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Federal Government Response to the COVID-19 Pandemic

Issues and Implications for the Staffing Industry

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Federal Government Response to COVID-19 Pandemic

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To date, Congress has enacted three separate pieces of legislation to address the COVID-19 pandemic, with more legislation on the way:

- Phase 1: $8.3 Emergency Supplemental Appropriations (March 6)
- Phase 2: *Families First Coronavirus Response Act* (March 18)
  - Enhanced unemployment insurance benefits;
  - New federal emergency paid leave benefits and refundable tax credits for small businesses to defray the cost of the paid leave;
  - Increase in Medicaid matching funds to support healthcare providers;
  - Policies to ensure that COVID-19 testing is significantly expanded and free to everyone in the US; and
  - Food safety support needed in the wake of school and business closures
- Phase 3: Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27)

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CARES Act

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Provides more than $2 trillion in relief for both companies and families affected by COVID-19 pandemic. It includes a number of provisions designed to help employers and employees contend with a scaled-back workforce and other economic fallout:

- $250 billion in unemployment insurance benefits;
- $301 billion in direct payments to households ($1,200 to taxpayers with adjusted gross income of $75,000 or less and couples with US$150,000 or less, plus additional money for children in their households);
- $150 billion in direct aid to states and territories;
- $221 billion in tax deferrals with extended filing deadlines;
- $300 billion for small business loans;
- $500 billion for loans, loan guarantees or other forms of assistance to businesses, States and municipalities; and
- $340 billion in further emergency supplemental appropriations

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4 Key Provisions for Staffing Industry

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- Delay of Payment of Employer Payroll Taxes
- Employer Retention Credit for Employers Subject to Closure Due to COVID-19
- Small Business Administration Loans
- Treasury and Federal Reserve Direct Lending, Loan Guarantees, and Other Investments

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Delay of Payment of Employer Payroll Taxes

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- Employers generally are responsible for paying a 6.2% Social Security tax on employee wages to the federal government.
- For wages from the date of enactment through December 31, 2020, employers and self-employed individuals may delay paying the 6.2% employer share of Social Security taxes, with no penalties or interest charges.
- One-half of the amount will be due by December 31, 2021 and the other half by December 31, 2022.
- Small businesses that have received loan forgiveness under Section 1106 of this legislation are not entitled to delay these tax payments.

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Employer Retention Credit for Employers Subject to Closure Due to COVID-19

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- During 2020, eligible employers are able to receive a credit against their employment taxes equal to 50% of qualified wages up to $10,000 for each employee.
- Eligible employers are:
  - employers that experience a partial or full suspension of operations due to a COVID-19 related government order that limits commerce, travel or group meetings; or
  - employers that have gross receipts that are less than 50% of their gross receipts for the same quarter in the prior year, until their gross receipts exceed 80% of their gross receipts for the same calendar quarter in the prior year.
- Eligible employers with more than 100 employees are eligible for an employment tax credit on wages for their employees who are not providing services due to a COVID-19 related business suspension or reduction in gross receipts as noted above. Employers with 100 or fewer employees may receive an employment tax credit on all wages paid to their employees.

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Employer Retention Credit for Employers Subject to Closure Due to COVID-19 (cont'd.)

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- Two important items to note are:
  - employers may not receive an employee retention credit if they are claiming an FMLA credit under Code Section 45S; and
  - employers who receive a business interruption loan under the Small Business Act will not be eligible to receive an employee retention credit

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Small Business Administration Loans

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- The CARES Act provides $350 billion to fund two types of lending programs for small businesses:
  - Economic Injury Disaster Loan (EIDL) Program: Helps small businesses recover for broader economic injury related to the COVID-19 pandemic.
  - Paycheck Protection Program (PPP): Administered under the Small Business Administration's (SBA's) 7(a) program and provides small business owners with forgivable, low-interest, no-collateral loans to provide the liquidity that businesses need to support employees during the impacts related to the COVID-19 pandemic.

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EIDL

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Loans of up to $2 million:

- Can be used for working capital (including fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster's impact).
- Proceeds may not be used for refinancing of long-term debt, expanding facilities, paying dividends or bonuses, or relocation.
- May defer payment of remaining principal, interest and fee balances for at least six months and up to one year after any loan forgiveness.
- EIDLs have variable maturity dates and have a maximum interest rate of 4%.
- An applicant for an EIDL may receive, within three days after applying, an emergency advance of $10,000. If the application is denied, the applicant is not required to repay the US$10,000 advance. The $10,000 advance can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue loss.
- You can apply from the SBA directly online, at https://covid19relief.sba.gov/#/.

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EIDL (cont'd.)

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- Who is Eligible:
  - Meets the applicable North American Industry Classification System (NAICS) code-based size standard or other applicable SBA 7(a) loan size standard, both alone and together with its affiliates
  - Has an employee headcount that is lower than the greater of:
    - 500 employees; or
    - the employee size standard, if any, under the applicable NAICS Code
- Eligibility Restrictions:
  - Eligibility period ends December 31, 2020.
  - Businesses that have received a PPP loan are not eligible for EIDLs. However, businesses receiving an EIDL are eligible for a PPP loan.

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PPP

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Loans of up to $10 million:

- The amount to be guaranteed is an amount equal to 2.5 times the average total monthly payroll costs in the one-year period before the loan is made (or from January 1, 2020 through February 29, 2020, if the business did not exist in the previous year).
  - “Payroll costs” is the sum of all payments for compensation, which includes: (1) salaries, wages, commissions, or similar compensation; (2) payment of cash tip or equivalent; (3) payment for vacation, parental, family, medical and sick leave; (4) allowances for dismissal or separation; (5) payments for group health care benefits and premiums; (6) retirement benefits; and (7) state and local tax assessed on employee compensation.
  - “Payroll costs” do not include: (1) employee compensation over US$100,000 per year; (2) compensation of an employee whose principal place of residence is outside the US; or (3) qualified sick leave or family leave wages for which a credit is allowed under Section 7001 or 7003 of the Families First Coronavirus Response Act.

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PPP (cont’d.)

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Loans:

- Can be used to pay allowable payroll costs, interest on mortgage obligations (but not principal payments), rent (including utilities) and interest on debt that existed as of February 15, 2020. The loan proceeds may not be used to pay salaries over US$100,000.
- Principal amount may be forgiven for eligible costs incurred and paid during the eight-week period after the origination of the loan.
  - Forgiveness for rent under a lease agreement, mortgage interest and utility payments are only allowed for those services and contracts that were in place before February 15, 2020.
- Do not require collateral or personal guarantees. The loans are non-recourse, except to the extent that loan proceeds are used for disallowed costs and expenses.
- Only start to mature following the business’s application for loan forgiveness (but no later than 10 years after issuance and have a maximum interest rate of 4%).
- May defer payment of remaining principal, interest and fee balances for at least six months and up to one year after any loan forgiveness
- Applications are now available and will be accepted beginning April 3.

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PPP (cont'd.)

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- Who is Eligible:
  - Meets the applicable North American Industry Classification System (NAICS) code-based size standard or other applicable SBA 7(a) loan size standard, both alone and together with its affiliates
  - Has an employee headcount that is lower than the greater of:
    - 500 employees; or
    - the employee size standard, if any, under the applicable NAICS Code
  - Note: For PPPs, the employee limit does not apply for businesses that:
    - are in the "accommodation and food services" sector under the NAICS (NAICS codes beginning with 72); and
    - maintain more than one physical location, in which case the 500-employee cap applies for each physical location
- Eligibility Restrictions:
  - Eligibility period ends June 30, 2020.
  - Businesses receiving an EIDL are also eligible for a PPP loan.
    - If a borrower has also obtained an EIDL after January 31, 2020, the outstanding amount of the EIDL will count against the US$10 million cap for purposes of calculating the amount available. EIDL loans made after January 31, 2020, and ending on the date when PPP loans are made available may be refinanced as part of the PPP loan.

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Treasury and Federal Reserve Direct Lending, Loan Guarantees, and Other Investments

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- $500 billion in direct loans, loan guarantees, and other investments from Treasury, including:
  - $46 billion in direct loans, loan guarantees, and other investments to air carriers and national security firms; and
  - $454 billion in funding to the Federal Reserve Board ("Federal Reserve"), which will provide financial assistance to businesses and State and local governments with liquidity needs as a result of the COVID-19 pandemic
- Part or all of the $454 billion will be used to support a Federal Reserve credit facility that supports lending to small and mid-sized businesses. We expect that the Federal Reserve will leverage banks and other lenders to make direct loans to businesses with between 500 and 10,000 employees.

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Main Street Lending Facility

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- Loans from such a facility are appealing in their terms:
  - the interest rate is capped 2-percent, unlike the requirement for loans made through other facilities that must charge a penalty rate; and
  - no principal or interest payments are due during the first six months after the loan is made.
- That said, any business or other entity that receives support through this facility would be required to use the funds to:
  - Retain at least 90-percent of its work force as of March 24, 2020, at full compensation and benefits through September 30, 2020;
  - Restore 90-percent of its work force that existed as of February 15, 2020 at full compensation and benefits within four months of the termination of the national emergency established in response to the COVID-19 outbreak;
  - Not pay dividends on common stock as long as the loan is outstanding;
  - Not outsource or offshore jobs for two years after the loan is repaid;
  - Not abrogate a collective bargaining agreement for two years after the loan is repaid; and
  - Remain neutral in any union organizing effort

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Main Street Lending Facility (cont'd.)

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- In addition to the terms and conditions established by the Federal Reserve in connection with each credit facility, the Act places certain restrictions against engaging in stock buybacks on any company (and its affiliate(s)) that receives support from a new facility established as a result of the Act.
- Another condition that comes along with this financial assistance: annual compensation limits for officers and employees until 12 months after the loan ceases to be outstanding.
  - The Act prohibits recipients of financial assistance from increasing the compensation of any officer or employee whose total compensation in 2019 exceeded $425,000, or from providing severance pay or other benefits upon termination of employment of more than twice the maximum total annual compensation received by that employee, until one year after the loan is no longer outstanding.
  - Additionally, officers or employees who were paid over $3 million in 2019 could not be paid more than $3 million plus 50-percent of the amount their compensation in 2019 that exceeded $3 million.

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What's Next?

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- Phase 4 and Beyond
- Squire Patton Boggs and American Staffing Association Advocacy Efforts
- Any questions?

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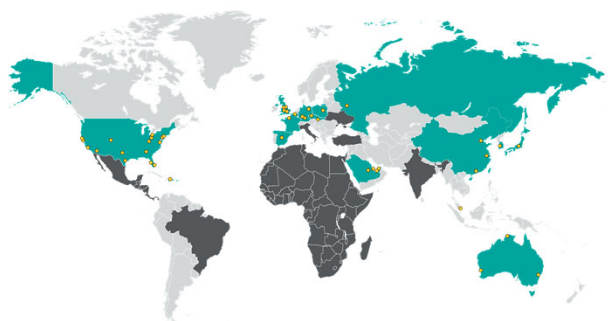
Office locations
Regional desks and strategic alliances



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