

Employer Considerations under COVID Legislation and Sponsor Debt Purchases

Welcome to the inaugural release of our *PErspectives* COVID “newsflash” series. In our first news roundup, we bring to you highlights and key takeaways on the following topics:

- Key employer considerations under COVID legislation
- Sponsor debt purchases

COVID-19 Legislation Key Employer Considerations

The recently enacted Families First Coronavirus Response Act and CARES Act cover topics of interest to employers, including expanded paid leave, payroll retention tax credits, payroll tax deferral and unemployment insurance.

- **Expanded Leave:** Employees of companies with fewer than 500 employees are eligible for expanded family and sick leave through December 31, 2020.
 - Employees can receive up to 12 weeks of leave (two unpaid and 10 paid) if unable to work/telework due to child care duties as a result of COVID-19 closures.
 - Also entitled to two weeks of paid sick leave if not able to work/telework due to quarantine, diagnosis, or care for individuals quarantined due to COVID-19 or child care duties as a result of COVID-19 closures.
 - Employers will receive a refundable tax credit for amounts paid under the new leave (subject to caps).
- **Payroll Retention Tax Credits:** Employers whose operations have been fully or partially suspended by a governmental authority due to COVID-19, or experienced a 50% reduction in revenues (compared to same calendar quarter in prior year) may be eligible for payroll retention tax credits.
 - Refundable tax credit for 50% of “qualified wages” paid to employees; only applies to wages paid after March 12, 2020 and before January 1, 2021.
 - Qualified wages generally means the social security wages paid to any employee that is currently idle (and qualified health plan expenses allocable to such wages).
 - Qualified wages for any employee capped at \$10,000 in the aggregate; credit capped at \$5,000 per employee.
- **Payroll Tax Deferral:** All employers can defer payment of employer social security payroll taxes from March 28, 2020 to January 1, 2021; deferred amount is payable 50% on December 31, 2021 and 50% on December 31, 2022.

- **Unemployment Insurance:** Extends unemployment benefits to individuals who are unable to work as a result of COVID-19 and who may not otherwise be eligible for regular unemployment compensation; provides for an additional \$600/week on top of state benefits.
 - Individuals who have qualified for regular unemployment compensation will also receive the additional \$600/week payment.
 - Additional 13 weeks of unemployment compensation available through December 31, 2020.

Download our presentation on:

- [COVID Legislation: Key Employer Considerations](#)

Debt Repurchases and Cancellation of Indebtedness

A sponsor may purchase the debt of a portfolio company for investment purposes, to de-lever the portfolio company (by contributing the acquired debt to the portfolio company) or to retain an ownership position in the event of insolvency.

- **Contractual Restrictions:** Debt agreements may restrict the amount of debt purchased by the sponsor and the sponsor's voting rights with respect to any acquired debt. The debt agreements may also prescribe conditions governing the sponsor's purchase.
- **Securities Laws:** Knowledge of material non-public information may limit the ability to buy and sell debt back into the market.
- **Fiduciary Duties:** Debt purchases may be considered a corporate opportunity of the company; most sponsor-backed companies address such risk through a waiver of corporate opportunities. Regardless, a sponsor should consider disclosing its intention to purchase debt at a discount to the Board of Directors in advance and whether or not to give the opportunity first to the issuer.
- **Conflicts of Interest:** If different funds hold debt and equity, conflicts may arise between the funds.
- **Potential Bankruptcy Risks:** As an insider, actions taken by a sponsor as a debt holder will be subject to heightened scrutiny and an extended preference period.
- **U.S. Tax Consequences:** Purchases of a portfolio company's debt by the issuer or a related party (or any de-levering transaction) may give rise to cancellation of indebtedness income to the issuer. A sponsor should consult with its tax advisors prior to engaging in any portfolio company debt purchase.

Download our presentations on:

- [Sponsor Debt Purchases: Portfolio Company Restructuring Considerations](#)
- [Sponsor Debt Purchases: CODI Flowchart](#)

If you would like more information on these or other COVID-related topics, please reach out to any of your Ropes & Gray contacts, or email our hotline: COVID-19-Implications@ropesgray.com.