MEMORANDUM

TO: IMPACT
FROM: Frank Marco
DATE: March 30, 2020

RE: Summary of Federal COVID-19 relief legislation

I. Introduction

The Iron Worker industry has changed dramatically in the past few weeks. Unemployment is skyrocketing and construction projects are being shut down across North America. Contractors are trying to weather the storm but no one knows when the storm will end. The economic downturn will likely continue until the coronavirus pandemic is over or at least under reasonable control. Until then, governments across the world are passing stimulus programs in record speed. The following is a summary of the U.S. response and how it may affect the iron worker industry.

In the last two weeks, Congress has passed three major pieces of legislation and is negotiating a potential fourth bill. The first bill was called the Coronavirus Preparedness and Response Supplemental Appropriations (CPRSA) Act and it dealt with emergency appropriations for the development of a vaccine and emergency loans for small businesses. The cost of this bill was just over 8.3 billion dollars. The Families First Coronavirus Response Act (FFCRA) was a $100 billion-dollar package that dealt with paid sick leave, unemployment insurance, free testing and additional protections for health care workers. The Coronavirus Aid, Relief and Economic Security Act (CARES Act) is a 2.2 trillion-dollar Act that is an economic stimulus package that provides direct payments to the American people, and a massive expansion of sick leave and unemployment benefits. The Acts also place major burdens on relief small businesses but they also provide potentially greater relief for such businesses that are struggling to survive economically.

The FFCRA and the CARES Act provide economic relief for businesses and workers severely impacted by COVID-19. The following is a summary of many of the key provisions of these major pieces of legislation with special emphasis on any features which could impact the iron worker industry. This memorandum is meant to provide general information on recent legislation, and is not intended to serve as legal advice of any particular problem or issue. For specific legal advice, please consult with your own legal advisor. For continuing updates on legislative and regulatory developments related to the COVID-19 pandemic, the North American Building Trades Union website provides additional guidance via this link: https://protect-us.mimecast.com/s/NoUQCmZM33IQZZDHGb8IG.

II. Free Testing for Covid-19

The CARES Act ensures that all testing of individuals for the coronavirus will be free. It also ensures that a vaccine, once developed, will be made available to all persons free of charge. A person does not need to have insurance to receive these benefits. Treatment is not covered by the Act but is still covered by insurance policies.

III. Major Increases to Unemployment Insurance Benefits.

A. Easier Application Process. The FFCRA makes it easier for individuals to apply for unemployment insurance because it provides $1 billion in grants to help states administer their unemployment compensation programs. $500 million is available to any state that takes certain steps to facilitate applying for unemployment insurance in-person, by phone or online. An amount of $500 million is also available to states that experience a 10% increase in unemployment and that ease eligibility requirements for applicants impacted by COVID-19 by waiving work search requirements and eliminating the waiting week.

B. Expansion of Unemployment Benefits. The CARES Act expands unemployment insurance programs administered by the states in four ways:

1) expands access to unemployment insurance benefits;
    a. These enhancements are for unemployment for any reason – not just COVID-19 related unemployment.
2) increases the amount of unemployment insurance payments;
    a. All weekly unemployment insurance benefits will be increased by $600 for the next four months through July 31;
3) extends the duration of unemployment insurance benefits;
    a. Benefits can be received for an additional 13 weeks beyond what state law typically allows; and
4) eliminates waiting periods.

The changes only go into effect if a state enters an agreement with the federal government agreeing to certain terms. However, because the federal government is offering to pay for 100% of the changes allowed by the bill, states will likely offer these expanded benefits.

The CARES Act expands unemployment coverage to those who would not normally qualify for a benefit. The Act provides that:

1) Access to the unemployment insurance system is expanded to include individuals who have exhausted their benefits, independent contractors, sole proprietors, those without a wage history, and others who usually would not qualify for unemployment insurance benefits are eligible for regular payments;
2) These individuals may receive benefits if they are unemployed or unavailable to work because of COVID-19 but are otherwise available for work;
3) These workers are entitled to up to 39 weeks of unemployment insurance benefits (including any benefits they received under regular unemployment insurance);
4) All weekly unemployment insurance benefits will be increased by $600 for the next four months (through July 31); and
5) State-law mandated "waiting periods" are waived.

For people who are eligible for regular unemployment insurance, the increased benefits begin when the state enters into an agreement with the federal government. For people who are not otherwise eligible for unemployment insurance, but are now eligible, because of the CARES Act, the benefits begin with weeks of unemployment after January 27, 2020.

C. Increased unemployment insurance Payments

The bill increases the amount of unemployment insurance benefits workers receive each week by $600, from the time the state enters into an agreement with the Federal Government through July 31st. This extra $600/week will be sent to workers receiving regular/extended unemployment insurance benefits, as well as workers receiving benefits under the expanded access and duration provisions of the new bill.

D. Increased Eligibility to Unemployment Insurance

The Act allows those who have exhausted their rights to unemployment insurance or would typically be ineligible to receive unemployment insurance benefits if they are unemployed or unavailable for work for COVID-19-related reasons but would otherwise be able to and available for work. Examples of who will be eligible for unemployment insurance under this section include the self-employed (e.g., independent contractors) and those who would normally not have a sufficient wage history to receive unemployment insurance benefits. Workers receiving benefits under this section will receive the weekly payments they would receive if they were eligible for regular unemployment insurance, plus the extra $600/week described above. Generally speaking, workers can earn up to 39 weeks of unemployment insurance payments under this section, including any weeks of unemployment insurance they have already used.

States can use any evidence of prior earnings to calculate the amount of weekly benefit payments owed an individual. If someone does not produce sufficient evidence of prior earning history for a determination of weekly benefits to be made, they can instead earn a "minimum flat benefit" based on the average weekly payments made in the state. This benefit is not available to anyone who has the ability to telework with pay or is receiving paid sick leave or other paid leave benefits. If an individual remains out of work because of COVID-19 after exhausting their paid leave, they can then apply for these unemployment benefits.

E. Increased Duration of Regular Unemployment Insurance

States can extend the length of unemployment insurance benefits for workers who are eligible for regular or extended unemployment benefits. In most cases, this allows for an extra 13 weeks of benefit payments. (Note that this extension is not available to individuals receiving benefits under Section 2102's new expanded access rules.) To be eligible, an individual must exhaust all their rights to regular/extended UI under state law and must be actively seeking work. Individuals receiving benefits under this section will receive the extra $600/week until July 31, 2020. Anyone who is eligible for benefits under this section must use up these benefits before receiving payments under the expanded access provision.

F. Waiting Periods Are Waived

The bill offers incentivizes states to waive their "waiting periods" that prevent people from immediately receiving unemployment insurance benefits. The federal government will pay for 100% of the total amount of regular unemployment insurance benefits states pay to individuals for their first week of regular unemployment if states waive these "waiting periods" through the end of 2020.

Examples – the following are anticipated real life scenarios of how the CARES Act will impact building trades men and women.

1. Jane Doe is laid off because the project site she was working on has been shut down due to Covid-19. She reported that she earned $60,000 of income on her most recent tax return, and she is eligible for regular unemployment insurance benefits because she was an employee and has a prior earning history. She will receive: (1) her weekly unemployment insurance benefits, which are a percentage of her prior salary, *plus* (2) an extra $600 per week (through July 31), *plus* (3) a $1,200 tax credit. Her state normally limits allows 26 weeks up to 39 weeks of regular and extended unemployment insurance benefits and applies a "waiting week" before benefits are sent. Under the CARES Act, she will be able to receive benefits immediately and for up to 52 weeks because of this bill.

2. Jill Jones has been out of the workforce for a few years but was hired to start on a project at the end of March. This project was delayed because of COVID-19. While Jill would not typically be eligible for unemployment insurance because of her lack of wage history, she can now apply for benefits because of the expanded access provisions of this bill. Because she did not report any income on her most recent tax return and has no wage history that can be used to calculate a weekly benefit amount, she will receive: (1) a "minimum flat benefit" based on the average weekly benefit paid in the state, *plus* (2) an extra $600 per week (through July 31), *plus* (3) a $1,200 tax credit. She will start receiving this benefit immediately because the state has waived its waiting period.

IV. Paid Sick Leave.

The law requires employers with less than 500 employees to provide paid sick leave. Sick leave is available to all employees, regardless of length of tenure with the employer. The employer would be required to pay 80 hours for full-time employees or average hours for part-time worker over a 2-week period.

Specifically, the law requires employers to pay either:

A. Regular wages, capped at $511/day with a $5,110 maximum for employees unable to work because:

1. the employee is subject to a public COVID-19-related quarantine or isolation order.
2. a health care provider has advised the employee to self-quarantine, or

3. the employee is experiencing COVID-19 symptoms and is seeking a diagnosis.

B. 2/3 of the employee's regular wages, capped at $200/day with a $2,000 maximum for employees unable to work because the employee is:

1. Caring for an individual subject to a public quarantine or isolation order or who has been advised to self-quarantine,
2. Caring for a son or daughter if the school or childcare facility is closed or childcare provider is unavailable, or
3. Experiencing similar conditions, as specified by HHS.

Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits through Dec. 31, 2020. The Act provides an option for employers in multiemployer bargaining units to satisfy their obligations by paying into a multiemployer benefit plan *if* the plan pays employees the required benefits.

The DOL can exempt employers with fewer than 50 employees from paying for leave to care for others if compliance would jeopardize the viability of the business. The DOL has already published some Frequently Asked Questions which seem to indicate that the small business exemption is going to be very limited. Paid leave in general is available for any of 5 separate reasons, all related to COVID-19:

1. Employee is subject to government quarantine/isolation order.
2. Employee is advised by health care provider to self-quarantine.
3. Employee is experiencing symptoms and seeking medical diagnosis.
4. Employee is caring for an individual (doesn't have to be child) who falls under reason 1 or 2 above.
5. Employee is caring for a child where the school or place of care for the child is either closed or unavailable because of COVID-19.

Small business with fewer than 50 employees can claim exemption for reasons stated in the DOL FAQ # 58, but only where employee claims leave for reason (5) above. As stated in FAQ # 59, a small business is exempt "only if leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied."

V. Paid Leave Through the FMLA

In addition to the Sick leave benefit, the FFCRA also created paid leave through the existing Family and Medical Leave Act. The law only applies to employers with fewer than 500 employees, and exempts employers with fewer than 25 employees from the job protection aspects of the bill. The benefit is only available to employees who have been employed for 30 days with the employer from which they are requesting the leave.

The new rules require employers to provide 10 days of *unpaid* leave and up to an additional 10 weeks of *paid* leave to care for son or daughter whose school or childcare facility is closed, or childcare provider is unavailable for COVID-19 related reasons. Paid leave is paid at the rate of

2/3 of regular wages, capped at $200/day with a $10,000 maximum. Employees can elect to use accrued vacation, personal, medical or sick leave for the unpaid portion. Employers may take a credit against payroll taxes worth 100% of the amount they pay in required benefits through Dec. 31, 2020.

The DOL can exempt employers with fewer than 50 employees but more than 25 if requirements would jeopardize the viability of the business. The DOL has already published some Frequently Asked Questions which seem to indicate that the small business exemption is very limited. The exemption is only available if the employee takes leave to care for a child whose school is closed or unavailable because of COVID.

The Paid Leave provisions are new and subject to upcoming regulations and guidance. The Department of Labor has already published guidance on the new laws and their impact on the workplace. The site also has pertinent links to related government sites such as OSHA safety requirements. The DOL site is linked here: https://www.dol.gov/coronavirus

VI. Direct Payments to Individuals and Families

The CARES Act also provides direct payments to individuals and families. All U.S. 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) payment. 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 SSI benefits. For most Americans, no action on their part will be required in order to receive a rebate check as the IRS will use a taxpayer's 2019 tax return if filed, or their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold of $75,000 for individuals, $150,000 for married persons. The amount is completely phased- out for single filers with incomes exceeding $99,000, and $198,000 for joint filers with no dependent children.

VII. Small Business Relief

One of the major features of the CARE Act is the commitment of up to 350 billion dollars to Small Business owners in the forms of loans to keep them operational during the economic crisis. The loans may even be forgiven or reduced in the end if the small business maintains or restores their payroll. Businesses with fewer than 500 employees can receive a small business interruption loan so long as they keep their workers employed. These loans may even be forgiven or reduced if the money is used to retain workers at their regular salaries capped at $100,000 per year on a prorated basis or to cover basic operational expenses such as rent.

A. The Paycheck Protection Program

The CARES Act creates a new avenue for small businesses, veterans' organizations, 501(c)(3) organizations or "any business concern" to receive a cash infusion if they do not employ more than 500 individuals. Specifically, it amends the Small Business Administration's (SBA) Section 7(a) Loan Program. The core mission of this program is to provide SBA-guaranteed financial assistance to small businesses that lack access to capital. Private lenders partner with the SBA by making loans directly to small businesses and the SBA guarantees a portion of each loan. The CARES Act amends the program to direct the SBA to guarantee the *entire* loan. The loans are capped at $10 million, and interest shall not exceed 4%. Eligible loans may only be made between February 15, 2020 and June 30, 2020. Additionally, the SBA shall require lenders who make loans during the above-referenced period to provide payment deferment relief for not less than 6 months. The amount of loan forgiveness shall be reduced if the business laid off workers or reduced their wages. The SBA, however, may grant exemptions to this rule. Finally, loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions.

B. Employee Retention Tax Credit

The CARES Act revives a tax credit that has been used before in the aftermath of natural disasters to for employers to retain employees. The amount of the credit is 50% of all employee wages per calendar quarter but won't exceed $10,000 per employee per calendar quarter. In applying for the tax credit, the employer may include amounts paid to group health plans as "wages" if the amounts are not normally included as income to the employee. To receive the credit, the employer must experience: 1) a full or partial suspension of operations due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or 2) a significant decline in gross receipts. The credit only applies to wages paid between March 12, 2020 and January 1, 2021. Tax exempt organizations are eligible for the credit. 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 condition 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 U S Chamber of Commerce summarized the relief programs for small businesses in the following guide: https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources - section-header-0

Small businesses who are impacted by the coronavirus can receive substantial assistance from the Small Business Association. The Economic Injury Disaster Loan program can provide small businesses with up to 2 million dollars in working capital to overcome the impact of Covid-19 on their businesses. The CARES Act would expand eligibility for entities suffering economic harm due to COVID-19 to access SBA's Economic Injury Disaster Loans (EIDL), while also giving SBA more flexibility to process and disperse small dollar loans. The bill allows entities that apply for an EIDL expedited access to capital through an Emergency Grant—an advance of $10,000 within three days to maintain payroll, provide paid sick leave, and to service other debt obligations. An amount of $10 billion would be provided to support the expanded EIDL program. For those interested in more information about the SBA loan programs, the following link will provide more details: https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources - section-header-0.

The Small Business relief provisions are some of the most extensive and most expensive parts of the Acts. They are also some of the most open ended or subject to future clarifications and regulations. Please check the linked sites above for updates from the regulatory agencies in the future.

VIII. Retirement Plans

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. The bill also provides flexibility for loans from certain retirement plans for coronavirus-related relief. A coronavirus-related distribution is one made to an individual:

A) who is diagnosed with COVID-19,

B) whose spouse or dependent is diagnosed with COVID-19, or

C) 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 CARES Act made numerous changes waiving certain deadlines that affect benefit plans. It waived the required minimum distribution rules for 401Ks, 403bs, SEPs and IRAs for calendar year 2020. It provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. ERISA is amended to provide the Department of Labor with the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.

IX. Miscellaneous Provisions

A. Child Care Subsidies The CARES Act provides $3.5 billion in grants to states for immediate assistance to childcare providers, but also to financially support child-care for families, including for healthcare workers, first responders, sanitation workers and other workers who have been deemed essential during the response to COVID-19 by public officials. This means that if a state or locality has deemed construction workers as essential, they may be eligible to receive funds from this grant to pay for childcare if the child for which care is provided is under 13 and resides with the construction worker.

B. Retaining Employees on Federal Job Sites The CARES Act opens up new authority for federal agencies to use existing funds to pay their contractors whose employees or subcontractors cannot perform work on a "site that has been approved by the Federal Government, including a federally-owned or leased facility, due to facility closures or other restrictions" and whose job duties cannot be performed remotely due to the COVID-19 public health emergency. This could include iron worker subcontractors on federal jobs. Payments to employees are limited to an average of 40 hours a week and exclude any credits the contractors are allowed for benefits they otherwise provide under the FFCRA or this Act. This only applies to paid leave or paid sick leave up to September 30, 2020.

C. Student Loans. Employers may 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 towards 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 before January 1, 2021.

D. Foreclosure Moratorium. The bill provides up to 180 days of forbearance for federally-backed mortgages if experiencing financial hardship due to the COVID-19 emergency. Applicable mortgages included those purchased by Fannie Mae and Freddie Mac, insured by HUD, or VA. The authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020. Furthermore, the bill prohibits foreclosures on all federally backed mortgage loans for a 60-day period beginning on March 18, 2020.

E. Temporary Moratorium on Eviction Filings. The CARES Act prohibits landlords from initiating legal action to evict or to charge fees, penalties, or other charges for 120 days if the landlord's mortgage on that property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.

X. Conclusion

The legislative initiatives enacted thus far have been massive and far- reaching but there are a few areas where additional relief may be in order. These areas include pension relief. Public officials have committed to prioritizing pension relief in the next COVID-19 relief bill. Health Plans are also impacted with fewer hours and participants unable to make COBRA payments. COBRA subsidies are also being discussed. Finally, infrastructure spending is what is needed to keep our industry moving forward. This means more work and more jobs. The success of the industry's recovery and the country's recovery from this pandemic will be centered on rebuilding this nation's infrastructure.