

President Trump Issues Coronavirus Relief Executive Order

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Practice Area: Labor and Employment

On August 8, 2020, President Trump issued a Coronavirus relief executive order (“EO”) intending to help alleviate the hardships experienced by American workers as a result of the pandemic. The EO focuses on four key areas of relief: (1) a deferral of payroll tax obligations for certain workers, (2) an extension of supplemental unemployment benefits, (3) an extension of relief for student loan borrowers, and (4) additional eviction relief to renters who are unable to pay rent due to economic hardship due to COVID-19. This *Legal Update* summarizes the EO as it relates to employment concerns.

Deferring Payroll Tax Obligations

In the EO, President Trump directed the Secretary of the Treasury to use his authority to defer payroll tax obligations for certain American workers. Pursuant to the EO, tax obligations of workers who earn less than \$4,000 during any bi-weekly pay period are able to defer their tax payments for compensation earned between September 1, 2020 through December 31, 2020. Eligible individuals who defer tax obligations will not be penalized, charged interest, or be liable for any amount in addition to the deferred tax.

Importantly, this stimulus measure is not equivalent to a tax forgiveness. While the EO directs the Secretary of the Treasury to explore avenues, including legislation, to eliminate the obligation to pay the deferred taxes, at present no such mechanism exists. This means that workers who defer their payroll tax obligations may be required to pay those taxes at a later date.

The EO is silent as to whether employers are required to stop withholding the tax. It does, however, direct the Secretary of the Treasury to issue guidance to implement President Trump’s EO, and employers’ withholding of payroll taxes will likely be addressed in this anticipated guidance.

Extension of Supplemental Unemployment Benefits

Pursuant to the CARES Act, which was enacted in late March 2020, in addition to the base amount paid by each state, the federal government provided a \$600 per week increase in unemployment benefits for individuals who experienced a loss of wages because of the COVID-19 pandemic. This federally supplemented unemployment benefit expired on July 31, 2020.

In response, President Trump’s EO establishes an Assistance Program for Lost Wages, under which the federal government will provide an additional \$400 per week to eligible claimants who have lost wages due to COVID-19 from the week of unemployment ending August 1, 2020. To receive this new federal funding, states must pay 25% of the \$400 per person increase. The supplemental unemployment benefits contemplated in the EO are set to expire on December 6, 2020, unless the balance of the Department of Homeland Security’s Disaster Relief Fund reaches \$25 billion prior to that date.

Potential Legal Challenges

Legal challenges to the constitutionality of President Trump's EO are expected, thus creating uncertainty as to whether the EO will be upheld. We are continuing to monitor the status of the situation for new developments.

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