

What You Need to Know About the CARES Act Employee Benefits-related Provisions

Hinckley Allen Labor & Employment

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) as part of a \$2 trillion stimulus package. The CARES Act contains a number of provisions of interest to employers that are summarized below:

Unemployment Insurance

- The CARES Act extends unemployment benefits to individuals who are unemployed, partially unemployed, or unable or unavailable to work because of various COVID-19 related reasons enumerated in the Act. This includes individuals that are not otherwise generally entitled to unemployment benefits, e.g. self-employed individuals, independent contractors, individuals without sufficient work history to qualify for benefits, and individuals who already previously exhausted their benefit entitlement.
- The Act also provides an enhanced benefit for all workers eligible for unemployment. The amount of benefit equals the amount that would be calculated under the state law (with a minimum equal to 50% of the average weekly payment of regular compensation in the state), plus through July 31, 2020, an additional \$600 per week.
- The normal one-week waiting period for benefits has been waived.
- The duration of such assistance is up to 39 weeks, an increase from the standard 26 weeks in most states, between January 27, 2020 and December 31, 2020.
- Individuals who (i) have the ability to telework with pay and (ii) individuals receiving paid sick leave or other paid leave are excluded from receipt of unemployment benefits.
- The Act also extends federal financial support for states that have or create “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit.

Health and Welfare Plans

Several provisions of the CARES Act impact design and administration of health and welfare benefits.

COVID-19 Testing Coverage

The CARES Act amends the Families First Coronavirus Response Act’s (“FFCRA”) requirement that group and individual health plans cover without cost-sharing tests for COVID-19 detection or diagnosis by defining the type of tests for which no cost-sharing would apply. To be covered without cost-sharing, a test must:

1. Be approved, cleared, or authorized under the Federal Food, Drug, and Cosmetic Act;
2. Be subject to a request (or a stated intent to request) by the developer for emergency use authorization unless and until such request is denied or the request is not submitted within a reasonable amount of time;

3. Be developed in and authorized by a state that has notified the Department of Health and Human Services (“HHS”) that it will review the tests; or
4. Be another test determined appropriate by HHS.

Pricing of Diagnostic Testing

The CARES Act contains rules regarding reimbursement rates to providers for items and services related to testing. If a group plan has a negotiated rate with a provider, that rate will apply. If there is no negotiated rate, the reimbursement rate is either the cash prices listed by the provider on a public internet website, or a lower price negotiated by the plan or issuer. During the emergency period, all providers of diagnostic COVID-19 testing must publish the cash price of testing on their public website or potentially be subject to a civil penalty.

Rapid Coverage of Preventative Services and Vaccines for Coronavirus

The CARES Act requires health plans and health insurance issuers to cover (without cost-sharing) any “qualifying coronavirus preventative service” as a benefit under the Affordable Care Act. A “qualifying coronavirus preventative service” is an item, service, or immunization that is intended to prevent or mitigate coronavirus disease that is either an evidence-based item or service that has in effect a rating of ‘A’ or ‘B’ in the current recommendations of the United States Preventative Services Task Force; or an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved. The services must be covered without cost-sharing within 15 business days following the recommendation. This is a change from the current rule in the Affordable Care Act that permits a delay in covering certain preventive services or medications.

Telehealth

Under the CARES Act, effective immediately, telehealth or remote care services may be provided to individuals covered by high-deductible health plans (“HDHP”) at no cost (or at a subsidized cost) prior to satisfaction of the statutory minimum HDHP deductible.

Over-the-Counter Products and Medications

The CARES Act provides that the cost of menstrual care products will be qualified medical expenses reimbursable by health savings accounts, Archer medical savings accounts, health flexible spending arrangements, and health reimbursement arrangements after December 31, 2019.

HIPAA Privacy Requirements

The CARES Act mandates that HHS issue guidance, within 180 days, on sharing protected health information during the coronavirus-related health emergency.

Retirement Plans

The CARES Act contains provisions designed to help retirement plan sponsors and participants under financial distress due to the pandemic.

Required Minimum Distributions

- The CARES Act waives required minimum distributions for certain defined contribution plans and individual retirement accounts for 2020. The waiver also covers the first required minimum distributions, which individuals may have delayed

from 2019 until April 1, 2020.

- The CARES Act waives the 10% early withdrawal penalty that would have otherwise applied to a participant who is under age 59 ½ for “coronavirus-related distributions” up to \$100,000.
- A coronavirus-related distribution means any distribution from an eligible retirement plan made in 2020 to a participant:
 - Who is diagnosed with COVID-19 by a test approved by the CDC;
 - Whose spouse or dependent is diagnosed with COVID-19 by such test; or
 - Who experiences, as a result of COVID-19, adverse financial consequences as a result of being quarantined, furloughed or laid off, having work hours reduced, being unable to work due to a lack of child care, closing or reducing hours of a business owned or operated by the individual, or other factors as determined by the Secretary of the Treasury.

While coronavirus-related distributions are generally exempt from the 10% early withdrawal penalty, they are still subject to income tax. However, the Act provides that the distributions may be taxed evenly over three years. An individual that receives a coronavirus-related distribution may repay some or all of the distribution within a three-year period. Any repayment will be treated as a rollover contribution and will not be subject to annual contribution limitations.

The CARES Act Provides for Optional Expansion of Plan Loans

During the 180-day period following the enactment date of the Act (March 27, 2020), the limitation on loans can be raised to the lesser of \$100,000 or 100% of the participant’s vested account balance. Loan re-payment due dates on existing plan loans falling between March 27, 2020 and December 31, 2020 will be delayed for one year for qualified individuals, with interest accruing during the delay.

Required Minimum Contributions to Defined Benefit Plans

The CARES Act provides relief for single-employer pension plans by extending the due date for minimum required contributions due in 2020 to January 1, 2021, with accrued interest from the original payment date to the actual payment date.

We are here to help answer specific questions and offer advice on your options. Feel free to contact any member of our Labor & Employment group.

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