# What New COVID-19 Legislation Means for Faith-Based Employers

Overview and Resource Links

April 3, 2020

# 1. Introduction

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provides a variety of forms of emergency relief. The Center for Public Justice and the Institutional Religious Freedom Alliance (a division of CPJ) have been monitoring the ways that the necessary relief will support essential components of civil society, notably faith-based organizations and their employees. This document highlights select elements of the CARES Act as well as the previously enacted Families First Coronavirus Response Act, noting their potential significance for faith-based organizations, their employees, and those they serve.

# 2. Supporting Faith-based Organizations

## 2.1 Small Business Administration support for faith-based organizations, including houses of worship

The CARES Act makes Small Business Administration (SBA) loans available for the first time to nonprofits, including houses of worship and other faith-based organizations.

**The Paycheck Protection Program** offers forgivable loans to be used for payroll, mortgage interest, rent and utilities. These programs are available to small employers (500 or fewer employees). Loans are to be made by banks approved for the SBA's 7(a) small business loan program. Unlike grants provided to deliver government-specified services, these loans seem purposed toward maintaining a community's institutions and workers. A recipient may be either a small business or a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code. Houses of worship are considered in law to have 501(c)(3) status without applying for it from the IRS.

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The Small Business Administration has indicated that banks will begin accepting applications from businesses and nonprofit organizations on April 3, 2020. All loans must be made on or before June 30, 2020. Loans will be made available until funds run out. Therefore, organizations should engage banks as soon as possible. Applicants may want to become familiar with their regional SBA office in order to troubleshoot challenges with the PPP.

**Resources**

U.S. Department of the Treasury Guidance:

- Department of Treasury Assistance for Small Businesses
- SBA COVID-19 related loan resources
- Information for Borrowers
- Small Business Administration Regional Offices
- Interim guidance issued April 2, 2020
    - Indicates that 75% of loan proceeds should be used for payroll costs
    - Includes religious freedom protections consistent with the Religious Freedom Restoration Act

For prospective borrowers:

- Borrower Application Form
- Gather the documentation you might need to complete and back-up your application
    - Tax ID or EIN (Employer Identification Number)
    - Organizational documents: Articles of Incorporation, By Laws (if available)
    - Evidence of payroll expenses: Payroll processor records or payroll tax filings; Form 1099, income tax filings, or bank records
    - Breakdown of payroll benefits (vacation, group health care benefits, retirement benefits) (for loan amount calculation)
    - Recently filed IRS Form 990

### 2.1.1 Economic Injury Disaster Loans

Organizations can apply directly to the SBA for Economic Injury Disaster Loans (EIDL). Both nonprofits and businesses are eligible if the COVID-19 pandemic caused them "substantial economic injury," meaning they are unable to meet their financial obligations, to pay their ordinary operating expenses, or to provide the products or services they normally offer. Applicants receive an emergency grant of $10,000 that need not be repaid provided that funds are used for certain expenses. The remainder of an EIDL is not forgivable. Borrowers may refinance an EIDL into a Paycheck Protection Program loan.

The EIDL program does come with restrictions on faith-based applicants. Regulations currently indicate that EIDL loans are *not* available to organizations that are "principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious belief."

**Resources**

- Small Business Administration Disaster Loan Assistance online application
- SBA COVID-19 related loan resources

### 2.1.2 Loans for mid-size religious institutions

The supplemental funding act signed into law along with the CARES Act provides funding for a new program of loans for organizations with 500-10,000 employees, including nonprofits and religious institutions. To qualify, the majority of these employees must be located in the U.S. Because this is a new program, the details are not yet available and there may be a significant lapse of time before applications will be accepted.

## 2.2 Employee Retention Tax Credits

COVID-19 related legislation has created several refundable tax credits that are available to nonprofit organizations. The Employee Retention Tax Credit creates a refundable tax credit for employers who fully or partially suspend operations due to government orders limiting commerce, travel or meetings. The credit is equal to 50 percent of wages paid to employees between March 12, 2020 and December 31, 2020 up to $10,000 in qualified wages per employee. Employers may *not* receive *both* an Employee Retention Tax Credit and a Paycheck Protection Program loan.

**Resources**

- IRS FAQ Employee Retention Credit under the CARES Act

# 3. How faith-based organizations can support employees and workers

As we have written elsewhere, the COVID-19 pandemic and its public health responses have transformed how many businesses, nonprofits and houses of worship operate. Some organizations have curtailed their work; others are expanding in order to meet new needs. New legislation creates both responsibilities and resources for employers and workers affected by COVID-19 or facing economic hardship.

## 3.1 Organizations must provide employees with paid sick and family leave for COVID-related reasons and can receive reimbursement through a federal payroll tax credit.

The newly enacted Families First Coronavirus Response Act requires employers with fewer than 500 employees to provide paid sick and family leave for COVID-related reasons and provides full reimbursement for these benefits through a refundable payroll tax credit. Recently released information from the Department of Labor and IRS detail how to calculate pay and tax credits. The Department of Labor FAQs set forth potential accommodations for small employers.

**Resources**

- Department of Labor COVID-19 and the American Workplace overview
- Department of Labor FAQ on the Families First Coronavirus Response Act
- IRS FAQ for Small and Midsize Employers
- A one-page explanation of emergency paid leave for employers to distribute or post
- IRS Coronavirus Tax Relief resource page, including the advance credit application

For covered employers:

- Document employee need for and requests for emergency paid sick and family leave. For example, for family leave, document announcements of school closure.
- Document wages and health benefits paid to employees in emergency paid sick and family leave on April 1, 2020 or thereafter.

## 3.2 New unemployment insurance enhancements can help employees who are laid off or whose hours are reduced.

Unemployment insurance provides weekly income to individuals who are out of work, typically through no fault of their own. The American unemployment insurance system operates through both state and federal cooperation. In the wake of COVID-19, changes are underway at the federal and state level to ease access to unemployment compensation for those who need it as well as to supplement unemployment compensation benefit amounts and lengths.

State unemployment programs are the main point of contact for employers and workers. Each state operates its own program, with varying benefit amounts and ways of accessing the state system. Nevertheless, the CARES Act created and funded several programs that each state must operate.

- **Pandemic Unemployment Compensation**: a federally-funded $600/week supplement to benefits awarded between March 27, 2020 and July 31, 2020 (an 18-week period).
- **Pandemic Emergency Unemployment Compensation**: a federally-funded program that allows those who have exhausted benefits under regular unemployment compensation (typically, unemployment compensation extends for 26 weeks) or other programs to receive up to 13 weeks of additional benefits.
- **Pandemic Unemployment Assistance**: assistance for up to 39 weeks to individuals unemployed or partially unemployed as a result of COVID-19 and who would not otherwise be eligible for unemployment compensation. Employees of houses of worship, self-employed individuals and some independent contractors (who are not eligible for other programs) can apply for Pandemic Unemployment Assistance.

The CARES Act also encourages and incentivizes states to offer **work-sharing** or **Short-Time Compensation** programs. Through a work-share program, an employer may reduce hours and pay to its workforce, offering workers a wage supplement through the unemployment insurance system. Employers must apply for a work-sharing agreement with their state's unemployment insurance program. Currently, 28 states have work-sharing programs in place.

Federal law allows nonprofit employers to choose not to pay regular state unemployment taxes and, instead, reimburse the state only when a former employee receives unemployment compensation. Were they to have to lay-off many staff in the wake of the COVID-19 economic crisis, these reimbursing employers could receive a hefty bill from their state unemployment agency. The CARES Act covers one half of this bill with federal funds. In this situation, laid off employees receive the same supplements described above: an additional 13 weeks of compensation (in addition to a typical 26-week unemployment benefit) and a $600 per week supplement to benefits due between March 27, 2020 and July 31, 2020 (an 18-week period).

**Resources**

- Career One Stop Unemployment Benefits Finder with links to all state agencies
- Department of Labor description of Short-Time Compensation and a list of states with Work-Sharing programs

## 3.3 Many COVID-19 related worker benefits apply to self-employed persons or others in non-traditional job situations.

Self-employed persons or independent contractors may be eligible for emergency paid sick and family leave and unemployment benefits.

Self-employed persons who are experiencing job loss or reduced work as a result of the COVID-19 public health emergency, may be helped by the Pandemic Unemployment Assistance described above. Pandemic Unemployment Assistance benefits can be sought retroactively for work-loss starting on or after January 27, 2020 (the date that the Secretary of Health and Human Services declared a public health emergency relative to COVID-19). Benefits may last for as many as 39 weeks, ending on or before December 31, 2020.

**Resources**

- IRS Emergency paid sick and family leave tax credits for self-employed individuals
- Career One Stop Unemployment Benefits Finder with links to all state agencies

## 4. Support for particular sectors of faith-based service providers

In addition to aid directed specifically to nonprofits, including faith-based organizations, extended unemployment insurance, new eligibility for unemployment insurance, and aid to employers to pay for extended family and medical leave by their employees, the CARES Act makes provision for aid specifically to certain nonprofit sectors where faith-based organizations are significantly involved.

- Aid to K-12 Schools and their Students
- Higher Education Emergency Relief Fund
- Funding for childcare for the Child Care Development Block Grant

## 5. Charitable giving

Many nonprofit organizations asked Congress to create a special fund to assist nonprofits to keep operating, just as Congress did to aid airlines, hospitals, and many other major sectors of our society and economy. Congress chose not to do this in the CARES Act. Many nonprofits, including faith-based organizations, through the Faith and Giving Coalition, also asked Congress to enact a Universal Charitable Deduction and to encourage people to donate to charities right now, while the coronavirus crisis is underway. The CARES Act did not do this, either, although it did enact a few positive changes to encourage donations.

The CARES Act allows non-itemizers to deduct for their donations, but only up to $300, and the tax deduction can only be taken on the tax form for 2020, not 2019. Congress did add to the incentive to give for itemizers, who will be able on their 2020 form to deduct for charitable contributions up to 100% of their adjusted gross income, instead of the previous limit of 60% of adjusting gross income. The CARES Act also includes incentives for corporations to give more.

# 6. Monitoring Access, Administration, and Addressing Challenges

The COVID-19 health crisis has and will strain every institution in our society. The measures enacted by the CARES Act and other systems may help stabilize institutions and at-risk households, but many of the benefits and processes contemplated by these laws are new and untested. Citizens will need to monitor these processes as they roll out, discerning: Are they providing the help intended? Are vulnerable communities and those serving within them able to access support? Does support reach vulnerable households who entered this crisis with few financial buffers and whose life and livelihood may now be at risk? Along the way, people of faith will need to continue to address these challenges through both charitable service and engaged citizenship.