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AMERICAN RESCUE PLAN ACT BRINGS RELIEF FOR THE RESTAURANT INDUSTRY

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Categories: COVID-19, Workplace

As we recently reported, on March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law. The \$1.9 trillion stimulus package includes the Restaurant Revitalization Fund (RRF), a program to aid the restaurant industry, which has been hard hit by the Covid-19 pandemic.

The RRF will be administered by the Small Business Administration (SBA) and provide \$28.6 billion in grants to eligible eating and drinking establishments. These include restaurants, bars, food trucks, food carts, caterers, breweries, tap rooms, and tasting rooms for other alcoholic beverage producers. The program liberally defines eligible business types as any business where the primary purpose is for people to gather for the consumption of food and drink. While this program excludes theaters, nightclubs, concert venues, and other performance venues, even if they serve food and drink, ARPA also provides funds for another program, Grants for Shuttered Venue Operators, which is specifically designed to help that industry.

While the majority of restaurants, bars, and other eligible business types will be allowed to apply for RRF grants, there are some limitations. Only entities who own or operate 20 or fewer individual locations will be eligible. This number includes any location in which the applicant has at least a 50% interest, even if not the sole owner. Publicly traded corporations are not eligible.

Grant funds are specifically designed to offset pandemic-related losses or costs. The amount of RRF grants for most eligible businesses will be determined by subtracting an applicant's 2020 gross receipts from their 2019 gross receipts. The RRF will also seek to apply certain limitations to ensure that the grants are not concentrated too heavily in too small a pool of grantees. These grants are limited to a total of \$10 million per applicant and \$5 million per location.

There also are mechanisms for newer restaurants who were not in operation for all of 2019, and even restaurants that delayed opening due to the pandemic. If an eligible business was open for part of 2019, its average monthly gross receipts will be multiplied by 12 to determine a baseline amount from which its 2020 gross receipts will be subtracted in order to determine the amount of RRF funds it is eligible to receive. If the business was intended to be opened but has not begun operations due to the pandemic, it can still apply for RRF funds to cover certain eligible expenses incurred during the pandemic.

Of the \$28.6 billion total of RRF funds, the majority will be available to most eligible applicants. \$23.6 billion is available to be distributed in an “equitable manner” to businesses of various gross receipts. The remaining \$5 billion is available only to bars and restaurants with gross receipts of \$500,000 or less in 2019. This ensures there is a dedicated pool of funds available to smaller eligible businesses.

During the first 21 days of the application period the SBA will give priority to certain eligible applicants, specifically those owned by women, veterans, and “economically disadvantaged small business concerns.” After that priority period, funds will be available to the general pool of eligible businesses, subject to the equitable distribution requirements which will be developed by the SBA.

Funds that a business receives from this program may be used for a wide variety of operational expenses, but not without limitation. Funds may be spent on payroll; principal or interest on mortgage obligations; rent; utilities; maintenance, including construction to accommodate outdoor seating; PPE and cleaning materials; normal food and beverage inventory; certain covered supplier costs; operational expenses; paid sick leave; and any other expenses the SBA determines to be essential to maintaining operations. Significantly for recipients, these grants are not treated as income for tax purposes. One important detail to note is that for any applicant who received or receives Payroll Protection Program funds in 2020 or 2021, the amount of the PPP funds received will be subtracted from their grant award to prevent a double benefit.

The SBA has not yet announced when the application period for RRF funds will begin, but the time frame has been described as “weeks, not months.” Those considering an application should prepare their documentation in advance and frequently check to see when an application date is announced. It is unknown at this time how many businesses will apply for these funds, and how long they will last. Considering the massive effect the pandemic has had on the restaurant industry, it would not be surprising if applications quickly exceed the amount of available funds.

The pandemic has hit the restaurant industry extremely hard. Many restaurants are small businesses which operate on relatively low profit margins, and this is especially true for newer businesses in this industry. Many restaurant and bar operators had limited funds going into the

pandemic and struggled with the unexpected loss of revenue. For many this program will have come too late, with many restaurants having decided to close permanent. The hope is that these programs will offer a lifeline to those that have managed to hold on throughout the pandemic.

Employers should explore their options with respect to the various provisions of ARPA to determine how best to take advantage of the opportunities set forth in the new bill. The attorneys at McMahon Berger are available to answer any questions you may have.

The St. Louis employment attorneys at McMahon Berger have been representing employers across the country in labor and employment matters for over sixty years and are available to discuss these issues and others. As always, the foregoing is for informational purposes only and does not constitute legal advice regarding any particular situation as every situation must be evaluated on its own facts. The choice of a lawyer is an important decision and should not be based solely on advertisements.