

The CARES Act Implications for Employee Benefits and Executive Compensation

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (Act) into law, which includes multiple provisions providing relief for both businesses and individuals amid the coronavirus pandemic, including provisions implicating employee benefits and executive compensation. These provisions impact retirement plans, health and welfare plans, employer-provided student loan payments and executive compensation.

Retirement Plans

Coronavirus-Related Distributions

The Act permits certain retirement plans (as well as individual retirement accounts) to be amended to permit “coronavirus-related distributions.” During the period from January 1, 2020 to December 31, 2020, an eligible participant could elect to receive a coronavirus-related distribution from the plan in an amount up to \$100,000 regardless of whether or not the participant has terminated employment or is otherwise entitled to a distribution under the generally applicable provisions of the plan.

A coronavirus-related distribution is a distribution that is made to a plan participant who, generally, has either been diagnosed with COVID-19, or whose spouse or dependent has been diagnosed with COVID-19, or who experiences adverse financial consequences due to COVID-19, such as being furloughed, being unable to work due to being quarantined or being unable to work due to lack of child-care due to COVID-19.

Plan administrators may rely on a participant’s certification that the conditions to receive a coronavirus-related distribution are satisfied.

Coronavirus-related distributions are not subject to the 10 percent excise tax which is imposed on other forms of early distributions, nor are such distributions subject to tax-withholding. While amounts received as a coronavirus-related distribution are includible in gross income of the recipient, the Act permits the inclusion in gross income to be spread out over the three-year period beginning on the day after the date on which the distribution is received. Furthermore, the Act also permits coronavirus-related distributions to be repaid to the plan. To the extent of the amounts repaid, the coronavirus-related distribution will not be included in gross income.

Plan Loans

Certain retirement plans may be amended to temporarily increase the amount available as a plan loan for participants who meet the same requirements listed above to receive a coronavirus-related distribution.

The amount available as a plan loan is generally limited to the lesser of \$50,000, or one-half of the present value of the participant’s nonforfeitable accrued benefit under the plan. Under the Act, a plan may be amended to increase the limit on plan loan amounts to the lesser of \$100,000, or the present value of the participant’s nonforfeitable accrued benefit under the plan, for participants who meet the requirements listed above and who receive a plan loan during the 180-day period beginning on March 27, 2020.

In the case of a participant who meets the requirements described above to receive a coronavirus-related distribution, certain retirement plans may also be amended to temporarily delay the due date for any repayment of a plan loan that is outstanding as of March 27, 2020. Such due date may be delayed for one year, and any subsequent repayments with respect to such plan loan will be appropriately adjusted to reflect the delay and any interest accrued during such delay.

Required Minimum Distributions

The Act temporarily waives required minimum distributions from defined contribution plans (as well as individual retirement accounts). This waiver applies to required minimum distributions required to be made in 2020, as well as to 2019 required minimum distributions that were required to be made in 2020.

Plan Amendments

To implement the changes described above, plan amendments must be adopted on or before the last day of the first plan year beginning on or after January 1, 2022 (or January 1, 2024 in the case of a governmental plan). However, during the applicable time periods, the plan must have been operated as if the amendment were in effect, and the amendment must apply retroactively for such period.

Delay of Minimum Required Contributions to Defined Benefit Plans

The Act delays the due date of any quarterly minimum required contribution to a defined benefit plan which would have otherwise been required to be made during calendar year 2020 to January 1, 2021. However, the amount of any such delayed minimum required contribution shall be increased by interest accruing for the period between the original due date and the payment date, at the effective rate of interest for the plan for the plan year which includes such payment date. Additionally, the Act provides that a plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the adjusted funding target attainment percentage for the plan year which includes calendar year 2020.

Health and Welfare Plans

COVID-19 Testing and Preventative Services

The Families First Coronavirus Response Act (Coronavirus Response Act), passed prior to the Act, generally required that the costs of COVID-19 testing be covered by group health plans and health insurance issuers, and that no cost-sharing be imposed on the individuals receiving such tests, so long as the tests met certain requirements. Additionally, the Coronavirus Response Act only required that the test and testing-related services be covered with no cost-sharing. The Coronavirus Response Act did not require coverage for the treatment for COVID-19.

The Act expands the testing that must be covered by group health plans and health insurance issuers without cost-sharing, and also includes rules regarding the amount that group health plans or health insurance issuers must reimburse testing providers. Furthermore, the Act now requires group health plans and health insurance issuers to cover, without cost-sharing, any qualifying coronavirus preventative service, which is an item, service or immunization that is intended to prevent or mitigate COVID-19 and that meets certain standards.

Certain Over-the-Counter Medical Products Now Qualified Medical Expenses

The Act generally removes the prohibition on the reimbursement of non-prescription medicine and drugs under health savings accounts, Archer medical savings accounts, health flexible spending arrangements and health reimbursement arrangements. Additionally, the Act provides that amounts paid for menstrual care products shall be treated as paid for medical care.

Telehealth and High-Deductible Health Plans

For certain plan years a plan will not fail to be treated as a high deductible health plan by reason of failing to have a deductible for telehealth and other remote care services and the availability of telehealth or remote care will be disregarded as “other coverage” for purposes of the contribution rules applicable to health savings accounts.

Employer-Provided Student Loan Payments

The gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance provided to the employee under an Internal Revenue Code (Code) Section 127 educational assistance plan, in an amount up to \$5,250 per year. Prior to the enactment of the Act, amounts received by an employee from an employer for repayment of education loans were not subject to this exclusion from gross income and, as a result, were included in the employee’s taxable income. The Act permits employer payments of an employee’s education loan, made after March 27, 2020, and before January 1, 2021 to be treated as education assistance under a Code Section 127 educational assistance plan and excludible from the employee’s gross income. The \$5,250 annual limit applies to all educational assistance, including student loan repayments, provided under an educational assistance plan.

Limits on Employee Compensation

Entities that receive loans or loan guarantees under Title IV of the Act are required to limit certain employees’ compensation (in addition to a specific limitation on employee compensation relating to the Air Carrier Worker Support subtitle). Entities that receive such loans or loan guarantees under Title IV of the Act must agree that during the period beginning on the date on which the agreement to receive the loan or loan guarantee is executed, and ending on the date that is one year after the date on which the loan or loan guarantee is no longer outstanding (the Applicable Period), certain employees’ compensation will generally be limited as follows:

- If an officer or employee of the entity received total compensation of more than \$425,000 (from the entity) in calendar year 2019, then such officer or employee may not receive total compensation (from the entity), during the Applicable Period, in excess of the amount received in calendar year 2019, or severance pay or other benefits upon termination of employment with the entity, which exceeds twice the maximum total compensation received by the officer or employee in calendar year 2019; or
- If an officer or employee of the entity received total compensation of more than \$3,000,000 (from the entity) in calendar year 2019, then such officer or employee may not receive total compensation (from the entity), during the Applicable Period, in excess of the sum of (i) \$3,000,000, and (2) 50% of the excess over \$3,000,000.

Bond will continue to monitor COVID-19 legal issues and will be hosting weekly webinars to update employers and businesses on the latest federal and state developments. You can register for the complimentary weekly webinar [here](#).

If you have any questions about this Information Memo, please contact any [attorney](#) in our [Employee Benefits and Executive Compensation Practice Group](#), or the attorney at the firm with whom you are regularly in contact.



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