



The Heroes Earnings Assistance and Relief Tax Act (The "Heart Act")

Employment, Labor & Benefits Practice Group

Foster Swift Employment, Labor & Benefits Quarterly

September 2008

PRACTICE AREAS

Employee Benefits

The HEART Act was signed into law on June 17, 2008. The Act provides tax relief to the men and women in our nation's armed services and others volunteering service on behalf of the United States. The HEART Act affects both qualified retirement plans and cafeteria plans in the following ways:

- A retirement plan must treat a participant who (1) leaves employment for qualified military service and (2) cannot be reemployed because of death or disability as an individual who was reemployed on the day preceding death or disability and terminated employment thereafter because of the event. The provision applies in the case of deaths and disabilities occurring on or after January 1, 2007, and must be adopted on or before the last day of the first plan year beginning on or after January 1, 2010.
- The 10% early distribution penalty does not apply to retirement plan distributions to individuals who are called to active military service for a period of at least 180 days or indefinitely. This provision applies to reservists ordered or called to active duty on or after December 31, 2007.
- For plan years beginning after 2008, a participant on military leave for at least 30 days is deemed to have severed from employment. This means that the retirement plan limits on in-service distributions of tax-deferred contributions will not apply.
- Distributions from a cafeteria plan of unused health flexible spending arrangement ("FSA") balances may be made to reservists who are called to active duty. This provision is an exception to the "use it or lose it" rule associated with health FSAs.