



Summary of FFCRA and CARES Act

Congress has passed major pieces of legislation to address the challenges caused by the Coronavirus. The Families First Coronavirus Response Act (FFCRA) has been signed into law by the president. The Coronavirus Aid, Relief and Economic Security Act (CARES Act) passed on Friday, March 27th. Both pieces of legislation were designed to provide economic relief for businesses and workers severely impacted by COVID-19. We lobbied very aggressively to ensure each bill contained policies that would help the working families of the construction industry as well as its contractors.

The following summary has many of the key provisions impacting the building trades and its industry partners. While Congress is expected to officially recess until mid to late April (possibly longer), plans for a fourth relief bill are already coming together. As you will read, we have unfinished business and our members and their families are depending on us to get it done.

WORKER-RELATED PROVISIONS

Unemployment Insurance in the FFCRA – the FFCRA makes it easier for individuals to apply for unemployment insurance (UI) because it provided \$1 billion in grants to help states administrate their unemployment compensation programs. An amount of \$500 million is available to any state that takes certain steps to facilitate applying for UI in at least two of the following ways; in-person, by phone or online. An amount of \$500 million is also available to states that experience a 10% increase in unemployment and that ease eligibility requirements for applicants impacted by COVID-19 by waiving work search requirements and eliminating the waiting week. If states receive any amount of this grant money, it will make it easier for workers to apply for unemployment insurance.

Unemployment Insurance in the CARES Act - the CARES Act expands UI programs administered by the states in four ways: (1) expands access to UI benefits; (2) increases the amount of UI payments; (3) extends the duration of UI benefits; and (4) eliminates waiting periods. The changes only go into effect if a state enters an agreement with the federal government agreeing to certain terms. However, because the federal government is offering to pay for 100% of the changes allowed by the bill, there is little reason for states *not* to offer these expanded benefits.

Here is a summary of how the CARES Act will positively impact workers who are receiving or will apply for UI benefits.

For workers who qualify for regular UI benefits:

- All weekly UI benefits will be increased by \$600 for the next four months (through July 31);
- State-law mandated “waiting periods” are waived;
- Benefits can be received for an additional 13 weeks beyond what state law typically allows; and
- These enhancements are for unemployment for any reason – not just COVID-19.

For workers who typically would not qualify for regular UI benefits:

- Access to the UI system is expanded – individuals who have exhausted their benefits, independent contractors, sole proprietors, those without a wage history, and others who usually would not qualify for UI benefits are eligible for regular UI payments;
- These individuals may receive benefits if they are unemployed or unavailable to work because of COVID-19 (but otherwise would be available for work);
- These workers are entitled to up to 39 weeks of UI benefits (including any benefits they received under regular UI);
- All weekly UI benefits will be increased by \$600 for the next four months (through July 31); and
- State-law mandated “waiting periods” are waived.

For people who are eligible for regular UI, the increased benefits begin when the state enters into an agreement with the federal government. For people who are not otherwise eligible for UI, but are now eligible, because of the CARES Act, the benefits begin with weeks of unemployment after January 27, 2020. Regardless, these changes to UI are in addition to the direct payments described below in this memo.

The following is a more detailed summary from the CARES Act explaining specific UI provisions in the bill. The summary above is taken from these more specific details of the unemployment insurance provisions in the bill. In short, this is a deeper dive.

Increased UI Payments

- The bill increases the amount of UI benefits workers receive each week by \$600, from the time the state enters into an agreement with the Federal Government through July 31st.
- This extra \$600/week will be sent to workers receiving regular/extended UI benefits, as well as workers receiving benefits under the expanded access and duration provisions of the new bill.
- The extra \$600 may be included in the weekly UI payment, or sent as a separate, weekly payment.
- These payments are in addition to the \$1,200/\$2,400 direct payments provided for elsewhere in the bill that are not tied to the UI system.

Increased Access to UI

- This bill allows those who have exhausted their rights to UI or would typically be ineligible to receive UI benefits if they are unemployed or unavailable for work for of COVID-19-related reasons but would otherwise be able to and available for work.
- Examples of who will be eligible for UI under this section include the self-employed (e.g., independent contractors) and those who would normally not have a sufficient wage history to receive UI.
- Workers receiving benefits under this section will receive the weekly payments they would receive if they were eligible for regular UI, plus the extra \$600/week described above.
- Generally speaking, workers can earn up to 39 weeks of UI payments under this section, including any weeks of UI they have already used.
- Any state-mandated waiting periods are waived for purposes of this benefit.
- States can use any evidence of prior earnings to calculate the amount of weekly benefit payments owed an individual. If someone does not produce sufficient evidence of prior earning history for a determination of weekly benefits to be made, they can instead earn a “minimum flat benefit” based on the average weekly payments made in the state.
- This benefit is not available to anyone who has the ability to telework with pay or is receiving paid sick leave or other paid leave benefits. If an individual remains out of work because of COVID-19 after exhausting their paid leave, they can then apply for these UI benefits.

Increased Duration of Regular UI

- The bill allows states to extend the length of UI benefits for workers who are eligible for regular or extended UI. In most cases, this allows for an extra 13 weeks of benefit payments. (Note that this extension is not available to individuals receiving benefits under Section 2102's new expanded access rules.)
- To be eligible, an individual must exhaust all their rights to regular/extended UI under state law and must be actively seeking work.
- Individuals receiving benefits under this section will receive the extra \$600/week provided by section 2104, until July 31, 2020.
- Anyone who is eligible for benefits under this section must use up these benefits before receiving payments under the expanded access provision (section 2102).

Waiting Periods Are Waived

- The bill offers states a powerful economic incentive to waive their state-law mandated "waiting periods" that prevent people from immediately receiving UI benefits.
- The federal government offers to pay for 100% of the total amount of regular UI benefits states pay to individuals for their first week of regular unemployment if states agree to waive these "waiting periods" through the end of 2020.

Examples – the following are anticipated real life scenarios of how the CARES Act will impact building trades men and women

1. Jane Doe, a pipefitter, is laid off because the project site she was working on has been shut down due to Covid-19. She reported that she earned \$60,000 of income on her most recent tax return, and she is eligible for regular UI benefits because she was an employee and has a prior earning history. She will receive: (1) her weekly UI benefits, which are a percentage of her prior salary, *plus* (2) an extra \$600 per week (through July 31), *plus* (3) a \$1,200 tax credit. Her state normally limits allows 26 weeks up to 39 weeks of regular and extended UI benefits and applies a "waiting week" before benefits are sent. Under the CARES Act, she will be able to receive benefits immediately and for up to 52 weeks because of this bill.
2. John Smith is a first-year apprentice operating engineer. He started his apprenticeship in September but was laid-off in February because of COVID-19-related work slowdowns. He reported an income of \$20,000 on his most recent tax return. In normal circumstances, he would be denied UI under his state's eligibility rules because of a lack of work history. Under the CARES Act, the state would be able to use any documentation he submits of his earnings during his apprenticeship to calculate an appropriate weekly benefit. He will receive: (1) weekly UI benefits based on the pay stubs that establish his pre-layoff wages, *plus* (2) an extra \$600 per week (through July 31), *plus* (3) a \$1,200 tax credit. He can receive these weekly UI benefits for up to 39 weeks, as long as his unemployment continues to be caused by COVID-19.
3. Jill Jones is an electrician who has been out of the workforce for a few years but was hired to start on a project at the end of March. This project was delayed because of COVID-19. While Jill would not typically be eligible for UI because of her lack of wage history, she can now apply for benefits because of the expanded access provisions of this bill. Because she did not report any income on her most recent tax return and has no wage history that can be used to calculate a weekly benefit amount, she will receive: (1) a "minimum flat benefit" based on the average weekly benefit paid in the state, *plus* (2) an extra \$600 per week (through July 31), *plus* (3) a \$1,200 tax credit. She will start receiving this benefit immediately because the state has waived its waiting period.

Paid Sick Leave – the FFCRA created paid sick leave for employers with less than 500 employees. It is available to all employees, regardless of length of tenure with the employer. The employer would be required to cover 80 hours (full-time employees) or average of part-time worker's hours over a 2-week period.

- Requires employers to pay:
 - Regular wages, capped at \$511/day (\$5110 maximum) for employees unable to work because:
 - Employee is subject to a public COVID-19-related quarantine or isolation order
 - Health care provider has advised employee to self-quarantine

- Employee is experiencing COVID-19 symptoms and seeking diagnosis
 - 2/3 of regular wages, capped at \$200/day (\$2000 maximum) for employees unable to work because the employee is:
 - Caring for an individual subject to a public quarantine or isolation order or who has been advised to self-quarantine
 - Caring for a son or daughter if the school or childcare facility is closed or childcare provider is unavailable
 - Experiencing similar conditions, as specified by HHS.
- Provides an option for employers in multiemployer bargaining units to satisfy their obligations by paying into a multiemployer benefit plan *if* the plan can pay employees the required benefits.
- Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits (through Dec. 31, 2020).
- DOL can exempt employers with fewer than 50 employees from paying for leave to care for others if “requirements would jeopardize the viability of the business” and can exclude certain healthcare workers and first responders.

Paid Leave Through FMLA – the FFCRA also created paid leave, not paid sick leave, through the existing Family and Medical Leave Act. It only applies to employers with *fewer* than 500 employees. However, it is only available to employees who have been employed for 30 days with the employer from which they are requesting the leave.

- Requires employers to provide 10 days *unpaid* leave and up to an additional 10 weeks of *paid* leave to care for son or daughter whose school or childcare facility is closed, or childcare provider is unavailable for COVID-19 related reasons.
- Paid leave is 2/3 of regular wages, capped at \$200/day (\$10,000 maximum)
- Employees can elect to use accrued vacation, personal, medical or sick leave for the unpaid portion.
- Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits (through Dec. 31, 2020).
- DOL can exempt employers with fewer than 50 employees if requirements would jeopardize business and can exclude certain healthcare workers and first responders.

Direct Payments – the CARES Act also provides direct payments to individuals and families. All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) payment. In addition, they are eligible for an additional \$500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. For most Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer’s 2019 tax return if filed, or their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by \$5 for each \$100 that a taxpayer’s income exceeds the phase-out threshold (\$75,000 for individuals, \$150,000 married). The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

Employee Retention Tax Credit – the CARES Act revives a tax credit that has been used before in the aftermath of natural disasters to for employers to retain employees. The amount of the credit is 50% of all employee wages per calendar quarter but won’t exceed \$10,000 per employee per calendar quarter. In applying for the tax credit, the employer may include amounts paid to group health plans as “wages” if the amounts are not normally included as income to the employee. To receive the credit, the employer must experience: 1) a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or 2) a significant decline in gross receipts. The credit only applies to wages paid between March 12, 2020 and January 1, 2021. Tax exempt organizations are eligible for the credit. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

Paycheck Protection Program – the CARES Act creates a new avenue for small businesses, veterans organizations, 501(c)(3) organizations or “any business concern” to receive a cash infusion if they do not employ more than 500 individuals. Specifically, it amends the Small Business Administration’s (SBA) Section 7(a) Loan Program. The core mission of this program is to provide SBA-guaranteed financial assistance to small businesses that lack access to capital. Private lenders partner with SBA by making loans directly to small businesses and the SBA guarantees a portion of each loan. The CARES Act amends the program to direct the SBA to guarantee the *entire* loan. The loans are capped at \$10 million, and interest shall not exceed 4%. Eligible loans may only be made between February 15, 2020 and June 30, 2020. Companies may use these loans for a wide range of purposes including acquisition of land, construction, materials, supplies, equipment, payroll costs, continuing group healthcare benefits, employee salaries, interest on mortgage, rent, and utilities. Additionally, SBA shall require lenders who make loans during the above-referenced period to provide payment deferment relief for not less than 6 months. The amount of loan forgiveness shall be reduced if the business laid off workers or reduced their wages. SBA, however, may grant exemptions to this rule. Finally, loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program. Depending on the definition of “any business concern” this could be an opportunity for Taft Hartley plans and unions to receive these loans.

Child Care Subsidies – the CARES Act provides \$3.5 billion in grants to states for immediate assistance to childcare providers, but also to financially support child-care for families, including for healthcare workers, first responders, sanitation workers and other workers who have been deemed essential during the response to COVID-19 by public officials. This means that if a state or locality has deemed construction workers as essential, they may be eligible to receive funds from this grant to pay for childcare if the child for which care is provided is under 13 and resides with the construction worker.

Retaining Employees on Federal Job Sites – the CARES Act also opens up new authority for federal agencies to use existing funds to pay their contractors whose employees or subcontractors cannot perform work on a “site that has been approved by the Federal Government, including a federally-owned or leased facility, due to facility closures or other restrictions” and whose job duties cannot be performed remotely due to the COVID-19 public health emergency. This includes building trades workers. Payments to employees are limited to an average of 40 hours a week and exclude any credits the contractors are allowed for benefits they otherwise provide under the FFCRA or this Act. Applies only to paid leave or paid sick leave up to September 30, 2020.

Economic Injury Disaster Loans (Unions Eligible) – the CARES Act would expand eligibility for entities suffering economic harm due to COVID-19 to access SBA’s Economic Injury Disaster Loans (EIDL), while also giving SBA more flexibility to process and disperse small dollar loans. This includes 501(c)(5) entities. The bill allows entities that apply for an EIDL expedited access to capital through an Emergency Grant—an advance of \$10,000 within three days to maintain payroll, provide paid sick leave, and to service other debt obligations. An amount of \$10 billion would be provided to support the expanded EIDL program.

RETIREMENT PROVISIONS

Single employer – the CARES Act provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan’s status for benefit restrictions as of December 31, 2019, will apply throughout 2020.

Expands DOL Authority to Postpone Certain Deadlines – the CARES Act amends ERISA to provide the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.

Special rules for use of retirement funds – the CARES Act also, consistent with previous disaster-related relief, waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for

coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. The bill also provides flexibility for loans from certain retirement plans for coronavirus-related relief. A coronavirus-related distribution is one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Temporary waiver of required minimum distribution rules for certain retirement plans and accounts – the CARES Act waives the required minimum distribution rules for 401Ks, 403bs, SEPs and IRAs for calendar year 2020. This bill provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

PREVAILING WAGE

Temporary hospitals – while neither the FFCRA nor CARES Act addresses prevailing wage rates for the building of temporary hospitals, NABTU has obtained confirmation from the US Army Corps of Engineers (USACE) that prevailing wage will be paid on USACE federal contracts to build these structures.

Airport construction – the CARES Act provides \$10 billion dollars to airports, some of which may be used for construction and is already covered by prevailing wage.

Department of HHS – the CARES Act provides approximately \$31 billion in grant money for CDC and other programs, some of which may be used for construction. These programs do not yet have prevailing wage coverage on them.

STUDENT LOAN PROVISIONS

Exclusion for certain employer payments of student loans – the provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Institutional Refund and Federal Student Loan Flexibility – for students who dropped out of school as a result of COVID-19, the student is not required to return Pell grants or federal student loans to the Secretary. Waives the requirement that institutions calculate the amount of grant or loan assistance that the institution must return to the Secretary in the case of students who dropped out of school as a result of COVID-19.

Satisfactory Progress For students who dropped out of school as a result of COVID-19 – the student's grades do not affect a student's federal academic requirements to continue to receive Pell Grants or student loans

Student loan debt collection – separate from the FFCRA or the CARES Act, the US Education Department has announced that it will temporarily suspend collection and wage garnishments of individuals with defaulted student loans. It will also refund approximately \$1.8 in garnishments collected since the president declared a national emergency on March 13. In addition, third party debt collectors have been instructed by the department to halt all activities related to debt collection.

MORTGAGE PROVISIONS

Foreclosure Moratorium and Consumer Right to Request Forbearance – the bill provides up to 180 days of forbearance for federally-backed mortgages if experiencing financial hardship due to the COVID-19 emergency. Applicable mortgages included those purchased by Fannie Mae and Freddie Mac, insured by HUD, VA, or USDA, or directly made by USDA. The

authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020. Furthermore, the bill prohibits foreclosures on all federally backed mortgage loans for a 60-day period beginning on March 18, 2020.

Temporary Moratorium on Eviction Filings – the CARES Act prohibits landlords from initiating legal action to evict or to charge fees, penalties, or other charges for 120 days if the landlord’s mortgage on that property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.