Year-End Appropriations and COVID-19 Act Includes Employee Benefit Changes

On Dec. 27, 2020, President Trump signed into law the Consolidated Appropriations Act of 2021 and the COVID-Related Tax Relief Act of 2020 (collectively, the Act). In addition to the annual appropriation provisions and COVID-19 relief and stimulus provisions, the Act includes a number of changes impacting employee benefits. The most significant employee benefits-related provisions are summarized below. Other employee benefits changes included in the Act, such as the new rules regarding surprise medical billing, will be addressed in a subsequent information memo.

Partial Plan Terminations

Under Section 411(d)(3) of the Internal Revenue Code (Code), retirement plans are required to provide for 100% vesting for affected participants if the plan incurs a "partial plan termination." In general, a partial plan termination occurs when there is a significant reduction in the number of active participants in a plan as a result of employer-initiated terminations. Under the Act, a plan will not have a partial termination for any plan year that includes the period beginning on March 13, 2020 and ending March 31, 2021, so long as the number of active participants under the plan as of March 31, 2021 is at least 80% of the plan's active participants as of March 13, 2020.

Coronavirus-Related Distributions

The CARES Act enacted earlier this year permitted certain retirement plans to offer participants affected by COVID-19 the opportunity to elect pre-termination distributions of up to $100,000, notwithstanding the plan's generally applicable distribution rules. These distributions, referred to as Coronavirus-Related Distributions (CRDs), were available through Dec. 30, 2020 and are not subject to the 15% additional tax on distributions prior to age 59½, are included in income over a three-year period and may be repaid to the plan within three years. However, under the CARES Act, CRDs were not available from a money purchase pension plan. The Act now permits CRDs from money purchase pension plans, retroactive to Jan. 1, 2020.

However, the Act did **not** extend the availability of CRDs (or the increased participant loan limits) beyond Dec. 30, 2020. Therefore, a participant may not receive a CRD from a retirement plan or take advantage of the increased participant loan limits after Dec. 30, 2020.

Disaster-Related Distribution and Loan Changes

The Act provides for special distribution and loan rules for other federally-declared disasters (other than the COVID-19 pandemic disaster) declared from Jan. 1, 2020 through Feb. 25, 2021, such as the major disaster declared in connection with the California wildfires. The loan and distribution rules are similar to the special rules applicable to COVID-19 pursuant to the CARES Act. Like the CARES Act distribution and loan rules, these provisions are optional.

Flexible Spending Account Changes

The Act temporarily liberalizes the rules for health and dependent care flexible spending accounts (FSA). These changes are optional.

- The Act allows an FSA to permit health and dependent care FSA election changes for plan years ending in 2021, without regard to whether the employee has had a change in status that would permit an election change under the generally applicable FSA rules. Similar relief was provided under IRS Notice 2020-29 for 2020. The Act extends this relief for an additional year.
- An FSA may permit participants to carry over unused balances from 2020 to 2021 and from 2021 to 2022. The Act does not provide for a cap on this carryover provision.
- An FSA may extend its grace periods for 2020 and 2021 for up to 12 months following the close of plan year.
- An FSA may permit an employee who ceases participation in an FSA to receive reimbursement from unused balances through the end of the plan year in which the employee ceased to participate in the FSA (including any grace period). For example, an employee who stopped participating in an FSA due to termination of employment may be permitted to continue to submit reimbursement requests for eligible expenses incurred during this extended period.
- The Act also provides for special rules that would permit a dependent care FSA to reimburse childcare expenses in connection with 13 and 14 year old children.

Reimbursement of Student Loan Expenses

The CARES Act permitted educational assistance plans under Code Section 127 to pay or reimburse eligible employees' student loan payments (up to the $5,250 annual limit on education assistance benefits) on a tax-free basis through Dec. 31, 2020. The Act extends this rule through Dec. 31, 2025. This is an optional change.

Employers that wish to adopt any of the optional changes permitted by the Act will be required to adopt appropriate amendments. However, the Act permits employers to implement these changes prior to actually adopting amendments to reflect them. In general, for changes affecting 2020, an amendment must be adopted by Dec. 31, 2021 and for changes affecting 2021, an amendment must be adopted by Dec. 31, 2022. However, other amendment deadlines apply for certain changes.

If you have any questions about this information memo, please contact Aaron M. Pierce, any attorney in our Employee Benefits and Executive Compensation practice or the attorney at the firm with whom you are regularly in contact.

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