

Employee Benefits Related Provisions of the CARES Act

March 31, 2020

On March 27, 2020, President Donald Trump signed the \$2 trillion Coronavirus Aid, Relief, and Economic Security Act (the “Act”). The following is a summary of certain key provisions of the Act impacting employee benefits:

Access to Retirement Funds

The Act allows a “qualified individual” to take distributions of up to \$100,000 from an eligible retirement plan, such as a 401(k) plan or an IRA, between January 1, 2020, and December 31, 2020, without incurring the 10-percent early withdrawal penalty that would otherwise apply to distributions prior to age 59-1/2. A qualified individual is an individual who (i) has been, or whose spouse or dependent has been, diagnosed with COVID-19, or (ii) has experienced adverse financial consequences due to COVID-19 as a result of being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of child care, or closing or reducing hours of a business owned or operated by the qualified individual. Plan administrators may rely on an employee’s certification that the employee satisfies the conditions for such a distribution.

These distributions will continue to be taxable to participants, but the income will be spread ratably over three years unless the participant elects to include it all in the year of distribution. The participant may, but is not obligated to, recontribute the funds to an eligible retirement plan within three years as a rollover contribution.

Plan sponsors should note that these distribution provisions are not required. If a plan sponsor elects to allow these distributions, the plan must be amended no later than the last day of the plan year beginning on or after January 1, 2022 (which would be December 31, 2022 for calendar year plans).

Plan Loans

The Act increases the maximum amount that a qualified individual (defined above) may borrow from the individual’s retirement account to \$100,000 (or 100% of the individual’s account balance, if less) for 180 days from the date the Act is enacted. As with the distribution provisions discussed above, plan sponsors are not required to adopt this change. If a plan sponsor elects to allow increased loan amounts, the plan must be amended no later than the last day of the plan year beginning on or after January 1, 2022.

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The Act further provides a one-year extension of time to repay a plan loan if the due date occurs between the date the Act is enacted and December 31, 2020. Remaining payments, plus applicable interest, will be re-amortized over the extended period. This change appears to be automatic and cannot be rejected by the plan sponsor.

Temporary Waiver of Required Minimum Distributions

The Act allows plans to suspend required minimum distributions in 2020. This suspension would also apply to participants who turned age 70-1/2 in 2019 and had not yet received their 2019 distribution.

Exclusion for Employer Payments of Student Loans

The Act allows employers to contribute up to \$5,250 annually toward an employee's student loans on a pre-tax basis from the date the Act is enacted through the end of 2020. The \$5,250 cap applies to both the new student loan repayment benefits as well as other educational assistance (such as tuition, fees and books) provided by the employer under current law.

Coverage of Testing and Preventative Services

The Act requires that all testing for COVID-19 must be covered by private insurance plans without cost sharing, including those tests without an Emergency Use Authorization by the FDA. The Act further provides that, with respect to COVID-19 testing covered at no cost to patients, an insurer must pay a provider 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. The Act also mandates free coverage without cost-sharing of a vaccine for COVID-19 that has a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force or a recommendation from the Advisory Committee on Immunization Practices (ACIP).

Health Savings Accounts for Telehealth Services

The Act allows high-deductible health plans to cover telehealth services prior to satisfaction of a participant's deductible, ensuring that participants covered by such plans will continue to be eligible to contribute to their Health Savings Accounts.

Over-the-Counter Medical Products Without Prescription

The Act allows patients to use funds in Health Savings Accounts and Health Flexible Spending Arrangements for the purchase of over-the-counter medical products, including those needed in quarantine and social distancing, without a prescription from a physician.

Single-Employer Plan Funding Rules

The Act provides sponsors of single-employer pension plans with additional time to satisfy their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions previously due would be due with interest. The Act also provides that a plan's status for benefit restrictions as of December 31, 2019, will apply through December 31, 2020.

If you have questions regarding these developments, please contact a member of our Labor, Employment & Benefits team.

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