SUMMARY OF THE CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT OF 2021

The $900 billion Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (the "Act") was signed into law at the end of 2020. The Act includes "Round Two" of the Paycheck Protection Program (PPP), extended unemployment benefits, and stimulus checks to some individuals. The Act also changes several of the previous PPP rules, including providing that business expenses (such as payroll) paid with forgivable PPP funds are also tax deductible.

Despite other expectations, the **Act did not**: extend the *requirement* for employers to provide paid leave under the Families First Coronavirus Response Act ("FFCRA") beyond December 31, 2020; provide liability protection from COVID-19 related claims for employers/business owners; or provide aid to state and local governments.

PPP - Round 2

"Second Draw" Loans

As anxiously anticipated, second PPP loans are now available to certain borrowers that already received a PPP loan. A business may apply for a **"Second Draw" PPP loan if:**

- It has **300** or fewer employees (down from 500 employees);
- It has used or will use the full amount of its first PPP loan; and

- It can show a **25% gross revenue decline** in any 2020 quarter compared to the same quarter in 2019.

As with the original PPP, the maximum loan amount for a "Second Draw" is 2.5 times average monthly payroll costs in the prior year (3.5 times for accommodation and food service businesses). However, "Second Draw" loans are **capped at $2 million**.

Eligibility for First Time PPP Borrowers

The PPP loan application deadline had been August 8, 2020, but the PPP has now been extended through March 31, 2021. Accordingly, PPP loans are again available to the following first-time borrowers, subject to the original eligibility requirements:

- Businesses with 500 or fewer employees that are eligible for other SBA 7(a) loans;
- Sole proprietors, independent contractors and certain self-employed individuals;
- Not-for-profits, including churches;

- Food and accommodation services (e.g., NAISC codes starting with 72) with fewer than 300 employees per physical location; and

- Newly added - Section 501(c)(6) organizations (e.g., trade groups, chambers of commerce, etc.) and "destination marketing organizations" (as defined in the Act), which were not eligible previously, are now eligible for a PPP loan if they have 300 or fewer employees and do not receive more than 15% of revenue from lobbying. Also, lobbying activities must comprise no more than 15% of the entity's total activities and total no more than $1 million during the most recent tax year that ended prior to February 15, 2020.

New Rules for First Time and Second Draw PPP Borrowers

- Additional Expenses Now Eligible for Forgiveness:

  To be eligible for full forgiveness, the borrower must still spend at least 60% of the loan proceeds on "payroll costs". However:

  -- "Payroll expenses" include employer-provided group life, disability, vision and dental insurance.

  -- "Non-payroll costs" eligible for forgiveness include added expenses. In addition to payroll, rent (not paid to a related entity), mortgage interest and utilities, forgivable expenses now include:

    - COVID-related worker protection expenditures (e.g., personal protective equipment, facility modifications);

    - Essential payments to suppliers pursuant to contracts or orders in place before the loan origination;

    - Operating costs such as software, cloud computing services and human resources or accounting services are eligible for forgiveness; and

    - Property damage due to vandalism and looting that occurred in 2020 and is not covered by insurance.

  The above changes are retroactive, but do not apply to borrowers who have already received forgiveness.

  -- The requirement to deduct the amount of any EIDL advance from the PPP forgiveness amount has been repealed.

- Tax Deductibility

  The Act supersedes the IRS and Treasury guidance from November and specifically provides that **business expenses paid with forgivable PPP loans are tax deductible**. This is **retroactive** and applies to loans under both the original PPP and PPP Round 2, even if the loans were already forgiven.

- Covered Period

  The borrower may elect a Covered Period ending at any point between 8 and 24 weeks after loan origination (as we had indicated should have been the case all along).

- Simplified Application

  There is a new, simplified forgiveness process for loans of **$150,000 or less**. For such loans, the borrower shall receive forgiveness if it signs and submits a simple SBA form (to be created within 24 days) to certify the number of employees the borrower was able to retain as a result of the loan, the estimated total amount of the loan spent on payroll costs, and the total PPP loan amount.

- Other Items to Note

  -- The Act allocates $15 billion to community lenders and small depository lenders to issue PPP loans. This is an effort to reach smaller businesses and under-served communities. The Act also allocates a portion of the PPP funding specifically for borrowers with 10 or fewer employees and loans of less than $250,000 in low-income areas. There is also $15 billion allocated for grants to live venue operators and cultural institutions.

  -- The PPP has now been extended through March 31, 2021, but it is not yet clear when the SBA will start accepting applications for "Round 2" loans. Interested borrowers should contact their lending institution for timing.

  -- The Act allows a borrower that returned all or part of a previous PPP loan to reapply for the maximum amount available.

Other Key Provisions of the Act for Employers

- Additional funding for the PPP and Economic Injury Disaster Loan (EIDL) grants.

- **Stimulus payments of $600** to individuals making up to $75,000 per year and $1,200 for married couples making up to $150,000 per year, plus $600 for each child dependent.

- **The federal unemployment benefits supplement, known as "Pandemic Unemployment Assistance" ("PUA"), is extended through March 14, 2021. Accordingly, the PUA supplement of $300 per week** is restored, beginning December 26 and ending March 14, 2021. Eligibility for PUA benefits is extended from 39 to 50 weeks. The Act also extends the programs that offer unemployment benefits to those with nontraditional employment (e.g., self-employed, gig workers) and that provide additional weeks of benefits to those who exhaust their regular state benefits.

- Extends paid leave tax credits under the **FFCRA** through March 31, 2021. (This **allows, but does not *require***, an employer to honor requests for paid leave from December 31, 2020 through March 31, 2021).

- Extends the employee retention tax credit and other expiring tax provisions.

- Allows a 100% **business expense tax deduction** for food or beverages provided by a restaurant for the period January 1, 2021 to December 31, 2022.

- Extending the repayment period for deferred payroll taxes until December 31, 2021.

This memo is intended only as a general overview of these provisions based upon the official summary of the Act provided by Congress. If you have any questions or would like legal advice regarding the above or any other employment issue, please contact David A. Lawrence or Sarah Gidley.