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# What Employers Should Know Before Seeking Stimulus Loans

By **Braden Campbell**

Law360 (April 2, 2020, 9:02 PM EDT) -- The new stimulus package will help avert layoffs for employers struggling with reduced business or mandatory shutdowns resulting from the coronavirus, although not all employers will want — or be able — to take advantage of the billions in federal loans the measure provides.

As the COVID-19 crisis has raged, employers have faced a tough choice between laying off workers or trying to stay afloat in a sea of uncertainty. The Coronavirus Aid, Relief and Economic Security, or CARES, Act makes the second path easier, but drawbacks to the loans mean layoffs are still on the table for many.

"[The act] definitely changed the sort of panic that set in when some were being foreclosed by the government [and] others were simply being shut down because at a time like this, they don't have any business," said Ed Harold, who chairs the retail practice at management-side employment firm Fisher Phillips. "This certainly is an opportunity for different sorts of analyses."

The act, which the president **signed into law March 27**, injects $2 trillion into an economy reeling from the effects of virus-related shutdowns. In addition to boosting benefit amounts for the unprecedented number of workers now filing unemployment claims, it **allocates about $850 billion** across two loan programs geared toward small and midsize employers.

A provision of the law known as the Paycheck Protection Program opens up about $350 billion in forgivable loans to businesses with fewer than 500 workers. Another provision, the Coronavirus Economic Stabilization Act of 2020, empowers the Treasury Department to fund $500 billion in loans to larger businesses that have not "otherwise received adequate economic relief" through the act.

These programs offer a lifeline to employers at a time many have laid off workers or are considering doing so, but the loans' utility to would-be applicants will depend on their individual circumstances, attorneys say.

Harold is based in New Orleans, where many employers have struggled during one of the worst coronavirus outbreaks in the U.S. He told Law360 his phone has been ringing off the hook with calls from clients asking about the small business loans.

"My perception is small businesses are lining up to take advantage of this, particularly if they haven't furloughed or let go of their employees yet," he said.

The loans are attractive because they're forgivable, Harold said. The Paycheck Protection Program allows employers to take out loans equal to two-and-a-half times their average monthly payroll. Whatever portion employers use to pay workers, make mortgage payments or cover certain other operational expenses over the loan's first eight weeks is forgiven, and this benefit is also available to shuttered businesses if they restart payroll.

The loans will allow recipients to keep their workers on the books for another two months, which will help businesses get up and running more quickly if the pandemic has slowed by the time funds dry up, Harold said.

Carrie Hoffman, a partner in Foley & Lardner LLP's Dallas office, said applying for a loan is close to a no-brainer for small businesses, but using it is a different story.

Hoffman said many of her clients are considering applying for loans, thinking, "It's 'free money' ... Why wouldn't I try to get some of it if I can?" But she said she is advising them to keep their options open, saying there are several reasons they might not want to draw on the funds.

"You have to bring your employment levels back to prepandemic levels [to get a loan], and some of my clients, frankly, are struggling with whether that makes sense when they don't have work for people to perform," she said.

Maintaining relationships with workers will make it easier to resume business on the other side of the pandemic, but if the economy is still struggling at that point, employers won't be facing bidding wars for their laid-off workers, she said. And taking a small business loan means forgoing other financial help in the CARES Act, such as tax credits on money used to pay wages and benefits, she added. Employers can only get back half the wages they pay, up to a $5,000 credit per worker, but this applies to wages paid out through the end of the year.

The loans may be attractive to employers that have cut back but kept business going, but they're a harder sell for those that have already closed their doors, said Antoinette Theodossakos, employment counsel at Saul Ewing Arnstein & Lehr LLP. Theodossakos works with many restaurants, which have been among the businesses hardest-hit by coronavirus.

"I haven't really heard of … any of my clients hiring anyone back at this point," she said. "They just don't have the business."

Like the small business loans, the new Treasury Department loans help employers make ends meet, but they have some drawbacks. These loans aren't forgivable, so struggling businesses may want to think twice before seeking one, experts said.

"Some businesses can't afford to take more loans, just like plenty of consumers can't afford [more debt]," Fisher Phillips' Harold said. "You can give me a new credit card with a $20,000 limit and 3% interest, and all that's going to do is put me further in debt."

The act provides for a few loan types, each of which has certain conditions attached. For example, the law makes airlines and several other specified recipients keep at least 90% of their workforce as of March 24 through September, limits how much their executives can earn and blocks stock buybacks. General businesses tapping into another pool of funds must satisfy the last two conditions. And another provision making low-interest loans available to businesses and nonprofits with 500 to 10,000 workers imposes its own set of conditions, including that they maintain most workers through September and promise to remain neutral if their workers seek to unionize.

Some of these conditions are tough to swallow, especially the requirements that recipients keep workers on through September, Foley & Lardner's Hoffman said.

"We don't really know right now what Sept. 30 is going to look like," she said.

Workers' advocates have largely praised Congress for structuring the stimulus in such a way that workers continue getting paid, whether through unemployment benefits or because their employer takes out a loan. Still, many say the law doesn't go far enough.

Raisner Roupinian LLP attorney Jack Raisner, who sues employers that don't give workers enough notice before implementing mass layoffs, said the loan provisions pale in comparison to pay replacement measures many European countries enacted at the height of the Great Recession.

But "every bit counts, and every bit is needed, and potentially will stave off bad results for a limited time," he said.

--Editing by Jill Coffey and Kelly Duncan.