

CARES Act: Employee Benefit Plans

March 27, 2020

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which was signed into law on March 27, 2020, expand employee benefit plan opportunities through the relaxation of certain requirements (including under the Internal Revenue Code ("Code") and the Employee Retirement Income Security Act ("ERISA") for retirement plans, health plans and certain medical reimbursement accounts. Plan sponsors should carefully review plan documentation to consider implications on their benefit offerings and administration.

Retirement Plans

- *Expanded Retirement Plan Distribution Opportunities.* The CARES Act permits retirement plans to provide some financial relief for participants impacted by COVID-19 by allowing individuals to access money from their eligible retirement plans through certain distributions until Dec. 31, 2020. Specifically, the CARES Act dictates that the 10% additional tax, generally imposed on early distributions from certain retirement plans, will not apply to any "coronavirus-related distributions" up to an aggregate amount of \$100,000 in the taxable year. The term "coronavirus-related distribution" includes a distribution from an eligible retirement plan made during 2020 under three circumstances: (i) the individual is diagnosed with the virus SARS-CoV-2 or with COVID-19; (ii) the individual's spouse or dependent is diagnosed with the same specifications as above; or (iii) the individual experiences adverse financial consequences as a result of COVID-19 and its containment efforts. Flexible tax treatment of the distribution is available and the individual is permitted to restore any distributed funds through a rollover contribution into certain retirement plans.
- *Expanded Retirement Plan Loan Opportunities.* As an alternative option to plan distributions, the CARES Act increases the maximum amount available to be loaned from a retirement plan to a qualified individual for a 180-day period to up to \$100,000. Moreover, the due date for repaying most outstanding loans has been delayed one year for all loans that are due between the date of enactment and Dec. 31, 2020.
- *Waiver of RMDs.* A temporary waiver of certain required minimum distributions is provided for the 2020 calendar year for certain retirement plans.
- *Defined Benefit Plan Funding.* Relief for minimum funding standards for certain defined benefit plans is provided through delay of the due date for minimum required contributions owed during the 2020 calendar year. Certain plan sponsors for defined benefit plans may also elect to treat the plan's adjusted funding target attainment percentage for the last plan year, ending before Jan. 1, 2020, as the adjusted funding target attainment percentage for plan years which include calendar year 2020.
- *Additional Opportunities for Cooperative and Small Employer Charity Pension.* Some rules applicable to cooperative and small employer charity pensions are expanded to certain charitable employers whose primary exempt purpose is providing services with respect to mothers and children.

Health Plan and Medical Reimbursement Account Issues

- *Coverage for Qualifying COVID-19 Preventive Service and Testing.* The CARES Act states that the Secretary of Health and Human Services ("HHS"), the Secretary of Labor, and the Secretary of the Treasury must require both group health plans and health insurance issuers that offer group or individual health insurance to cover (without

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cost-sharing) qualifying coronavirus preventive services (generally defined as an item, service, or immunization that is intended to prevent or mitigate COVID-19). Clarification is also provided regarding coverage for diagnostic testing for COVID-19 and associated pricing for such testing.

- *Health Savings Account.* The CARES Act amends Code section 223, related to health savings accounts, to provide a safe harbor for first-dollar coverage for telehealth during plan years beginning on or before Dec. 31, 2021.
- *Medical Expense Reimbursement Accounts.* The medical expenses that can be paid from HSAs, health FSAs, HRAs and Archer MSAs are expanded.
- *HIPAA Guidance.* The Secretary of HHS is directed to issue guidance on sharing protected health information during the COVID-19 public health emergency.

The CARES Act also expands the United States Department of Labor's authority to postpone certain deadlines under ERISA. Accordingly, further relief for employee benefit plans may be forthcoming. Plan sponsors wishing to provide this coronavirus-related relief to plan participants should coordinate with their plan record keepers, custodians, trustees, insurance carriers, and administrators to facilitate operational and documental compliance with the CARES Act options.

This is part of a series of our **COVID-19 alerts** providing clients with practical advice on measures they can take to navigate through these challenging times. Please contact the authors or your Miller Canfield attorney with further questions.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.