

Highlights of Employee Benefits Provisions in the CARES Act

Applicable to State of Maine Benefits

Overview

The CARES Act is primarily a stimulus package that addresses the current coronavirus crisis, and it includes several provisions relating to employee benefit plans.

Health Plans

- **Coverage of Diagnostic Testing for COVID-19** — The Families First Coronavirus Response Act is revised to clarify that *all testing for COVID-19* must be covered by group health plans without cost sharing. This includes tests without an emergency use authorization by the Food and Drug Administration.
- **Pricing of Diagnostic Testing** — For COVID-19 testing that is covered with no cost to participants, group health plans must pay either the rate specified in a contract between the provider and the plan, or, if there is no contract, a cash price published by the provider on a public internet site. A provider who does not publish a cash price for testing may be subject to a penalty of \$300 for each day of noncompliance.
- **Rapid Coverage of Preventive Services and Vaccines for The Coronavirus** — Group health plans must provide free coverage without cost-sharing for a COVID-19 vaccine that has in effect, a rating of “A” or “B” in the current recommendations, of the United States Preventive Services Task Force or a recommendation from the Advisory Committee on Immunization Practices (ACIP). The coverage must be provided within 15 days of any such recommendation.

Health Care Flexible Spending Accounts (FSAs)

- **Use for Purchase of Over the Counter (OTC) Drugs**
Health savings accounts (HSAs) and flexible spending accounts (FSAs) may be used to purchase over-the-counter drugs without a physician’s prescription. They may also be used to purchase menstrual care products including tampons, pads, liners, cups, sponges, and similar products.

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Retirement Plans

- **Penalty-Free Coronavirus-Related Distributions**

The 10% early withdrawal penalty under Internal Revenue Code Section 72(t) is waived for “coronavirus-related distributions” of up to \$100,000. In addition, the 20% withholding requirement on these distributions does not apply. A coronavirus-related distribution is a distribution made in 2020 from a 457(b) plan to a “qualified individual”.

Note: A plan administrator may rely on an employee’s certification that the distribution is a coronavirus-related distribution. A coronavirus-related distribution is not treated as an eligible rollover distribution and may not be contributed as a rollover contribution to an individual retirement account or another employer retirement plan.

Qualified individual — An individual (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

- **Taxability of Coronavirus-Related Distributions**

Amounts required to be included in an individual’s income because of a coronavirus-related distribution can be included ratably over the individual’s 2020, 2021, and 2022 taxable years. An individual may choose to opt out of this special income tax treatment. Furthermore, an individual who receives a coronavirus-related distribution may repay the distribution in one or more payments at any time during a three-year period beginning on the day after the distribution was received. The repayment is to be treated by the plan as a rollover contribution made through a trustee-to-trustee transfer and is therefore not subject to annual contribution limitations.

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- **Temporary Waiver of Required Minimum Distributions**

Required minimum distributions from the 457(b) plan, individual retirement annuities, and individual retirement accounts due in 2020 are waived.

Note: Plan administrators may begin operating plans to reflect the above changes immediately. Plan documents and/or separate loan policies will need to be amended or revised to reflect any changes that are implemented. The CARES Act provides that retroactive amendments for these purposes generally must be made by the last day of the first plan year beginning on or after January 1, 2024 for governmental plans.

Other Provisions (we have no formal program)

- **Exclusion from Income for Employer-Paid Student Loan Assistance** — Up to \$5,250 of student loan repayment assistance paid by an employer after the date of enactment of the CARES Act through December 31, 2020, to or on behalf of an employee may be excluded from the employee's income under Code Section 127. The repayment assistance may be paid to a lender or directly to the employee, must be for the principal or interest on a qualified education loan incurred by the employee for his or her own education, and is combined with other employer provided-education assistance for purposes of applying the \$5,250 annual exclusion limit for such payments under Code Section 127.

The Future

Congress and the Administration are working on at least one additional stimulus package, and it is expected to include corrections and clarifications to the CARES Act and previous stimulus efforts.