STRADLEY RONON

Employee Benefits Alert

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Retirement Plan Relief in the CARES Act

The CARES Act includes provisions that will make it easier for employees to access their retirement plan savings during the pandemic.

CARES Act allows 401(k), 403(b) and 457(b) plans to be amended to permit in-service “coronavirus-related distributions:”

- A “coronavirus-related distribution” is a year 2020 distribution from the plan, not to exceed $100,000 in the aggregate, to a participant:
- Who is diagnosed with the virus (or ensuing disease) by a test approved by the CDC
- Whose spouse or dependent is so diagnosed by such a test, or
- Who experiences adverse financial consequences due to the virus as a result of:
    - Being quarantined
    - Being furloughed
    - Being laid-off
    - Having reduced work hours
    - Being unable to work due to lack of childcare
    - The closing or reduction of hours of a business owned or operated by the participant, or
    - Other factors as determined by the IRS
- Plan administrator may rely on employee’s certification that such distribution is a “coronavirus-related distribution:”
    - The administrator does have to ensure that all coronavirus-related distributions from the plan and from all plans in the employer’s control group do not exceed $100,000 in the aggregate.
- “Coronavirus-related distributions” are not considered eligible rollover distributions and are therefore not subject to mandatory 20% withholding.
- The Plan must be amended to permit such distributions by the end of 2021.

Early distribution tax does not apply. "Coronavirus-related distributions" from any qualified retirement plan, to active or former employees or beneficiaries, or from any IRA, are, to the extent they do not exceed $100,000 in the aggregate, not subject to the IRC section 72(t) 10% excise tax for early distributions:

- Taxation of such amounts may be spread over 3 years and such amounts may be repaid to a qualified retirement plan or IRA for 3 years after distribution.

Temporary increase of Plan loan limits. If the plan is amended by the end of 2021 to permit, plan participants suffering from C-19 directly or indirectly (as described above) may borrow from the Plan up to the lesser of $100,000 or the vested account balance through 180 days after the date the CARES Act was enacted:

- Installments on existing and new loans that are payable during the remainder of 2020 may be delayed up to one year.

- These provisions of the CARES Act will generally apply only to active participants.

Waiver of required minimum distributions for 2020. If permitted by the plan, defined contribution plans and IRAs do not have to comply with the required minimum distribution rules for 2020:

- The plan must be amended by the end of 2021.

- Employer payment of student loans. During 2020, employers that have "educational assistance programs" under section 127 of the Internal Revenue Code may pay or reimburse their employees' student loan installments on a Federal income tax-free basis. Such payments (together with all payments under section 127) remain subject to the annual $5,250 per employee limit.

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- Changes to mandatory no-cost-sharing coverage under ACA. During the coronavirus emergency period, employer group health plans must cover most C-19 in-vitro testing and other C-19 preventive services, including any vaccine that may be forthcoming, at no cost to the employee.

Limitations on executive compensation. With respect to any business that receives a bailout loan or loan guarantee from the government:

- Any employee whose "total compensation" in 2019 exceeded $425,000 may not receive an increase of such compensation until one year after the loan is repaid and may receive severance pay of not more than two times the employee's pay during 2019.

- Total compensation of any officer whose 2019 compensation exceeded $3,000,000 is limited to total compensation of no more than $3,000,000 plus 50% of the officer's 2019 compensation in excess of $3,000,000 until the loan is repaid.

- "Total compensation" is defined as salary, bonus, awards of stock, and other financial benefits.