

## Ordenes Ejecutivas



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### Relevo y Advertencias legales

- Esta presentación es para propósitos educativos exclusivamente y no tiene como fin, ni debe considerarse, como una consulta contributiva, legal o de contabilidad.
- Cualquier consejo que esta presentación contenga no ha sido considerado o escrito para ser usado, y no puede usarse, con el propósito de evadir penalidades que puedan imponerse al amparo del Código de Rentas Internas o de cualquier disposición contributiva local, estatal o federal.

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### Recursos

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# Beneficios Federales



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## Legislación Federal

- Coronavirus Preparedness and Response Supplemental Appropriations Act (CORPRE)
  - Firmado 4 de Marzo
  - Cambios
    - Hace varias Asignaciones Monetarias
    - Préstamos de SBA
      - Economic Injury Disaster Loans (EIDL)
  - Costo \$8,300 millones

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## Legislación Federal

- Families First Coronavirus Response Act (FFCRA)
  - Firmado 18 de marzo de 2020
  - Cambios
    - Beneficios de Pruebas de COVID-19
    - Protecciones Laborales
      - Emergency Paid Sick Leave Act (“EPSLA”)
      - Emergency Family and Medical Leave Expansion Act (“EFMLEA”)
    - Crédito por las Protecciones Laborales

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**Legislación Federal**

- Coronavirus Aid Relief Economic Security Act (CARES)
  - Firmada 27 de marzo de 2020
  - Cambios
    - Lending
    - SBA Loans
      - Cambia EIDL
        - » \$10,000 se pueden condonar
      - Crea Paycheck Protection Program (PPP)
        - » Se puede condonar
    - Unemployment Provisions
    - Taxes
      - Rebates
      - Retention Credits

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**Legislación Federal**

- Sec. 1102 – Paycheck Protection Program
- Sec. 1107 – Direct Appropriations
- Sec. 1110 – EIDL
- Sec. 2101 – PUI
- Sec. 2201 – Recovery Rebates
- Sec. 2202 – Retirement of Funds (waiver 10% penalty)
- Sec. 2204 & 2205 – Charitable Contributions
- Sec. 2301 – Employee Retention Credit
- Sec. 2302 – **Delayed Social Security**
- Sec. 2303 – NOL Carrybacks
- Sec. 2305 – AMT Credits Use
- Sec. 2308 – No excise tax alcohol

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**Legislación Federal**

- Paycheck Protection Program and Health Enhancement Act (PPPEA)
- Legislación aprobada el 24 de abril
- Costo Total
  - \$484 billones
- Aumentos
  - PPP de \$349 billones a \$659 billones
    - Aumento \$310 billones
    - \$60 billones son para bancos pequeños, cooperativas y similares
  - EIDL de \$50 billones adicionales
    - \$10 billones a avances \$10,000
  - \$75 billones para hospitales y proveedores de salud

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### Legislación Federal

- Paycheck Protection Program Flexibility Act (PPPPA)
- Firmado el 5 de junio de 2020
- Cambia varias cosas del PPP
  - 8 → 24 semanas
  - 75% → 60% a otros gastos
    - No es un cliff
  - 2 años → 5 años para pagar el préstamo
  - Provee otros "safe-harbors"

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## Futuro de Legislación Federal



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## HEROES

- Aprobada por la Cámara de Representantes
- Aprobada el 12 de mayo
- Costo \$3.5 billones



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## HEALS

- Aprobada por el Senado Federal
- Se aprueba el 27 de julio
- Costo \$1 billón



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**Senate returns with a path to nowhere on coronavirus aid**


**Congress Returns to an Impasse Over Pandemic Aid**

- Lawmakers return to Washington today for a battle over virus relief — and to face a potential government shutdown.
- The standoff comes as millions remain unemployed and states begin to renege budget cuts with no promise of assistance. Here's the latest.

Live




**Discord over state and local funds plagues coronavirus talks**



**Lawmakers Tackle Spending Deal, Look to Better Coronavirus Aid**

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# ÓRDENES EJECUTIVAS



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## Ordenes Ejecutivas

- Ante el impasse legislativo Presidente Trump Firma 1 Ordenes Ejecutivas y (3) Memorandos Presidenciales
  - 8 de agosto
- Descripción
  - Orden Ejecutiva 13945 - Deshaucios
  - MP 1 - Extensión de PUA
  - MP 2- Diferimiento de Contribuciones Patronales
  - MP 3 - Préstamos Estudiantiles



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## Que son Ordenes Ejecutivas

- Facultad concedida al Presidente para MANEJAR cuestiones gubernamentales
- No se supone afecten el presupuesto

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**MP 1 – Diferimiento de Patronal**

- Idea presentada por Presidente varias veces
- Aplica al 6.2%
  - De empleado solamente (Sec. 3101(a) del IRC)
  - No aplica a
    - 1.45% : Porción Medicare (Sec. 3101(b))
    - 6.2% y 1.45%: Porción Patronal (Sec. 3111 (a) y 9(b))
    - 12.4% y 2.9%: Cuentapropistas (Sec. 1401)



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**MP 1– Diferimiento de Patronal**

- Diferimiento de **1 de sept** al 31 de diciembre
  - Secretario del Tesoro lo debe tratar de condonar
  - Parece ser opcional
- Personas que se ganan \$4,000 bisemanal o menos
  - \$104,000 anual
  - "Pay-Period by Pay-Period"



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**Sec 2 Deferring Certain Payroll Tax Obligations** The Secretary of the Treasury is hereby directed to use his authority pursuant to 26 U.S.C. 7508A to defer the withholding, deposit, and payment of the tax imposed by 26 U.S.C. 3101(a) and so much of the tax imposed by 26 U.S.C. 3101 as is attributable to the rate in effect under 26 U.S.C. 3101(a), on wages or compensation, as applicable, paid during the period of September 1, 2020, through December 31, 2020, subject to the following conditions:

(a) The deferral shall be made available with respect to any employee the amount of whose wages or compensation, as applicable, payable during any bi-weekly pay period generally is less than \$4,000, calculated on a pre-tax basis, or the equivalent amount with respect to other pay periods.

(b) Amounts deferred pursuant to the implementation of this memorandum shall be deferred without any penalties, interest, additional amount, or addition to the tax.

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IRS Notice 2020-66

- Publicada 28 de agosto
- Affected Taxpayer
  - Employer
- Affected Taxpayer
  - No retiene entre **septiembre 1 y 31 de diciembre**
  - 1 de mayo comienza a acumular intereses
  - **Tiene que PAGARLO ENTRE ENERO 1 Y 30 DE ABRIL**
    - Puede tratar de cobrarlo al Empleado

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Secretary has determined that employers that are required to withhold and pay the employee share of social security tax under section 3102(a) or the railroad retirement tax equivalent under section 3202(a) are affected by the COVID-19 emergency for purposes of the relief described in the Presidential Memorandum and this notice (Affected Taxpayers). For Affected Taxpayers, the due date for the withholding and payment<sup>2</sup> of the tax imposed by section 3101(a), and so much of the tax imposed by section 3201 as is attributable to the rate in effect under section 3101(a), on Applicable Wages, as defined herein, (collectively Applicable Taxes) is postponed until the period beginning on January 1, 2021, and ending on April 30, 2021.

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<sup>2</sup>The deposit obligation for employee social security tax does not arise until the tax is withheld. Accordingly, by postponing the time for withholding the employee social security tax, the deposit obligation is delayed by operation of the regulations. Thus, this notice does not separately postpone the deposit obligation.

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Reacciones

- AICPA
- US Chamber of Commerce & Coalition

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AICPA

- August 12
- Concerns
  - Is Voluntary?
  - Eligible Employee is responsible for making election
  - Process of Making the Election
  - Guidance of Model Notice to Employees
  - Waiver Responsibility for Employer
  - Guidance of Eligible Uses

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US Chamber

- August 18
- Text:

If this were a suspension of the payroll tax so that employees were not forced to pay it back later, implementation would be less challenging. But under a simple deferral, employees would be stuck with a large tax bill in 2021. Many of our members consider it unfair to employees to make a decision that would force a big tax bill on them next year. It would also be unworkable to implement a system where employees make this decision. Therefore, many of our members will likely decline to implement deferral, choosing instead to continue to withhold and remit to the government the payroll taxes required by law. We hope Congress and the Administration come together on a path that supports workers instead of burdening hardworking Americans with a large tax bill next year.

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### Ahorro Diferido

Income	Bi-Weekly Pay	Increase Per Pay Period	Tax Bill Due in 2021 <small>(based on 9 pay periods)</small>
\$35,000	\$1,346.15	\$83.46	\$ 751.15
\$50,000	\$1,923.08	\$119.23	\$1,073.08
\$75,000	\$2,884.62	\$178.85	\$1,609.62
\$104,000	\$4,000.00	\$248.00	\$ 2,232.00

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### Retos

- Es solo un diferimiento
  - Cómo le cobro esto al empleado?
  - Qué hago empleados ya no trabajen allí?
- Garantizado por el Patrono
- Cuestionamiento Constitucional
- No beneficia personas no son empleados
- Táctica para Forzar Volver a Negociar

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### MP 2 - Extensión del PUA

- Pago Semanal de \$400
  - \$100 los paga el estado
- Duración
  - Hasta 6 de diciembre o
  - Se terminen los fondos
- Se pide por el Gobernador del Estado
  - Se supone usen los fondos de CRF para pareo
- Asignación Total \$44 billones
- Aplica a Territorios



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### MP 3 – Préstamos Estudiantiles

- Requiere tomar acción para proveer dispensas o modificaciones a planes de pago por los daños (“hardships”) causados por el COVID-19
- Quienes quieran seguir pagando lo pueden hacer



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### EO 13945 – Deshaucios

- Analizar si **son necesarias** medidas para temporariamente detener deshaucios residenciales
- Buscar fondos para arrendadores
- Promover la habilidad de inquilinos para evitar deshaucios
- Aplica a posesiones



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### Consecuencias

- Económicas
  - No atienden negocios
  - Pareo Estatal
    - Época de Huracanes
- Legales
  - Validez Legal de las Ordenes y Memorandos



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# HEROES V HEALS



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## Pago de \$1,200

- CARES:
  - Adelanto Planilla del 2020
  - \$1,200 Por Persona/\$2,400 Casado
  - \$500 por Dependiente
    - Menor de 16 años
- HEROES
  - Igual que Cares
  - \$1,200 por Dependiente
    - Incluye Otros Dependientes
- HEALS
  - Igual que Cares
  - \$500 por Dependiente
    - Incluye a Otros Dependientes



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## Pandemic Unemployment Assistance ("PUA")

- CARES
  - \$600 semanales
  - Programa Federal
  - Julio de 2020
- HEROES
  - \$600 semanales
  - Hasta 31 de enero 2021
- HEALS
  - Pago de \$200 hasta 30 de septiembre
  - Pago hasta \$500 hasta 31 de diciembre
    - Limitado 70% del salario



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### Employee Retention Credit ("ERC")

- CARES:
  - 50% de los primeros \$10,000
  - Por Trimestre
  - No pidió PPP
- HEROES:
  - 80% de los primeros \$45,000 / \$80,000
  - Eliminan exclusión de PPP
- HEALS:
  - 65% de los primeros \$30,000
  - Eliminan exclusión de PPP



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### Coronavirus Relief Fund ("CRF")

- CARES
  - \$150 billones
  - Puerto Rico \$2.2 billones
- HEROES
  - \$1 trillón
- HEALS
  - No pone más dinero
  - Flexibiliza su uso



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### Protección Legal

- CARES
  - N/A
- HEROES
  - N/A
- HEALS
  - Provee una protección legal a patronos, negocios, Sin Fines de Lucro y escuelas
  - Siguieron Protocolos
  - No fueron crasamente negligentes o actuaron con intención
  - Se extiende hasta
    - 1 de octubre de 2024
    - Termine la Pandemia



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### Paycheck Protection Program

- CARES
  - 2.5 meses de nómina
  - 8 o 24 Semanas para su Uso
  - Gastos Elegibles (nómina, renta, interés y utilidades)
  - 60% en nomina (antes era 75%)
- HEROES
  - Todas sin fines
  - Quita el 60%
  - Incluye como gasto Elegible equipo de protección
- HEALS
  - Más Flexible en el Tiempo
  - Incluyen Equipo Segunda Ronda



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### Segunda Ronda

- Solo en HEALS
- Préstamos de hasta \$2 millones
- 300 empleados o menos
- Demuestra una Reducción de 50% en ingresos brutos



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### Equipo de Protección - Credito

- CARES
  - N/A
- HEROES
  - N/A
- HEALS
  - 50% de los gastos elegibles
  - Gastos Elegibles
    - 1 - 500: \$1,000 por empleado
    - 500 - 1,000: \$750 por empleado
    - Más de 1,000: \$500 por empleado



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**ÓRDENES DE CIERRE  
("LOCKDOWNS")**

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**Caso de Newsom**

- South Bay United Pentecostal Church v. Newsom, 590 US \_\_\_\_ (2020)
  - May 29, 2020
- Newsom es el Gobernador de California
  - Orden Ejecutiva de Cierre
  - Iglesias 25% → Máximo 100 personas
  - Aplicaba a conciertos, cines, teatros, eventos deportivos
  - Excluye venta de comida, bancos y limpieza de ropa ("laundries")
  - Iglesia dice es inconstitucional y piden un interdicto "injunction" para quitarla
- Supremo NO concede el interdicto

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**Decisión**

- Mayoritaria (5 votos)
  - Nuestra constitución delega la función de defender y proteger ("to guard and protect") la seguridad y salud de la gente ("the Safety and the Health of the people") en los funcionarios políticos que son políticamente responsables ("politically accountable officials")
    - Jacobson v. Massachusetts, 197 US 11 (1905)
  - Se da mayor amplitud en cuestiones de incertidumbres médicas y científicas
    - Marshall v. US, 414 US 417 (1974)
  - Restricción aplica a otras entidades no seculares similares

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**Decisión**

- Minoritaria (4 votos)
  - En la medida que otros negocios si puede abrir, se esta penalizando a la institución religiosa
  - Se les debe eximir de la aplicación

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