

COVID-19 Legislative and Regulatory Impact on Employee Benefits

| Provision | Details | Mandatory or Optional | Comments |
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| Families First Coronavirus Response Act (“FFCRA”) | | | |
| COVID-19 Testing | Insured and self-insured group health plans must cover COVID-19 testing and may not impose any cost-sharing requirements (including deductibles, co-payments, or co-insurance) or prior authorization requirements on FDA-approved (in vitro) products used to test for COVID-19 and the administration of such tests, or items and services furnished during a visit to a health care provider (including telemedicine), urgent care center, or emergency room that result in COVID-19 testing. | Mandatory | This provision has been clarified and expanded by the CARES Act (see below). |
| Emergency Sick Leave | Employers with fewer than 500 employees must provide up to 80 hours of paid leave for eligible employees (full-time and part-time; 80 hours is prorated for part-time). Applies when an employee cannot work (or telework) due to: (1) Experiencing symptoms of COVID-19 and seeking a medical diagnosis (paid at 100% and capped at \$511 per day and \$5,100 in total). | Mandatory for covered employers | The Act provides refundable tax credits to covered employers to help cover the cost of this benefit. Note that this sick leave is in addition to other leave policies already in place by the employer, and the employer cannot require an employee to use them concurrently. |

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| | <p>(2) Subject to federal, state, or local quarantine or been told by health care provider to self-quarantine due to COVID-19 (paid at 100% and capped at \$511 per day and \$5,100 in total) (or, in the case of an employee who is assisting or caring for an individual who must self-quarantine, paid at 2/3 the employee's rate and capped at \$200 per day and \$2,000 in total). (3) Caring for a child if school/childcare provider is unavailable due to COVID-19 precautions (paid at 2/3 the employee's rate and capped at \$200 per day and \$2,000 in total). (4) Experiencing any other substantially similar condition specified by the Secretary of HHS (paid at 2/3 the employee's rate and capped at \$200 per day and \$2,000 in total).</p> | | <p>The DOL has clarified that in determining whether related employers are under the 500-employee threshold, the FMLA joint employer and integrated employer rules are used.</p> |
| <p>Expanded FMLA Leave</p> | <p>Also applies to employers with fewer than 500 employees and provides expanded FMLA leave and job protection if an employee is unable to work (or telework) because they must care for a child (under age 18) when school or a care provider is closed due to a COVID-19 emergency. The first ten days of the FMLA leave may be unpaid (but note the new emergency sick leave may apply), but employees may elect to use accrued vacation, sick, or other</p> | <p>Mandatory for covered employers</p> | <p>This is essentially a new category of FMLA leave for lack of childcare due to the COVID-19 crisis.</p> <p>This provision is only applicable to employees with at least 30 days' tenure.</p> <p>As with the emergency sick leave, the Act provides refundable tax credits to covered employers</p> |

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| | <p>leave during this period. After the initial 10-day period, employers must pay at least 2/3 of an employee's regular wages (capped at \$200 per day and \$10,000 total for the duration of the leave). There are formulas for calculating payments due to employees with irregular schedules.</p> | | <p>to offset the cost of this benefit.</p> |
| Coronavirus Aid Relief and Economic Security Act ("CARES Act") | | | |
| <p>Coronavirus-Related Distributions</p> | <p>Retirement plans may allow "qualified individuals" to take distributions of up to \$100,000 until December 31, 2020, without being subject to the 10% early distribution penalty or mandatory withholding. Participants may elect to spread taxes over three years. Additionally, distributed amounts may be re-contributed to a retirement plan or an IRA during the three-year period following the distribution. Qualified individuals include those diagnosed with COVID-19, whose spouse or dependent has been diagnosed, or who experience adverse financial consequences due to being quarantined, furloughed, laid off, reduced work hours, lack of childcare, or other factors determined by the Department of Treasury. A participant may self-certify as to his/her qualification.</p> | <p>Optional</p> | <p>These distributions may be made available under any type of qualified retirement plan, but would have limited applicability to a defined benefit plan.</p> <p>These coronavirus-related distributions are separate from traditional hardship withdrawals.</p> |

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| Expanded Participant Loan Amounts | Legal limit on participant loans to qualified individuals is increased to \$100,000 and 100% of vested account balance (previously \$50,000 and 50%). Applicable to loans through December 31, 2020. | Optional | Unlike the coronavirus-related distribution provision, this one is not explicitly clear on whether a participant may self-certify as to his/her qualified status. More guidance is expected. |
| Participant Loan Payment Suspension Provisions | Outstanding loan payments through December 31, 2020, may be delayed for one year by qualified individuals. Interest continues to accrue and remaining payments will be re-amortized. | Optional | This applies to pre-existing loans as well as new loans. |
| Waiver of Required Minimum Distributions | Defined contribution plans and IRAs may allow participants to waive required minimum distributions (RMDs) otherwise required to be made in 2020. | Optional | <p>This provision is not limited to participants directly affected by COVID-19. It is similar to a provision enacted for the 2008-9 financial crisis.</p> <p>This provision is not applicable to defined benefit plans.</p> <p>Guidance is expected from the IRS with respect to RMDs that were already made in 2020 before the enactment of the CARES Act.</p> |
| COVID-19 Testing | Requires group health plans to provide coverage for COVID-19 diagnostic testing with no cost-sharing, prior | Mandatory | Expands on FFCRA provision to include tests that are FDA-approved, for which FDA |

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| | authorization, or medical management requirements. Also mandates that reimbursement is at the negotiated rate or the provider's posted rate. | | <p>emergency use authorization is requested, tests developed by a state, or other tests approved by the Secretary of HHS.</p> <p>Recent guidance indicates this coverage applies both in-network and out-of-network.</p> <p>This does not cover <i>treatment</i> for COVID-19.</p> |
| COVID-19 Vaccines | Requires group health plans and insurer to cover coronavirus preventive services (e.g., vaccines) at 100% without cost sharing under Affordable Care Act preventive care. | Mandatory | Coverage is required within 15 days after recommendation as preventive care. |
| Telemedicine Expansion for High Deductible Health Plans | High deductible health plans (HDHPs) may cover telemedicine services before deductible is reached for individuals who contribute to health savings accounts (HSAs). This provision is in effect through December 31, 2021, and may be applied retroactively to January 1, 2020 (this is a change per Notice 2020-29; the Act previously indicated it was effective March 27, 2020.) | Optional | Prior to enactment of the CARES Act, the IRS had issued a notice permitting testing and treatment of COVID-19 (including telemedicine) without deductible within an HDHP. The CARES Act expanded that to include all telehealth services. |
| Over-the-Counter Drugs and Menstrual Care Products under FSAs | Health Flexible Spending Accounts (FSAs) may now reimburse over-the-counter drugs and menstrual care products without a prescription. | Optional | <p>This provision applies to amounts paid on or after January 1, 2020.</p> <p>Plan sponsors wishing to adopt this change may need to amend</p> |

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| | | | <p>their cafeteria (FSA) plans quickly and communicate the change to participants.</p> <p>This change is also applicable to health savings accounts (HSAs), health reimbursement arrangements (HRAs), and Archer MSAs.</p> |
| Defined Benefit Funding Relief | Single employer defined benefit plans may utilize two forms of relief: (1) minimum required contributions are not due until January 1, 2021, and (2) the plan's adjusted funding target attainment percentage (AFTAP) for 2019 can be used for 200. | Optional | Note that if a plan takes advantage of the delayed minimum required contribution due date, interest will still accrue from the original date of the minimum required contribution until the date it is actually made. |
| Student Loan Repayments | Employers who offer educational assistance programs may make student loan payments up to \$5,250 per employee on a tax-free basis. | Optional | <p>An educational assistance program under Section 127 of the Tax Code is required.</p> <p>This is applicable only for payments after March 27, 2020, through December 31, 2020.</p> |
| DOL and Treasury Regulatory Guidance | | | |
| Extension of COBRA Election and Payment Deadlines | Department of Labor and Treasury issued guidance relaxing election and payment deadlines relating to COBRA for the period from March 1, 2020, through an as yet-to-be-determined end date for the COVID-19 | Mandatory | Although the new guidance is intended to assist individuals who lose coverage during this time of medical and economic uncertainty, |

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| | <p>“Outbreak Period” (60 days after the end of the COVID-19 national emergency).</p> <p>An example in the guidance presumes the end of the COVID-19 national emergency as April 30, 2020, with the Outbreak Period ending 60 days later on June 29, 2020. In this example, an individual who is terminated during the Outbreak Period has until August 28, 2020 to elect COBRA coverage. This means someone who lost group health plan coverage in March or April 2020 would have until August 28, 2020 to make a COBRA election and another 45 days (until October 12, 2020) to make his or her first COBRA premium payment.</p> | | <p>employers face increased complexity of administering medical claims during the extended election and payment period, and may have to pay claims that might not have been the responsibility of the employer’s group health plan, had individuals been required to elect and pay for COBRA under the old deadlines.</p> <p>Plan sponsors should contact their COBRA and health plan vendors to determine how they are handling these extended deadlines.</p> |
| Extended ERISA Claims and Appeals Deadline | Deadlines for participants and beneficiaries to make claims for benefits, appeals, and external reviews, are extended during the period from March 1, 2020, through the end of the COVID-19 Outbreak Period (see above under COBRA extension). | Mandatory | Note that this applies to health FSAs as well as other ERISA health and welfare plans. |
| Cafeteria Plan Mid-Year Election Changes | Plan sponsors may allow participants to make mid-year election changes during the remainder of the 2020 calendar year. Permissible changes include changes with | Optional | <p>Only prospective changes are allowed.</p> <p>Plan sponsors considering mid-year new</p> |

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| | <p>respect to employer-sponsored health coverage, contributions to a health FSA account, or contributions to a dependent care account. The election changes can include making a <i>new</i> election for employer-sponsored health coverage (e.g., an initial election for someone who previously declined coverage), <i>revoking</i> an existing election in employer-sponsored health coverage (but the participant must attest he/she is enrolled in or is immediately enrolling in other health coverage), and <i>revoking or making a new</i> election under a health FSA or dependent care account (including increasing or decreasing the amounts).</p> | | <p>enrollments into a health plan may wish to consider the possibility of adverse selection by participants who did not elect coverage during the last open enrollment.</p> <p>Permitting mid-year changes to health FSAs and dependent care accounts may be helpful to employees who may have postponed medical procedures or not used planned childcare during the COVID-19 stay-at-home period.</p> |
| <p>Cafeteria Plan Grace Period Extended Claims Period</p> | <p>A plan with a grace period ending in 2020 may extend the claims period for amounts remaining at the end of the grace period to include expenses incurred through the end of 2020.</p> | <p>Optional</p> | <p>This change is only applicable to plans utilizing a grace period ending in 2020 (i.e., March 15, 2020).</p> |
| <p>Increase in Cafeteria Plan Carryover Amount</p> | <p>The carryover amount for health savings accounts has been increased from \$500 to \$550 for 2020.</p> | <p>Optional</p> | <p>This reflects an indexing for inflation but generally will require a plan amendment for plans with the \$500 carryover amount built in. The amendment can be adopted any time</p> |

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| | | | before the end of the 2021 plan year. |
| Relief for Disclosure, Notice, and Contribution Deadlines | <p>DOL has provided limited relief from deadlines for participant disclosures and notices, loan and distribution procedures, and temporary delays in depositing participant contributions.</p> <p>Relief extends from March 1, 2020, until the end of Outbreak Period (see above under COBRA extension).</p> | Available | <p>The relief for distribution of disclosures and notices is “good faith relief,” so a plan sponsor must act in good faith to distribute notices as soon as administratively practicable (including by electronic distribution if appropriate). Disclosures and notices covered by the relief include SPDs, SMMs, SARs, etc. (Specific guidance is also provided with respect to blackout notices.)</p> <p>Delays in depositing participant contributions and loan payments must be due to the COVID-19 crisis. Relief for delays in forwarding contributions and loan repayments is a DOL non-enforcement policy and does not preclude IRS enforcement.</p> |
| Relief for Authorization of Plan Loans and Distributions | DOL guidance provides that if a retirement plan fails to follow the plan’s procedural requirements | Available | Note that this relief if applicable only to DOL rules, and does not extend to |

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| | for loans or distributions, it will not be treated as a failure if the failure is due to the COVID-19 outbreak, the plan administrator makes a good faith effort to comply with the requirements, and the plan administrator makes a reasonable attempt to correct any deficiencies as soon as possible. | | IRS requirements (e.g., spousal consent). |
| Extended Form 5500 Filing Deadline | IRS extended the filing deadline to July 15, 2020, for retirement and welfare plans with Form 5500s due between April 1, 2020, and July 15, 2020. | Optional | Note that this relief does not apply to the normal Form 5500 deadline of July 31, 2020, for calendar year plans. Plan sponsors may file Form 5558 to obtain a traditional extension until October 15 (note this extended due date also has not changed). |

*Chart current as of May 29, 2020. Please note that this chart includes only a high-level listing of certain key provisions of the FFCRA, the CARES Act, and regulatory guidance, and does not include all relevant details. Applicability to a particular employer's circumstances or plans may vary.