

The following article is located at: <https://www.churchlawandtax.com/web/2020/march/what-cares-act-means-for-churches-and-church-staff.html>

## What the CARES Act Means for Churches and Church Staff [Exclusive Online, March, 2020](#)

How to navigate the government's \$2.2 trillion stimulus plan responding to COVID-19's economic fallout.

[ posted 3/29/2020 ]



The 900-page, \$2.2 trillion *Coronavirus Aid, Relief, and Economic Security (CARES) Act* became law on March 27, 2020. It is the third package enacted by Congress in response to the COVID-19 (coronavirus) outbreak. It follows:

1. The [Coronavirus Preparedness and Response Supplemental Appropriations Act \(March 6, 2020\)](#), which provided \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak.
2. The [Families First Coronavirus Response Act \(March 18, 2020\)](#), which requires certain employers, including churches, to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions, which can be [fully reimbursed](#) by the government, will apply from April 1, 2020, through December 31, 2020.

---

**Join Richard Hammar on Thursday, April 2, 2020, for a free, one-hour webinar (open to the public) on key provisions of the CARES Act. [Register now.](#)**

---

**Key point.** Some members of Congress are suggesting that a fourth package may be necessary.

Here is a summary of the provisions in the CARES Act most relevant to churches and church staff.

## Rebates and other individual provisions

- All US residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) rebate. In addition, they are eligible for an additional \$500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as Supplemental Security Income (SSI) benefits.

A few clarifications:

- Any child who is a qualifying child for the purposes of the Child Tax Credit is also a qualifying child for the purposes of the recovery rebate. In general, a child is any dependent of a taxpayer under the age of 17.
- Individuals with \$0 of income are eligible for a rebate so long as they are not the dependent of another taxpayer and have a work-eligible Social Security Number.
- College students are eligible for a recovery rebate only if they are not considered a dependent of their parents. Generally, full-time college students under the age of 24 are considered a dependent if their parent(s) provide more than half of their support. Rebates sent via direct deposit will take a few weeks.
- Rebates sent via checks may take a few months.

**Key point.** For the vast majority of Americans, no action on their part will be required to receive a rebate check since the Internal Revenue Service (IRS) will use a taxpayer's 2019 tax return if filed (or their 2018 return if they haven't filed their 2019 return). This includes many individuals with very low income who file a tax return despite not owing any tax in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit.

**Key point.** To illustrate, a family of four is eligible for a \$3,400 rebate.

**Key point.** The rebate is treated like other refundable tax credits, such as the child tax credit and earned income tax credit, and is not considered taxable income.

**Key point.** The rebate amount is reduced by \$5 for each \$100 that a taxpayer's adjusted gross income (AGI) exceeds the phase-out threshold. The threshold is \$75,000 for single taxpayers and \$150,000 for married persons filing jointly. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

- The CARES Act waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.

**Key point.** A coronavirus-related distribution is one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

- The Act increases the amount available for personal loans from a qualified retirement plan from \$50,000 to \$100,000.
- The Act waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

## Employee retention credit

This is a credit designed to prevent layoffs and keep workers on the job. Tax-exempt employers are eligible. This is how it works:

- Eligible employers are allowed a credit against employment taxes (FICA, income tax) for each quarter of 50 percent of the qualified wages of each employee (up to \$10,000) for such calendar quarter during the COVID-19 emergency.
- The fully refundable credit would be available to any business or non-profit that has a furloughed or reduced workforce as a result of a forced closure due to a federal, state or local government directive or as a result of quarantining of employees. The credit would also be available to any business that has seen a 50 percent drop in gross receipts when compared to the same quarter last year.
- The credit is capped at \$5,000 (maximum income of \$10,000 x 50 percent) and is refundable against payroll taxes.
- A special rule applies to eligible small employers (those with 100 employees or less) that provides a 50-percent credit for all wages paid, regardless of whether employees are furloughed or not.
- The credit would be available to businesses that do not receive Small Business Administration loans. Business owners would be able to choose whether an SBA loan or employee retention credit is better suited to their situation.
- The term “eligible employer” means any employer—(a) which was carrying on a trade or business during calendar year 2020, and (b) with respect to any calendar quarter, for which the operation of the trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19.

**Key point.** The CARES Act provides that if an eligible employer receives a forgivable loan under the Paycheck Protection Program (see below) it is not eligible for the employee retention credit under this section.

## Paycheck Protection Program (PPP)

**Key point.** Most churches are unfamiliar with US Small Business Administration (SBA) loans, including this newly created Paycheck Protection Program. For assistance, contact your nearest Small Business Development Center (SBDC). The SBA website [lists local centers](#) and has more information about approved lenders.

The Act establishes a new SBA loan program called the Paycheck Protection Program for small employers (including nonprofits and churches) to help prevent workers from losing their jobs and small businesses from failing due to economic losses caused by the COVID-19 pandemic. Here is how it works:

- The program provides small businesses, nonprofits, and churches with 500 employees or fewer with federally guaranteed loans to cover payroll and other operating expenses.
- Loans are available from any lender approved to participate in SBA loans, as well as additional lenders approved by the US Department of the Treasury.
- Applicants can apply for this loan until June 30, 2020.
- To be eligible, the small employer must have been harmed by the pandemic between February 15, 2020, and June 30, 2020. The Act requires eligible borrowers to make a good-faith certification that:
  - the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; and
  - they will use the funds to retain workers and maintain payroll, lease, and utility payments.
- The program provides loans of up to 250 percent of an employer's average monthly payroll costs.
- The loan is forgiven in full if, during the eight-week period beginning when the church receives the loan, the money is spent entirely on:
  - payroll costs
  - group health care expenses
  - interest on any mortgage obligations
  - rent, including rent under a lease agreement
  - interest on debt incurred before February 15, 2020

- utilities
- The amount of loan forgiveness is reduced based on an employer's reduction in workers or wages according to a formula (but any declines between February 15, 2020, and April 26, 2020, do not reduce the amount of loan forgiveness if the employer returns to pre-decline levels by June 30, 2020).
- Any portion of a loan not forgiven is carried forward as an ongoing loan with a term of ten years at four percent interest.
- This program is retroactive to February 15, 2020, to help bring workers who may have already been laid off back onto payrolls. The loan period ends on June 30, 2020.
- The Act allows complete deferment of loan payments for at least six months and not more than a year.

**Key point.** If an eligible employer receives an employee retention credit (see above), it is not eligible for the Paycheck Protection Program.

**Key point.** Because churches are eligible for the Paycheck Protection Program, this provision will likely be challenged in court as an unconstitutional establishment of religion in violation of the First Amendment. But note:

(1) Any legal challenge will be hampered by the fact that this program ends on December 31, 2020, and

(2) The United States Supreme Court has ruled that laws benefiting a wide range of secular nonprofit organizations are not rendered unconstitutional by the fact that religious organizations are included among the beneficiaries. To illustrate, in 1970 the Court upheld the constitutionality of a New York law exempting churches from property taxes, in part because property used for religious

Similarly, in 1989 the United States Supreme Court ruled that a Texas law exempting religious periodicals from state sales tax violated the First Amendment's nonestablishment of religion clause. *Texas Monthly, Inc. v.*

*Bullock, 109 S. Ct. 890 (1989)*. From 1984 until 1987 Texas law imposed a sales tax upon all periodicals except those “published or distributed by a religious faith and that consisted wholly of writings sacred to a religious faith.” This law was challenged by a secular publisher, and the United States Supreme Court agreed that the Texas law violated the First Amendment’s ban on the establishment of religion.

But the Court stressed that “insofar as a tax exemption is conferred upon a wide array of nonsectarian groups as well as religious organizations in pursuit of some legitimate secular end, the fact that religious groups benefit incidentally does not [violate the First Amendment].” The court emphasized that if Texas chose to grant a tax exemption to “all groups that contributed to the community’s cultural, intellectual, and moral betterment, then the exemption for religious publications could be retained.” The court specifically ruled that a statute exempting organizations created for “religious, educational, or charitable purposes” from the payment of state sales tax would be a “model” exemption statute.

This precedent strongly suggests that any constitutional challenge to the inclusion of religious groups in the Paycheck Protection Loan Program will fail.

- In the SBA [loan application document](#) just released by the SBA, it contains a statement that any organization receiving SBA financial assistance, and that includes the Paycheck Protection Program, must agree not to discriminate in employment on the basis of Parts 112, 113, and 117 of Title 13 of the Code of Federal Regulations. These parts prohibit discrimination on the basis of race, color, national origin, sex, or age by any organization receiving SBA financial assistance.

This raises the question of eligibility of churches that discriminate in employment on the basis of sexual orientation or sexual identity to participate in Paycheck Protection Program loans. Are they barred from participating in the loan program?

Let me make three points. First, Title VII of the Civil Rights Act of 1964, which bans discrimination in employment on the basis of race, color, national origin, sex, or religion, permits religious employers to discriminate in employment decisions on the basis of religion. Many courts have recognized that this exception allows churches to discriminate in employment on the basis of the sexual orientation of employees or applicants for employment. It is possible, but too soon to tell, if this same principle would apply to SBA loans. I would say that it is likely, but not certain.

Second, the so-called ministerial exception, which prohibits the civil courts from resolving employment disputes between churches and clergy, likely would allow churches to participate in an SBA loan program even if they discriminate on the basis of sexual orientation in the employment of clergy.

Third, later this year the United States Supreme Court will be addressing the question of whether Title VII's ban on sex discrimination in employment extends to sexual orientation and transgender status. The Court's ruling may impact SBA loans in the future, but it is not likely to apply to loans under the Paycheck Protection Program since the case probably will not be decided before the June 30, 2020 expiration date for these loans.

**Key point.** The SBA loan application states that “all borrowers must display the Equal Employment Opportunity Poster prescribed by SBA.”

## Unemployment insurance provisions

- The Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020, to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

**Key point.** The application of this provision to church employees is unclear. State and federal laws [exempt from unemployment taxes](#) “service



performed in the employ of a church, a convention or association of churches, or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches.” Does the CARES Act’s temporary Pandemic Unemployment Assistance program apply to church employees on the ground that they “are not traditionally eligible for unemployment benefits”? This question needs clarification.

- The Act provides payment to states to reimburse nonprofits for half of the costs they incur through December 31, 2020, to pay unemployment benefits.
- The Act provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- The Act provides an additional 13 weeks of unemployment benefits through December 31, 2020, to help those who remain unemployed after weeks of state unemployment benefits are no longer available.
- The Act provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

## Charitable contributions

- The Act encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to \$300 of cash contributions, whether they itemize their deductions or not.
- The Act increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50 percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10 percent limitation is increased to 25 percent of taxable income.

## Payroll taxes

- The Act provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to

employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020, through December 31, 2020.

- The Act allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021, and the other half by December 31, 2022. Deferral is not available to employers receiving assistance through the Paycheck Protection Program of the CARES Act.

## Delay of certain deadlines

- The Act extends the April 15 filing date to July 15, giving individuals more time to file their tax returns given the limitations caused by the COVID-19 emergency. The filing date would be aligned with the extended payment filing date [already announced](#) by the IRS.
- The Act allows all individuals to postpone estimated tax payments due from the date of enactment until October 15, 2020. There is no cap on the amount of tax payments postponed, and any individual required to make estimated tax payments can take advantage of the postponement. This delay should increase the available cash flow for individuals experiencing cash shortfalls as a result of the COVID-19 emergency.

**Key point.** This provision is especially relevant to pastors who typically use the estimated tax procedure to prepay their federal taxes since they are exempt by law from income tax withholding.

## Education provisions

- The Act allows employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.
- The Act temporarily suspends payments for federal student loans held by the federal Department of Education through September 30, 2020, and interest is waived for the duration of the suspension. Only loans held by the federal Department of Education are eligible, including loans made under the federal William Ford Direct Loan Program, and some loans made under the Federal Family Education Loan Program (FFLEP).
- Generally, Pell grants are limited to 12 semesters. The CARES Act provides that the Secretary of Education shall exclude from a student's Federal Pell Grant duration limit any semester (or the equivalent) that the student does not complete due to a qualifying emergency.
- The CARE Act bars involuntary collections of student loans by offsetting an income tax refund or by other means.

## Foreclosure moratorium and forbearance

- Any homeowner who is experiencing financial hardship—and who possesses either an FHA, VA, USDA, 184/184A mortgage, or a mortgage backed by Fannie Mae or Freddie Mac—is eligible for up to six months' forbearance on their mortgage payments, with a possible extension for another six months. At the end of the forbearance, borrowers can work within each agency's existing programs to help them get back on track with payments, but they will have to

pay missed payments at some point during the loan, so if borrowers can pay, they should continue to do so.

- Renters who have trouble paying rent also have protections under the bill if they live in a property that has a federal subsidy or federally backed loan. Owners of these properties cannot file evictions or charge fees for nonpayment of rent for 120 days following enactment of the bill, and cannot issue a renter a notice to leave the property before 150 days after enactment. After this period renters will be responsible for making payments and getting back on track, so they should continue to make payments if they're financially able to do so. Renters who receive housing subsidies, such as public housing or Section 8, and who have had their incomes fall should recertify their incomes with their public housing agency or property owner because it may lower the rent they owe.
- The Act includes a 60-day foreclosure moratorium starting on March 18, 2020, for all federally backed mortgage loans. Borrowers with FHA, VA, USDA, or 184/184A loans, or loans backed by Fannie Mae and Freddie Mac, will not see foreclosure actions and cannot be removed from their homes due to foreclosure during that time.

## “Real ID” compliance

- Many Americans do not have a Real ID-compliant identification (which will be required to board commercial airlines) and are concerned about going to a crowded department of motor vehicle department before the October 1, 2020, deadline. There is no need to visit a DMV just to obtain a REAL ID by October 1, 2020, because the deadline was extended one year, until October 1, 2021.

## Utility shutoffs

Utility service is regulated by the states, rather than the federal government. Many states have ordered their utilities not to terminate service to customers during the crisis.

## Posters

The CARES Act does not require employers to post an explanatory notice. But the Families First Coronavirus Response Act (FFCRA) does. Here is what [FFCRA says](#):

- Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.
- Not later than seven days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of a notice that meets the requirements of [the law].

To obtain the FFCRA notice free of charge, contact the Department's Wage and Hour Division at 1-866-4-USWAGE (1-866-487-9243). Alternatively, churches may [download and print](#) the notice for free.

This content is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. "From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations."

Due to the nature of the U.S. legal system, laws and regulations constantly change. The editors encourage readers to carefully search the site for all content related to the topic of interest and consult qualified local counsel to verify the status of specific statutes, laws, regulations, and precedential court holdings.