

Employee Benefits Provisions in the CARES Act

April 3, 2020

The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), which was signed into law on March 27, 2020, contains several employee benefits provisions. These include clarification of the earlier relief provisions of the March 18, 2020 Families First Coronavirus Response Act (FFCRA).

1. Defined Contribution Plans

a. Coronavirus-related plan distributions (§ 2202(a))

Qualified defined contribution plans and IRAs may permit coronavirus-related distributions in 2020 up to \$100,000 (or 100% of the account balance, if less) without the 10% early withdrawal penalty. Distributions may be made to any participant who (or whose spouse or dependent) is diagnosed with coronavirus or who faces adverse financial consequences because of coronavirus (“qualifying participant”). These adverse financial consequences must result from:

- (1) being quarantined,
- (2) being furloughed or laid off or having work hours reduced,
- (3) being unable to work due to lack of child care,
- (4) closing or reducing hours of a business owned or operated by the participant, or
- (5) other factors as determined by the U.S. Treasury.

Plan administrators may rely on a participant’s certification that he or she is qualified. Distributions are taxable ratably over three years unless the qualifying participant elects to be taxed immediately. Distributions also may be recontributed within three years to a rollover-eligible qualified defined contribution plan or IRA and would be treated as rollovers regardless of annual limits on contributions. Plans that elect to add these optional rules must be amended by the end of the plan year beginning in 2022.

b. Coronavirus-related plan loans (§ 2202(b))

Qualified defined contribution plans that permit participant loans may increase the maximum amount that may be taken as a plan loan by a qualifying participant from \$50,000 to \$100,000 (or 100% of the account balance, if less). Loans taking advantage of the increased limit must be initiated within 180 days of the enactment of the Act (i.e., on or before September 23, 2020). Additionally, plans must permit qualifying participants to delay loan

repayments scheduled in 2020 by one year, with interest but without penalty. Plans must be amended by the end of the plan year beginning in 2022 to add these changes.

c. Waived required minimum distributions (§ 2203)

Qualified defined contribution plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code (including 401(k) plans), governmental 457(b) plans, and IRAs may temporarily waive required minimum distributions in 2020. (This waiver is not available to defined benefit plans.) The waiver affects all participants who turned 70½ on or before December 31, 2019, including 5% owners of the plan sponsor. (Under the SECURE Act passed into law in 2019, individuals who turned or will turn 70½ after 2019 will not begin required minimum distributions until after they turn 72.) Plans must be amended by the end of the plan year beginning in 2022.

2. Defined Benefit Plans

a. Delayed single-employer defined benefit pension plan contributions and extended benefit restriction status (§ 3608)

Sponsors of single-employer defined benefit plans may delay until January 1, 2021 any contributions otherwise required to be made to the plans in 2020. Delayed contributions would accrue interest, at the plan's effective rate; this is determined each year by the plan actuary based on the interest rates used to determine plan liabilities. If a pension plan was not subject to benefit restrictions under Internal Revenue Code section 436 for the 2019 plan year, then it will avoid these restrictions in the 2020 plan year as well.

3. Health Plans

a. Coverage for coronavirus preventive services (§ 3203)

Group health plans must cover without cost-sharing qualifying coronavirus preventive services, which include any item, service, or immunization that is intended to prevent or mitigate coronavirus and that is (1) an evidence-based item or service that is rated "A" or "B" by the United States Preventive Services Task Force or (2) an immunization that is recommended by the CDC's Advisory Committee on Immunization Practices.

b. Coverage for coronavirus testing (§§ 3201-02)

The Act expands the coronavirus diagnostic testing required to be covered by group health plans under FFCRA to include certain tests not yet approved under the Federal Food, Drug, and Cosmetic Act. The reimbursement that health providers may receive from group health plans for coronavirus diagnostic testing is limited to the rate negotiated before the coronavirus public health emergency or, if no rate has been negotiated, limited to the rate posted by the provider on a public website (unless a lower rate can be negotiated).

c. Expansion of telehealth under high-deductible health plans (§ 3701)

The Act clarifies earlier IRS guidance by providing that high-deductible health plans may offer first-dollar coverage for telehealth and other remote care services without causing participants to lose eligibility to

contribute to a health savings account. This expansion is not limited to items that are coronavirus-related, nor is the expansion time-limited. This is a separate provision that was included in the Act but is not limited to coronavirus testing and treatment.

d. Over-the-counter medication and menstrual products (§ 3702)

Health savings accounts, health flexible spending arrangements, health reimbursement arrangements, and Archer medical savings accounts may be used to pay for over-the-counter medications and menstrual products. This expansion is much broader in scope (and timing) than coronavirus.

4. Executive Compensation

a. Limitation of compensation for businesses receiving emergency relief (§ 4404)

Businesses receiving loans or loan guarantees under section 4003 of the Act, which provides up to \$500 billion in emergency relief, must impose certain limits on executive compensation until one year after the loan or guarantee is no longer outstanding.

- (1) Officers or employees who received total compensation (which includes salary, bonus, stock award, and other financial benefits) greater than \$425,000 in 2019 may not receive total compensation during any 12-month period exceeding such 2019 compensation and may not receive severance benefits exceeding two times such 2019 compensation.
- (2) Officers or employees who received total compensation greater than \$3 million in 2019 may not receive total compensation during any 12-month period exceeding the sum of \$3 million plus 50% of the excess over \$3 million of such 2019 compensation.

5. Other Provisions

a. Employee retention credit for affected employers (§ 2301)

Eligible employers are entitled to a refundable payroll tax credit for 50 percent of up to \$10,000 of eligible wages paid to each employee during the coronavirus crisis. Employers are eligible if their operations were fully or partially suspended due to a coronavirus-related shutdown order or if gross receipts in a quarter declined by more than 50 percent year-to-year. For employers with more than 100 full-time employees, only the wages of employees who are furloughed or face reduced hours because of the coronavirus crisis are eligible; for employers with 100 or fewer full-time employees, all employee wages are eligible. Eligible wages may also include qualified health plan expenses that are excluded from the employee's income. This credit is not available to employers receiving covered small business loans under section 1102 of the Act.

b. Deferred payroll tax payments (§ 2302)

Employers may defer paying the employer portion of federal payroll taxes for March 27, 2020 through December 31, 2020. Deferred payroll taxes must be paid in two equal payments, one at the end of 2021, the other at the end of 2022. This deferral is not available to employers who have a covered small business loan forgiven under

section 1106 of the Act. Self-employed individuals may similarly defer half of their Self Employed Contributions Act taxes for March 27, 2020 through December 31, 2020.

c. Exclusion for employer-paid student loans (§ 2206)

Employees may exclude from income up to \$5,250 of payments made in 2020 by their employers toward the principal or interest of the employees' qualified educational loans. Payments may be made directly to the lender or to the employee as reimbursement. The existing nondiscrimination and other restrictions of Internal Revenue Code section 127 apply; this precludes an employee from electing loan repayment on a salary reduction basis through a cafeteria plan.

d. DOL authority to postpone filing deadlines (§ 3607)

The Act authorizes the Department of Labor to postpone certain ERISA filing deadlines by a year in case of a public health emergency declared by the Secretary of Health and Human Services. (Secretary of HHS, Alex Azar, declared a public health emergency on January 31, 2020.)

For questions, please contact a member of IPB's [Benefits Team](#).