



CARES Act Considerations for Employer-Sponsored Benefit Plans

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Agenda

**The Coronavirus Aid,
Relief, and Economic
Security (CARES)
Act of 2020**

**Miscellaneous
Employee Benefit
Changes**

Q&A

COVID-19: Record Pace of Congressional Stimulus

- Phase I Stimulus Package – Coronavirus Preparedness and Response Supplemental Appropriations Act (March 6th)
- Phase II Stimulus Package – Families First Coronavirus Response Act (March 18th)
- Phase III Stimulus Package – CARES Act (March 27th)
- Phase IV Stimulus Package – Infrastructure, Jobs, Energy???

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020

- President Trump signed on March 27th
- \$2 trillion package with the emphasis of injecting stimulus to small businesses and individuals
- Today – April 3 – Small businesses may begin to apply for SBA Paycheck Protection Program
- Retirement plan, Health & Welfare, & Payroll Tax Relief

Squire Patton Boggs – COVID-19 Resources

COVID-19 continues to impact businesses globally, posing changes and challenges in your day-to-day operations. Please utilize the resources below from our firm to stay up to date on the latest COVID-19 news and manage related business impacts:

[COVID-19 Resource Hub](#) – 24/7 monitoring and regular updates on current coronavirus legal, regulatory and business continuity issues across our global platform, including how business is responding to potential new and existing ramifications.

[Coronavirus Contingency Planning Risk Assessment Tool](#) – A complimentary mapping tool, including optional contingency planning template. Within 24 hours, you will receive a summary mapping factors your business has not yet considered, together with benchmarking information collated from assessments completed by other businesses.

CARES ACT

Tax-Qualified Retirement Plan Provisions



CARES Act – Tax Qualified Retirement Plan Provisions

- Section 2202. Tax-Favored Withdrawals
 - 10% early withdrawal penalty waived
 - Increases access to plan loans
 - Must be eligible for **Coronavirus-Related Distribution**
 - Diagnosed with COVID-19
 - Spouse or dependent diagnosed with COVID-19, or
 - Experiencing adverse financial consequences from COVID-19:
 - quarantined, furloughed, laid off, work hours reduced
 - unable to work due to lack of child care due to COVID-19
 - business closed or hours reduced
 - other factors determined by the Treasury Secretary

CARES Act – Tax Qualified Retirement Plan Provisions

- Section 2202(a). **10% Early Withdrawal Penalty Waived**
 - Qualified plans under 401(a) (e.g., 401(k) plans), annuity plans and contracts under 403(a) and 403(b), government 457(b) plans and IRAs
 - \$100,000 distribution limit (aggregate limit)
 - Available through 2020
 - Distributions not subject to withholding
 - Income tax may be spread ratably over three years or re-contributed to plan within three years to avoid inclusion in income
 - Employees must sign certification of the reason for distribution; plan administrators not required to verify

CARES Act – Tax Qualified Retirement Plan Provisions

- Section 2202(b). **Plan Loan Rules Relaxed**
 - Qualified plans under 401(a) (e.g., 401(k) plans), annuity plans and contracts under 403(a) and 403(b), and government plans
 - Maximum loan increased from \$50,000 to \$100,000 or 100% of accrued benefit (currently 50%)
 - Delays repayment of existing loan obligations by one year

CARES Act – Tax Qualified Retirement Plan Provisions

- Section 2203. **Required Minimum Distribution Rules Waived**
 - 401(k) plans, annuity plans and contracts under 403(a) and 403(b), government 457(b) plans and IRAs
 - 2020 distributions not required for individuals age 70½
 - Amounts that would have been RMDs are not eligible for direct rollover to another plan or IRA

CARES Act – Tax Qualified Retirement Plan Provisions

- Section 3607. **DOL Authority to Postpone Deadlines Expanded**
 - Retirement plans and health and welfare plans
 - ERISA Sec. 518 allows Secretary of Labor to postpone deadlines for up to one year in specified situations (e.g. 5500 filings)
 - Authority extended to the declaration of a public health emergency by the Secretary of Health and Human Services; previously, presidential-declared disaster or terrorist or military action
 - No impact until DOL issues guidance

CARES Act – Tax Qualified Retirement Plan Provisions

- Single-Employer Defined Benefit Plan Funding Rules Relaxed
 - Section 3608(a). **Required Contribution Relief**
 - Additional time to meet 2020 funding obligations (including quarterly contributions)
 - Contributions due during 2020 due January 1, 2021 with interest

CARES Act – Tax Qualified Retirement Plan Provisions

- Single-Employer Defined Benefit Plan Funding Rules Relaxed
 - Section 3608(b). **Funding Based Distribution Restrictions**
 - Restrictions on payments of certain types of benefits (e.g., plant shutdown benefits) and plan distributions (e.g., lump sums), and plan amendments increasing plan liabilities, when a plan's adjusted funding target attainment percentage (AFTAP) is below 80% or 60%, depending on the type of restriction
 - Plan sponsors can rely on AFTAP last plan year ending before January 1, 2020, for purposes of determining whether restrictions apply to plan year beginning January 1, 2020, or any other plan years that include part of the 2020 calendar year
 - Helps plans avoid additional restrictions due to lower funding levels

CARES ACT

Health and Welfare Changes



CARES Act – Health and Welfare Provisions

- Section 2206. Exclusion for Certain Employer Payments of Student Loans
 - Employees may exclude up to \$5,250 from their gross income, under Code Section 127(c), amounts received from an employer for the payment of qualified education loans relating to educational assistance (e.g., tuition, fees, books)
 - Limited to 2020 loan repayments

CARES Act – Health and Welfare Provisions

- Section 3203. Coverage for Preventive Service and Vaccines – no cost sharing requirement
 - Group health plans must cover “qualifying coronavirus preventive service” without cost sharing
 - Effective 15 business days after the date the item, service, or immunization is recommended by either (1) United States Preventive Services Task Force, or (2) Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention

CARES Act – Health and Welfare Provisions, cont.

- Section 3224. PHI Guidance
 - Within 180 days after enactment of the CARES Act, HHS to issue guidance on sharing PHI during national emergency
- Section 3701. Telehealth Guidance
 - Telehealth and other remote care can be provided without a deductible without violating high deductible plan rules
 - Effective for Plan Years beginning on or before December 31, 2021

CARES Act – Health and Welfare Provisions, cont.

- Section 3702. Inclusion of Certain Over-the-Counter Medical Products as Qualified Medical Expenses
 - Over-the-counter drugs and menstrual care products now permitted to be paid with Health Savings Accounts, Flexible Spending Accounts, Health Reimbursement Accounts and Archer Medical Savings Accounts **without** a prescription
 - Effective for expenses after December 31, 2019

CARES ACT

Employer Payroll Relief Provisions



CARES Act – Employer Payroll Relief Provisions

- Section 2301. Employee Retention Credit for Employer Subject to Closure Due to COVID-19
- Section 2302. Delay of Payment of Employer Payroll Taxes

CARES Act – Employer Payroll Relief Provisions

- Section 2302. Delay of Payment of Employer Payroll Taxes
 - What is it?
 - Employer 6.2% Social Security Tax may be deferred over a 2-year period
 - Who does it cover?
 - Employers (non-profits included) and self-insureds may defer over a 2-year period
 - When can it be deferred?
 - 50% of the deferred amount paid by December 21, 2021
 - 50% of the deferred amount paid by December 31, 2022

CARES Act – Employer Payroll Relief Provisions

- Section 2302. Delay of Payment of Employer Payroll Taxes
 - What is the applicable Deferral Time Period?
 - IRS Notice 2020-22: “Social Security Tax due to be made during the period beginning on March 27th and ending before January 1, 2021”
 - Deferral opportunity is **not** available for employers who receive loan forgiveness under the Paycheck Protection Program

CARES Act – Employer Payroll Relief Provisions

- Section 2301. Employee Retention Tax Credit – Eligibility
 - Employee Retention Tax Credit (ERTC)
 - Provides a refundable tax credit equal to 50% of qualified wages paid to employees up to a maximum \$10,000 in wages (up to \$5,000 per employee) if:
 - the employer's operations are fully or partially suspended due to a government order, or
 - the employer experiences a significant decline (>50%) in quarterly gross receipts

CARES Act – Employer Payroll Relief Provisions

- Section 2301. Employee Retention Tax Credit – Eligibility
 - Significant decline in gross receipts
 - Were Gross Receipts >50% in 2020 calendar quarter compared to same calendar quarter in 2019? If gross receipts are less than 50% in 2020 compared to 2019, credit eligible

Gross receipts	2019	2020	Percentage difference
Q1	\$210,000	\$100,000	48%
Q2	\$230,000	\$190,000	83%
Q3	\$250,000	\$230,000	92%

CARES Act – Employer Payroll Relief Provisions

- Section 2301. Employee Retention Tax Credit – Eligibility
 - What are “qualified wages”?
 - If the employer had more than 100 full-time employees in 2019, then only wages paid to an employee that is not providing services are “qualified”
 - If the employer had 100 or fewer full-time employees in 2019, then any wages paid during a suspension of operations or during a period when the employer is experiencing a significant decline in quarterly gross receipts are “qualified”
 - How is the credit claimed?
 - Credit can be claimed by reducing payroll deposits on Form 941 or by filing Form 7200
 - Credit must be recaptured if employer obtains a PPP Loan

CARES Act – Employer Payroll Relief Provisions

- Section 2301. PPP Loans & ERTC
 - Employee Retention Tax Credit Recapture
 - If an employer has claimed an ERTC, but later obtains a PPP loan, then employer must recapture the ERTC
 - Employers should consider waiving the ERTC if they plan to apply for a PPP loan

CARES Act – Employer Payroll Relief Provisions

- Section 2301. PPP Loans & ERTC
- PPP Loan or ERTC?
 - Decision whether to claim the ERTC or apply for a PPP loan will depends on the employer's facts and circumstances
 - Notably, a PPP loan can cover a greater percentage of employee's wages
 - ERTCs are capped at \$5,000 per employee, whereas PPP loans are not so limited

Miscellaneous Employee Benefit Changes



Miscellaneous Employee Benefit Changes

- Families First Coronavirus Response Act
 - Effective April 1 and applies to employers with less than 500 employees
 - COVID FMLA Leave
 - COVID Sick Leave
 - IRS Form 7200 – Advance Payment of Employer Credits Due to COVID-19

Miscellaneous Employee Benefit Changes

- Families First Coronavirus Response Act
 - COVID FMLA Leave – provides for leave:
 - when the employee is unable to work, or telework, due to a need for leave to care for a son or daughter under 18 years of age if the minor child's elementary or high school or place of care has been closed, *or*
 - the minor child's paid child care provider is unavailable, due to a public health emergency, where "public health emergency" means "an emergency with respect to COVID-19 declared by a federal, state, or local authority."
 - Tax credit of \$200 per day for each employee who is paid COVID FMLA Leave wages – up to \$10,000 per employee for all calendar quarters

Miscellaneous Employee Benefit Changes

- Families First Coronavirus Response Act
 - COVID Sick Leave
 - Provides up to 80 hours of paid COVID Sick Leave if the employee is unable to work due to certain COVID situations
 - Tax credit of \$200 per day for each employee, which can increase to \$511 depending on the leave reason
 - The payroll tax credit is available for a maximum of 10 days per calendar quarter, subject to reduction for days taken into account for all preceding calendar quarters

Miscellaneous Employee Benefit Changes, cont.

- Expansion of High-Deductible Plan Rules – Notice 2020-15
 - Testing and treatment for COVID-19 may be provided by a high deductible health plan (“HDHP”) prior to the minimum deductible being satisfied
- Extension of 403(b) plan deadline
 - IRS extended the date Plan Sponsors have to update their 403(b) plans from March 31 to June 30
- Future IRS guidance
 - <https://www.irs.gov/coronavirus>

A photograph of a modern office interior. Four people are seated in a meeting area. On the left, a woman in a light grey blazer and trousers sits on a tan leather sofa, holding a notebook. Next to her, a man in a dark suit and light blue shirt sits on the same sofa, holding a laptop. On the right, a man in a dark suit and a woman in a light grey blazer sit on another tan leather sofa, facing the first pair. They are in a room with large glass walls and a grey carpet. A purple semi-transparent rectangle is overlaid on the right side of the image, containing the text "Questions & Answers".

Questions & Answers

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