

Breaking News

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Four Recent Executive Actions In Response to COVID-19

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On August 8, 2020, President Trump signed one Executive Order and three Memoranda in response to the ongoing COVID-19 pandemic. These actions focus on a payroll tax deferral, additional unemployment benefits, renter and homeowner protections from eviction and foreclosure, and student loan payment deferrals.

Memorandum Regarding Payroll Tax

This [memorandum](#) instructs the Secretary of the Treasury to delay the withholding, deposit, and payment of the 6.2% social security tax imposed on an employee's wages and compensation. The delay runs from September 1, 2020, through December 31, 2020. Note that this is only a delay in the timing of the payment, **not** a cancellation of the tax obligation. That said, the memorandum also instructs the Secretary of the Treasury to issue guidance and "explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred pursuant to the implementation of this memorandum". Thus, while the memorandum merely defers the payment of some payroll taxes, it leaves open the possibility that the deferred social security tax on employees will be ultimately cancelled through guidance and legislation.

The deferral applies only to employees who makes less than \$4,000 of pre-tax income every two weeks, or roughly \$104,000 annually. Employers who wish to take advantage of the program should wait for further guidance. Moreover, employers who elect to defer the tax should do so cautiously because, under current law, employers will be liable for the full amount deferred in January 2021.

Memorandum Regarding Unemployment Benefits

The President also signed a [memorandum](#) providing for \$400 per week in additional assistance to certain unemployed individuals (as defined in the memorandum), if a state requests the additional funding. States that do request the additional funding, however, must partially fund the benefit themselves. A number of Governors have questioned whether their States will request the money, in part because they are unsure whether they can afford their share of the program. The memorandum also provides for termination of the additional benefit provided by the memorandum on the earlier of (a) the Department of Homeland Security's Disaster Relief Fund (which funds the federal portion of the program) decreasing to \$25 billion, or (b) December 6, 2020. The additional benefit will also terminate if there is legislation enacted providing supplemental unemployment payments.

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Executive Order Regarding Renter and Homeowner Assistance

This [executive order](#) states a policy “to minimize, to the greatest extent possible, residential evictions and foreclosures during the ongoing COVID-19 national emergency,” and takes the following four actions:

1. It directs the Secretary of Health and Human Services and the Director of the CDC to “consider whether any measures temporarily halting residential evictions of any tenants for failure to pay rent are reasonably necessary.” The Order does not expand or extend the temporary eviction moratorium under the CARES Act, which expired on July 24, 2020.
2. It directs the Secretary of the Treasury and the Secretary of Housing and Urban Development to “identify any and all available Federal funds to provide temporary financial assistance to renters and homeowners.” The Order does not specifically set aside any new cash funds or other immediate financial relief for renters or homeowners facing financial hardship due to COVID-19.
3. It directs the Secretary of Housing and Urban Development “to promote the ability of renters and homeowners to avoid eviction or foreclosure,” such as “encouraging and providing assistance to public housing authorities, affordable housing owners, landlords, and recipients of Federal grant funds in minimizing evictions and foreclosures.”
4. It directs the Director of the Federal Housing Finance Agency to “review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19.”

Memorandum on Student Loans

The CARES Act provided relief from student loan payments through September 30, 2020. The third [memorandum](#) President Trump signed instructs the Secretary of Education to take action to allow deferments of student loan payments through December 31, 2020.

The above are all subject to further actions and guidance by different federal government agencies. Further, some have questioned the constitutionality of the actions. Finally, the President has indicated that he may sign additional executive orders and memoranda on various other issues in the near future. Businesses and individuals should stay informed on these subjects and contact legal counsel with any questions about whether they can take advantage of any provisions of the actions.

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