Plan Loans

- Permissive
- Increase in maximum loan limit for new loans made within 180 day window from March 27, 2020.
- Permits loans up to \$100k (capped at 100% of present value of participant's vested accrue benefit under the plan or \$10k if less)
- Eligibility: Same as for plan withdrawals (COVID related distribution)

48

48

---

---

---

---

---

---

---

---



### Temporary Coronavirus-Related Plan Loans

- NOTE: Payments on new or existing loans that would be due on or after March 27, 2020 and before December 31, 2020 are delayed for 1 year.
- Plan Amendments-Sponsors and administrators choosing to provide this must update plan by January 1, 2022.

49

49

---

---

---

---

---

---

---

---

### Waiver of 202 Required Minimum Distributions for Certain Retirement Plans and IRAs

- Required
- Temporary waiver of required minimum distributions
  - RMDs not required uring calendar year 2020 for defined contribution plans (including 403(b)and 457(b) plans maintained by governmental entities).
- Applies to:
  - 2020 RMDs, and
  - Distributions required in 2020 as a result of a required beginning date occurring in 2020 (to the extent not made before 1/1/2020).

50

50

---

---

---

---

---

---

---

---

### Other Employer Considerations

- Expectations for Relief:
  - National emergency declaration provides basis to provide relief on wide range of tax code requirements.
  - Federally declared disaster declarations provide more typically used basis to provide relief.
  - Expect IRS press release, other guidance (likely addressing things like Form 5500 filing deadline)
  - CARES Act provides expanded authority to DOL to extend deadlines.
- Treatment of paid leave as compensation under retirement plans.

51

51

---

---

---

---

---

---

---

---

### Health Benefits

52

52

---

---

---

---

---

---

---

---

### Coverage of COVID-19 Tests

- FFCRA requires group health plans to cover certain COVID-19 testing and related health care visits at 100%
  - No deductibles, co-insurance, or copays
  - No prior authorization, utilization review, or medical management
  - For covered items and services that are provided on or after March 18, 2020 and during public health emergency declared by Secretary of Dept. of Health and Human Services.
- Which plans must comply?
  - Any group health plan with at least 2 participants that are current employees (excludes retiree-only plans)
  - Excludes excepted benefits
  - Employer size does not matter.

53

53

---

---

---

---

---

---

---

---

### Coverage of COVID-19 Tests

- Tests covered under FFCRA:
  - In vitro diagnostic products for detection of SARS-CoV-2 or diagnosis of the virus that causes COVID-19 that are approved, cleared, authorized
- Tests covered Un

54

54

---

---

---

---

---

---

---

---

Student Loans

55

---

---

---

---

---

---

---

---

55

Student Loans

- Expands tax code Sec. 127 to allow employers to reimburse employees up to \$5,250 for most student loan payments, which can be excluded from taxable income
- CARES Act stipulates:
  - Payments must be for a student loan incurred for the education of the employee (i.e. can't be for an employee's child or spouse).
  - Rules for education assistance programs under Sec 127 apply.
    - E.g. Employer must adopt a written plan describing the benefit and communicate the terms of the program to eligible employees, cannot favor highly compensated employees.

56

---

---

---

---

---

---

---

---

56

Unemployment

57

---

---

---

---

---

---

---

---

57

### Unemployment

- Extends to workers traditionally not eligible for unemployment benefits.
- Provides an extra \$600 per week on top of state benefits.
- Benefits amount is not linked to individual's income.
- Provides 13 week extension of benefits.

58

58

---

---

---

---

---

---

---

---

### Next Steps

- Loan action
  - Loans on a first come-first served basis.
  - 30 million small business
  - 15 million self-employed
- Look at 401k withdrawals
- Student loan provision
- Mention MDR to affected employees
- Notify HAS, FSA, HRA participants on OTC
- Notify HDHP participants on telemedicine.

59

59

---

---

---

---

---

---

---

---