

CARES Act -- New Employee Benefit Tools to Support Affected Employees

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03.27.2020

Signed by President Trump on March 27, 2020, the CARES Act adds a few new tools to employers' employee benefit arsenal. Many changes – such as the increase in plan loans limits and hardship distribution conditions – expand longstanding benefits concepts. However, other changes – such as the availability of federal loans, that may be forgiven, to cover payroll costs and tax-free employer student loan payments – introduce new concepts and new opportunities for employers.

Forgiveness of Loans Used for "Payroll Costs"

The CARES Act allows certain business to take advantage of the Small Business Administration 7(a) Loan Program to address their working capital needs during this time of uncertainty. These loans may be used to cover "payroll costs," which specifically includes retirement plan contributions like employer matching obligations. Loan proceeds used for payroll costs also are eligible for partial or full forgiveness, so long as certain conditions are met. These loans may obviate the need for employers to consider reducing or eliminating retirement plan matching obligations.

COVID-19 Hardship Distributions – Penalty-Free / Repayments / 3-Year Taxation

The CARES Act suspends the additional 10% penalty tax on early distributions from defined contribution plans, such as 401(k) plans, for coronavirus-related distributions. The distributions can be as much as \$100,000 and can be repaid to the plan in single or multiple payments. Amounts not repaid are taxed either over a three-year period or in a single year at the election of the taxpayer. To be a "coronavirus-related" hardship distribution the taxpayer or the taxpayer's family must be diagnosed with COVID-19 or must experience adverse financial impact due to furlough or similar lack of paid resulting from the community's

virus avoidance measures. Employers can rely on employees' self-certification regarding financial hardship to qualify this new type of hardship distribution. These new coronavirus-related hardship distributions are available for any qualifying hardship distribution made during 2020 calendar year.

New Plan Loan Amounts and Relaxed Loan Repayment Rules

Defined contribution plans are now, for a 180-day period that began when the law was signed, allowed to increase the maximum plan loan to \$100,000, up from the previous \$50,000. In addition, employers are allowed to suspend loan repayments through the end of the year for plan participants adversely impacted by the coronavirus. The deferred loan payments can extend for one year and will continue to accrue interest during the suspension period.

Suspension of Required Minimum Distributions for 2020

The CARES Act also suspends required minimum distributions in 2020 from defined contributions plans, which otherwise would have to be made by April 1. Without this suspension, plan participants must take a distribution based on their plan account value as of December 31, 2019. Given the recent market fluctuation, those distributions would substantially impact plan balances. That said, amounts distributed in 2020 that would have been required minimum distributions but for this law change will not be treated as eligible rollover distributions and are not subject to automatic 20% withholding.

Income Exclusion for Student Loan Payments

The CARES Act also added a new income exclusion for employer payments of employee student loan obligations. This provision expands Code Section 127 to create an exclusion for student loan payments made during the remainder of 2020 by an employer to either to a lender or directly to an employee to cover qualifying education loan payments.

Amending the Plan to Incorporate these Changes

Employers can begin using these new tools now, but must amend their plans for those changes impacting tax-qualified retirement plans in order to formally implement these changes in law. In the interim, the CARES Act extends the deadline for making those amendments to 2022 for most plans, and to 2024 for governmental plans, so long as the plan is administered as if the amendment is in effect and any amendment is retroactive. We suggest plan sponsors act quickly to ensure their plans are being operated in accordance with these changes in law.

Expect IRS Guidance

As with any legislative action, especially those passed in emergency circumstances, there will be a host of practical implementation and administrative questions. We expect the IRS will issue much-needed guidance in



the days ahead. In the meantime, please reach out to Jim Rourke or Mike Brittingham with any questions.

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