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Covid-19 ---Coronavirus Aid, Relief, and Economic Security Act

This Client Alert describes two of the sections most relevant to our clients in the Coronavirus Aid, Relief, and Economic Security Act (the Bill) passed late Wednesday night by the Senate: the Paycheck Protection Program and the enhanced unemployment benefits available to employees and former employees. It should be noted that, while the Bill has been approved by the Senate, it has not yet been passed by the House or signed by the President, so there may be some changes. That being said, this was a bipartisan effort and there is no reason to expect that the below provisions of the Bill will change drastically.

Paycheck Protection Program:

1. Applying for a Loan: As the Bill has not yet become law, there is a dearth of information about the application process. As best as we can tell, any "covered loans" will be administered by the SBA under the 7(a) program. We expect that the program will be explained in greater detail in the coming days once it passes and will be more equipped to explain the process at that time.

2. Small businesses with under 500 employees (this definition is broad and includes part-time employees) are eligible for a loan in the amount of certain approved expenses (including payroll costs for employees earning less than \$100,000 annually, mortgage interest or rent payments, and utilities) up to the lesser of (i) 2.5 times the average totally monthly 2019 amounts spent by the Company on the approved expenses or (ii) \$10,000,000. The goal of the program is to help small businesses pay off existing obligations (expenses in connection with existing mortgages and leases). Therefore, the loan proceeds cannot be used to fund mortgage, rent or utilities expenditures for new loans or leases entered into on or after February 15, 2020.

3. Small Businesses are eligible for loan forgiveness under this program for the actual amount of covered expenses incurred during the first 8 weeks following the date the loan originated. The amount of this forgiveness can be up to the amount of the loan used for the payment of the covered expenses described in Item (2) above.

4. The amount of forgiveness for a loan under this program may be reduced in two ways (Note: the amount can never be raised by these adjustments):

- a. Reduction in Employees: The forgiveness amount is multiplied by a percentage equal to the average number of employees (full time equivalents) during each month of the covered period divided by the average number of employees (full time equivalents) in one of the following two periods (at the borrowers election) (a) February 15, 2019 – June 30, 2019 or (b) January 1, 2020 – February 29, 2020. For illustration purposes: \$500,000 expected forgiveness x (70 employees during the covered period in 2020 / 100 employees during the elected earlier period) = \$350,000 in actual forgiveness.
- b. Reduction in Pay amount: If the gross amount paid to the employees earning less than \$100,000 annually is 25% less during the covered period in 2020 than the gross amount paid to those same employees in the most recent quarter before the covered period, then the forgiveness amount will be reduced by that percentage. Note: Unlike for retaining employees, a reduction of at least 25% must be incurred in order for the forgiveness amount to be reduced at all. Note: There is no guidance yet on how these two reductions of the forgiveness amount will work together.

5. Employees rehired or those employees whose salaries were restored prior to June 30, 2020 would not count as part of the reduction so long as the firing or reduction of salary occurred between Feb. 15, 2020 and within 30 days following the bill's passage into law.

6. Forgiveness is made as a "cancellation of the debt" by the Lender with no taxable income to the borrower.

Enhanced Unemployment Insurance Benefits Provisions:

Unemployment benefits have been dramatically increased both in the amount being paid to eligible individuals and the categories of individuals covered.

1. Increase in Eligible Individuals: the Bill defines "covered individuals" more broadly than the categories of individuals who would normally qualify for unemployment. These include those individuals that are (i) not already receiving unemployment benefits or other sick or family leave or (ii) that are teleworking or (iii) otherwise receiving pay and:
 - a. Are unable to work due to Corona virus diagnosis, symptoms pending diagnosis of themselves or a family member they must care for,
 - b. Are unable to work due to caring for a child that is not able to go to school as a result of the pandemic, or
 - c. Are unable to work due to reasons caused directly by the coronavirus.

The covered individual definition also includes those self-employed and those seeking part-time employment, subject to criteria.

2. Benefits are expanded to include those individuals still partially employed or unable to work for a period of weeks (furloughed) who are not being paid or are ineligible for other employment benefits.
3. The benefit period for the 2020 calendar year has been expanded to up to 39 weeks for Corona-related unemployment (including the expanded definition of "covered individual" explained above).
4. All individuals eligible to receive unemployment under the Bill will receive a weekly amount equal to: (i) the amount allocated by applicable state law; PLUS (ii) \$600.
5. The Bill also provides full funding for the first week of unemployment for states that waive the usually required state waiting period of one week before individuals are eligible for unemployment insurance.
6. Individuals who would be eligible for unemployment benefits except for the fact that such individual reached the maximum amount of benefits in 2020 under state law are eligible to receive unemployment for an additional 13 weeks, to a maximum of 39 weeks (the total unemployment received includes the additional \$600 per week provided under the Bill).
7. The Bill also provides temporary financing of short-time compensation payments in states with such programs, where employers reduce employee hours instead of headcount.
8. Most of these provisions require state acceptance and although funded by the federal government, will need to be implemented by each individual state.

Please contact your Meltzer Lippe attorney with any questions or concerns. We are here to help you navigate through this current environment.