Small Business FAQs related to COVID-19 – Employee Benefits

Last Updated May 27, 2020

What changes apply to employer-sponsored retirement plans in the time of COVID-19?¹

The laws and guidance applicable to employer-sponsored retirement plans in the time of COVID-19 are changing near daily. At the time of this writing, some of the key changes include (but are not limited to):

- **Coronavirus-Related Distributions from Qualified Retirement Plans**. The CARES Act provides for a new form of distribution under certain qualified retirement plans, called “coronavirus-related distributions.” Individuals diagnosed with, or with spouses of dependents diagnosed with, COVID-19, or who experience certain adverse financial consequences as a result of COVID-19, may be eligible to receive a distribution of up to $100,000 without incurring the 10% additional tax normally imposed on early distributions. Employers may, but are not required, to amend their plans to provide for coronavirus-related distributions.²

- **Loan Relief**. The CARES Act permits loan amounts taken from a qualified plan during the 180-day period following the enactment of the CARES Act to be increased to $100,000 (up from $50,000) and the repayment requirements may be delayed up to a year if certain requirements are met. Employers may, but are not required, to amend their plans to adopt these new loan provisions. The CARES Act also contains provisions that exempt distributions from certain defined contribution qualified plans from the minimum distribution rules for 2020 permitting such amounts to remain deferred in the plan subject to certain restrictions.

- **Minimum Required Contributions to Single Employer Qualified Retirement Plans**. The CARES Act permits minimum contributions to certain single employer qualified retirement plans that would otherwise be due in 2020 to be delayed until January 1, 2021, but any delayed contributions will require interest to be paid on the delay. Additionally, for defined benefit qualified retirement plans, plan sponsors may use the adjusted funding target attainment percentage for the last plan year ending prior to January 1, 2020 as the adjusted funding target attainment percentage for plan years that include calendar year 2020.


² For more information on coronavirus-related distributions and the loan relief described below, see the IRS’s Coronavirus-related relief for retirement plans and IRAs questions and answers, https://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers (visited May 26, 2020).
• **Deadline Extensions; Relaxed Enforcement.** The IRS and DOL have extended many deadlines applicable to qualified retirement plans, including a delay for certain annual report (Form 5500) filings and an extension of deadlines by which participants and beneficiaries must make timely claim for benefits and appeal denied claims. Plan sponsors should ensure that updated deadlines are communicated to impacted participants. The agencies also announced relaxed enforcement and extended time frames for plan sponsors to comply with deadlines for furnishing notices, disclosures and certain other documents. However, not all deadlines are extended, and plan sponsors must still act in good faith to distribute notices as soon as reasonably practicable. Accordingly, plan sponsors seeking to delay any required notices, disclosure or reporting should review the guidance to determine what may be permitted given the individual circumstances.  

What changes apply to employer-sponsored health and welfare plans in the time of COVID-19?  

As with retirement plans, the health plan landscape is changing daily. Employers that sponsor health and welfare plans should work closely with their insurers, brokers and third-party administrators to ensure they are aware of and responding to relevant changes in law. Recent changes include (though are not limited to):  

• **Flexibility to Make New Elections, Change Elections, and Revoke Elections.** The IRS issued detailed guidance allowing flexibility related to health plan and flexible spending account plan elections. Employers that want to make these options available to their employees should review the guidance carefully and consider any limitations that might be utilized – for example, using only a limited enrollment period or limiting changes to health and dependent care FSA elections so that a participant cannot elect less than what has already been reimbursed.  

• **Deadline Extensions; Relaxed Enforcement.** The DOL and the Treasury extended many key deadlines relating to health plans, such as deadlines affecting COBRA coverage (including those relating to qualifying event notification, elections and premium payments) and deadlines by which participants and beneficiaries must make timely claim for benefits and appeal denied claims. As with retirement plans, plan sponsors should ensure that updated deadlines are

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communicated to impacted participants – particularly with respect to those on COBRA. Relaxed enforcement and extended timelines described above also apply.

- **Coverage of COVID-Related Services.** Group health plans and health insurers are required to cover qualifying items, services, and immunizations intended to prevent or mitigate COVID-19 (referred to as qualifying coronavirus preventive services) without imposing any cost-sharing, prior authorization, or other medical management requirements. The FFCRA and CARES Act set forth detailed information regarding tests that are covered and the required reimbursement rates.

- **Telehealth Services.** High deductible health plans may now provide coverage for telehealth services and COVID-19 treatment without a deductible, without jeopardizing the plan’s status under the Internal Revenue Code, if the plan sponsor adds this optional provision to its plan. This flexibility applies for plan years beginning on or before December 31, 2021.

- **Expansion of FSAs, HSAs.** Effective January 1, 2020, individuals may use health savings account and Archer medical savings account funds to purchase over-the-counter medicines without a prescription, and to purchase menstrual care products. Similarly, plan sponsors may amend their plans to allow for those reimbursements from health flexible spending accounts.

- **Employer Payments of Student Loans.** The CARES Act provides temporary tax-free status to certain educational assistance payments made by an employer. Effective from March 28, 2020 through December 31, 2020, an employer may make payments up to $5,250 per year to an employee or to a lender, of principal or interest on any “qualified education loan,” and these payments will not be treated as taxable income to the employee. Qualified education loans are those that were incurred by the employee for his or her higher education expenses, and they include, but are not limited to, loans for tuition, fees, books, supplies, transportation, equipment, room and board.

**Can we reduce or eliminate employer-sponsored benefits?**

Any changes to employer-sponsored benefits will need to be reviewed based on the terms of the applicable plan and subject to applicable law. For example, an employer is typically able to terminate or diminish its health or welfare benefits, though this may require advance notice to participants and notice and coordination with the applicable insurer or third party-administrator. An employer may generally suspend or eliminate 401(k) employer contributions, though may not do so retroactively, and will need to take into account plan design, testing, and notice requirements when doing so (for example, eliminating safe harbor matching or nonelective contributions is subject to strict requirements described [here]). Changes will also typically necessitate a plan amendment and may require a summary of material modifications, an updated summary plan description, and/or an updated summary of benefits and coverage.
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