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The big items of note in the Consolidated Appropriations Act, 2021 (CAA, 2021) include extending and expanding existing provisions from prior 2020 federal COVID-19 legislation such as the employee retention credit, paid sick and family leave credits, and Paycheck Protection Program.

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After much negotiating, the latest COVID-19 relief bill was signed into law by

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process that payroll professionals go through seemed like it never ended once the COVID-19 pandemic federal legislation was enacted in March of 2020.

These laws included the Families First Coronavirus Relief Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security (CARES) Act. After the FFCRA and CARES Act were signed into law, there was plenty of federal government agency guidance from the IRS, Department of Labor and other agencies, as well as state and local legislation, executive orders, and even more guidance.

Now, as the 2020-2021 payroll year-end process gets into full swing, it appears to be deja vous all over again with the CAA, 2021. This massive bill contains many extenders and expanders for existing provisions from the FFCRA and CARES Act that involve payroll.

Let's run through some of the most impactful provisions of the CAA for the payroll industry. We'll also touch on some of the more peripheral payroll items that we think are worth a mention too.

First, let's start by identifying the sections of the CAA, 2021 that are most important to payroll professionals: (1) Division N – Additional Coronavirus Response and Relief (ACRR); (2) Division O – Extensions and Technical Corrections (ETC); and (3) Division EE – Taxpayer Certainty and Disaster Tax Relief (TCDTR) Act of 2020. These areas of the CAA generally extend and expand previous provisions found in the FFCRA and CARES Act.

Extension of Paid Sick and Family Leave Credits

The FFCRA requires certain employers to provide paid leave to workers who are unable to work or telework due to circumstances related to COVID-19. The cost of providing this leave is offset with refundable tax credits against employment taxes

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reported wages from tax year 2019 instead of tax year 2020 to compute the credit.

Technical adjustments to definitions and taxability for paid sick and family leave. Section 288 aligns the definitions of qualified wages for paid sick and family leave with the Internal Revenue Code and excludes leave payments from employer Social Security employment taxes.

Extension of Certain Deferred Payroll Taxes

On August 8, 2020, President Trump signed a Presidential Memorandum directing Treasury Secretary Mnuchin to permit the postponement of the withholding, deposit, and payment of the employee's share of Social Security tax (6.2%), as well as the employee's share of Railroad Retirement Tax Act (RRTA) Tier 1 taxes on wages and compensation paid from September 1, 2020 through December 31, 2020 for employees whose amount of wages or compensation, payable during any biweekly pay period generally is less than $4,000, or the equivalent amount with respect to other pay periods.

Section 274 of the TCDTR extends the repayment period of the deferred employee taxes through December 31, 2021. It also provides that penalties and interest will not begin to accrue on the deferred amounts until January 1, 2022.

Employee Retention Credit Expansion and Extension

Under the CARES Act, the employee retention credit (ERC) provides a refundable payroll tax credit for 50% of qualified wages of up to $10,000 per employee for a maximum credit of $5,000 per employee.

Section 206 and 207 of the TCDTR extends and expands the following ERC provisions from January 1, 2021 through June 30, 2021: (1) increases the ERC rate from 50% to 70% of qualified wages; (2) expands the eligibility for the credit by reducing the required year-over-year gross receipts decline from 50% to 20% and

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in the same quarter in a previous year, and (7) provides rules to allow new employers who were not in existence for all or part of 2019 to be able to claim the credit.

Unemployment Extensions

The FFCRA and CARES Act both contained unemployment-related provisions. Most notably, COVID-19 relief included the addition of $600 per week in pandemic unemployment compensation through July 31, 2020. This was partially extended by an August 8, 2020 Presidential Memorandum that created a "Lost Wages Assistance" program from August 1, 2020 through December 27, 2020. The ACRR extends and expands on several of the unemployment provisions from the FFCRA and CARES Act.

Extension of pandemic unemployment compensation. Section 203 of the ACRR restores the Federal Pandemic Unemployment Compensation (FPUC) supplement to all state and federal unemployment benefits at $300 per week, starting after December 26, 2020 and ending March 14, 2021.

Pandemic Unemployment Assistance. Section 201 of the bill extends Pandemic Unemployment Assistance (PUA) to March 14, 2021 and allows individuals receiving benefits as of March 14, 2021 to continue through April 5, 2021, as long as the individual has not reached the maximum number of weeks. It also increases the number of weeks of benefits an individual may claim from 39 to 50.

Extension of relief to reimbursing employers (i.e., governmental entities and nonprofit organizations. Section 202 extends through March 14, 2021, a provision in the CARES Act that amended the Families First Coronavirus Response Act to provide federal support to cover 50% of the costs of unemployment benefits for employees of state and local governments and non-profit organizations.

Extension of no waiting week for benefits. Section 204 extends through March 14, 2021 the CARES Act provision which reimbursed states for the cost of waiving the "waiting week" for regular unemployment compensation. It sets the reimbursement

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Return to work reporting. Section 251 requires states (30 days after enactment) to have methods in place to address situations when claimants of unemployment compensation refuse to return to work or refuse to accept an offer of suitable work without good cause.

Temporary assistance for states with advances. Section 221 extends through March 14, 2021 the accumulation of interest on federal loans states have taken in order to pay state unemployment benefits. The loans allow states with low balances in their unemployment trust funds to delay employer tax increases or other employer surcharges while the economy is struggling.

Paycheck Protection Program Second Draw Loans and Continuation

The CARES Act authorized the Small Business Administration (SBA) to make loans to qualified businesses under certain circumstances. The provision established the Paycheck Protection Program (PPP), which provides up to 24 weeks of cash-flow assistance through 100% federally guaranteed loans to eligible recipients to maintain payroll during the coronavirus (COVID-19) pandemic and to cover certain other expenses. The Paycheck Protection Program Flexibility (PPPF) Act made substantial changes to the PPP, including decreasing the percentage that loan proceeds must be used on payroll costs from 75% to 60%, thereby increasing the percentage that may be used for nonpayroll costs such as rent, mortgage interest and utilities from 25% to 40%.

Additionally, the PPPF Act permits borrowers to defer payments of principal, interest, and fees to 10 months after the last day of the covered period (the earlier of 24 weeks or December 31, 2020). Prior to the PPPF Act, the deferral period would end after six months. The application period closed on August 8, 2020.

Second draw PPP loans. The ACRR allows certain small businesses who received a

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organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

Loan forgiveness. As with the first PPP loan, the second loan can be 100% forgivable if it is used for payroll costs (with some exceptions) of up to 60% and nonpayroll costs (i.e., rent, mortgage, interest and utilities) of up to 40%.

Application of exemption based on employee availability. The ACRR extends current safe harbors on restoring full-time employees and salaries and wages. Specifically, it applies the rule of reducing loan forgiveness for the borrower by reducing the number of employees retained and reducing employees' salaries in excess of 25%.

Gross income clarification. Section 276 of the ACRR makes a clarification that gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan. This provision also says that deductions are allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven and that the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness. This is true as well for the second draw PPP loans.

Additional PPP loan expenses. Section 304 provides additional allowable and forgivable uses for PPP funds such as covered: operations expenditures, property damage costs, supplier costs, and worker protection expenditures.

Definition of seasonal employer. Section 315 defines a seasonal employer to be an eligible recipient which: (1) operates for no more than seven months in a year and (2) earned no more than 1/3 of its receipts in any six months in the prior calendar year.

News organization eligibility Section 317 makes eligible FCC license holders and

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Other Provisions Related to Payroll

Airline worker support extension. Section 4113 of the CARES Act authorized the Treasury Department to provide payments to passenger air carriers, cargo air carriers, and certain contractors exclusively for the continuation of payments of employee wages, salaries, and benefits, known as the Payroll Support Program (PSP).

The CAA includes an extension of the PSP for a four-month period, from December 1, 2020 through March 31, 2021. The financial assistance for employee wages, salaries and benefits is an aggregate amount of $15 billion for passenger air carriers and $1 billion in aggregate for contractors.

Immigration extension. The CAA also includes a provision regarding the H-2B visa program, which permits employers to temporarily hire non-immigrants to perform non-agricultural labor or services in the United States. The provision allows for an increase in H-2b visas that may not be more than the highest number of H-2B non-immigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limitation.

Minimum age for distributions during working retirement. Section 208 of the TCDTR discusses the minimum age for distributions during working retirement. Specifically, it reduces the age from 59 and one-half to 55 for certain employees in the building and construction industry in the case of a multi-employer plan described in the Employee Retirement Income Security Act of 1974.

Payroll-Related Tax Extenders

Work Opportunity Tax Credit. Section 113 of the TCDTR extends the work opportunity tax credit (WOTC), a general business credit to employers hiring individuals of one or more of 10 targeted groups under the program, through 2025. The amendment

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extends the up to $5,250 exclusion from employee income for educational assistance provided for under an employer's qualified educational assistance program through 2025.

Indian employment credit. Section 135 of the TCDTR extends the credit on the first $20,000 of qualified wages and qualified employee health insurance costs paid to or incurred by the employer with respect to each qualified employee who works on an Indian reservation by one year, through December 31, 2021, applicable to tax years beginning after December 31, 2020.

Temporary allowance of full deduction for business meals. Section 210 of the TCDTR allows for the full deduction of expenses for food and beverages paid or incurred to a restaurant after December 31, 2020 and prior to January 1, 2023. The credit was limited to 50% from December 31, 2017 through December 31, 2025, under the Tax Cuts and Jobs Act (TCJA).

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