

CARES ACT EXPANDS U.S. RETIREMENT PLAN ACCESS AND PROVIDES ADDITIONAL RELIEF AND CHANGES TO EMPLOYER-PROVIDED BENEFITS

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The Coronavirus, Aid, Relief and Economic Security Act ("CARES Act") provides legislative relief to participants impacted by the Coronavirus pandemic. A summary of key provisions of the CARES Act, based on the current draft, is included below. These provisions are, of course, still subject to approval by both houses of Congress and the President's signature.

PROVISIONS APPLICABLE TO RETIREMENT PLANS

CORONAVIRUS-RELATED DISTRIBUTIONS

Tax-favored coronavirus-related distributions ("CRD's) which do not exceed \$100,000 will not be subject to the 10% early distribution tax. A CRD means any distribution from a plan made on or after January 1, 2020 and before December 31, 2020 to an individual who is one of the following:

- An individual who is diagnosed with COVID-19 or SARS-CoV-2;
- An individual whose spouse or dependent is diagnosed with COVID-19 or SARS-CoV-2; or
- An individual who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, experiencing a reduction of work hours, inability to work due to lack of child care caused by COVID-19 or SARS-CoV-2, the closing or reduction of hours by a business owned or operated by such participant due to COVID-19 or SARS-CoV-2, or other factors determined by the Treasury Secretary.

Notably, the plan administrator may rely on the individual's certification that he/she has experienced a CRD. Tax on the CRD shall, unless the individual elects to the contrary, be spread pro-rata over a three year period. The individual may repay the CRD to the plan without regard to contribution limits over the subsequent three-year period which begins on the date following the distribution.

PLAN LOANS

The CARES Act expands access to plan loans for “qualifying individuals,” a group defined to include only those individuals who qualify for a Coronavirus-Related Distribution (described above). The maximum loan that can be taken is increased to the lesser of \$100,000 or 100% of an individual’s vested account balance. This limit is double the current limit of the lesser of \$50,000 or 50% of an individual’s vested account balance. In addition, qualifying individuals with outstanding loan balances on or after the date of enactment may be allowed to delay loan repayments for up to one year without regard to the five-year repayment period. In the event of such a delay, subsequent payments would be adjusted to reflect interest for the period of delay and the term of the loan would be extended accordingly.

OTHER RELIEF

The required minimum distribution requirements are waived with respect to distributions which should have been made in 2020 with respect to a required beginning date that occurs in 2020.

Minimum contributions to single employer plans which would be due in 2020 shall be due (with adjustments for interest) January 1, 2021.

EFFECTIVE DATE AND AMENDMENT OF PLAN

This relief is available as of the effective date of the CARES Act. The plan does not need to be amended to reflect this relief until the last day of the first plan year commencing on or after January 1, 2022; however, the plan must be operated as if the amendment was in effect.

ADDITIONAL PROVISIONS

EMPLOYER-PAID STUDENT LOAN RELIEF

The CARES Act amends Code Section 127 to permit employees to exclude up to \$5,250 in employer-paid student loan principal and interest from income in 2020. Employers may make the payments directly to an employee or to the lender under an educational assistance program established by the employer under Code Section 127. Eligible student loans include any “qualified education loan” as defined in Code Section 221(d)(1) used for the employee’s education. This provision is effective on the date the CARES Act is enacted and applies to payments made prior to January 1, 2021.

PAYMENT OR REIMBURSEMENT OF EXPENSES FOR MENSTRUAL CARE PRODUCTS UNDER HEALTH SAVINGS ACCOUNTS AND FLEXIBLE SPENDING ACCOUNTS

The CARES Act amends Code Sections 106 and 223 to permit individuals to be reimbursed by a health care flexible spending account for the amounts paid for menstrual care products or to make payments from a health savings account for menstrual care products. A new definition is added to Code Section 223(d)(2)(D) for eligible “Menstrual care products,” which are defined to include tampons, pads, liners, cups, sponges, or similar products used by individuals with respect to

menstruation or other genital-tract secretions. These provisions are effective for menstrual care products purchased after December 31, 2019.

Employers should review their flexible spending plans and health plans for updates required to enact this change.

CHANGES TO COVID-19 DIAGNOSTIC TESTING REQUIREMENTS FOR MOST GROUP HEALTH PLANS

The Families First Coronavirus Response Act (“FFCRA”) enacted last week included a mandate for most group health plans and group insurance coverage to cover COVID-19 diagnostic testing without any cost sharing or prior authorization or other medical management restrictions.

The CARES Act includes changes to this requirement to include additional items in the definition of “in vitro diagnostic tests” subject to the coverage mandate. The expanded definition also includes tests that:

- are approved, cleared, or authorized under section 510(k), 513, 515, or 564 of the Federal Food, Drug, and Cosmetic Act,
- the developer has requested, or intends to request, emergency use authorization from the Federal Drug Administration unless and until the emergency use authorization has been denied or the developer does not submit the test within a reasonable time frame;
- are developed in and authorized by a state and the state has notified the Secretary of Health and Human Services of its intention to review COVID-19 diagnostic tests; or
- the Secretary of Health and Human Services determines is appropriate in future guidance.

The CARES Act also includes additional provisions related to COVID-19 diagnostic testing and treatment:

- **Reimbursement Requirements for COVID-10 Diagnostic Testing.** Group health plans and insurance issuers must reimburse providers for the diagnostic testing covered under the FFCRA in an amount equal to either (i) the reimbursement rate the plan or issuer had in effect before the public health emergency declared on January 31, 2020, or (ii) if no negotiated rate was in place on that date, the cash price for the service as listed by the provider on a public website or a lesser negotiated cash price.
- **Published COVID-19 Diagnostic Testing Prices.** Providers of COVID-19 diagnostic tests are required to publish the cash price for the test on a public website maintained by the provider.
- **Accelerated Coverage of COVID-19 Preventive Services.** The CARES Act directs the Secretaries of the Department of Health and Human Services, Department of Labor, and the Treasury to

require group health plans and health insurance issuers to cover, without cost-sharing, “qualifying coronavirus preventive services” (defined to include items, services, or immunizations intended to prevent or mitigate COVID-19) within 15 business days after a United States Preventive Services Task Force “A” or “B” recommendation or a recommendation by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. The 15-day coverage requirement shortens the delay between the coverage recommendation and the effective date of coverage that normally applies under the Affordable Care Act.

EXPANDED ACCESS TO TELEHEALTH IN 2020 AND 2021

The CARES Act amends Code Section 223(c) to permit high deductible health plans to cover telehealth and other remote care services without a deductible without failing to qualify as high deductible health plans for purposes of an individual’s health savings account eligibility. The services must be provided in a plan year beginning on or before December 31, 2021. This provision is effective on the date the CARES Act is amended.

Employers desiring to provide this benefit will need to review their plans and make any necessary amendments.

RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation

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