WEBINAR SERIES

A Look Into New Omnibus COVID-19 Relief Bill and More in 2021

January 12, 2021

PrestigePEO

PrestigePEO Webinar

Guest Speakers

WEBINAR HOST

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Today's Agenda

- Overview of Consolidated Appropriations Act of 2021 (CAA 2021)
- Unemployment Insurance & Relief Payments
- Health-Related Relief
- Paid Family and Emergency Sick Leave
- Employee Retention Tax Credit
- Payroll Tax Deferral
- Paycheck Protection Program

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during todays session.

Today's presentation will be posted online at prestigepeo.com/blogs/

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Groom Law Group

Seth Perretta and Malcolm Slee

- Seth Perretta and Malcolm Slee are Principals at Groom Law Group, a Washington, DC law firm that focuses exclusively on employee benefit matters.
- Seth interfaces regularly with federal agency regulators and advises clients on legislative and regulatory developments.
- Malcolm advises clients on issues under ERISA, the Internal Revenue Code, and related laws and regulations as they relate to qualified retirement and welfare plans.

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CAA 2021

Consolidated Appropriations Act of 2021

- Combined COVID-19 stimulus bill and omnibus spending bill for FY 2021, with a price tag of $2.3 trillion
- Passed Congress on December 21; signed into law by Trump on December 27
- At 5,593 pages, reportedly the longest piece of legislation ever passed by Congress
- Today's presentation will give a high-level overview of the provisions most likely to be of interest to employers

Unemployment Insurance & Relief Payments

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Unemployment Insurance

CAA 2021 extends the various pandemic unemployment insurance programs (including the expanded coverage to self-employed and gig workers) **and provides an additional $300 per week for workers receiving unemployment benefits through March 14, 2021**

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Individual Relief Payments

CAA 2021 provides $600 per individual ($1,200 for taxpayers filing jointly) payments directly to Americans, as well as $600 for each child dependent under the age of 17

Note: The payments begin to phase out at an adjusted gross income of $75,000 for an individual and $150,000 for joint filers

Health-Related Relief

Health Provisions

- **Funding for COVID testing and vaccines**
- **Surprise billing "fix"**
- **Health transparency provisions**
  - Prohibits "gag" clauses
  - Mandatory broker comp disclosure
  - Mental health parity attestation regarding NQTL compliance
  - Annual reporting on pharmacy benefits and drug costs
- **Other health**
  - FSA/DCAP relief
  - Reduced threshold for medical expense deduction on Form 1040

Paid Family and Emergency Sick Leave

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Expanded FFCRA Leave

- Prior COVID legislation (FFCRA) required that certain employers (generally under 500 employees) provide certain emergency paid sick and paid family medical leave for certain qualifying leave events related to COVID-19 (through December 31, 2020)
- This prior legislation also provided tax credits to employers to offset the cost of the mandated leave
- **CAA 2021**
  - No new/extended mandate to provide the leave
  - **EXTENDS** tax credits for voluntary (qualifying) leave provided through March 31, 2021

Employee Retention Tax Credit (ERTC)

ERTC – Generally

- CAA 2021 makes numerous changes that apply not only on a prospective basis, but also on a **retroactive** basis (i.e., back to date of the enactment of the CARES Act when the ERTC was initially established)
- CAA 2021 also makes certain **prospective** changes to ERTC with respect to wages paid after December 31, 2020

ERTC – **Retroactive** Changes

CAA 2021 (retroactive to the effective date of the CARES Act):

- **Provides that employers who receive PPP loans may still qualify for the ERTC with respect to wages that are not paid with forgiven PPP proceeds**
  - Previously, an employer that received a PPP loan could not qualify for an ERTC
- **Clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee**
  - Was unclear under prior statutory language
- **Provides a special reporting rule for employers that already claimed an ERTC for 2020**

ERTC – **Prospective** Changes

For 2021 Q1 and Q2:

- **The maximum tax credit is increased to 70% of qualifying wages paid**
  - **For 2020 wages, the maximum credit is 50%**
- **The cap on qualifying wages that can be considered is increased to $10k *per quarter***
  - **For 2020 wages, the maximum is $10k of wages paid through 12/31/20*(versus on a quarterly basis)***

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ERTC – **Prospective** Changes

Eligible Employer

- For 2021 Q1 and Q2, an eligible employer is **any business with a decline in gross receipts of more than 20% compared to the same calendar quarter in 2019**

Notes:

- *CAA 2021 gives the employer the option (i.e., safe harbor) to determine eligibility based on gross receipts in the immediately preceding calendar quarter (compared with the corresponding quarter in 2019)*
- *CAA 2021 also allows certain governmental employers to claim the credit*

ERTC – **Prospective** Changes

Qualifying Wages

- Pre-CAA 2021 rules in effect for 2020 wages, set forth two separate definitions:
  1. For employers $\leq$ 100 “full-time” employees: all wages qualify
  2. All other employers: qualifying wages are limited to wages paid to employees not performing services due to certain COVID-related events
- For 2021 Q1 and Q2, **CAA 2021 applies first definition to employers with 500 or fewer “full-time” employees**

ERTC – **Prospective** Changes

Limit on advance payments

- For 2021 Q1 and Q2, CAA 2021 limits **advance** ERTC payments to:
  - Employers with 500 or fewer “full-time” employees during 2019
  - No more than 70% of the average 2019 quarterly qualifying wages

ERTC – **Prospective** Changes

Anti-Abuse Provision

- With respect to 2021 Q1 and Q2 periods, CAA 2021 authorizes the IRS to issue guidance to prevent the abuse of the ERTC, including by employers utilizing employee leaseback arrangements

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ERTC – **Prospective** Changes

No “Double Dip” Rule

- For 2021 Q1 and Q2, rules now provide that an employer also cannot double count for purposes of ERTC and the tax credits available under IRC sections 45A (Indian employment), 45P (active duty military) and 1396 (empowerment zones)
  - For prior quarters, the rule only applies to credits under IRC sections 41 (R&D), 45S (voluntary family and medical leave credit), 51 (WOTC), or FFCRA qualified leave wages

ERTC – **New** Disaster Provision

With respect to 2021 Q1 and Q2, CAA 2021 provides a new 40% ERTC for certain qualifying disasters.

- Qualifying disasters include “major disasters” declared between January 1, 2020 and 60 days after enactment of the CAA:
  - Examples- California wildfires, Tropical Storm Isaias in New York
  - Does NOT include any disaster related to COVID-19
- Tax credit generally is business credit against income taxes and applies to wages paid without regard to whether employee performed services
- For some tax-exempt organizations, credit applies to payroll taxes

Payroll Tax Deferral

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Payroll Tax Deferral

- CARES Act allowed employers to defer the employer share of the Social Security tax – 50% into 2021 and 50% into 2022
    - **CAA 2021 made no changes**
- Per Trump memorandum and IRS Notice, employers were permitted to defer the employee share of the Social Security tax on wages paid from 9/1/20 – 12/31/20. Amounts deferred had to be paid ratably over period from 1/1/21 – 4/30/21
    - **CAA extends repayment period through close of 2021**

Paycheck Protection Program (PPP)

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Return of the Paycheck Protection Program ("PPP") and Introducing…. PPP2

- "Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act"
- Reopens the PPP until March 31, 2021, and makes some changes to the rules that apply
- Adds new "second draw" PPP loans ("PPP2") which are intended for eligible borrowers that already received a PPP loan
- Provides that business expenses can still qualify for a tax deduction under the Code even if paid by a PPP loan that was subsequently forgiven under the CARES Act
- SBA/Treasury have already released two interim final rules on January 6

PPP- What's New
New Allowable And Forgivable Expenses

- **"Covered Operations Expenditures"** – clearly includes software and cloud computing expenses related to human resources and accounting. Open question as to how broadly this can be interpreted
- **"Covered Property Damage Costs"** – Costs related to property damage due to public disturbances that occurred during 2020, if not covered by insurance
- **"Covered Supplier Costs"** – Payments to a supplier pursuant to a contract/purchase order in effect prior to taking out the loan, if expenditures were essential to the recipient's operations at the time the expenditure was made
- **"Covered Worker Protection Expenditures"** – Costs to pay for PPE or other investments that would help the borrower comply with governmental guidelines related to COVID-19 between March 1, 2020 and the end of the national emergency declaration

PPP- What's New
Other Notable Changes

- Definition of "payroll costs" revised to include group life, disability, vision, or dental insurance
- More flexibility for borrower to pick the duration of the "covered period," which is the period looked at for purposes of determining which loan proceeds are forgivable
    - Can pick any period between 8 and 24 weeks after origination date of loan
- **Can now deduct the expenses even if paid for with PPP proceeds**
- Simplified, one-page loan forgiveness application for loans that are $150,000 or less
- Borrowers that returned part of their PPP loan, or did not borrow the full amount for which they were eligible, may request a modification to increase the loan amount to the maximum
- Waiver of affiliation rules for certain "news organizations"
- Publicly-traded companies are now generally ineligible for PPP

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PPP2- "Second Draw Loans"

- Maximum Amount: 2.5X average monthly payroll costs in the one year prior to the loan or the calendar year, up to a maximum amount of $2 million
- Eligibility:
  - Must have not more than 300 employees
  - Must have used, or will use, the full amount of the PPP1 loan on eligible expenses
  - Must demonstrate at least a 25 percent reduction in gross receipts in a calendar quarter during 2020 relative to the same 2019 quarter. (Special rules apply for businesses not in operation in 2019)

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PPP2- "Second Draw Loans"

- Loan forgiveness rules for PPP2 loans are much like rules for PPP1 loans
- Loan forgiveness available for amounts spent on:
  - Payroll costs
  - Covered mortgage, rent, utility payments
  - Covered operations expenditures
  - Covered property damage costs
  - Covered suppler costs
  - Covered worker protection expenditures
- In order to receive full loan forgiveness, at least 60% must be spent on payroll costs vs. non-payroll costs (as with PPP1)

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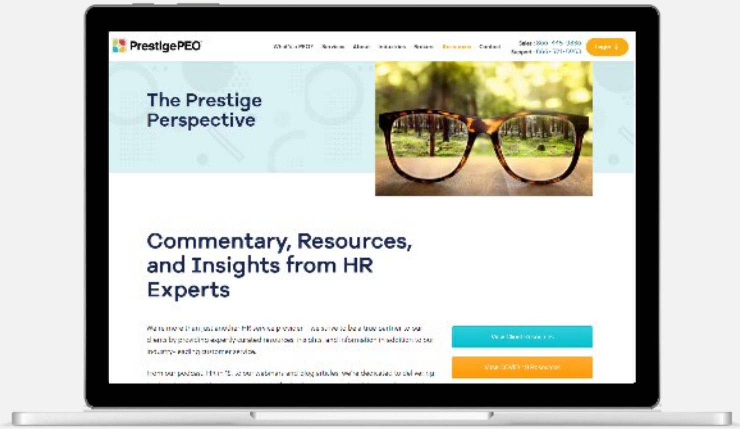

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