

CARES Act Provisions Related to Employee Benefits

On March 27, 2020 the CARES Act (Act) was signed into law. The Act is the stimulus package intended to mitigate the adverse economic effects associated with the Coronavirus/COVID-19 pandemic. The Act contains several provisions related to employee benefits. The following highlights those provisions.

Retirement Plans

Coronavirus Related Distributions. Section 2202(a) of the Act allows qualified defined contribution plans to offer coronavirus related distributions (CRD) of up to an aggregate limit \$100,000 (taking into account all plans of all control group members) to CRD Eligible Participants. The distribution must be taken before December 31, 2020 to qualify for relief.

CRD Eligible Participants includes a participant: 1) who is diagnosed with the coronavirus; 2) whose spouse or dependent is diagnosed with coronavirus; or 3) who experiences adverse financial consequences as a result of: a) being quarantined; b) being furloughed or laid off; c) having reduced hours; d) being unable to work due to lack of child care; e) closing or reduced hours of a business owned or operated by the participant; or f) other factors determined by the Secretary of Treasury. Plan administrators may rely on the participant's certification that the participant satisfies the eligibility conditions.

The CRD is afforded special tax treatment, including: 1) an exemption from the rule that prohibits 401(k) plans from making in-service distributions prior to age 59½ from participant elective deferrals; 2) the additional 10% tax on withdrawals before age 59½; 3) ratable income inclusion over three taxable years, unless the participant elects to take the entire amount into income in the year of the distribution; and 4) up to three years to repay all or a portion of the CRD (repayments being treated as a rollover contribution and not included in income).

Comment: Section 2203(a) does not indicate how an amount that is taken into income but which is repaid is to be reported. In similar situations in the past, repayments in a year in which an amount is included in income would reduce income recognized in that year. If the repayment amount exceeds the amount required to be included in income for a particular year, the excess amount could be either carried forward or backward and applied to reduce the amount previously included in income. Amended individual income tax returns would be required if the excess amount is carried back to a prior year.

Increased Limit on Plan Loans and Related Plan Loan Relief. Section 2203(b) of the Act provides increased loan limits and related loan relief for Qualified Individuals who borrow between March 27, 2020 and December 31, 2020 (Loan Relief Period). Qualified Individuals are defined in the same manner as CRD Eligible Participants. See above for the definition.

The maximum amount of a loan is increased from the lesser of \$50,000 or 50% of the vested account balance to the lesser of \$100,000 or 100% of the vested account balance. Additional relief is also available for outstanding loans.

Loan payments that otherwise become due during the Loan Relief Period can be extended for one year. The typical maximum permitted loan repayment period (e.g., five years for non-residential loans) is extended accordingly. However, subsequent repayments must be appropriately adjusted to reflect the delay in the payment and any interest which accrues during the Loan Relief Period.

Temporary Waiver of Required Minimum Distributions (RMD). Section 2203 provides for a temporary waiver for RMDs that would otherwise have to be paid from defined contribution plans for calendar year 2020. For instance, if a Participant attained age 70½ in 2019 and delayed the commencement of their first RMD to April 1, 2020, the RMD that would have otherwise been payable on April 1, 2020 and December 31, 2020 can be waived. It appears that the waived RMDs would be made up over the remaining period over which RMDs would be paid.

Comment: The special rules described above are effective immediately. Plans can be operated in compliance with these provisions without an immediate plan amendment. However, the plan document will have to be amended retroactively to conform to operation. The deadline for plan amendments, unless it is extended, is December 31, 2022 for calendar year plans (or, for non-calendar year plans, the end of the plan year that begins in 2022). For governmental plans the amendment is required on or before the last day of the plan year beginning on or after January 1, 2024. In order to ensure that the plan document reflects operation, plan operations should be documented so that the proper amendments can be ultimately adopted.

Single Employer Defined Benefit Plan Funding Relief. Act Section 3608 provides single employer defined benefit funding relief. Those plans are able to delay payment of minimum required contributions for calendar year 2020 until January 1, 2021. The delayed payment must include interest. Additionally, plan sponsors have the option to use the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 as the percentage for plan years which include calendar year 2020.

Health Plans

Expansion of COVID-19 Tests to be Covered Without Cost-Sharing. Section 3201 expands the types of diagnostic tests that must be covered without cost-sharing. Tests for which the developer has requested "emergency use authorization" under the Federal Food, Drugs, and Cosmetics Act, tests authorized and used by a state to diagnose patients and other tests designated by Health and Human Services are now included.

Cost of Testing. Section 3202 requires providers to publish the prices of COVID-19 diagnostic tests. Additionally, self-insured group health plans or insurance carriers, in the case of fully-insured group health plans, have to reimburse the provider in accordance with the negotiated rate in effect before the COVID-19 crisis or if there was no negotiated rate, the published rate.

Rapid Coverage for Preventive Service and Vaccines for Coronavirus. Section 3203 requires group health plans, if self-insured, or insurance carriers, if fully-insured, to cover, without cost-sharing, qualifying coronavirus preventive services (QCPS) no later than 15 business days after the date the QCPS is designated as such by Health and Human Services, Department of Labor and Treasury.

Exemption for Telehealth Services for High Deductible Health Plans (HDHP). Section 3701 permits, but does not require, HDHPs, for plan years beginning on or before December 31, 2021, to waive deductibles for telehealth and other remote care services without adversely impacting the status of the HDHP.

Comment: The Act provisions related to health plans are generally effective immediately. Some provisions are mandatory while others are discretionary. Accordingly, the plan could be operated in compliance with the provisions of the Act, however, it is likely that group health plans will have to be amended to formally implement the provisions. An amendment would trigger the production of a summary of material modifications or at the very least some communications to participants to inform them of the changes to the plan document or insurance policy.

Fringe Benefits

Inclusion of Certain Over-the-Counter Medical Products as Qualified Medical Expenses. Section 3702 eliminates the requirement to have a prescription for over-the-counter drugs to qualify for tax-favored reimbursement from health savings accounts (HSA), health reimbursement accounts (HRA), and health flexible spending arrangements (FSA), effective as of January 1, 2020. Menstrual care products likewise will be considered qualified medical expenses payable from those accounts.

Exclusion for Certain Employer Payments for Student Loans. Section 2206 allows employers to reimburse or pay up to an aggregate amount of \$5,250 of an employee's student loan payments through a Code Section 127 education assistance plan. Payment or reimbursement only applies to loan payments (whether to the employee or directly to the lender) made by the employer after March 27, 2020 and before January 1, 2021. Educational assistance plans are subject to a number of requirements, including written plan document requirements and nondiscrimination rules.

Comment: In order to implement the fringe benefit provisions, plan amendments or new plan documents will have to be adopted. Additionally, if the plan sponsor wants to implement the elimination of prescriptions for over-the-counter drugs, the sponsor should consult with the third party administrator of the program to ensure that their system will accommodate the change.

Please reach out to your Bodman Attorney or Dave Walters at (248) 743-6052 or dwalters@bodmanlaw.com for more information or to discuss.