

Issued April 5, 2020

**Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
Information for Local Government**

PLUS

**Families First Coronavirus Response Act (FFCRA Act)
Bonus Update for Local Government**

CARES Act Introduction

We previously circulated a Client Alert on the CARES Act for individuals and businesses, which can be accessed here:

- [CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT \(CARES ACT\)](#) (Posted on: March 28th, 2020)

However, some parts of the CARES Act are specifically aimed at providing relief to local government. Below, we will answer which parts of the CARES Act are intended to aid local government and which are not.

The programs discussed in this Alert are those that will be of most interest to local governments, particularly municipalities and counties. There are dozens upon dozens of additional appropriations for use in programs and departments of the federal government, the branches of the military, the courts, the legislature, and the VA that appear intended to support governmental operations impacted by the COVID-19 outbreak, which are not discussed below. As always, we encourage you to reach out to one of our lawyers if you would like to learn more.

CARES Act Programs That Do NOT Apply to Local Government

- Paycheck Protection Loans
- Emergency EIDL Grants
- “Employee retention” tax credit (This is clearly stated in Sec. 2301(f): “This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.”)

CARES Act Programs That CAN Benefit Local Government

Emergency Unemployment Relief for Governmental Entities

The expansion of unemployment benefits accompanied by pressure for reductions in force and/or reductions in hours/compensation may cause an increase in unemployment compensation filings by local government employees. Although private employers are taxed for unemployment claims based on their experience

Local Government

Alert

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rating, local governments are different; they may not necessarily have an experience rating. In Alabama, they are considered “reimbursing employers” and must pay the actual dollar-for-dollar costs to the State incurred by their employees’ claims. In Florida, local governments have the option of being contributing (i.e., tax paying) employers or reimbursing employers.

While the Alabama Department of Labor has temporarily ordered that the filing of partial unemployment compensation claims related to COVID-19 not be charged against an employer’s experience rating (again this does not help Alabama local governments who are “reimbursing employers”), the Florida Department of Economic Opportunity is still reporting that there is no relief under Florida law for the impact caused by COVID-19 related filings to an employer’s tax account: “Currently, there are no modifications to Florida law regarding employer’s chargeability, contributions and/or reimbursements.”

See AL DOL News Release (Mar. 20, 2020), <https://www.labor.alabama.gov/COVID/COVID-19%20Employers%20File%20Claims%20news%20feed.pdf>; FL DEO “Reemployment Assistance COVID-19 FAQ (http://www.floridajobs.org/docs/default-source/reemployment-assistance-center/ra-covid-19-faqs-eng.pdf?sfvrsn=805543b0_12).

There is relief provided under the CARES Act for reimbursing employers. Specifically, for the period of March 13, 2020, through December 31, 2020, Federal funding has been provided to cut the reimbursement obligation in half.

The CARES Act also allows the State to modify its current laws to “provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws.” Neither Alabama nor Florida have yet issued guidance on if, how, or when they will make such modifications, but this is something to keep an eye on.

How will the CARES Act benefit local government employees who are seeking unemployment compensation?

- Before passage of the CARES Act, state unemployment departments had already begun relaxing unemployment obligations and eliminating waiting periods, including in Alabama. The Alabama Department of Labor allows workers affected by the crisis to file for unemployment benefits without having to be “able and available” to work, or to search for work while collecting benefits. In Florida, workers are not required to register for Employ Florida or to search for work in that system to receive benefits, if the application is filed before May 2, 2020. Both states allow for unemployment claims (called “reemployment assistance” claims in Florida) for employees who are underemployed or furloughed, even if temporary.
- The Act extends the period of coverage of state unemployment benefits. Although the Act says that the periods “shall not exceed 39 weeks,” we are hearing that the States will likely elect to offer a shorter extension period.
- For four months (through July 31, 2020), the Act provides an additional \$600 per week in benefits to each individual receiving unemployment compensation. In Alabama and Florida, that will be on top of the normal maximum benefit amount of \$275/week.

Coronavirus Relief Funds

Section 5001 of the CARES Act amends the Social Security Act to create a \$150 billion “Coronavirus Relief Fund” from which direct payments can be made to States, tribal governments, and units of local government. State distribution is based on population, but no State will receive less than \$1.25 billion from the Coronavirus Relief Fund. Estimates of State shares can be viewed here, courtesy of the Center on Budget and Policy Priorities: <https://www.cbpp.org/research/state-budget-and-tax/how-will-states-and-localities-divide-the-fiscal-relief-in-the>.

Although 45% of a State’s funds are set aside for local governments, in order for a local government to qualify for a direct payment from the Coronavirus Relief Fund, it must be “a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000” (as determined by determined by the most recent year for which data is available from the Bureau of the Census). If the local government has a population under 500,000, it will need to seek an allocation of the Coronavirus Relief Fund from its State (or potentially its county, if the county has a population in excess of 500,000). If a local government receives a direct payment from the Coronavirus Relief Fund, it can proportionately reduce its State’s share.

Funds provided from the Coronavirus Relief Fund must be used to cover only those costs that:

- “(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.”

Emergency Relief Loans for Local Government

\$500 billion has been allocated to provide subsidized loans, loan guarantees, and other investments for “eligible businesses, States, and municipalities.” Of this total, \$25 billion has been set aside for passenger air carriers (and related services), \$4 billion has been set aside for cargo air carriers, and \$17 billion has been set aside for businesses critical to maintaining national security. This leaves \$454 billion in the pot for all other eligible businesses and “States and municipalities.” The CARES Act does not define the term “municipalities.”

Under a program yet to be developed by the Treasury, “The Secretary shall endeavor to seek the implementation of a program or facility in accordance with subsection (b)(4) that provides liquidity to the financial system that supports lending to States and municipalities.” See CARES Act, Sec. 4003(c)(3)(E). Check the Treasury’s website at the following link to learn if new guidelines are issued: <https://home.treasury.gov/cares>.

Because we do not yet have Treasury guidelines for lending to States and municipalities, we will tell you what the Act specifies in subsection (b)(4) for loans generally, much of which has no application to municipalities, but which may provide some insight as to what the government program will look like:

- Allocations are available for loans to mid-size businesses and non-profit organizations with between 500 and 10,000 employees. Loans are to be made with an annualized interest rate that is not higher than 2% per annum. No principal or interest will be due on the loans for the first 6 months after the loan is made.
- There is NO loan forgiveness for this program.
- To qualify, the borrower must be a U.S. entity with significant operations in and a majority of its employees in the U.S. Furthermore, amongst other items, the borrower must certify that:
 - the loan is required to support the borrower’s ongoing operations;
 - the funds it receives will be used to retain at least 90% of its workforce until September 30, 2020;
 - it intends to restore not less than 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to its workers no later than 4 months after the termination date of the declared COVID-19 public health emergency;
 - it will not pay dividends with respect to its common stock of or repurchase an equity security that is listed on a national securities exchange of the recipient or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act;
 - it will not outsource or offshore jobs for the term of the loan and 2 years after completing loan repayment;
 - it will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing loan repayment; and
 - it will remain neutral in any union organizing effort for the term of the loan.
- To receive a loan, the borrower must agree 1) not to repurchase an equity security that is listed on a national securities exchange of the borrower for a specified period of time, 2) until 12 months after the direct loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the borrower, and 3) to limit the pay of officers and employees making more than \$425,000 annually. The second condition is eligible for waiver by the Federal Reserve if found “necessary to protect the interests of the Federal Government.”

Partial Above the Line Deductions for Charitable Contributions

The CARES Act makes a number of changes for cash contributions to charitable organizations described in Section 170(b)(1)(A) (a “qualified contribution”), which generally include churches, schools, hospitals, public charities, private foundations, and state/local governments, but specifically excludes contributions to donor advised funds and supporting organizations.

Beginning with the 2020 tax year, an individual who does not elect to itemize deductions may take an above-the-line deduction for qualified contributions up to \$300.

For taxpayers who itemize deductions, the Act would suspend the limit on charitable contribution deductions for tax year 2020, meaning qualified contributions will be deductible to the extent they do not exceed the taxpayer’s adjusted gross income.

The limit on corporate deductions for qualified contributions in tax year 2020 is increased from 10% to 25% of taxable income.

Additional Allocations

There are many specific emergency appropriations that are baked into Division B of the CARES Act that will benefit local governments and related entities with specific issues:

- \$45 billion for the Disaster Relief Fund for the immediate needs of State and local governments in responding to the COVID-19 emergency. For the purposes of this Fund, “local governments” is broadly defined to include: “(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; (B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization, that is not an Indian tribal government as defined in paragraph (6); and (C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.”
- \$1.5 billion, through the Centers for Disease Control and Prevention, for grants to or cooperative agreements with States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes, including to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities related to coronavirus.
- \$1.5 billion for the Economic Development Administration (EDA) for “Economic Development Assistance Programs” to prevent, prepare for, and respond to coronavirus, domestically or internationally, including for necessary expenses for responding to economic injury as a result of coronavirus.
- \$5 billion for the Community Development Block Grant (CDBG) program to enable States and local governments to respond to economic and housing impacts caused by COVID-19.
- \$100 million for Emergency Management Performance Grants, which can be applied for by the State Administrative Agency (SAA) or the State’s Emergency Management Agency (EMA) and which can be allocated to local agencies for emergency management activities, including logistics and supply chain distribution, evacuation planning, disaster financing management, catastrophic disaster housing, resilient communications, and implementation of community lifelines.
- \$100 million for Assistance to Firefighter Grants for the purchase of personal protective equipment (PPE) and related supplies. This program provides direct financial assistance to eligible fire departments, nonaffiliated Emergency Medical Services organizations, and State Fire Training Academies.
- \$25 billion for transit systems. To determine if your locality has been apportioned a share of the transportation funds, see the tables published by the Federal Transit Administration here: <https://www.transit.dot.gov/cares-act-appportionments>.

FFCRA Bonus Update for Local Government

FFCRA Introduction

We previously have issued several Client Alerts related to the FFCRA that can be accessed via the following links:

- [FAMILIES FIRST CORONAVIRUS RESPONSE ACT \(FFCRA\) IS PASSED BY THE HOUSE AND SENATE, WILL REQUIRE EMPLOYERS WITH FEWER THAN 500 EMPLOYEES TO PROVIDE PAID LEAVE](#) (Posted on: March 18th, 2020)
- [DOL AND IRS RELEASE GUIDANCE ON THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT \(FFCRA\), EFFECTIVE APRIL 1](#) (Posted on: March 25th, 2020)
- [DOL ISSUES NOTICE POSTER OF EMPLOYEES' RIGHTS UNDER THE FFCRA AND GUIDANCE REGARDING THE NON-ENFORCEMENT PERIOD](#) (Posted on: March 26th, 2020)

Here, we expand our previous analysis to two matters of particular interest to local government.

Emergency Responders

The FFCRA provides paid sick leave or expanded family and medical leave for employees meeting certain qualifications, and it went into effect on Wednesday, April 1, 2020.

The law allows employers to exclude “emergency responders” from this new FFCRA leave. Under 29 C.F.R. § 826.30(c)(2), “emergency responders” are defined as follows.

For the purposes of Employees who may be excluded from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, an emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility. This also includes any individual whom the highest official of a State or territory including the District of Columbia, determines is an emergency responder necessary for that State’s or territory’s or the District of Columbia’s response to COVID-19.

Under guidance from the U.S. Department of Labor, “To minimize the spread of the virus associated with COVID-19, the Department encourages employers to be judicious when using this definition to exempt emergency responders from the provisions of the FFCRA.”

As your local government considers who to exclude from the FFCRA’s leave provisions, some items to consider in making your decision include:

- Opting employees out of FFCRA coverage would not prevent the local government from making its normal leave policies (sick leave, personal days, etc.) available to employees.
- The most expansive coverage given under the FFCRA is to employees caring for a child whose school or day care is closed. This is the qualifying reason that is likely to result in the most employees leaving work for the longest period of time. If you opt-out of this law for emergency responders, then no federal leave would be permitted for this reason. The local government’s normal leave policies would still be available to the employee for personal or vacation leave, etc.

- If the local government opted out of the FFCRA for its local responders, there would be nothing to prevent the local government from making adjustments to its own benefit policies. For example, if the local government opted out of the FFCRA for its responders, it could nonetheless decide to provide additional paid sick leave for emergency responders who experience COVID-19, in addition to the normal city sick leave. Thinking creatively, it might even add additional paid vacation for emergency responders after the crisis is passed.
- Unlike other employers, local governments do not receive any kind of tax credits for the use of this leave.

Documentation of Need for Leave

The documentation that an employer should collect to determine eligibility for FFCRA leave (whether sick leave or family leave) is as follows:

- For every employee requesting FFCRA leave:
 - The employee's name;
 - The date or dates for which leave is requested;
 - A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
 - A statement that the employee is unable to work, including by means of telework, for such reason.
- In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.
- In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.