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GOSS & LUCARELLI LLC
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CONGRESS PASSES ADDITIONAL COVID RELIEF FOR BUSINESSES AND INDIVIDUALS

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On December 21, 2020, Congress passed a COVID-relief package which provides ongoing financial relief to businesses and individuals, and resolves issues left open by prior COVID relief measures. The relief bill is currently awaiting signature by the President.

Within the relief bill, there are two acts impacting employers and businesses: (1) the COVID-related Tax Relief Act of 2020; and (2) the Continued Assistance for Unemployed Workers Act of 2020.

COVID-RELATED TAX RELIEF ACT OF 2020

The Tax Relief Act extends COVID-related tax benefits previously set to expire on December 31, 2020, extends the Paycheck Protection Program (PPP), and resolves issues concerning the taxability of PPP loan forgiveness.

FFCRA Tax Credits

Under the Families First Coronavirus Response Act (FFCRA), employers with fewer than 500 employees were required to provide certain COVID-related paid leave benefits to employees through December 31, 2020. These benefits included:

- **Emergency Paid Sick Leave:** Two (2) weeks (up to 80 hours) of paid leave for six qualifying COVID-related reasons.
- **Expanded Family and Medical Leave:** Ten (10) additional weeks of partially paid leave to individuals who were unable to work because their child's school or place of care was closed due to COVID.

In exchange for providing paid leave benefits, private employers were permitted to take a credit against payroll taxes in an amount equal to: FFCRA wages, qualified healthcare expenses, and the employer portion of Medicare tax imposed on the paid leave wages. The employer portion of social security tax on the wages was also waived.

Congress declined to extend the expiration date for mandatory paid leave under FFCRA. This means that, as of January 1, 2021, employers are no longer required by law to offer paid leave.

Under the Tax Relief Act, however, Congress has extended the payroll tax credit created by FFCRA through March 31, 2021 to private employers with fewer than 500 employees who voluntarily provide COVID-related paid leave in accordance with the FFCRA framework. While employers are no longer required to provide FFCRA leave benefits, those who elect to continue offering paid leave may continue to take a tax credit for the first quarter of 2021.

Absent further guidance from the IRS, employers who wish to continue offering paid leave should comply with the original leave limitations provided for FFCRA.

- **Emergency Paid Sick Leave (EPSL):** Employees are only entitled to two total weeks of EPSL. If an employee already used two (2) full weeks of EPSL earlier this year and the employer received a tax credit, the employer will not be eligible for tax credits if additional EPSL is provided.
- **Expanded Family and Medical Leave (EFML):** Under the FFCRA regulations, an employee is only entitled to 12 total weeks of leave to care for a child whose school or place of care is closed, even if the leave spans two separate FMLA periods. If an employer follows the calendar year method for FMLA administration, and an employee took their full EFML in 2020, they do not automatically qualify for an additional 12 weeks of EFML on January 1, 2021.

The Tax Relief Act also extends FFCRA tax credits for self-employed individuals through March 31, 2021.

Employee Retention Tax Credit

The Employee Retention Credit (ERTC), created under the CARES Act, is a refundable credit against certain employment taxes equal to 50% of the qualified wages an eligible employer pays to employees after March 12, 2020. The ERTC originally expired on January 1, 2021, but was extended by Congress through July 1, 2021. The amount of the credit has also been increased from \$5,000 to \$14,000.

Finally, under the CARES Act, employers who received a PPP loan were not permitted to claim the ERTC. The new Tax Relief Act permits employers that receive a PPP loan to also claim the ERTC.

Paycheck Protection Program

The Tax Relief Act provides a number of new updates regarding the Paycheck Protection Program and other relief for small businesses. Briefly, the Act provides the following for businesses which have already received a PPP loan:

- Any forgiven portion of a business's PPP loan will be not taxable as income.
- Covered business expenses paid with forgiven PPP loans are deductible.
- For businesses which received an Economic Injury Disaster Loan (EIDL) Advance up to \$10,000 and received (or will receive) a PPP loan, PPP forgiveness will no longer be reduced by such EIDL Advance.
- Businesses which previously received a PPP loan are eligible to receive another PPP loan (in an amount not to exceed \$2,000,000), so long as:
 - The business has 300 employees or less;
 - The business has exhausted the full amount of their previous PPP loan (or can show that they will); and
 - The business has experienced an at least 25% decline in gross revenue in any quarter in 2020 compared to that same quarter in 2019.

The Tax Relief Act also provides the following to business which did not previously apply for or receive a PPP loan, or which have not yet applied for PPP Loan forgiveness:

- Eligible businesses may apply for PPP loan; and
- There is a simplified forgiveness process for PPP Loans which are under \$150,000.

Qualifying expenses for use of PPP funds have been expanded to include: covered property damage, facility modification (for worker/customer protection) and personal protective equipment, purchases of goods and supplies necessary for business operations, and software and cloud computing services.

Direct Payment Tax Rebates

For individuals, the Tax Relief Act provides for another round of direct payment stimulus checks. Individuals with a 2019 adjusted gross income of \$75,000 or less will receive \$600, and married couples with a 2019 adjusted gross income of \$150,000 or less will receive \$1,200. Payment will also be issued for each qualifying child.

The amount individuals and married couples will receive begins to decrease as their respective adjusted gross incomes increase, with stimulus check payments not coming to individuals with an adjusted gross income of more than \$87,000 or married couples with an adjusted gross income over \$174,000.

CONTINUED ASSISTANCE FOR UNEMPLOYED WORKERS ACT OF 2020

The Continued Assistance Act extends several current federal unemployment programs:

Pandemic Unemployment Assistance (PUA) extended through March 14, 2021

- PUA provides benefits to individuals who are unemployed due to COVID and who are not eligible for regular UC benefits such as self-employed individuals, independent contractors, gig workers, those seeking part-time employment, and those who have exhausted their regular UC benefits.
- Benefit weeks have been increased from 39 weeks to 50 weeks.
- New requirements which applicants must meet to demonstrate self-employment.
- New requirements for state UC systems to verify applicant identity.

Extends Pandemic Unemployment Compensation (PUC) extended through March 14, 2021

- PUC provides an additional \$300/week to individuals receiving UC from December 26, 2020 through March 14, 2021.
- PUC is not retroactive to July 2020, when prior PEC benefits of \$600/week ended.

Extends Pandemic Emergency Unemployment Compensation (PEUC) extended through March 14, 2021

- PEUC provides additional 11 weeks of UC benefits (in addition to 13 weeks of extended benefits previously provided by CARES Act).
- If an individual is receiving PEUC as of March 14, 2021, and has not exhausted all benefit weeks, they can continue to receive benefits until total eligible weeks are exhausted.

Provides Additional Mixed Earner Benefits

- Individuals who earn a combination of traditional W-2 employment wages and at least \$5,000 self-employment income in 2019 will receive an additional \$100/week.

Other Provisions

- Extends federal funding for states that waived “waiting week” through March 14, 2021.
- Extends emergency UC for government entities and non-profits.
- States must provide process to report refusal of suitable work.

If you have questions about the relief measures provided by the pending COVID-relief bill, please contact a member of our [Business and Corporate Law](#) or [Employment and Labor Law](#) practice groups.