

What's The Best Plan To Pay Employees Now?

The House just passed the CARES Act stimulus plan so it's headed to the President's desk and will be law. The only certainty in the information circling in the media and via emails right now is that there are many competing and conflicting messages being sent around. So it's hard to pinpoint "what's the best plan?" as some facts remain vague.

Here are the key facts from the 880 page CARES Act bill passed by Senate Wed. and the House this morning. With so many conflicting messages floating around I went directly to the source and read all 3 stimulus bills, cover-to-cover, to know how they work together. After many hours of study and cross-referencing the amendments from one act to another, here's what I found (my summary and interpretation first, then more details below).

My Interpretation:

These recommendations are based on the sole focus of preserving cash flow and maintaining economic viability in our businesses in times of great uncertainty.

My great hope is that we can all make plans of action with intention, calibrating our messages to employees with compassion and caring, realizing everyone is dealing with their own levels of fear, stress, anxieties and uncertainties. One common theme rings true in my discussions with clients across the country, "We're all in this together, we need to stay strong and united, and we need to be mindful of what this will look like on the other side, when we get there, and we will."

➤ Best Scenario:

- a) **Pay employees for wages earned and accumulated vacation/sick time by end of March.**
- b) **File for unemployment to cover April**
- c) **Avoid paying Sick Leave/Family Leave (starting April 2)**
- d) **Apply for SBA Loan or "Paycheck Protection Loan" ASAP (to cover May-June)**
- e) **Contact lenders for forbearance on loan payments for 6-12 months**
Provides employees best wage replacement level, covers some overhead and avoids out-of-pocket cost for 8-10 weeks.

- The big uncertainty right now is how unemployment benefit payments will work alongside use of SBA loans in the 8 weeks of the "covered period" but we'll likely have this answer in the coming week.

Reasoning:

1. Unemployment pays best up to \$38,000-\$52,000 annual wage level (see your state below) vs. employer paying the 2/3 wage rate for Sick/Family Leave. And Unemployment is no out-of-pocket for employer vs. Sick/Family Leave that could take 1-2 years to recoup through reduced payroll match. No waiting period for Unemployment and up to 39 weeks benefits (higher payout ends 7/31/20).
2. Paying Sick Leave and Family Paid Leave for the 12 week period starting April 2nd may be mandatory at 2/3 employee pay unless terminated. Unclear how to avoid paying this and allowing them to collect unemployment while "underemployed or furloughed."

3. Payment Protection Loan may be the best option to supplement Unemployment and cover loan interest, rent, utility costs for 8 weeks. This loan has 6-mo. deferred payment and is fully forgiven if employee numbers and payroll are back to pre-crisis levels by 6/30/20 (if not forgiveness is reduced). With a cap of \$349 bil. allotted for these loans getting in line early may be prudent. Apply and get this SBA loan in place, but don't accept funds until needed (likely May-June).

3 Basic Payroll Options:

- 1) Unemployment
- 2) Sick Leave / Paid Leave (if paying this, can't get Unemployment)
- 3) Paycheck Protection Loan (with forgiveness)

Unemployment:

Pandemic Unemployment Assistance – 2102

- a. Eligible if unable to work due to Covid-19 (caring for child, can't reach place of employment)
- b. Ineligible if receiving Sick Leave or Paid Leave
- c. Max benefit period 39 weeks, no waiting period.
- d. Owners/employers who are also employees paying into Unemployment can file for benefits
- e. Payout equal to State Unemployment weekly rate + Federal Pandemic Unemployment Compensation (2104) of \$600 (unclear in the bill if this is a weekly or monthly additional benefit as it doesn't say which, this ends 7/31/20)

For

CO – Unemployment is better payout up to \$52,000 wage, above that 2/3 Sick/Family Leave better

CA – Unemployment is better payout up to \$46,000 wage, “ “

IL – Unemployment is better payout up to \$47,300 wage, “ “ (with dependents to Unemployment better to \$60,000)

ME – Unemployment is better payout up to \$42,500 wage, “ “

TX – Unemployment is better payout up to \$46,800 wage, “ “

VA – Unemployment is better payout up to \$38,200 wage, “ “

Challenge with paying Sick/Family Leave is burden of employer to pay up front with future FICA credits to reimburse.

Emergency Paid Sick Leave (Effective April 2, 2020)

- a. Paid up to 80 hours for full-time employees (covers 1st 2 weeks payroll April 2-April 15)
- b. Paid at 2-week average hours for part-time employees
- c. Pay 2/3 wage up to \$200/day (\$2,000 max. 2 weeks) if caring for sick, children home from school or work disruption.
- d. Pay up to \$511/day if sick from virus.
- e. Post notice of this Act for employees. If don't pay, in violation of Fair Labor Standards Act subject to penalties
- f. Employer reimbursed by avoiding future payment of FICA matching tax (6.2% of payroll) 10-20 weeks to recoup outlay
- g. New bill accelerates credits (unclear how much and how fast) may get in first quarter of payment

Family Medical Leave Act (Effective April 2, 2020)

- a. 1st 10 days is “unpaid leave” (covered by Emergency Paid Sick Leave above)
- b. Pay 2/3 wage up to \$200/day or \$10,000 max. for 10 weeks (covers April 16-June 24)
- c. May exempt small businesses <50 employees if imposition would jeopardize viability of business as going concern (not guaranteed)
- d. Not paying could violate law and be subject to penalties.
- e. Employer reimbursed by avoiding future payment of FICA matching tax (6.2% of payroll) takes 1-2 years to recoup 10 weeks payroll outlay
- f. New bill accelerates credits (unclear how much and how fast)

Paycheck Protection Loan (1102) also known as “expanded SBA 7(a) loan program”

- a. Borrow up to 2.5 month’s average “payroll cost” (max. \$10mil.) defined as:
 - “salary, wage, commission, paid vacation, sick leave, group health insurance, retirement benefits, state/local tax”
- b. For employee payroll cost <\$100,000 annual basis.
- c. Not including: FICA/Medicare tax, Federal tax, 2-week Sick Leave (Family First Act), 10-week Family Leave (Family First Act)
- d. Eligibility to borrow: “small business, sole proprietor, self-employed, independent contractor, non-profit”
- e. Covered Period is Feb. 15 to Jun. 30
- f. Waiver or personal guarantee, collateral, non-recourse (if used for allowed expense), waived fees
- g. Interest rate not to exceed 4%
- h. No payment due first 6 months (pending forgiveness)
- i. **Once loan is approved you have 6 months to activate and take funds. Don’t take funds until the 8 weeks you plan to use them.** I would recommend initially planning this 8-week period for May-Jun
- j. **\$349 billion authorized** for these loans

Loan Forgiveness (1106)

- a. Forgiveness available on eligible expenditures for 8 weeks after loan given (“covered period”), including:
 - “Payroll costs” (1102 expanded definition) for employees <\$100,000
 - “Mortgage interest” all real estate and personal property loans
 - “Rent” payments
 - “Utility” payments including “electric, gas, water, transportation, telephone, internet”
- b. Forgiveness reduced by any reduction in # of full-time employees or reduction in payroll “exceeding 25%” measured during covered period vs. prior to.
 - Prior period either 2/15/19-6/30/19 or 1/1/20-2/29/20 baseline vs. “covered period”
 - Have until 6/30/20 to restore # full-time employees and payroll level to avoid reduction in forgiveness of loan.
- c. Full documentation and receipts required for forgiveness of loan (no forgiveness without receipts), forgiveness processed within 60 days of submission.