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Employee Benefits Alert

CARES Act: Impact on Employer Sponsored Retirement and Welfare Plans

The Coronavirus Aid, Relief, and Economic Security Act or CARES Act, offers several provisions that directly impact employer sponsored retirement and welfare plans. The provisions generally provide access for workers to their retirement savings, curtail required distributions, attempt to utilize employer welfare plans to fight the spread of the coronavirus, and provide funding relief to sponsors of defined benefit plan sponsors. The following provides a summary of the changes impacting employer-sponsored plans.

CORONAVIRUS RELATED DISTRIBUTIONS AND LOANS FROM RETIREMENT PLANS

Under the legislation, participants in eligible retirement plans will be able to take tax-favored coronavirus-related distributions of up to $100,000 if the plan sponsor makes the option available under the plan. A distribution will be considered a coronavirus-related distribution if it is taken between January 1, 2020 and December 31, 2020, and the participant or the participant's spouse or dependent was diagnosed with SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention, or if the participant experienced severe financial consequences as a result of quarantine, furlough, layoff, reduction of hours, closing of a business, or being unable to work due to lack of child care due to SARS-CoV-2 or COVID-19 or other factors as determined by the IRS.

Eligible retirement plans from which participants may take a coronavirus-related distribution are 401(a) profit sharing, 401(k), 403(a), 403(b), and governmental 457(b) plans.

Participants will be able to take the distribution without any 10% penalty for early withdrawal, and include the amount of the distribution into income ratably over three tax years beginning with the year of the distribution. Withholding is voluntary; participants may opt out of the 10% withholding requirements so that they may utilize the entire amount of the distribution to address their circumstances. The legislation provides that plan administrators may rely on an employee's self-certification of need when evaluating whether an individual qualifies for the distribution. A participant may repay all or a portion of the coronavirus-related distribution from a plan within the three year period beginning the day after the distribution if the plan is one to which a rollover contribution could be made.

This tax-favored distribution is capped at $100,000 from all plans of all entities required to be treated as a single employer under the controlled group rules for qualified plans. Ordinary distribution rules apply for amounts in excess of the $100,000.

The tax benefits (no early withdrawal penalty and deferred income inclusion) appear available to all plan participants who take a distribution during the applicable period and who meet the criteria, whether active or terminated, although further clarification is necessary due to the undefined usage of individual and employee in the provision, and only a current participant would be eligible to repay under a plan's rollover contribution provisions.

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For participants that meet the criteria for a corona-virus related distribution, the plan loan limit is increased from $50,000 to $100,000, or the present value of their vested account balance, if lesser, with respect to loans taken within 180 days of enactment of the legislation. The provision also provides that if a loan term were to mature from the date of enactment through December 31, 2020, the maximum repayment term shall be delayed for one year with interest continuing to accrue. Additionally, for the purpose of determining the 5-year period and the term of a loan, the period from enactment of the legislation through the end of calendar year 2020 is to be disregarded.

Sponsors that implement the coronavirus-related distribution or loan provisions will have until the last day of the plan year beginning on or after January 1, 2022 (2024 for governmental plans) to amend their plans, provided they operate their plans in accordance with the legislation.

WAIVER OF REQUIRED MINIMUM DISTRIBUTIONS

Required minimum distributions are waived for 2020. The waiver applies to defined contribution plans that are qualified plans, 403(a) and 403(b) arrangements, individual retirement plans, and governmental 457(b) plans, and waives any distribution that would be required for 2020 only.

The provision clarifies that it applies to individuals with required beginning dates in 2020 (who would have reached age 70 ½ in 2019) for whom a distribution was not made before January 1, 2020, and in the case of an individual who dies without a designated beneficiary, the 5-year period to make a distribution is to be calculated without regard to calendar year 2020.

The change appears to be required to maintain the qualified status of a sponsor’s plan. Therefore sponsors should operate in compliance with the waiver provision immediately once the legislation is enacted. Sponsors will have until the last day of the plan year beginning on or after January 1, 2022 (2024 for governmental plans) to amend their plans, provided they operate their plans in accordance with the legislation.

FLEXIBILITY FOR DEFINED BENEFIT PLAN SPONSORS

Employers who sponsor defined benefit plans will receive some welcome relief from their pension obligations under the legislation. Sponsors will not be required to make minimum required contributions due in 2020 under the defined benefit plan funding rules until January 1, 2021. During the deferral period, interest will continue to accrue at the plan’s effective rate of interest. For purposes of determining the funding status of a plan, sponsors may also use the adjusted funding target attainment percentage (AFTAP) for the last plan year ending before 2020 for plan years that include 2020.

DOL MAY POSTPONE CERTAIN ERISA DEADLINES

The legislation expands the authority of the DOL to toll the due date for any action required or permitted under ERISA to include public health emergencies declared by the Secretary of Health and Human Services by up to one year. This would give the DOL a broad range of authority to postpone the due date for notices and annual filings, such as the Form 5500 in response to the coronavirus pandemic. Interestingly, it does not appear that the legislation expands IRS authority to take similar action under a parallel provision of the Internal Revenue Code.

GROUP HEALTH PLANS MUST COVER CORONAVIRUS PREVENTION

As part of the response to the coronavirus pandemic, the legislation imposes requirements on employer group health plans subject to the Affordable Care Act’s (ACA) market reforms to cover items, services or immunizations intended to prevent or mitigate the coronavirus disease 2019 that may be recommended by the United States Preventive Services

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Task Force or the Advisory Committee on Immunization Practices at the CDC. Group health plans subject to the ACA's preventive care requirements will be required to provide any recommended items within 15 business days of an agency recommendation.

Because the amendment is made to a market reform provision of the ACA, a group health plan that is still grandfathered from the ACA market reforms would not be subject to the requirement. For insured plans, one could expect that the carriers of such plans would voluntarily make such services available, but for a self-insured grandfathered plan, the decision would be up to the employer. Employers sponsoring self-insured grandfathered plans may wish to discuss this plan design issue with their TPAs.

HSA ELIGIBILITY AND TELEMEDICINE

One concern sponsors of high deductible plans coupled with a health savings account faced in the pandemic is whether to make telemedicine available without cost to participants in those plans. In order to contribute to an HSA, an individual may only have certain limited types of coverage in addition to their high-deductible plan. Without express authority, it was not clear whether providing telemedicine visits at no cost to the employee would make an employee ineligible to contribute to the HSA. The legislation addresses this by providing that offering telemedicine without cost to the individual for plan years beginning on or before December 31, 2021 will not make an individual ineligible to contribute to an HSA.

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This Employee Benefits Alert is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact author William S. Carter at 412.566.6016 or wcarter@eckertseamans.com, a member of Eckert Seamans' Employee Benefits team, or any other attorney at Eckert Seamans with whom you have been working.

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