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Employee benefit changes under the CARES Act: What employers need to know

The Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law by the President on March 27, 2020 to provide much-needed relief with respect to the COVID-19 crisis.

The following are key employee benefit provisions that employers should know.

Qualified retirement plans

Plan loans to qualified individuals

Maximum loan amount increases

The CARES Act permits a plan to increase temporarily the limit on plan loans to qualified individuals to (i) \$100,000, or (ii) 100% of the participant's vested account balance. This increase is permitted for loans granted during the 180-day period after the date of enactment, i.e., until September 23, 2020.

Extension of loan repayment date

With respect to plan loans to qualified individuals that are outstanding on or after March 27, 2020, any loan repayment dates scheduled from March 27, 2020 through December 31, 2020 may be delayed for one year. Interest will continue to accrue during the delay period and subsequent loan payments will be adjusted to reflect the increased interest due. The Act provides that the extension of payment dates under the CARES Act will be disregarded in determining compliance with the maximum 5-year loan term under the Internal Revenue Code. Additional guidance is needed to determine the impact of any home purchase loan repayment period.

Coronavirus distributions to qualified individuals

The CARES Act allows a plan to permit coronavirus distributions to be made to qualified individuals on and after January 1, 2020 and before December 31, 2020 in an amount up to \$100,000 without imposition of the 10% early distribution penalty. Based on the language of the Act, coronavirus distributions are not permitted on December 31, 2020. This may be addressed in technical corrections to the Act.

The provision applies to eligible retirement plans (including 401(k) plans, 403(b) plans, 457(b) plans maintained by governmental entities, and individual retirement accounts (IRAs)). The \$100,000 is an aggregate limit that applies to distributions from all plans for an employee. However employers need only consider those plans maintained by the employer (and any member of any controlled group that includes the employer) to determine compliance with the dollar limit.

A recipient of a coronavirus distribution is permitted to make repayment contributions to an eligible retirement plan within three years after such distribution without regard to any annual limitation on contributions. Note that the repayment contributions need not be made to the eligible retirement plan making the coronavirus distribution.

A coronavirus distribution is included in income over a three-year period beginning in the year of the distribution unless the recipient elects earlier taxation, or to the extent the recipient makes a repayment contribution. A coronavirus distribution is not subject to the 20% withholding rate that otherwise applies to distributions that are eligible for rollovers.

Qualified individuals

For purposes of plan loans and coronavirus distributions, a qualified person includes a person:

- Who is diagnosed with COVID-19 by a CDC-approved test;
- Whose spouse or dependent is diagnosed with COVID-19 by a CDC-approved test;
- Who experiences adverse financial consequences as a result of:
 - being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19
 - 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 determined by the Secretary of the Treasury.

A plan administrator may rely on an employee's certification that he or she satisfies one of the above qualifications.

Waiver of minimum funding rules for 2020

The CARES Act waives required minimum distributions that would otherwise be required to be made in 2020 from 401(k) plans, 403(b) plans, 457(b) plans maintained by governmental entities and IRAs. The waiver also delays any distributions that would otherwise be due to beneficiaries due to the five year rule

Amendments

Employers will want to determine soon whether to implement any or all of the newly permitted provisions relating to plan loans, coronavirus distributions and the waiver of the minimum funding rules. Plan amendments reflecting the implementation of the CARES Act relief are not required, however, until the last day of the first plan year beginning on or after January 1, 2022 (i.e., December 31, 2022 for calendar year plans), or such later date as the Secretary of the Treasury may prescribe. Governmental plan sponsors have until the end of the 2024 plan year to amend their plans.

Single employer defined benefit plan funding

The CARES Act permits a delay in the payment of minimum required contributions due in 2020 to January 1, 2021. The delayed payment must include interest from the original due date of the minimum required contribution.

The CARES Act also permits a defined benefit plan to use the adjusted funding target attainment percentage (AFTAP) for the last plan year ending before January 1, 2020 for plan years which include calendar year 2020, for purposes of determining whether the benefit limitations under Internal Revenue Code 436 (i.e., benefit limitations imposed due to the underfunded status of the plan) apply.

Welfare plans

Expansion of covered preventive services

The CARES Act requires group health plans and insurance issuers offering group or individual health insurance to cover, without cost-sharing, any qualifying coronavirus preventive services. A qualifying coronavirus preventive service includes an item, service, or immunization that is intended to prevent or mitigate COVID-19 and that is:

- an evidence-based item or service that has a rating of "A" or "B" in the current recommendation of the U.S. Preventive Services Task Force; or
- an immunization that has a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved.

The coverage of the preventive service or vaccine must be effective no later than 15 business days after the date the preventive service is recommended by the applicable agency. Ordinarily, there is at least a one-year lag time between the recommendation of the agency and the requirement to cover a preventative service without cost-sharing.

The CARES Act also expands the diagnostic testing for COVID-19 that must be provided, without cost, to include diagnostic tests performed in vitro subject to certain conditions.

Telehealth and remote care services

For plan year beginning on or before December 31, 2021, a health plan shall not fail to be a high-deductible health plan because telehealth and remote care services are not subject to the plan's deductible requirements. This means a plan participant's ability to make health savings account contributions is not adversely affected by the coverage of such services on a first-dollar basis.

Expansion of over-the counter treated as medical expenses

The CARES Act amends the Internal Revenue Code to permit individuals to obtain reimbursement from health savings accounts, flexible benefit plans, health reimbursement accounts and Archer Medical Savings Account, for expenses incurred for over-the-counter medical products purchased without a prescription, reversing a restriction imposed by the Affordable Care Act. In addition, participants may be reimbursed from such accounts for expenses incurred for menstrual products.

Other relevant provisions

Employer assistance with student loan debt

The CARES Act expands the definition of educational assistance that can be provided to an employee on a tax-free basis to include a payment by an employer of the principal or interest on the employee's student loan, provided that such payment is made before January 1, 2021. The payment, together with any other educational assistance provided to the employee for 2020, cannot exceed \$5,250. The payment can be made to the employee or directly to the lender.

Department of labor authority to postpone deadlines

The Act permits the Department of Labor (DOL) to provide an extension of compliance deadlines in the event of a public health emergency, as determined by the Secretary of Health and Human Services. We will keep you posted of any such postponements.

We understand how extremely difficult it is for employers to respond and react to the daily challenges presented by the COVID-19 crisis. We stand ready to assist you in any way possible. Please contact us if you have questions relating to this alert or the scope of relief provided under other provisions of the CARES Act.

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