

# COVID-19 and Employee Benefit Plans: The CARES Act and Other Impacts

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# COVID-19 and Benefit Plans: Topics for Today

**Retirement  
Plans**

**Health and  
Welfare Plans**

**Employer  
Payments for  
Employee  
Student Loans**

**Leave Sharing  
Programs**

**PTO Cashouts**

**Disaster Relief  
Payments**

**Tax Credits  
under COVID-19  
Legislation**

**Delaying  
Payment of  
Payroll Taxes**

**PLUS!  
Overview of  
Financial Relief  
Programs**

# Retirement Plans



# Retirement Plan Impacts

- New CARES Act “Coronavirus Related Distributions” (Plans and IRAs)
  - Up to \$100,000 per person, without 10% penalty or 20% withholding
  - Taxes spread over 3 years, can be repaid to plan within 3 years, treated as rollover
  - Available to participant diagnosed with COVID-19, or spouse or dependent diagnosed, or experienced “adverse financial consequences” as a result of a quarantine, furlough, layoff, reduction in hours, or inability to work due to lack of child care due to the virus
  - Plan can rely on the participant’s certification that he or she meets these conditions
  - Only available during 2020



# Retirement Plan Impacts



## CARES Act Loan Expansion and Relief

- Applies to same category of participants as withdrawals
- Loan limit increased from \$50,000/50% of vested balance to \$100,000/100% of vested balance, payable over 6 years
- Existing loan payments due from enactment to 12/31/2020 can be deferred one year (with interest), loan term extended and remaining payments reamortized
- Only available for **180 days** from date of enactment (Sept. 23, 2020)

# Retirement Plan Impacts

- CARES Act RMD deferral (Plans and IRAs)—all participants
  - Required beginning date in 2020 (turned 70-1/2 in 2019) deferred one year
  - Required minimum distributions due in 2020 deferred one year
  - Does not apply to DB plans
  - Recall SECURE Act already delayed RBD until 2022 for those turning 70-1/2 this year
- All of these CARES provisions are optional, but many TPAs already moving quickly to implement them all, unless plan opts out
  - Could tailor design, for example allow loans only for active participants
- Amendments not required until 2022, retroactively to when put into operation

# Retirement Plan Impacts

## Other distribution options

- Age 59-1/2 withdrawals, profit sharing withdrawals, hardship due to “major disaster”
- Allow additional loans during year

## CARES defined benefit plan relief

- Can delay minimum funding contributions for 2020 for one year, with interest
- Can use last year’s funded status to avoid triggering benefit restrictions

# Retirement Plan Impacts

- Suspending Matching and other Contributions
  - NOTE: in most cases must send 45-day 204(h) notice by April 15 to freeze DB or MPP
  - Can generally suspend discretionary match or profit sharing at will; check plan on who has authority and action required (often just a Board resolution)
  - Fixed formula plans will require plan amendment but no prescribed notice
  - Safe Harbor match or 3% contribution can be suspended if power reserved in annual notice or operating at a loss
    - 30 days prior notice before effective date
    - Must amend plan, subject to ADP/ACP testing for entire year



# Retirement Plan Impacts

## ■ Partial Plan Termination

- Reduction in participation of 20% or more raises presumption of partial termination
- IRS guidance says to measure at end of plan year, so if enough employees are rehired, may not arise
- If does occur, consequence is that anyone who terminated during 2020 becomes fully vested, if not already
  - If unvested amounts were forfeited, must be restored; may want to wait until year-end
  - Does not allow distributions to active participants like full termination



# Health and Welfare Plans



# CARES Act: Medical Plan Coverage

## Provisions

- Cover COVID-19 testing w/o cost sharing
- Even for not-yet-FDA approved tests
- No prior authorization or medical management requirements
- Cover related doctor visit

## Provisions

- All qualifying preventive services or vaccines for COVID-19
- HDHP – OK to cover testing/treatment for COVID-19 w/o regard to deductible (IRS Notice 2020-15)
- Provisions expire when emergency deemed ended (except vaccine)

## Action Item

- Confirm medical plan carriers have made these changes
- Inform participants via SMM
- Coverage of coronavirus treatment without cost-sharing?

# CARES Act: Telehealth

## Telehealth and Other Remote Care

- Can be covered without any deductible, for any reason
- HSA eligibility unaffected

## Limited

- **Only** for plan years beginning on or before December 31, 2021

## Action Items

- Medical plan amendment required
- Amend employee communications

# CARES Act: Medical Care Definition for HSA/HCFSA/HRA

## HSA/HCFSA/HRA

- Reimburse over-the-counter medicines and drugs w/o prescription
- Reimburse menstrual care products

## Effective

- For FSA/HSA expenses incurred after 12/31/19
- For HSA reimbursements after 12/31/19
- No expiration date

## Action Items:

- Cafeteria plan amendment required
- Amend employee communications

# Furloughs/Hours Reduction: Medical Plans

## Is the Furlough Covered?

- Check the plan!
- Self-insured plans – don't forget stop loss coordination

## Premium Holidays

- Check the plan!
- Don't discriminate

## Payment Mechanisms While on Furlough

- Prepay
- Pay-as-you-go
- Employer pays then recoups

# Furloughs/Hours Reduction: Medical Plans

## COBRA

- If the reduction in hours triggers a loss of eligibility
- Employer subsidies? Watch for discrimination and Exchange coordination issues

## ACA Stability Periods

- Continue coverage during stability period
- Is it active or COBRA coverage?
- COBRA coverage raises affordability issues

## ACA Affordability

- Reducing hours may cause coverage to become unaffordable

# Furloughs/Hours Reduction: FSAs

## Health FSAs

- “Change in status” must result in a change in eligibility

## Dependent Care FSAs

- Can change elections because all daycare is closed
- Can change elections if provider no longer needed
- Does not apply to cost changes imposed by dependent care providers who are relatives
- Check 125 Plan



# Student Loan Repayment



# CARES Act: Student Loan Repayments

## Employer Payments for Employee's Student Loans

- After 3/27/20 but before 1/1/2021
- Qualified education loan ~ loan for higher education expenses
- Pay lender directly or pay the employee

## Annual Cap of \$5,250

- Tax-free up to \$5,250
- Annual \$5,250 cap also covers other employer provided education assistance (e.g. tuition, fees and books)

# Leave Sharing Programs



# Leave Sharing Programs

- PTO donation or leave-sharing arrangement allows employees to donate PTO, vacation, and sick days to other employees
  - No specific governing rules
  - Discrimination and state law considerations
- Assignment of income doctrine generally taxes *donor*
- Exceptions for:
  - Bona fide medical emergencies (Rev. Rule 90-29)
  - Major disasters (IRS Notice 2006-59)
- If exception satisfied, tax shifted to recipient
  - Gross-up option
  - Non-compliant purpose taints entire program



# Leave Sharing for Medical Emergencies

- Program limited to employees who suffer “medical emergency”
  - Medical condition of employee or family member
  - Requiring prolonged absence of work
  - Resulting in substantial loss of income
- Requires written policy or plan
- Eligible recipients must:
  - Be eligible to earn PTO
  - Exhaust all other PTO or paid leave
- Recipient must use donated PTO for medical emergency and return any excess



# COVID-19 and Medical Emergency Exception

- No IRS guidance
- Positive COVID-19 test
- Symptomatic or exposed and instructed by doctor to quarantine
- Self-quarantine alone unlikely to qualify

# Leave Sharing for Major Disasters

- Plan limited to employees adversely affected by “major disaster” declared by the President
- Must require employee to be absent from work
- Leave may not be converted into cash
- Employees may not designate specific leave recipient
- Donated leave cannot exceed maximum amount of leave that employee normally accrues during year
- Leave deposited on account of one major disaster must be used only for employees affected by that major disaster
- All unused leave must be returned to the leave donors after reasonable time period

## Major Disaster Policy for COVID-19

- Available only for recipients affected by COVID-19 in a state that has received a major disaster declaration (listed at: <https://www.fema.gov/disasters>).
- There is no limitation on location of donor employees



# PTO Cashouts



# Emergency PTO Cashouts

- Employers may wish to permit cashout of accrued vacation, sick leave, or PTO, without a penalty
- Exception for unforeseeable emergencies caused by COVID 19
  - Constructive receipt
- Limited window period



# Disaster Relief Payments



## Section 139 Qualified Disaster Relief

- “**Qualified disaster relief payments**” that serve to reimburse or pay an individual’s expenses incurred in connection with a “**qualified disaster**” are not taxable as federal income and are not subject to employment taxes or withholding
  - State withholding may apply
- Includes payments received for: (i) *reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster*, (ii) reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence due to a qualified disaster (a personal residence can be a rented residence or one you own), and (iii) reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster.

# Section 139 Qualified Disaster Relief

- Tax-free (not reported on W-2 or 1099)
- Limited to employees impacted by a declared major disaster
- No clear parameters from the IRS addressing the types of expenses that may be covered on a tax-free basis:
  - Childcare costs
  - Telecommuting
  - Unreimbursed medical expenses
  - Funeral expenses
  - Commuting expenses
  - Other unusual expenses resulting from the pandemic
- May **not** serve as income replacement or unemployment benefits
- Best practice: written policy, set procedures to apply for and receive aid

# Tax Credits and Delaying Payment of Payroll Taxes

# Employer Tax Credits under COVID-19 Legislation

- FFCRA and CARES Act offer employers tax credits for certain COVID-19-related wages paid to employees
  - FFCRA offers credits for qualified sick leave and qualified family leave paid to employees unable to work due to COVID-19
  - CARES Act offers tax credits for 50 percent of “qualified wages” paid while operations are significantly impacted by COVID-19
  - Both laws also provide tax credits for “qualified health plan expenses” attributable to wages eligible for tax credit under FFCRA or CARES Act

# Families First Coronavirus Response Act (FFCRA)

**Law requires employers with 500 or fewer employees to provide paid sick and family leave**

- Count FT and PT employees within U.S. towards 500 threshold

## **Exemptions**

- For employers with respect to employees who are health care providers and emergency responders
- Limited exemption for employers with fewer than 50 employees

**Sick and family leave funded by tax credits**



# FFCRA – Qualified Sick Leave

- Qualified sick leave (up to 80 hours)
  - At employee's regular rate of pay (up to \$511/day; \$5,110 total) for employees unable to work because they:
    1. Are subject to quarantine or isolation by government order;
    2. Have been advised by a health care provider to self-quarantine; or
    3. Are experiencing COVID-19 symptoms and seeking a medical diagnosis.
  - At 2/3 of employee's regular rate of pay (up to \$200/day; \$2,000 total) for employees unable to work because they are:
    1. Caring for an individual subject to quarantine or isolation by government order or advised to self-quarantine by a health care provider;
    2. Caring for their child if school or place of care has been closed or unavailable due to COVID-19 precautions; or
    3. Experiencing a similar condition specified by HHS (in consultation with DOL and Treasury).

# FFCRA – Qualified Family Leave

## Qualified Family Leave

(capped at 10 weeks)

- At 2/3 of employee's regular rate of pay (up to \$200/day; \$10,000 total) for employees unable to work because:
  - They are caring for a child whose school or place of care has closed; or
  - The child care provider is unavailable for COVID-19-related reasons.

# FFCRA Tax Credits

- Tax credits against employer portion of Social Security taxes for:
  1. 100% of qualified sick and family leave paid between April 1, 2020 and December 31, 2020 (up to specified caps);
  2. Qualified health care expenses attributable to the paid leave (discussed later); and
  3. Employer-portion of Medicare taxes on paid leave
    - No Social Security taxes assessed on employer for paid leave
- Employers should retain documentation to substantiate employees' eligibility for paid sick and family leave
  - Keep records for at least 4 years

# CARES Act Employee Retention Credit

- Provides tax credit against employer portion of Social Security taxes to “eligible employers”:
  - To be “eligible employer,” must satisfy one of the following criteria:
    1. Operation is fully or partially suspended due to government orders limiting commerce, travel, or group meetings due to COVID-19; or
    2. Gross receipts for a calendar quarter was less than 50% when compared to same quarter for 2019 (continues until the calendar quarter in which gross receipts increase to 80% when compared to same quarter for 2019)



# CARES Act Employee Retention Credit

- “Qualified wages” are sum of:
  1. Wages paid to employees while “eligible employer”;
    - Avg. of more than 100 FT employees in 2019: wages paid to employees who are not working
    - Avg. of 100 or fewer FT employees in 2019: all wages paid while “eligible employer”; **and**
  2. Qualified health plan expenses
- Tax credit for 50% of “qualified wages” paid after March 12, 2020 and before January 1, 2021 (while “eligible employer”)
- Credit capped at \$10,000 per employee

# Qualified Health Plan Expenses

- Same definition under both FFCRA and CARES Act
- Amounts paid by employer to maintain a group health plan and allocable to wages paid that are eligible for tax credit
  - Includes portion of cost paid by employer and portion paid by employees on pre-tax basis
  - Excludes portion paid by employees on after-tax basis
- IRS guidance states “any reasonable method” can be used for determining and allocating “qualified health plan expenses” (e.g., use COBRA premium divided by number of work days)
- Employer contributions to HRA or health FSA count as “qualified health plan expenses”
  - But employer contributions to HSA, Archer MSA, or QSEHRA do not count

# How to Claim Tax Credits Under Either Law

- Credits only apply to employer portion of Social Security tax, but...
  - Employers can reduce all quarterly payroll withholdings (i.e., employer and employee portion of Social Security and Medicare taxes and employees' withheld income tax) by amount of anticipated credit for quarter
- If the reduction is insufficient to fund wages or leave amounts for quarter, employers can request an advance credit from the IRS for remaining amounts
  - IRS has issued Form 7200 for this purpose and expects to start issuing credits starting in April
- Refundability: If credits exceed employer's Social Security tax obligation, excess is treated as overpayment (and can be refunded to employer)

# Other Limitations

**Credits under both laws available to tax-exempt, but not governmental employers**

**Employer can receive tax credits under both laws, but not for the same wage payments**

**Employer who receives tax credits for paid leave under FFCRA is eligible to have that leave counted for purposes of an SBA loan, but not for purposes of loan forgiveness**

**Employer who receives SBA loan is ineligible to receive employee retention tax credit under CARES Act**



# Deferred Payment of Social Security Taxes

- Under CARES Act, employers can delay payment of their portion of Social Security taxes incurred between March 27, 2020 and December 31, 2020:
  - 50 percent can be delayed until December 31, 2021
  - Other 50 percent can be delayed until December 31, 2022
- Deferred payment not available to employers who have loan forgiven under Paycheck Protection Program of CARES Act

# Overview of Financial Relief Programs




# CARES Act Programs

- There are two SBA Programs (**PPP** and **EIDL**) and one non-SBA Loan
  - PPP maximum loan \$10 Million and EIDL \$2 Million
  - PPP loan terms 1% interest, 6 month deferral, 2 year payback, no guarantees or collateral required
- PPP loan can be forgiven – at least 75% must be payroll costs
- EIDL loan only, may impact PPP



# CARES Act Programs, cont.



Eligibility broader than standard SBA, but must check whether and, if so, how Affiliation Rules apply and then do payroll analyses

Employer size limitations – generally 500 with a per location exception for Hospitality and some industries have SBA authorized higher limits

New PPP and EIDL Application forms April 3 on SBA website –  
FIRST COME, FIRST SERVED

Title IV – non-SBA loan for companies 500 – 10,000 employees

# Thank you



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