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M E M O R A N D U M

TO: Employer Clients

FROM: MPL Law Firm, LLP

DATE: March 27, 2020

RE: Summary **-** The Families First Coronavirus Response Act

<u>The CARES Act</u>

In order to keep our clients updated on the rapidly evolving landscape of the federal stimulus package and corresponding changes in response to the COVID-19 pandemic, below is a summary of the Coronavirus Aid, Relief and Economic Security Act (the "***CARES Act***"), which is commonly referred to as "Phase III" of the federally enacted COVID-19 related stimulus legislation. President Trump is expected to sign the CARES Act into law late Friday afternoon, which is a $2 trillion stimulus package. The CARES Act provides much needed stimulus to individuals, businesses, and hospitals in response to the economic distress caused by the COVID-19 pandemic.

Due to the enormous size and complexity of the CARES Act, this "summary" is lengthy. It has been pared down to areas that we expect to have the most impact on our clients from a business, as well as individual, level. These include small business economic relief, unemployment, direct payments, debt relief, and retirement account rule changes.

<u>SMALL BUSINESS RELIEF</u>

<u>Paycheck Protection Program ("PPP")</u>

The CARES Act provides the ability for small businesses and other eligible entities to obtain loans up to $10 million. Payments on these loans would be deferred for up to a year. Also, the Small Business Administration (SBA) will forgive up to eight weeks of payroll and other costs if the organization retains its employees and maintains salary levels. Loan fees are waived and loan applicants do not have to provide a personal guarantee or provide collateral. Below is important criteria on PPP:

- <u>Who is Eligible for PPP Loans?</u> The PPP applies to any business that already qualified as a "small business concern," plus businesses, 501(c)(3)s, veterans organizations, and tribal business entities that employ not more than either: 500 employees; the size standard established by the SBA for their industry; or, if the business has more than one physical location (with 500 or fewer employees per location) and is assigned a North American Industry Classification System (NAICS) code beginning with 72. Sole proprietors, independent contractors, and self-employed individuals are eligible for PPP loans, as well.

- What can a PPP Loan Be Used For? The maximum loan amount is $10 million and proceeds may be used for:
  - payroll costs;
  - employee salaries;
  - interest payments on mortgages entered into before February 15, 2020 (but not prepayment or payment of principal);
  - rent for a lease entered into before February 15, 2020;
  - utilities, including electricity, gas, water, transportation, telephone, or internet; and
  - interest on any debt incurred before February 15, 2020.

- What are the PPP Loan Restrictions? If a business applies for the PPP, it may be ineligible for other relief provided in the bill. However, under certain conditions, the Act does allow a business to receive both a PPP loan and an economic injury disaster loan (EIDL). For example, if the a business receives an SBA Economic Injury Disaster Loan (EIDL) loan before PPP loans are available and is not being used for a purpose covered by the PPP loan, or if the borrower received the EIDL for a disaster other than COVID-19, it would be eligible to apply for the PPP loan.

Processing. The processing of PPP loans is also streamlined by giving authority to make and approve loans to qualified lenders (versus the SBA), waiving fees for both borrowers and lenders, and limiting a lender's consideration only to whether the borrower was in operation on February 15, 2020, and had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors. Current 7(a) lenders can provide PPP loans but will need to opt into the program. The Treasury Department, in consultation with other financial regulatory agencies, will establish criteria for allowing other lenders to participate in PPP within 15 days of enactment.

Forgiveness. PPP loans payments can be deferred for at least 6 months and no more than one year, as well as forgiveness for the total amount borrowers spent on payroll costs and mortgage interest, rent, and utility payments between February 15 and June 30, 2020. Any canceled indebtedness will not be included in the borrower's taxable income. Below are a few restrictions/caveats on the amount of loan forgiveness that can be received:

- The forgiven amount cannot exceed the loan principal;
- The amount forgiven will be reduced proportionally by any reduction in employees compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their compensation the prior year; and
- To encourage the rehire of employees who may already have been laid off due to COVID-19, there is an exception to the reduction if the business re-hires employees and/or eliminates the reduction in salaries by June 30, 2020.

SBA Disaster Loans and EIDLs

Additional funds have been allocated for SBA disaster loans, which include Economic Injury Disaster Loans ("***EIDL***"). By way of perspective, loans under EIDL can be up to $2m for working capital with a 3.75% interest rate for "for profit" businesses and 2.75% for non-profits.

They are currently available to small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most private, nonprofit organizations.

With passage of the ACT, an EIDL can also be used by tribal businesses, cooperatives, and ESOPs with less than 500 employees or any individual operating as a sole proprietor or independent contractor between January 31, 2020 and December 31, 2020. Private nonprofits are also eligible for both grants and EIDLs.

Until December 31, 2020, the SBA can approve EIDLs based solely on an applicant's credit score or an alternative appropriate method for determining an applicant's ability to repay. Importantly, for EIDLs made prior to December 31, 2020, the SBA will waive the following requirements:

- A personal guarantee on advances and EIDLs below $200,000;
- One year in business prior to the disaster; and
- No other credit availability

Lastly, the Act establishes that a federally declared emergency qualifies as a new trigger for the EIDL program, thus making EIDLs available nationwide.

<u>Emergency EIDL Grants.</u> The Act provides funding for the SBA to provide emergency EIDL grants until December 31, 2020. The emergency EIDL grant is an advance of $10,000 to small businesses and nonprofits that apply for SBA's EIDL program. The advance is provided within three days of applying for the loan, and businesses will not be required to repay the advance, even if they are denied for an EIDL.

<u>Existing SBA Loans.</u> Funding has been allocated to help businesses with existing SBA Loans. For 6 months, the SBA cover all principal, interest, and fees on all existing SBA loans (7(a), Community Advantage, 504, and Microloan programs). This does not cover the Paycheck Protection SBA program.

<u>Expanded Bankruptcy Eligibility.</u> For one year, the Act increases the eligibility threshold to file under chapter 11 of the Bankruptcy Code to businesses with less than $7.5 million of debt. In addition, coronavirus-related payments from the federal government are considered "income" during bankruptcy for one year.

<u>INDIVIDUAL/PERSONAL RELIEF</u>

<u>Direct Payments</u>

The CARES Act will provide one-time checks to Americans. The amounts will depend on the adjusted gross income (“***AGI***”) of the recipient. Recipients with an AGI of $75,000 or less will receive $1,200, while married recipient with a combined AGI of $150,000 will receive $2,400. Individuals and couples are eligible for an additional $500 per dependent child. The direct payments will be reduced for receipients above the $75,000/$150,000 AGI threshold, with checks being reduced $5 for each $100 of income over those thresholds, and completely phasing out for individuals whose incomes exceed $99,000, $146,500 for head of households with one child, and $198,000 for joint filers who don’t have children.

Payment amounts for AGI purposes will be based off of individual’s 2019 tax returns. If they haven’t prepared a 2019 tax return yet, individuals can use their 2018 return. If a 2018 tax return hasn't been filed yet, individuals can use a 2019 Social Security statement showing their income to see what an employer reported to the I.R.S.

Eligible U.S. residents must have a work-eligible Social Security number to receive such a check and must not be claimed as a dependent by another taxpayer. The checks will be available to those who have no income as well as people who rely on income benefit programs, such as supplemental security income from the Social Security Administration. Recipients don't have to take any action to receive the payment. Treasury Secretary Steven Mnuchin said he expected most people to get their payments within three weeks. The payments will not be taxable, so recipients will not report the amounts of their respective payments on their 2020 tax returns.

Unemployment Compensation

The CARES Act provides four months of bolstered unemployment benefits as the government braces for a spike in jobless claims. The maximum unemployment benefit would be increased by $600. This $600 increase is an across-the-board increase, as each state has a different unemployment insurance program. The extra $600 payment will only last for a period of four months, covering weeks of unemployment ending July 31, 2020.

The CARES Act also provides that self-employed workers would now be eligible for unemployment benefits, where in the past they were not. For self-employed workers, benefit amounts would be calculated based on previous income, using a formula from the Disaster Unemployment Assistance program. Part-time workers would also be eligible for benefits, but the benefit amount and how long benefits would last would be determined by state law. Both self-employed workers and part-time workers would also be eligible for the additional $600 weekly benefit.

The length benefits will be received is dependent on the state unemployment program. Many states already provide 26 weeks of benefits, though some states have trimmed that back while others provide a sliding scale tied to unemployment levels. The CARES Act provides all eligible workers with an additional 13 weeks on top of the state maximum. So participants in states with 26 weeks would be eligible for a total of 39 weeks. The total amount cannot exceed 39 weeks, but it may be shorter in certain states.

Despite this expansion, the additional $600 payment only last for a period of four months, covering weeks of unemployment ending July 31. These expanded benefits are available to workers who were newly eligible for unemployment benefits for weeks starting on Jan. 27, 2020, and only run through December 31, 2020. Individuals already receiving unemployment benefits for reasons unrelated to the coronavirus will have their state-level benefits extended by 13 weeks and will also receive the extra $600 weekly benefit.

Retirement Accounts

The CARES Act provides for the suspension of certain retirement account rules. For calendar year 2020, individuals do not have to take a required minimum distribution from any individual retirement accounts or workplace retirement savings plans, like a 401(k). This means individuals are not forced to sell investments that may have fallen in value, which would lock in losses. If the money is not needed this year, individuals can let the investments sit in hope of a recovery in the market. This rule suspension does not effect old-fashioned pensions.

The CARES Act also permits individuals to take money out of their I.R.A. or workplace retirement plan early, withdrawing up to $100,000 this year without the usual 10 percent penalty, as long as it's due to COVID-19. Individuals would also be able to spread out any income taxes owed on the distribution over a three (3) year period from the distribution date. Additionally, individuals that did withdraw an amount for COVID-19 reasons can put the money back into the account before those three (3) years are up to replace such withdraw. This will be permitted despite the rules normally keeping them from making a contribution that large.

This COVID-19 withdrawal exception applies if an individual, a spouse or dependent tested positive for the coronavirus, or an individual experienced a variety of other negative economic consequences related to the COVID-19 pandemic. Employers could allow workers to self-certify that they are qualified to pull money from a workplace retirement account.

Finally, individuals can still borrow from their 401(k) or other workplace retirement plan. The CARES Act permits individuals to take out twice the usual amount. For 180 days after enactment, with certification that the individual has been affected by the COVID-19 pandemic, they would be able to take out a loan of up to $100,000 (whereas pre-CARES Act, individuals could not take out more than half of their balance, but that rule is suspended). Individuals that already have a loan and are supposed to finish repaying it before December 31st get an extra year to repay the loan.

Mortgage Relief

The CARES Act affects mortgages with regards to foreclosures and payments. Except for vacant or abandoned properties, lenders of mortgages backed by federal agencies (such as the Department of Agriculture, Veterans Administration (VA), or Federal Housing Administration (FHA)), Freddie Mac or Fannie Mae may not execute foreclosures, or foreclosure-related evictions, for 60 days starting March 18. Although it encompasses a longer period, the postponement is generally in line with an earlier declaration by the President instructing HUD, Freddie Mac and Fannie Mae to suspend foreclosures and evictions.

Regardless of their delinquency status, owners of residencies, ranging from single-family homes to fourplexes, may request payment forbearance from their loan providers, given that they prove COVID-19-induced financial hardship. Forbearance may be granted for up to 180 days for all mortgages backed by federal agencies as well as Freddie Mac and Fannie Mae, for a period that could be subsequently doubled. During the time of forbearance, mortgage servicers are not to levy fees, penalties or interest that would not normally accrue if borrowers paid their monthly obligations.

Many private lenders are instituting forbearance programs, as well as state mandated forbearance requirements. At this time, Pennsylvania has only placed a stay on foreclosures and evictions, however further mortgage forbearance relief may come in the future. It is always worthwhile to inquire with your mortgage company about any proposed or pending forbearance program related to COVID-19 hardships.

Student Debt Relief

Prior to the enactment of the CARES Act, the federal government waived two (2) months of payments and interest for many federal student loan borrowers. This student debt payment relief expanded under the CARES Act. Until September 30th, there will be automatic payment suspensions for any student loan held by the federal government. Interest should not accrue on subject loans during the suspension period. Because it is hard to contact many of the loan servicers right now, individuals with student loan debt are encouraged to check their account online in the coming weeks to look for the current amount due. This should be able to show the individual if the servicer has reset its billing systems to show no payment due.

Only student loans owned by the federal government are eligible for relief. These are so-called direct loan. Individuals with direct loans in the past 10 years are definitely eligible, which means, according to the Institute for College Access & Success, 90 percent of loans (in dollar terms) will be eligible. Popular student loans that would not be eligible include Older Federal Family Educational Loans (F.F.E.L.) that the U.S. Department of Education does not own, Perkins loans, loans from state agencies, and loans from private lenders like Discover, Sallie Mae and Wells Fargo. Individuals are still encouraged to reach out to these holders, as many may be offering their own assistance programs.

Within a few weeks of the bill becoming law, individuals are supposed to receive notice indicating what has happened with applicable federal student loans. Individuals can choose to keep paying down principal if desired, and after August 1st, they should get multiple notices regarding the cessation of the suspension period.

While our office will closed, pursuant to Governor Wolf's shutdown order, our attorneys will remain available via cell phone and email. If you have any questions, please contact your MPL attorney to discuss the above, or other questions about the effect of COVID-19 on your operations. ***Email contacts: Andy Miller (amiller@mpl-law.com); James Sanders (jsanders@mpl-law.com); and Christian Miller (cmiller@mpl-law.com).***