



HOW THE CARES ACT IMPACTS EMPLOYEE BENEFITS

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The CARES Act signed into law on March 27, 2020 includes several changes that impact retirement plans and executive compensation. The law provides participants impacted by the COVID-19 pandemic with expanded rights related to distributions and loans from their retirement plans. In addition, the law permits plan sponsors to delay minimum required contributions to a pension plan and limits compensation for executives working at business that receive grants or loans under the law. These changes are summarized below.

Expanded Participant Rights Related to Distributions from a Retirement Plan

Until December 31, 2020, the law permits an eligible participant to elect to take a distribution of up to \$100,000 from the participant's retirement plan without paying the 10% early withdrawal penalty or 20% mandatory withholding that generally applies to those under 59 ½ years of age. The amount is subject to income tax but a participant will be permitted to pay that tax over a three year period. The participant is also permitted to "recontribute" the distribution back into a tax-qualified plan over that same three year period. This recontribution is treated as if it were a rollover from one tax-qualified plan to another and thus will not be subject to annual caps on contributions.

Expanded Participant Rights Related to Loans from a Retirement Plan

The law also increases the amount that an eligible participant can receive in a plan loan. Until September 23, 2020 (180 days from passage of the law), an eligible participant may receive a plan loan up to the lesser of: a) \$100,000; or b) 100% of the participant's vested account balance. This doubles the existing loan limit (the lesser of \$50,000 or 50% of vested account balance). In addition, the law provides a one-year extension on repayment of the loan (or any existing loan from the plan). Any due date for loan repayment occurring between now and December 31, 2020 is automatically extended for one year.

Who is Eligible for These New Distribution and Loan Rules?

In order to take advantage of these new distribution and loan rules, a participant must certify to the plan that: a) the participant has been diagnosed with COVID-19; b) the participant has a spouse or dependent diagnosed with COVID-19; or (c) the participant has experienced adverse financial consequences as a result of COVID-19 due to being quarantined; suffering a termination, layoff or reduced hours; or having to take off work to care for a child due to a school closure or lack of child care. A plan administrator may rely on the participant's certification.

No Required Minimum Distribution in 2020

The law also provides retirees with a way to avoid taking a distribution during this market downturn. A retired account holder who exceeded 70 ½ in 2019 will not be required to take a required minimum distribution in 2020. As both the amount of this RMD (and the taxes due on it) are calculated based on the value of the account as of December 31, 2019, this is a substantial benefit to those who can afford to hold off until next year.

Delay in Minimum Required Contributions

The law also eases the financial burden on businesses with defined benefit pension plans. These businesses can delay minimum required contributions to their plans until January 1, 2021.

When Must Plans Adopt These Changes?

Plans will have until the last day of the first plan year beginning on or after January 1, 2022.

What are the Limits on Executive Compensation?





The executives of any business that receives a loan or loan guarantee from the \$500 Billion Exchange Stabilization Fund will have significant limits placed on their compensation from the date that the loan agreement is entered into until one year after the date that the loan is no longer outstanding (the "Restricted Period"). For executives making over \$425,000 but less than \$3 million in 2019, their total compensation during the Restricted Period cannot exceed their 2019 compensation (except that a severance payment can be up to two times 2019 compensation). For executives making \$3 million or more in 2019, their total compensation during the Restricted Period cannot exceed \$3 million plus 50% of the amount that their 2019 total compensation exceeded \$3 million (effective a reduction in pay for those making over \$3 million).

If you have any questions, please feel free to contact any of the listed attorneys.

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