

Summary Charts of Employer Measures for Companies Impacted by COVID-19

SOURCES OF EMPLOYEE FUNDING

Program	Material Terms	Eligibility	Limitations on Actions	External Resources
Paycheck Protection Program (PPP) Loan (a.k.a. 7(a) loan) - CARES¹	<p>Cash flow assistance to cover payroll (at rates not exceeding \$100k/year per employee) for US resident employees.</p> <p>Can also use to cover costs of paid EFMLA (see below), group health insurance, corporate rent, mortgage, utilities, and existing debt obligations.</p> <p>Capped at lesser of \$10M and 2.5x average monthly payroll.</p> <p>Portion of loan used in first 8 weeks after origination for payroll, rent, mortgage and utilities can be forgiven without taxation on forgiveness.</p> <p>See matrix in Perkins blog post at https://www.covid19businessguidance.com/2020/04/comparison-of-cares-act-loan-programs/</p>	<p>Employers with 500 or fewer employees at given location at time of assistance</p> <p>Available through June 30, 2020</p> <p>“Affiliate” status of venture or private equity-backed companies may preclude participation</p>	<p>Loan forgiveness reduced if, in 2020, borrower undertakes layoffs, reduces salaries of employees making less than \$100K/year by more than 25%, or uses loan to pay portion of salaries in excess of \$100K. If employer rehires workers or rescinds pay cuts by June 30, 2020, forgiveness may be increased.</p>	<ul style="list-style-type: none"> • https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf • https://www.covid19businessguidance.com/2020/03/government-financing-options-for-companies-impacted-by-covid-19/ • https://www.covid19businessguidance.com/2020/04/expanded-faq-on-government-supported-loan-programs-for-businesses-impacted-by-covid-19/ • https://www.covid19businessguidance.com/2020/03/senate-covid-19-relief-bill-includes-significant-labor-law-commitments-among-requirements-for-recipients-of-financial-support/#more-3351 • https://nvca.org/wp-content/uploads/2020/03/VC-SBA-Lending-and-Affiliation-Guidance-for-SBA-Loan-Programs.pdf
Economic Injury Disaster Program (EIDL)²	<p>Provides working capital for fixed debts, payroll, accounts payable, sick leave and other COVID-19 obligations.</p> <p>Up to \$2M based on actual economic injury and needs.</p> <p>May include \$10K grant.</p>	<p>Employer must be (1) a “small business” as determined by SBA (subject to same “affiliate” analysis as PPP Loan program), (2) based in designated disaster area (all 50 states as of March 29, 2020), (3) that has substantial economic injury that</p>	<p>Employer may obtain both PPP loan and EIDL if EIDL is used for purposes other than PPP Loan permitted uses.</p>	<ul style="list-style-type: none"> • https://www.covid19businessguidance.com/2020/04/expanded-faq-on-government-supported-loan-programs-for-businesses-impacted-by-covid-19/ • https://crsreports.congress.gov/product/pdf/R/R46279

¹ The Coronavirus Aid, Relief and Economic Security (CARES) Act - <https://assets.documentcloud.org/documents/20059055/final-final-cares-act.pdf> . See Sections 1102 and 1106.

² The Coronavirus Preparedness and Response Supplemental Appropriations Act - <https://www.congress.gov/bill/116th-congress/house-bill/6074>

Program	Material Terms	Eligibility	Limitations on Actions	External Resources
	See matrix at Perkins blog post https://www.covid19businessguidance.com/2020/04/comparison-of-cares-act-loan-programs/	prevents meeting obligations as they come due (not simply loss of profit/sales).		<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/R/R46284
Mid-Size Business Loans - CARES³	<p>Provides loans for companies that do not qualify for or have not otherwise received adequate economic relief under PPP Loan program.</p> <p>Interest on loans provided to mid-size businesses will not exceed 2% on an annualized basis, with no interest or principal due within the first 6 months after the loan is made.</p> <p>Employer must certify economic need and that funds will be used to preserve and restore workforce at full compensation and benefits.</p> <p>See Perkins blog post: https://www.covid19businessguidance.com/2020/04/government-financing-options-for-mid-size-and-large-companies-impacted-by-covid-19/</p>	<p>Mid-size businesses are those (1) domiciled in US, (2) with 500-10,000 employees, the majority located in US, (3) significant US operations, and (5) not currently in bankruptcy proceedings.</p> <p>Additional criteria may be established as part of the regulatory process to implement these loans.</p>	<p>Recipient must:</p> <ul style="list-style-type: none"> -Retain or restore at least 90% of its workforce, at full compensation and benefits, until September 30, 2020; -Restore all cuts to compensation and benefits within 4 months after the termination date of the COVID-19 public health emergency; -Not pay dividends with respect to common stock or repurchase listed equity securities (including parent securities) while the loan is outstanding, except to the extent required under a contract existing on March 27, 2020; -Not outsource or offshore jobs for term of loan + 2 years; -Not abrogate existing collective bargaining agreements for term of loan + 2 years; -Remain neutral in union organizing effort for term of loan. 	
Selected Business Loans - CARES⁴	<p>Provides loans for eligible businesses that certify that they have incurred or expect to incur losses due to COVID-19 that jeopardize continued operations of business.</p> <p>Loans not to exceed 5 years, must be secured, and bear interest at risk-appropriate rate.</p> <p>Businesses must certify that:</p> <ul style="list-style-type: none"> -Credit is not otherwise reasonably available; -Intended use obligation is prudently incurred; 	<p>Business must be (1) air carrier, aircraft inspector, repair, replacement and overhaul service provider, cargo air carriers and businesses critical for national security; (2) organized under US law; (3) with significant operations and (4) majority of employees in US.</p> <p>Additional criteria may be established.</p>	<p>Recipient must:</p> <ul style="list-style-type: none"> -Not pay dividends or repurchase listed equity securities (including parent securities) while the loan is outstanding + 12 months thereafter, except to the extent required under a contract existing on March 27, 2020; -Retain at least 90% of its March 24, 2020 workforce until September 30, 2020; 	

³ See Section 4003 & 4004 of CARES Act.

⁴ See Section 4003 & 4004 of CARES Act.

Program	Material Terms	Eligibility	Limitations on Actions	External Resources
	<p>-Loan is secured or at risk-appropriate interest rate.</p> <p>Additional loan terms to be determined by Treasury Secretary by April 6, 2020.</p>		<p>-Limit total compensation (includes equity) and severance for duration of loan + 12 months thereafter for employees whose 2019 total compensation exceeded \$425K: (1) for workers making less than \$3M, total compensation is limited to exceed 2019 levels; (2) for workers making more than \$3M, total compensation is limited to \$3M plus 50% of excess in 2019 over \$3M; and (3) severance limited to 2x 2019 total compensation levels.</p>	
Employee Retention Tax Credit - CARES⁵	<p>Refundable payroll tax credit equal to 50% of “qualifying wages” “paid” (capped at \$10K per employee).</p> <p>Benefit allowed in excess of taxes due is refundable and non-taxable.</p> <p>“Qualifying wages” mean (1) for employers with more than 100 FTE in 2019, wages paid when employee is NOT working, capped at amount of wages paid for an equivalent duration during 30 days preceding non-work period, (2) for employers with 100 or fewer FTE in 2019, all wages, and (3) include health plan premiums paid by employer that are excludable from income; in the aggregate, capped at \$10K per employee.</p> <p>Applies to wages paid March 13, 2020 - December 31, 2020.</p>	<p>Employer either (1) suspended (fully or partially) operations due to COVID-19 governmental order or (2) has gross receipts 50% less than same quarter in prior calendar year.</p> <p>No cap on the number of employees included in calculation.</p>	<p>Not available to employers receiving loan under PPP Loan program described above.</p> <p>Reduced by certain credits allowed under Section 3111(e) and (f) of US Internal Revenue Code (IRC) and Sections 7001 and 7003 of Families First Coronavirus Response Act (FFCRA).</p>	<ul style="list-style-type: none"> • https://www.perkinscoie.com/en/news-insights/the-cares-act-tax-provisions-summary.html • https://crsreports.congress.gov/product/pdf/R/R46279
Payroll Tax Credit for Required Paid Sick Leave & Required Paid Family	<p>Refundable payroll tax credit equal to 100% of qualified sick leave wages paid under Emergency Paid Sick Leave Act (EPSLA) and Emergency Family and Medical Leave Expansion Act (EFMLA), capped at pay caps for those programs (see Employer Obligations, below).</p>	<p>See eligibility criteria for EFMLA and EPSLA (see Employer Obligations, below).</p>	<p>No double benefit - the gross income of the employer will be increased by the amount of the credit.</p>	<ul style="list-style-type: none"> • https://www.perkinscoie.com/en/news-insights/summary-of-tax-provision-of-the-families-first-coronavirus-response-act-and-certain-tax-filing-changes.html • https://www.perkinscoie.com/en/news-insights/congress-passes-the-

⁵ See Section 2301 of CARES Act.

Program	Material Terms	Eligibility	Limitations on Actions	External Resources
Leave - FFCRA⁶	<p>Qualified wages include health plan premiums paid by employer that are excludable from income.</p> <p>Benefits in excess of taxes due is refundable.</p> <p>Expires December 31, 2020.</p>			<p>families-first-coronavirus-response-act.html</p> <ul style="list-style-type: none"> https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus
Insurance	<p>Payouts under third party insurance may be triggered.</p>	<p>Depends on nature of injury and terms of insurance</p>		<ul style="list-style-type: none"> https://www.covid19businessguidance.com/wp-content/uploads/sites/40/2020/03/IR-Checklist-6.pdf

⁶ The Families First Coronavirus Relief Act - <https://www.congress.gov/bill/116th-congress/house-bill/6201> - See Section 7001 and 7003.

METHODS TO DELAY EMPLOYER PAYROLL COSTS

Program	Material Terms	Eligibility	Caveat on Use	Other Considerations	External Resources
Delay Payroll Tax - CARES	Employers can defer employer's share of social security payroll tax (6.2%) otherwise due through December 31, 2020. Payments due 50% by December 31, 2021 and 50% by December 31, 2022.	Includes 50% of self-employment taxes for self-employed individuals. If employer uses third party professional employer organization (PEO), PEO must be certified for employer to claim benefit.	Only employer portion is deferred - not employee's contribution. Reduced by employee retention credits under FFCRA and R&D credit used against payroll taxes.	PEO and employer need to coordinate to obtain benefits.	<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/R/R46279 https://www.perkinscoie.com/en/news-insights/the-cares-act-tax-provisions-summary.html
Delay 2019 Taxes - Stafford Act ⁷	Federal income tax payments and return filings due on April 15, 2020 may be delayed until July 15, 2020. Interest and penalties begin accruing July 16, 2020.	Automatic - no need to apply. No limit on amount that may be postponed.	Does not apply to employment taxes.	Check to see if your state has also delayed payment. CA and WA have approved similar extensions.	<ul style="list-style-type: none"> https://www.irs.gov/pub/irs-drop/n-20-18.pdf https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-2-more-time-to-file-pay-for-california-taxpayers-affected-by-the-covid-19-pandemic.html https://dor.wa.gov/about/business-relief-during-covid-19-pandemic https://www.perkinscoie.com/en/news-insights/summary-of-tax-provision-of-the-families-first-coronavirus-response-act-and-certain-tax-filing-changes.html
Salary or Bonus Deferral	A company may permit selected employees to elect or be required to defer salary or bonus payments until a later tax year.	Limited to "select group of management or highly compensated employees," under IRS guidance.	Deferral must comply with IRC Section 409A & 457A, ERISA "top hat" plan rules, and constructive receipt rules. Tax laws restrict ability to set aside funds for deferral. Noncompliance exposes employer to ERISA Title 1 liability.	Employee retains legally binding right to deferred comp as general unsecured creditor. Contributions still reported on W-2 and must file notification with Dept of Labor.	<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/startup-company-cash-conservation-strategies.html https://www.irs.gov/retirement-plans/non-governmental-457b-deferred-compensation-plans

⁷ The Robert T. Stafford Disaster Relief and Emergency Assistance Act permits the IRS to postpone tax filings and payments when the president declares a "major disaster" in states or a national emergency. President Trump's declaration of the COVID-19 pandemic as a national emergency, and subsequent declarations of "major disasters" in some states triggers relief under the Stafford Act.

METHODS TO REDUCE EMPLOYER COSTS

Program	Material Terms	Limitations on Actions	Other Considerations	External Resources
Reduction in force (layoffs)	<p>Termination of employment by employer.</p> <p>May ask for volunteers.</p> <p>Consider whether to offer severance in exchange for a release of claims.</p>	<p>May reduce forgiveness of PPP Loan.</p> <p>May disqualify from eligibility of other CARES Act loan programs for mid-size and large businesses.</p> <p>Triggers repayment obligation by employee of 401(k) loans.</p> <p>May increase unemployment insurance contribution.</p> <p>Ensure compliance with immigration requirements (e.g., return flight home) if employees on visas are impacted.</p>	<p>Must comply with non-discrimination, ADEA, OWBPA, WARN, COBRA, wage/hour and other employment laws.</p> <p>Severance payouts should comply with IRC Section 409A.</p> <p>If equity comp is offered as consideration for release, obtain pre-approval by board of directors.</p> <p>Expanded unemployment insurance benefits may be available (see Third Party Resources, below).</p>	<ul style="list-style-type: none"> https://www.dir.ca.gov/dlse/WARN-FAQs.html
Furlough	<p>Unpaid time off from work due to employer not having enough work or business for employees.</p>	<p>May reduce forgiveness of PPP Loan.</p> <p>May disqualify from eligibility of other CARES Act loan programs for mid-size and large businesses.</p> <p>May also trigger WARN in CA.</p> <p>If furlough is open ended, then employer must pay accrued and unused vacation at outset of furlough.</p> <p>Ensure compliance with immigration requirements.</p>	<p>Expanded unemployment insurance benefits may be available (see Third Party Resources, below).</p> <p>May be COBRA trigger.</p>	<ul style="list-style-type: none"> https://www.dir.ca.gov/dlse/WARN-FAQs.html
Reducing Hours (a.k.a. Work Sharing) ⁸	<p>Workers hours are reduced in lieu of a layoff.</p>	<p>May reduce forgiveness of PPP Loan.</p> <p>May disqualify from eligibility of other CARES Act loan programs for mid-size and large businesses.</p> <p>Some states require employers to provide health insurance and retirement benefits to employees as if working full time.</p> <p>Ensure compliance with immigration requirements.</p>	<p>Employees may be eligible under state unemployment insurance to receive pro-rated benefits as Short Time Compensation (STC) (see Third Party Resources, below).</p> <p>May trigger COBRA eligibility.</p> <p>Allows retention of highly skilled labor, preserves morale (of retained employees, including RIF survivors' guilt) and therefore reduces future recruitment costs.</p>	<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/R/R40689 https://ruby.perkinscoie.com/content/secure-preview/page/c5aaf3e28db2598a5872a5379b734b1c

⁸ Distinguished from "job sharing" which splits one position among two part-time workers.

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Salary/Wage Reduction	<p>Employer imposes reduced salary levels/wage rates on employees, but not below minimum rates required by law.</p> <p>Need to determine who, how much, how long.</p>	<p>May reduce forgiveness of PPP Loan.</p> <p>May disqualify from eligibility of other CARES Act loan programs for mid-size and large businesses.</p> <p>Prohibited if done to evade salary basis requirements for exempt employees.</p> <p>Ensure compliance with immigration requirements.</p> <p>Should not be paired with “investment” in company equity, dollar for dollar replacement bonus, or other “make whole” benefit - could be viewed as unlawful salary deferral or ERISA plan.</p> <p>Do not reduce below minimum exempt salary for role and state. E.g., exempt salary for computer professionals in California is \$96,969.</p>	<p>Employers can offer retention compensation packages. Take care not to make quid pro quo for salary reduction.</p> <p>Take care with voluntary reduction programs that also provide retention compensation.</p> <p>Reduced salary or wage rates impact employee benefits, including 401(k) contributions, payouts under disability and life insurance, unemployment insurance payments, and severance payouts.</p> <p>Review all offer letters and severance plans to ensure reduction does not trigger “good reason” or “constructive termination.”</p>	<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/startup-company-cash-conservation-strategies.html https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs https://ruby.perkinscoie.com/content/secure-preview/page/c5aaf3e28db2598a5872a5379b734b1c
Make Non-Exempt	<p>Intentionally reduce salary rate below exempt salary requirements and convert employee to non-exempt status.</p>	<p>Ensure compliance with wage and hour rules for non-exempt employees, including recording time, overtime payment, meal and rest periods.</p>	<p>May be difficult to implement during “shelter in place”/teleworking period.</p>	
Pay Bonus in Stock	<p>Convert existing cash bonus obligations into rights to receive shares of common stock or stock options covering common stock.</p>	<p>Ensure that conversion does not inadvertently result in unlawful deferral of compensation triggering Section 409A excise taxes.</p> <p>Ensure conversion doesn’t eliminate salary basis exemption for inside salespersons for whom test is met through incentive compensation.</p> <p>Ensure compliance with immigration requirements.</p>	<p>Review existing bonus plan documents and offer letters to determine ability to modify 2020 bonus program.</p> <p>Take care when determining size of award to ensure it will not undermine existing or future Section 409A valuations (e.g., by using preferred stock price to calculate number of common shares offered).</p> <p>Review Rule 701 limits to ensure program will not eliminate exemption from registration or cause obligation to provide Rule 701(e) disclosures.</p> <p>Consider morale impact of equity is subject to vesting or forfeiture.</p>	

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<p>Modify Existing Paid Time Off Program</p>	<p>If employer has existing paid time off program with high balances, consider reducing go forward annual accrual rate.</p> <p>If employer provides unlimited paid time off, convert to accrual program with annual cap on accrual and limits on carry forward of unused accrual.</p>	<p>Must comply with wage/hour rules on vacation accruals and forfeitures of unused leave.</p>		

EMPLOYER OBLIGATIONS

In addition to the chart below, employer should be mindful of their other ongoing obligations that may be impacted by COVID-19. Please see <https://ruby.perkinscoie.com/content/secure-preview/page/c5aaf3e28db2598a5872a5379b734b1c>, <https://www.perkinscoie.com/en/coronavirus-resources/coronavirus-webinars.html> and <https://www.perkinscoie.com/images/content/2/3/230127/L-E-Coronavirus-Checklist.pdf> for more information

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FFCRA - Emergency Family and Medical Leave Expansion Act - i.e., Expanded (Paid) Family and Medical Leave (EFMLA)⁹	<p>Effective April 1, 2020 -December 31, 2020.</p> <p>First 10 days can be unpaid (or use accrued PTO or EPSLA leave).</p> <p>Next 10 weeks at 2/3 of greater of (1) regular rate of pay, (2) federal minimum wage, (3) applicable state/local minimum wage (but not to exceed \$200/day or \$10K per employee).</p> <p>Employer eligible for reimbursement of EFMLA costs through refundable tax credit (see Sources of Employer Funding, above).</p>	<p>Employers with fewer than 500 employees at time leave begins (includes temp, part-time, and joint employees).</p> <p>Employee tenure of at least 30 calendar days.</p> <p>Available if employee is unable to work/telework due to (1) caring for individual subject to federal, state or local quarantine/isolation order or who has been advised by health care provider to self-quarantine due to COVID-19, (2) caring for child whose school is closed or care provider is unavailable due to COVID-19 or (3) experiencing substantially similar condition</p>	<p>Must post notices required by DOL.</p> <p>Job protection rules apply - be careful when implementing RIFs.</p> <p>If employee normally worked overtime, paid wage must include overtime wages employee would have received.</p> <p>Retain documentation to claim tax credit.</p> <p>Not available for worksite closures or employer imposed reduced hours.</p> <p>Leave is in addition to any other leaves to which they are entitled.</p> <p>May not apply to joint employers.</p>	<p>DOL may exempt employers with fewer than 50 employees if leave would jeopardize business as going concern - be prepared to document reasoning using DOL criteria.</p> <p>Job protection requirement not imposed on employers with fewer than 25 employees.</p> <p>Employers may require documentation in support of child care leave.</p> <p>Employee may still be eligible for normal unpaid FMLA because of own serious health condition related to COVID-19.</p> <p>Leave can be intermittent.</p>	<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/congress-passes-the-families-first-coronavirus-response-act.html https://www.covid19businessguidance.com/2020/03/department-of-labor-issues-guidance-and-required-workplace-poster-regarding-the-families-first-coronavirus-response-act/ https://www.dol.gov/agencies/whd/pandemic/ffcra-questions https://crsreports.congress.gov/product/pdf/IN/IN11249
FFCRA - Emergency Paid Sick Leave Act (EPSLA)¹⁰	<p>Effective April 1, 2020 - December 31, 2020.</p> <p>Capped at 80 hours of paid leave for duration of program.</p> <p>Payment equals greater of (1) regular pay rate, (2) federal minimum wage, (3) applicable state/local minimum wage.</p>	<p>Employers with fewer than 500 employees at time leave begins (includes temp, part-time, and joint employees).</p> <p>Available if unable to work or telework due to (1) federal, state or local quarantine/isolation order, (2) have been advised by health care provider to self-quarantine due to COVID-19, (3) are</p>	<p>Must post notices required by DOL.</p> <p>Retain documentation if you plan to claim tax credit.</p> <p>Not available for worksite closures or employer imposed reduced hours.</p>	<p>DOL may exempt employers with fewer than 50 employees if leave would jeopardize business as going concern - be prepared to document reasoning using DOL criteria.</p> <p>Leave can be intermittent.</p>	<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/congress-passes-the-families-first-coronavirus-response-act.html https://www.covid19businessguidance.com/2020/03/department-of-labor-issues-guidance-and-required-

⁹ See Section 3102 of FFCRA

¹⁰ See Section 5102 of FFCRA

Program	Material Terms	Eligibility	Limitations on Actions	Other Considerations	External Resources
	<p>Capped at \$511 per day for personal quarantine or illness and \$200 per day for EFMLA reasons.</p> <p>Employer eligible for reimbursement through refundable tax credits (see Sources of Employer Funding, above).</p>	<p>experiencing symptoms and seeking diagnosis, or (4) for reasons which trigger eligibility for EFMLA (see above).</p>	<p>Leave is in addition to any other leaves to which they are entitled.</p>		<p>workplace-poster-regarding-the-families-first-coronavirus-response-act/</p> <ul style="list-style-type: none"> https://www.dol.gov/agencies/whd/pandemic/ffcra-questions https://crsreports.congress.gov/product/pdf/IN/IN11249
Local Mandated Paid Sick Leave	<p>Some local jurisdictions (e.g., San Francisco) require employers to provide paid sick leave, accruing in amounts based on hours worked.</p> <p>Predates and separate from COVID-19 relief programs.</p>	<p>Varies by jurisdiction. For example, in San Francisco, employees earn 1 hour of paid sick leave for every 30 hours worked, and employers may cap accrual at 72 hours if 10 or more employees and 40 hours if fewer than 10 employees.</p>			<ul style="list-style-type: none"> https://sfgov.org/olse/paid-sick-leave-ordinance-pslo https://wagesla.lacity.org/sites/g/files/wph471/f/2018-MWO-Poster-EN-14.pdf
Paid Family Leave (CA Law)	<p>Provides partial wage replacement to employees for a maximum of 6 weeks of leave within a 12 month period for employees who need to take time off from work to care for a seriously ill family member (child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner) or to bond with a new child entering the family through birth, adoption, or foster care placement.</p>	<p>Have earned at least \$300 in wages subject to state disability insurance deductions during the 12-month base period.</p> <p>Provide proof of relationship for bonding claims (birth certificate or record, adoption paperwork, etc.).</p> <p>Have the care recipient's physician/practitioner certify to the need for care by completing the Physician/Practitioner's Certification for care claims.</p>		<p>Health care provider certification requirement may be relaxed during COVID-19 pandemic.</p>	<ul style="list-style-type: none"> https://www.edd.ca.gov/Disability/About_PFL.htm
FFCRA Health Benefits¹¹	<p>Group health plans must provide coverage for COVID-19 testing at no cost to participant.</p> <p>"Essential health benefits" expanded to include coverage for diagnosis and treatment of COVID-19 and medically necessary isolation and quarantine during a hospital admission.</p>				<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/covid-19-employee-health-plan-administration-considerations.html

¹¹ See Section 6001 of FFCRA.

EMPLOYER RETENTION PROGRAMS

Program	Material Terms	Eligibility	Limitations on Actions	Other Considerations	External Resources
Equity Grants	<p>Use stock plan share reserve to make special one time grants to motivate specific performance objectives or retain employees.</p> <p>Need to determine who, how much, vesting, and any special post-termination exercise periods (PTEP).</p>	<p>Based on terms of existing stock plan.</p> <p>Rule 701 exemption limits to employees and some individual independent contractors.</p>	<p>If participating in CARES Act Loan program for mid-size or large businesses, take care not to exceed executive compensation limits.</p> <p>Rule 701 limits size of offering in 12 month period.</p>	<p>If share reserve is insufficient, consider having founders give back unexercised stock options or make a capital contribution of owned shares.</p> <p>An extended PTEP may be appropriate if layoffs may still occur.</p>	
Option Repricing	<p>If financial distress causes existing stock options to be 'underwater', reduce exercise price to current FMV.</p> <p>Terms of repricing include ISO status, term of option, number of shares subject to repriced rewards, re-vesting conditions.</p>	<p>Set in board's discretion but limited to individuals who are service providers on repricing date (can't reprice terminated employees' options).</p> <p>Determine if contractors and board members will participate.</p>	<p>If not done unilaterally, may trigger tender offer rules (e.g., 20 business days, formal offering memo).</p> <p>May not be able to unilaterally reprice incentive stock options without holder's consent.</p>	<p>Consider impact on Rule 701 share limit calculations.</p> <p>Ensure coordination between legal, finance, stock admin and HR.</p>	
Carveout Bonus	<p>Cash bonus plan that pays employees at time of change of control.</p> <p>Size of payout may vary based on deal price or may be fixed.</p>	<p>Set in board's discretion and limitations imposed on compensation in shareholder rights agreements.</p>	<p>Must be documented in writing that complies with IRC Section 409A.</p> <p>Take care not to create new class of security without shareholder approval.</p> <p>Take care not to create discounted stock option under IRC Section 409A (e.g., if bonus acts as reduction in existing option exercise prices).</p>	<p>May make sense if financial distress causes existing stock options to be 'underwater' and repricing isn't appropriate.</p>	
Supplementary STD and Long Term Care Insurance	<p>Employer may wish to offer third party supplemental short-term disability or long-term care insurance at employee's cost.</p>	<p>Depends on third party provider terms.</p>		<p>May reduce anxiety related to unknown duration of COVID-19 pandemic.</p>	

Program	Material Terms	Eligibility	Limitations on Actions	Other Considerations	External Resources
IRC Section 139(c)(2) Tax-Free Reimbursement	<p>May reimburse or pay reasonable and necessary personal, family, living or funeral expenses with such amounts tax free to employee and tax deductible to employer.</p> <p>No cap - could be a six figure payment.</p>	<p>Expenses may include unreimbursed health care expenses, quarantine expenses (e.g., increased utilities, home office costs even if not otherwise deductible), nonperishable food, enhanced mental health expenses (e.g., meditation apps), child care costs and education costs related to school closures.</p>	<p>Self-employed individuals and employee-owners who receive benefits may face deduction limitations (no double benefits).</p>	<p>Employees are not required to substantiate expenses if reasonable and necessary to respond to COVID-19.</p> <p>Not subject to discrimination testing.</p> <p>While a written plan is not required, consider drafting explanation of benefits, administrative procedure and employee affidavit that expenses are necessary and not otherwise reimbursed by insurance.</p>	<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/summary-of-tax-provision-of-the-families-first-coronavirus-response-act-and-certain-tax-filing-changes.html
Student Loan Repayment - CARES¹²	<p>Employers can provide up to \$5,250 per employee directly to lender or employee to cover principal and interest of qualified student loans.</p> <p>Any loan payment made from enactment to December 31, 2020.</p>	<p>Qualified student loans are those eligible for deduction under IRC Section 221(d)(1).</p>		<p>In lieu of taxable annual cash bonus, consider making tax free loan repayment to increase value to employee.</p>	<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/the-cares-act-tax-provisions-summary.html https://crsreports.congress.gov/product/pdf/R/R46279

¹² See Section 2206 of CARES Act.

THIRD PARTY RESOURCES FOR EMPLOYEES/CONTRACTORS IMPACTED BY COVID

Employers facing the need to reduce labor costs still care about their employees' wellbeing and wish to direct employees toward other resources that can provide financial benefits during this crisis.

Program	Material Terms	Eligibility	Limitations on Actions	Other Considerations	External Resources
Pandemic Unemployment Assistance - CARES¹³	39 weeks of federally funded unemployment insurance (UI). For periods from January 27, 2020 - December 31, 2020. Amount is normal state amount + additional \$600 per week in benefits through July 31, 2020.	Individuals who are ineligible for UI or have exhausted other UI and who are (1) unemployed (in whole or part) or unable to work (including telework) due to own or family member's COVID-19 diagnosis or symptoms, child care due to shelter in place, or quarantine and (2) not receiving paid leave. Expanded to include self-employed individuals (contractors).	Amounts are offset by other UI benefits.	Helps to offset lost wages due to unpaid leave.	<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/IF/IF11475 https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf
Federal Pandemic Unemployment Compensation - CARES¹⁴	13 weeks of federally funded UI. For periods from January 27, 2020 - December 31, 2020. Amount is normal state amount + additional \$600 per week in benefits through July 31, 2020.	Must exhaust other state and federal UI benefits, be able to work and actively seeking work.	States must opt in to participation. Likely not available for employees on furlough or unpaid leave due to "actively seeking work" condition.		<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/IF/IF11475 https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf
Waiver of First Week Waiting Period - CARES¹⁵	100% federal financing of first week of UI benefits to states that waive one-week waiting period.	Depends on state program terms.	States must opt in.	May encourage states to waive one-week waiting period for UI benefits.	<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/IF/IF11475 https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf
Short-Time Compensation (STC) - CARES¹⁶	Federal financing of STC for states with work sharing programs.	Employer must participate in state program (voluntary employer decision) and pay half of the STC due under the program.	Requires DOL guidance and must be in a state with a job sharing program.	Preserves employee morale as compared to RIF, esp. when	<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/IF/IF11475

¹³ See Section 2102 & 2104 of CARES Act.

¹⁴ See Section 2107 & 2104 of CARES Act.

¹⁵ See Section 2105 of CARES Act.

¹⁶ See Section 2108 & 2109 of CARES Act.

Program	Material Terms	Eligibility	Limitations on Actions	Other Considerations	External Resources
	<p>For employers who submit STC plans, benefits provided for up to 26 weeks.</p> <p>Available through December 31, 2020.</p> <p>Benefit is prorated UI benefit based on hours reduction (e.g., 20% reduction in hours = 20% of regular UI benefit).</p>	<p>Workweek reduced by at least 10% and not more than 60%.</p> <p>Employee exempt from “able, available and actively seeing work” requirement.</p>	<p>Employers must certify to state they will continue to provide health and retirement benefits to same extent as regular full-time employees.</p> <p>May increase future UI contribution costs (varies based on state UI experience rate rules) although likely not more than a RIF.</p>	<p>new employment is not easily obtained.</p>	<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/R/R40689 https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf
Gig Worker Tax Credit -FFCRA¹⁷	<p>Self-employed workers (e.g., gig workers and contractors) can claim a tax credit equal to qualified sick leave/family leave equivalent (under FFCRA) if unable to perform services.</p> <p>Capped at lesser of qualified sick leave/family leave payment under FFCRA and 67% of average daily self-employment income for that taxable year.</p> <p>Benefit in excess of payroll taxes is refundable.</p> <p>Expires December 31, 2020.</p>	<p>Individual would be entitled to receive paid leave under EPSLA or EFMLA if the individual were an employee.</p>	<p>No double benefit - if individual receives qualified sick leave/family leave payments, credit is reduced.</p>		<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/IN/IN11249
401(k) Withdrawals - CARES¹⁸	<p>Expands eligibility for hardship distributions; increases penalty free distributions up to \$100K through December 31, 2020, increases loan amount cap to \$100K for 180 days after enactment (September 2020), extends due date for existing plan loans through December 31, 2020.</p>	<p>Qualified individuals expanded to those individuals who test positive or whose spouse tests positive for COVID-19, financial difficulties due to quarantine, layoff, reduced hours, furlough or unable to work due to lack of child care.</p>	<p>Plans need to be amended to add this feature.</p> <p>Employees still owe income tax on hardship distribution and loan balance (but not 10% federal penalty).</p> <p>Employee faces risk of default on loan if fail to repay by deadline</p>		<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/the-cares-act-tax-provisions-summary.html https://crsreports.congress.gov/product/pdf/R/R46279

¹⁷ See Section 7002 of FFCRA.

¹⁸ See Section 2202 of CARES Act.

Program	Material Terms	Eligibility	Limitations on Actions	Other Considerations	External Resources
	Permits distribution to be included in taxable income over 3 years or to avoid tax by repaying distribution within 3 years.		Loans aren't permitted from IRAs.		<ul style="list-style-type: none"> https://crsreports.congress.gov/product/pdf/IF/IF11472
Disability Insurance	An employee who suffers a disability related to COVID-19 who is unable to work may be eligible to claim short term disability insurance benefits.	Depends on insurance coverage and state disability insurance program terms.	Does not relieve employer of ADA reasonable accommodation obligations.		
Freeze on evictions and mortgage payments	Some jurisdictions are prohibiting evictions and foreclosures caused by COVID-19 job losses.				<ul style="list-style-type: none"> https://www.perkinscoie.com/en/news-insights/california-governors-executive-order-aimed-at-assisting-borrowers-tenants-renters-and-homeowners-affected-by-covid-19.html https://www.gov.ca.gov/wp-content/uploads/2020/03/3.16.20-Executive-Order.pdf
Freeze on student loan payments - CARES19	<p>Suspends student loan payments and interest accrual through September 30, 2020.</p> <p>Suspended payments treated as if made on time for federal loan forgiveness programs.</p> <p>Suspends delinquent loan garnishments and tax refund reductions through September 30, 2020.</p>		Employers should wait for further guidance before suspending wage garnishments.		<ul style="list-style-type: none"> https://www.savingforcollege.com/article/cares-act-makes-employer-paid-student-loan-repayment-assistance-tax-free

¹⁹ See Section 3513 of CARES Act.