

COVID-19 Breaking News

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SECOND STIMULUS PACKAGE SIGNED INTO LAW

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On December 27, 2020, President Trump signed the Consolidated Appropriations Act (the “Act”). The Act is designed to (a) provide appropriations to keep the government running through September 2021, and (b) provide additional COVID-19 emergency response and relief to businesses and individuals. This newsletter focuses on three of the key areas in the COVID-19 response and relief part of the Act.

Effect of the Act on the Families First Coronavirus Response Act (“FFCRA”)

The Act did **not** extend an employer’s obligation to provide employees with emergency paid sick leave and expanded paid family and medical leave for a COVID-19 related absence under the FFCRA, which expired on December 31, 2020. Additional information regarding the FFCRA can be found in our [March 2020 Legal Update](#) and in our [April 3, 2020 COVID-19 Legal Update](#).

Although the Act did not extend the FFCRA paid leave requirements, the Act did extend the substantial FFCRA-related tax credits to pay for the cost of FFCRA leave until March 31, 2021. Accordingly, employers may voluntarily continue to provide FFCRA paid leave benefits to employees and remain eligible to receive the refundable payroll tax credits equal to the cost of the paid sick leave under the FFCRA until March 31, 2021. If an employer is going to extend FFCRA paid leave until March 31, 2021, it would be advisable to notify its employees accordingly.

PPP/Business Assistance

The Act also made a number of changes to the Paycheck Protection Program (“PPP”). We have previously written about the PPP, including in our [March](#), [April](#), and [July](#) 2020 newsletters (among others). While a recitation of all of the changes to the PPP under the Act is not possible here, below are some of the key provisions of which business should be aware:

Changes to Allowable and Forgivable Uses: The Act adds a number of expenses as allowable uses of PPP funds that may be forgiven under the PPP:

- “Covered operations expenditure” – includes expenditures for “business software or cloud computing that facilitates” business operations;
- “Covered property damage cost” – includes costs “related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that [were] not covered by insurance or other compensation”; and
- “Covered worker protection expenditure” – includes expenditures to adapt “business activities of an entity to comply with requirements established or guidance issued by” certain governmental entities from March 1, 2020 to the end of the COVID-19 national emergency relating to “the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement” (the Act contains examples).

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These changes apply both to new loans made after the Act's effective date, as well as loans already made under the PPP, but not to loans that have been forgiven.

Payroll Costs: The Act added that payments for “group life, disability, vision or dental insurance” are included in the definition of “payroll costs.” This change was similarly made retroactive to apply to loans already made under the PPP.

Second Draw PPP Loans: The Act created the ability for certain businesses to obtain a second PPP loan (the “Second Draw”). To be eligible, in addition to other requirements, a business must (a) employ less than 300 employees, and (b) have at least 25% less in gross receipts compared to past fiscal quarters (which quarters can be compared depends on when the business started and when the Second Draw is requested). Additionally, the business's prior PPP loan must have been used, or will be used, by the time of disbursement of the Second Draw.

The calculation for the maximum amounts available under the Second Draw are similar to those under the original PPP, but are capped at \$2 million.

The Act also provides for the SBA Administrator to issue guidance to address “barriers to accessing capital for minority, underserved, veteran, and women-owned business concerns for the purpose of ensuring equitable access to covered loans.” Businesses that fall into these categories should be vigilant in monitoring such guidance and consult with their legal and financial advisors when it is issued.

Other Changes: The Act also provides other business assistance through changes to certain portions of the Economic Injury Disaster Loan program, the microloan program, and low interest refinancing of certain loans. Finally, the Act includes provisions providing grants for “shuttered venue operators,” also known as “Save Our Stages.”

Tax Changes

The Act makes a number of changes and clarifications regarding tax issues, two of which are discussed below.

First, the Act clarifies that a PPP loan that is forgiven is not included in the income of an entity (forgiveness of a loan normally is treated as income). The Act also clarifies that otherwise deductible expenses that are paid with the proceeds of a PPP loan (e.g., payroll, rent, utilities, etc.) remain deductible. This reverses an IRS Notice that took the position that expenses paid with forgiven PPP loans were not deductible.

Second, the Act extends and enhances the Employee Retention Tax Credit. Previously, the tax credit allowed eligible businesses a refundable tax credit up to 50% of qualified wages. The Act extends this program for the first 2 quarters of 2021 and allows a tax credit for up to 70% of qualified wages (up to \$7,000 per quarter), as well as other enhancements. The Act also loosens the restrictions on who qualifies for the tax credit. Most notably, the Act allows PPP Loan recipients to claim the credit, something they were previously unable to do.

If you have any questions about the new stimulus law, you should contact your legal and financial advisors.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen at 312.701.6860 or jvegosen@fvldlaw.com, Vance L. Liebman at 312.701.6850 or vliebman@fvldlaw.com, Peter T. Berk at 312.701-6870 or pberk@fvldlaw.com, Cecilia M. Suh at 312.701.6841 or csuh@fvldlaw.com or your regular FVLD contact.

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