

December 22, 2020

Yesterday, Congress passed an omnibus spending bill that includes \$1.4 trillion to fund the federal government and \$900 billion of additional COVID relief. The bill now heads to the White House, where President Trump is expected to sign. Below is a summary of the key provisions in the bill that impact PEOs.

## Tax Provisions

Specific tax provisions of interest to PEOs include:

- **Paid Sick and Family Leave Credits**
  - Extends the paid sick and family leave credits against employment taxes from the Families First Coronavirus Response Act (FFCRA) for three additional months to March 31, 2021.
  - The bill does not extend the FFCRA's mandate to provide paid sick leave or paid family and medical leave beyond December 31, 2020.
- **Changes to the Employee Retention Tax Credit (ERTC)**
  - Repeals the provision denying the ERTC to employers receiving a PPP loan. Instead, mechanisms would be created to prevent the same wages from being used for both PPP loan forgiveness and the ERTC.
  - Extends the ERTC to apply to wages paid before July 1, 2021 (instead of January 1, 2021).
  - Increases the credit percentage from 50% to 70% of applicable wages.
  - Increases the per-employee limitation on applicable wages from \$10,000 total to \$10,000 per calendar quarter. In combination with the increased credit percentage, this would increase the maximum credit per employee from \$5,000 to \$7,000 per quarter (up to \$14,000 for the first two quarters in 2021).
  - The following language was added to the ERTC provisions that specifically addresses PEOs: *Any forms, instructions, regulations, or guidance described in paragraph (2) **shall require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits** and shall require the certified professional employer organization or other third-party payor to accurately report such tax credits based on the information provided by the customer.* [Emphasis added.]
    - \**It is not clear whether this provision applies retroactively or just to new credits taken in 2021.*
  - Makes the ERTC available if the business experienced a decline of at least 20% in gross receipts (instead of a 50% decline) as compared to the same calendar quarter in the prior year.
  - Modifies the small employer definition of qualified wages to apply to employers that have 500 or fewer employees (instead of 100 or fewer employees).
- Creates a temporary employee retention credit of 40 percent of qualified wages up to \$6,000 (maximum credit of \$2,400 per eligible employee) for eligible employers affected by certain qualified disasters. This credit is retroactive and does not apply to COVID-related disasters.
- The bill also extends the Work Opportunity Tax Credit for five years.

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## Paycheck Protection Program and Other Small Business Assistance

In addition to the tax provisions, the COVID-19 relief portion of this legislation contains additional assistance for small businesses, which NAPEO has been lobbying Congress in support of. Specifically, it contains the following provisions designed to assist small businesses:

- Creates a second loan from the Paycheck Protection Program, called a “PPP second draw” loan for smaller and harder-hit businesses, with a maximum amount of \$2 million.
- Creates a simplified application process for loans under \$150,000.
- Expands the expenses that can be covered by a PPP loan.
- Makes 501(c)6 organizations that do not lobby eligible for PPP loans.
- Makes the expenses covered by PPP loans tax deductible.

## Unemployment Insurance

The COVID-19 relief provisions also make the following changes to unemployment insurance:

- Unemployed individuals get an additional \$300 per week from December 26, 2020 to March 14, 2021.
- Extends and phases out Pandemic Unemployment Assistance (PUA), a temporary federal program covering self-employed and gig workers, to March 14, 2021 and extends benefits from 39 to 50 weeks with all benefits ending April 5, 2021.
- Extends and phases out Pandemic Emergency Unemployment Compensation (PEUC) which provides additional weeks when state unemployment runs out, to March 14, 2021 (after which no new applications) through April 5, 2021.
- Extends provisions to March 14, 2021, including interest-free loans to the states.

**No federal money was provided to shore up the short falls in state unemployment funds.**

## Miscellaneous Provisions

The omnibus spending bill contained so-called “tax extenders,” which are temporary provisions in the tax code that are designed to support specific economic activities. There are two provisions of interest to PEOs that have been extended for five years. They are:

- The employer credit under section 45S for paid family and medical leave, originally enacted as part of tax reform in 2017.
- The expanded exclusion for employer-provided educational assistance, including student loan repayment benefits as enacted as part of the CARES Act. NAPEO has lobbied in support of this provision.