

Families First Coronavirus Response Act & Coronavirus Aid, Relief and Economic Security Act

KEY IMPACTS ON GROUP HEALTH AND RETIREMENT PLANS

Jeffrey D. Smith, Esq.

jdsmith@fisherphillips.com

440-740-2124

Key Health Plan Provisions (FFCRA)

- Effective March 18 – through expiration of the public health emergency:
 - Requires group health plans (self-insured, insured and grandfathered) to provide coverage for FDA-approved COVID-19 diagnostic testing without cost sharing (deductibles, copayments and coinsurance).
 - Requires group health plans to cover provider (in-person and telehealth) and facility costs (office, urgent care, telehealth, emergency room) associated with COVID-19 diagnostic testing visits.
 - Prohibits pre-authorizations or other medical management requirements.

Key Health Plan Provisions (CARES)

- Requires group health plans to reimburse COVID-19 diagnostic test providers at previously negotiated (pre-emergency declaration) rates OR if such a rate did not exist, the provider's cash price for the test (as listed on provider's public website).
- Requires group health plans to cover "qualifying coronavirus preventive services" without cost-sharing. Includes items, services and immunizations with A or B ratings by the USPSTF or recommended by the CDC. Coverage must be provided "rapidly" – within 15 business days of recommendation.
- Expands the definition of covered COVID-19 diagnostic testing to include: (1) tests for which a developer has requested or intends to request emergency use authorization from the FDA, until such request is deemed untimely submitted; (2) tests developed in or authorized by a State; and (3) tests deemed appropriate by the Secretary of HHS.
- Creates temporary safe harbor allowing HDHPs to remain HSA-eligible even if cover telehealth services before satisfying the plan's statutory minimum deductible. This safe harbor applies to COVID-19 related services AND non-COVID-19 related services.
- Allows over the counter drugs to be treated as "qualified medical expenses" absent a prescription.

KEY 401(k) Plan Provisions (CARES)

Tax Favored Coronavirus- Related Distributions made by “qualified individuals” from qualified plans

- Qualified Plans: 401(k), 403(b) or 457(b)
- Qualified Individual:
 - Who is diagnosed with SARS-CoV-2 or coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention
 - Whose spouse or dependent is diagnosed with the virus or disease
 - Who experiences adverse disease or virus-related financial consequences such as being quarantined, furloughed, laid-off, having working hours reduced, being unable to work due to lack of child care, or having to close your business or reducing your business hours, or such other facts determined by the Secretary of Treasury
- Plan Sponsors may voluntarily amend their plans to allow individuals to take advantage of the CARES Act distribution and loan provisions. Those who do not are still subject to a few major provisions. General rule: plan amended by last day of plan year in which change effective. CARES Act special amendment period: by last day of first plan year beginning on or after January 1, 2022 (January 1, 2024, for governmental plans).

KEY 401(k) Plan Provisions (CARES)

Coronavirus-Related Distributions

- Effective for distributions **January 1 – December 31, 2020**
- Withdrawal(s) up to \$100,000. Limit applies to all plans maintained by the employer and any member of the employer's controlled group.
- Distributions may be repaid (in one or multiple contributions) over next 3-year period back into any qualified plan or IRA
 - 20% mandatory withholding not apply
 - 402(f) special tax notice is not required
- Taxation may be spread out ratably over 3 years (unless participant directs otherwise).
- 10% early distribution penalty waived (**regardless of whether plan is amended**). Plan Sponsors who do not voluntarily amend their plans must still have their plans administered to waive the 10% early distribution penalty tax.
- Plan sponsor may rely on employee's certification that the distribution is coronavirus-related.

KEY 401(k) Plan Provisions (CARES)

Coronavirus-Related Loans

- Effective for loans made between **March 27 - September 23, 2020**.
- Maximum amount permitted for a loan is the LESSER of
 - \$100,000 (normally \$50,000);
 - or
 - The greater of \$10,000 or 100% of the participant's vested account balance (normally 50%)
- For individuals with loans currently outstanding (**required**). Plan Sponsors who do not voluntarily amend their plans must still extend the repayment date for outstanding loans:
 - May delay repayments due between March 27 – December 31, 2020, for up to one year
 - Subsequent repayments adjusted to reflect any delay and interest accrued during the delay
 - Delay period is disregarded when determining the maximum loan period
- As customary, qualified plan loans not taxable absent a subsequent default.

KEY 401(k) Plan Provisions

Coronavirus-Related Hardship Withdrawals

- If plan permits, must fall within plan terms.
- **POTENTIAL Hardships:**
 - Plan Rules
 - Safe-Harbor Rules
 - Layoff leads to home eviction or foreclosure
 - Extraordinary medical expenses
 - Funeral expenses
 - FEMA-Declared major disaster areas – applies to losses, expenses and loss of income incurred by participants who work or reside therein
 - FEMA declared several states major disaster areas due to COVID-19 – More than 20 states including California, Louisiana, Florida, Illinois, New Jersey, New York, Texas, and Washington State: <https://www.fema.gov/disasters>

Remember, six-month suspension of contributions no longer permitted

KEY 401(k) Plan Provisions (CARES)

Temporary Suspension of **Required Minimum Distribution** Rules

- As a result of volatile market conditions, there is a temporary suspension of required minimum distribution (RMDs) rules for defined contributions plans for 2020.
- The 2020 RMD waiver applies to:
 - Individuals that would have a RMD in 2020
 - Individuals who turned 70½ in 2019 and scheduled to have a RMD in 2020
 - Individuals who are already receiving RMDs (turned 70 ½ before 2019)
- Year 2020 is disregarded for the five year beneficiary payout requirement.
- If an eligible rollover distribution would have been an RMD in 2020 (if waiver had not been in effect), the distribution is not subject to the direct rollover rules, mandatory 20% withholding or a 402(f) notice.
- Additional IRS guidance expected.

KEY Pension Plans Provisions (CARES)

Pension Plans

- Annual minimum funding contributions for single-employer defined benefits plans due in 2020 are now due on January 1, 2021.
 - If the plan is calendar year, the First Quarterly 2020 Contribution (previously due April 15, 2020); the Second Quarterly 2020 Contribution (previously due July 15, 2020); the Final 2019 Plan Year Contribution (previously due September 15, 2020); and the Third Quarterly 2020 Contribution (previously due October 15, 2020) **ARE ALL DUE on January 1, 2021.**
 - **Interest will still accrue** at the plan's effective rate of interest starting with the previous deadline.
 - For plan years that include calendar year 2020, the plan sponsor may elect to treat the plan's adjusted funding target attainment percentage ("AFTAP") as being equal to the percentage from the last plan year ending before January 1, 2020.
 - There's no indication that a plan amendment is necessary for these changes.

COMPLIANCE RECOMMENDATION: Investment Committee/fiduciaries review investment strategies given market volatility.

Executive Compensation Plans and Fringe Benefits

Executive Compensation Plans

Plan Administrator discretion – determination as to whether COVID-19 circumstances constitute an “unforeseen emergency” basis for deferred compensation plan withdrawals and/or a NQ deferred compensation deferral election cancellation.

Qualified Education Loans (CARES)

Allows employers to make a tax free payment of up to \$5,250 directly to an employee or a lender towards an employees’ “qualified education loan.” The provision applies to payments made between March 27, 2020 and December 31, 2020.

Questions?

COVID-19 Resource Center and Alerts

<https://www.fisherphillips.com/>

<https://www.fisherphillips.com/legal-alerts>

Jeffrey D. Smith, Esq.

jdsmith@fisherphillips.com

440-740-2124