

CARES Act Impact on Employee Benefits and Compensation

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April 3, 2020

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), the third phase of emergency relief passed by Congress in response to the coronavirus pandemic. The CARES Act includes relief measures for workers and employers that impact employee benefit and compensation arrangements, and which may require employers to take certain administrative actions. Below is an overview of the CARES Act provisions affecting various types of employee benefit and compensation arrangements.

Note that this Advisory does not address the CARES Act provisions specific to air carriers and charitable employers.

Qualified Retirement Plans

Coronavirus-related Distributions. Eliminates the 10% early withdrawal penalty on up to \$100,000 in coronavirus-related distributions from eligible retirement plans for qualifying individuals.

A "qualifying individual" is an individual (a) who is diagnosed with COVID-19 or the virus that causes COVID-19 by a CDC approved test; (b) whose spouse or dependent is diagnosed with such virus or disease by such a test; or (c) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors determined by the Secretary of the Treasury.

Coronavirus-related distributions will be included in the participant's income ratably over a period of three years unless the participant elects to have such distributions fully taxed in the year of receipt. Coronavirus distributions will not be subject to mandatory 20% withholding applicable to eligible rollover distributions. Recipients can repay coronavirus-related distributions to an eligible retirement plan in one or more installments within three years following distribution, and such contributions will be treated as rollover contributions.

The deadline for adopting plan amendments to implement coronavirus-related distributions is generally the last day of the first plan year beginning on or after January 1, 2022.

Plan Loan Relief:

- **Increase in Plan Loan Limits.** The limit on loans from qualified retirement plans to qualifying individuals (as defined above) during the 180-day period beginning on March 27, 2020 is

increased to the lesser of (a) \$100,000 and (b) the greater of (i) 100% of the participant's vested accrued benefit and (ii) \$10,000.

- **Delay in Plan Repayments.** Imposes a 1-year delay on plan loan repayments by qualifying individuals (as defined above) that would otherwise be due during the period beginning on March 27, 2020 and ending on December 31, 2020, with corresponding adjustments to any subsequent repayment schedule, including the mandatory 5-year repayment requirement.

If an employer would like to allow for the above plan loan relief, it should review plan documents to confirm that loans are permitted and, if so, to consider revising any limits on the number of plan loans that would prevent participants from borrowing up to the new maximum amount.

Waiver of Required Minimum Distributions. Waives the application of the required minimum distributions rules to 401(k) plans, 403(b) plans, governmental 457(b) plans, individual retirement annuities and individual retirement accounts for 2020.

Defined Benefit Plan Funding Relief:

- **Delay in Minimum Required Contributions.** Allows single-employer defined benefit plans to delay minimum required contributions that would otherwise be due in 2020 until January 1, 2021.
- **Funding Percentage Relief.** Allows single-employer defined benefit plans to apply their 2019 plan year annual funding percentage to the 2020 plan year in order to avoid becoming subject to benefit accrual and distribution limitations.

Employer Student Loan Assistance

Student Loan Relief. Allows employers to provide up to \$5,250 in tax-exempt student loan repayment assistance under a Section 127 Educational Assistance Program between March 27, 2020 and December 31, 2020.

Health and Welfare Arrangements

Coverage of Diagnostic Testing for COVID-19. Amends the Families First Coronavirus Response Act to clarify that all testing for COVID-19 is to be covered by private insurance plans without cost sharing, even if it involves a test that does not have an emergency use authorization from the Food and Drug Administration.

Pricing of Diagnostic Testing for COVID-19. Provides that, for COVID-19 testing covered at no cost to patients, an insurer must pay either the rate specified in a contract between the provider and the insurer, or, if there is no contract, a cash price posted by the provider.

Coverage of Preventive Services and Vaccines for COVID-19. Requires group health plans to provide free coverage without cost-sharing within 15 days of a COVID-19 preventive item, service or immunization meeting certain minimum federal recommendation standards.

Health Savings Accounts for Telehealth Services. Allows a high-deductible health plan ("HDHP") with a health savings account ("HSA") to cover telehealth services prior to a patient reaching the HDHP deductible.

HSA and FSA Payment of Over-the-Counter Medical Products. Allows patients to use funds in HSAs and Flexible Spending Accounts (“FSAs”) for the purchase of over-the-counter medical products, including those needed in quarantine and social distancing, without a prescription from a physician. Such funds may also be used to purchase menstrual care products, including tampons, pads, liners, cups, sponges and similar products.

ERISA

DOL Discretionary Authority to Postpone Deadlines. Provides the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.

HIPAA

HIPAA Rules Continue to Apply. While the CARES Act directs the Department of Health and Human Services to issue regulations addressing the treatment of protected health information during the pandemic, employers sponsoring medical plans currently continue to be subject to the usual Health Insurance Portability and Accountability Act (“HIPAA”) rules covering protected health information.

Executive Compensation

Limitations on Certain Employee Compensation. Businesses receiving loans pursuant to the CARES Act are prohibited from (i) increasing compensation for officers and employees who received more than \$425,000 in compensation in 2019, (ii) offering severance benefits to such employees in excess of two times their 2019 pay, and (iii) paying more than a specified amount to employees who made more than \$3,000,000 in 2019.

Employers wishing to adopt any of the optional revisions under the CARES Act should be sure to contact their third-party administrators to determine to what extent such service providers will support the above described changes for qualified retirement plans and health and welfare arrangements.

The employee benefit and compensation arrangements affected by the CARES Act may be subject to further changes based on additional Congressional and/or regulatory action. As such, we will continue to monitor these items and keep you updated on the latest developments.

If you have any questions about the CARES Act provisions affecting employee benefit and compensation arrangements, please contact a member of our [Employee Benefits Group](#).

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