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CARES Act Provisions Affecting Employee Benefits

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), a bipartisan deal on a $2+ trillion stimulus package intended to aid businesses, workers and health care systems engulfed by the coronavirus pandemic. In addition, the IRS, DOL, and Department of Treasury have issued guidance with respect to the CARES Act and its provisions. The following is a general overview of the key provisions of the CARES Act, as clarified by agency guidance, as it relates to employee benefits. Please note that this is a new law and agency guidance is continuing to be issued, therefore you should see advice of counsel with respect to these issues.

Health and Welfare Provisions

First Dollar Coverage Safe Harbor for Telehealth Benefits. The CARES Act provides a safe harbor for health savings accounts (HSAs) paired with high-deductible health plans (HDHPs). This safe harbor allows HSA-qualifying HDHPs to cover telehealth and other remote care services on a pre-deductible basis until the end of the 2021 plan year. *This is a mandatory provision.*

Expansion of Qualified Medical Expenses for Tax Advantaged Health Accounts. The CARES Act expands the definition of a qualified medical expense for purposes of tax advantaged health accounts (e.g., HSA, flexible spending arrangements (FSAs), health reimbursement arrangements (HRAs), and Archer medical savings accounts (Archer MSAs)) to include menstrual care products paid for after December 31, 2019. *This is a mandatory provision.*

Other Provisions. The Act further expands coverage of any COVID-19 testing, vaccine, and/or treatment by group health plans and directs the Secretary of the Department of Health and Human Services (HHS) to issue guidance on the sharing of protected health information during the pandemic.

Retirement Plan Provisions (A plan may, but is not required to, adopt any or all of these provisions)

Defined Benefit Plan Funding Relief. The CARES Act allows plan sponsors to delay minimum required contributions due during 2020 to January 1, 2021, provided interest will accrue for the period between the original due date and the payment date. As a result, those contributions attributable to 2019 but that are due in 2020 may be delayed; however, it does not appear that those amounts due for 2020 (but that must be contributed in 2021) may be delayed.

Coronavirus-Related Distribution. The CARES Act allows Qualified Individuals (see below) participating in eligible retirement plans (such as an IRA, 401(k), 403(b), 457(b), or other defined contribution plan) to take distributions from January 1, 2020 to December 31, 2020 of up to $100,000 without incurring the 10% early distribution excise tax that would otherwise apply to distributions made prior to age 59 ½. It appears that this distribution provision is also available to a defined benefit plan. The CARES Act also allows the coronavirus-related distribution to be repaid to an eligible retirement plan within three years, with such repayment being treated as a rollover contribution, provided the plan accepts rollover contributions. A plan that does not accept rollover contributions is not required to change its provisions to accept rollover contributions in order to accept repayment of coronavirus-related distributions. Any amount required to be included in gross income will be included ratably over a three-year period beginning in the year in which the individual received the distribution, unless the participant elected to have it taxed in the year of distribution. If a participant elects to repay a coronavirus-related distribution, the distribution will be treated as though it were repaid in a direct trustee-to-trustee transfer, such that there is no 20% mandatory withholding applicable to the distributions.

The coronavirus-related distribution is only available to (i) a participant, spouse or dependent who has been diagnosed with the virus; and (ii) a participant who has experienced adverse financial consequences resulting from a reduction in work hours; been laid off, quarantined, or furloughed; or is unable to work due to lack of childcare on account of the virus ("Qualified Individual"). Employers and plan administrators may rely on a certification from the Qualified Individual that he or she meets these criteria unless the plan administrator has actual knowledge to the contrary.

Increased Plan Loan Limits. With respect to Qualified Individuals, the CARES Act temporarily increases the dollar amount available for loans from qualified plans to the lesser of $100,000 (minus any outstanding loans) or the individual's vested benefit under the plan, starting on March 27, 2020 to September 22, 2020. The CARES Act further increases the percentage test limit for plan loans from 50% of the participant's account balance to 100% of the participant's account balance.

Delayed Loan Repayments. With respect to Qualified Individuals, for any plan loan outstanding on or after March 27, 2020 with repayments due during such dates, repayments may be delayed for one year from the original payment date if the date occurs between the date the CARES Act is enacted and December 31, 2020. The one-year extension also extends the five-year term limit with respect to any extended loan payment that extends beyond five years from the original date of the loan. Any subsequent repayments, plus applicable interest, will be reamortized over the extended period.

Required Minimum Distributions. The CARES Act allows defined contribution plans (specifically, 403(a) plans, 403(b) plans, and 457(b) plans, as well as IRAs) to suspend making required minimum distributions to any individuals who would otherwise be required to receive a required minimum distribution in 2020. This suspension would also apply to individuals who turned age 70 ½ in 2019 and had not yet received their 2019 required minimum distribution.

With respect to Section 2202 of the CARES Act which provides for special distribution options and rollover rules as well as expands permissible loans, the IRS has stated that it intends to issue guidance similar to the guidance issued in 2005 for distributions related to the Hurricane Katrina disaster.

The CARES Act delays the due date for amendments to plans related to the CARES Act provisions, so long as the plan is operated as if the amendment is in effect and any subsequent writing is retroactive, as follows:

- Amendments need only be made by the last day of the plan year beginning on or after January 1, 2022 (i.e., for calendar plan years, by December 31, 2022); and
- In the case of governmental plans, that date is the last day of the plan year beginning on or after January 1, 2024 (i.e., for calendar plan years, by December 31, 2024).

Other Employee Benefit Provisions

Student Loans. Employers are permitted to make student loan repayments during 2020 pursuant to an educational assistance program on behalf of their employees, provided such payments are made prior to January 1, 2021. These amounts would not be taxable to the employee provided the employer's educational assistance program otherwise meets the requirements of Code Section 127, and the employee would be prohibited from claiming a student loan interest deduction on their taxes for these amounts.

Payroll Taxes. The CARES Act provides certain employers with a refundable payroll tax credit on wages paid up to $10,000 during the pandemic. The credit will be available to employers whose businesses were disrupted due to virus-related shutdowns and those that had a decrease in gross receipts of 50% or more when compared to the same quarter last year. The credit can be claimed for employees who are retained but not currently working due to the crisis for businesses with more than 100 employees, and for all employee wages for businesses with 100 or fewer employees.

Additionally, employers are permitted to delay the payment of the employer's share of the Social Security payroll tax due for the remainder of the year and pay back the liability as follows: 50% due on December 31, 2021, and 50% due on December 31, 2022.

Unemployment Insurance. The CARES Act includes an additional $600 per week payment to each unemployment insurance (UI) recipient for up to four months, and extend UI benefits to self-employed workers, independent contractors, and those with limited work history. The federal government will provide temporary full funding of the first week of regular unemployment for states with no waiting period and extend UI benefits for an additional 13 weeks through December 31, 2020 after state UI benefits end.

Families First Coronavirus Response Act. The CARES Act provides a few clarifications and makes modest changes to the Family Medical Leave Act provisions in the previous Families First relief package Employers Take Note of the CARES Act: More Paid Sick and Family Leave Legislation in Response to Coronavirus

This legal update reflects guidance as of this date and does not reflect any changes in guidance that occur thereafter.

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