Coronavirus Stimulus Deal’s Impact on Employee Benefit Plans

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On March 27th, Congress passed a stimulus package in response to the Coronavirus/COVID-19 pandemic. The package, which is entitled the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act” or the “Act”), contains several provisions that affect employee benefits.

Retirement Plans

- Early “Coronavirus-Related Distributions”: The CARES Act allows plans to offer “coronavirus-related distributions” up to $100,000 (from all plans in the controlled group combined). These distributions would be taken into income over three years (unless the participant elects otherwise) and are not subject to the 10% additional tax for withdrawal before age 59 ½. To qualify, the distribution must be taken during 2020 (before December 31st), and the participant must (i) have been diagnosed or have a spouse or dependent who was diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC, or (ii) have experienced “adverse financial consequences” as a result of being quarantined, furloughed, laid off, unable to work due to lack of child care, experiencing a closing or reduction of hours of a business owned by the

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individual, or other factors determined by the Secretary of Treasury. Similar to other recent qualified disaster relief and the adoption expense provision in the SECURE Act, these distributions may be repaid within three years after the distribution.

- **Increased Loans from Qualified Plans**: The Act also increases the limit on loans from qualified employer plans from $50,000 to $100,000 if the individual is a “qualified individual” (meaning someone who meets the requirements for a coronavirus-related distribution, as described above). The qualified individual’s full vested balance (rather than the usual cap of one-half of the balance) is available for this loan. In addition, the Act delays by one year the deadline for qualified individuals to make loan repayments that are otherwise due between the date of enactment and December 31, 2020. Unlike suspension of payments for other leaves, a suspension under the Act will extend the maximum permitted term of the loan (5 years for non-residence loans).

- **Waiver of Required Minimum Distributions (“RMDs”)**: The Act allows a temporary waiver for defined contribution plan RMDs that would otherwise have to be paid for calendar year 2020. The delay is available for section 401(a), 403(a), 403(b), and governmental 457(b) plans (in each case defined contribution only) and IRAs.

- **Plan Amendments**: A plan sponsor could adopt the above changes immediately, but it will eventually need to adopt plan amendments to reflect the changes. The deadline to adopt the amendments is extended to December 31, 2022 (or, for non-calendar year plans, the end of the plan year that starts in 2022). For governmental plans, amendments reflecting the RMD change may be adopted as late as the end of the 2024 plan year.

- **Single-Employer Defined Benefit Funding Relief**: The CARES Act allows sponsors of single-employer defined benefit plans to delay payment of minimum required contributions for calendar year 2020. Delayed contributions must be made with interest by January 1, 2021. A plan sponsor also has the option under the Act to use the plan’s adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 as the percentage for plan years which include calendar year 2020.

**Health Plans**

- **Expansion of Tests Covered under Families First Act**: The CARES Act amends the recent Families First Coronavirus Response Act (the “FFCRA”), which was discussed in a previous blog, to expand the types of SARS-CoV-2 and COVID-19 tests that group health plans and health insurance issuers must cover without cost-sharing, prior authorization, and other medical management requirements. The new tests to be covered include tests for which the developer has requested “emergency use authorization” under the Federal Food, Drugs, and Cosmetics Act and tests authorized and used by a state to diagnose patients.

- **Transparency in Pricing of Tests**: The Act generally requires providers to publicize the prices of COVID-19 tests. Plans and issuers paying for the tests
under the FFCRA then have to reimburse the provider in accordance with the negotiated rate that it had with the provider before the COVID-19 public health emergency or, if no negotiated rate, whatever is the publicized cash price.

- **Coverage of Qualifying Coronavirus Preventive Services and Vaccines:** The Act also directs the Secretaries of Health and Human Services, Labor, and Treasury to require plans and issuers to cover any coronavirus preventive services without cost-sharing. Such services include vaccines and any other services that are determined by the CDC or U.S. Preventive Services Task Force will prevent or mitigate COVID-19.

- **Telehealth under a High-Deductible Health Plan ("HDHP"):** Expanding on the IRS’s Notice with respect to HDHPs’ coverage of COVID-19 costs, the Act permits (but does not require) HDHPs to waive deductibles for all telehealth or remote care services in plan years beginning on or before December 31, 2021 (even if not related to COVID-19) without impacting the plan’s status as an HDHP.

- **Over-the-Counter Drugs and Menstrual Care Products:** The Act eliminates the requirement to have a prescription for over-the-counter drugs to qualify for tax-favored reimbursement from health savings accounts (“HSAs”), health reimbursement accounts (“HRAs”), and health flexible spending arrangements (“FSAs”), effective as of January 1, 2020. Menstrual care products likewise will be considered qualified medical expenses payable from those accounts.

## Student Loans

The Act allows employers to reimburse or pay up to $5,250 of an employee’s student loan payments through a Code Section 127 education assistance plan. This expansion applies only for loan payments (whether to the employee or directly to the lender) made by the employer after enactment and before January 1, 2021. The $5,250 limit is an aggregate limit for other permitted educational assistance and loan repayments combined. Section 127 arrangements are subject to certain technical requirements, including nondiscrimination and a plan document. For employers that already have Section 127 plans, this change can be implemented by an amendment to the definition of qualifying expenses. The Act also prohibits “double-dipping” by employees: employees may not deduct amounts that are reimbursed or paid by the employer.

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