

COMPLIANCE ALERT

CARES ACT ADDRESSES COVID-19 ECONOMIC CRISIS

March 27, 2020

Congress has passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and the President has signed it into law today. The largest emergency economic stimulus package ever passed, the CARES Act aims to help individuals and businesses deal with the severe financial effects of the COVID-19 pandemic.

The CARES Act includes sweeping provisions related to greatly expanding small business loan programs, providing direct and immediate cash payments to certain individuals, providing significant unemployment benefits, increasing production of necessary medical supplies and authorizing financial aid to certain particularly hard hit industries. Additionally, the CARES Act clarifies several elements of the Families First Coronavirus Response Act (FFCRA) that became law on March 18, 2020.

The new law raises dozens of questions, and there will be much guidance in the days and weeks ahead that will provide details as to how certain aspects of the law will work. We will continue to update you with items that directly relate to your group health and other benefit plans and programs, and we will continue to update the particulars related to the FFCRA rules.

No-Cost COVID-19 Testing

The CARES Act clarifies that costs associated with office visits, urgent care visits or emergency room visits must be covered with no cost sharing (e.g., deductibles, copayments or coinsurance) if related to evaluating a patient for the need for an approved diagnostic test for COVID-19. We expect further guidance on the lingering question of whether such office visit or associated costs would be covered for evaluations that do not result in actually ordering or administering a COVID-19 test, but for now those appear to be covered.

The CARES Act also states that plans must reimburse providers for the cost of COVID-19 testing at a plan's negotiated rate or, if none, at no more than the cash price required to be published on the provider's web site. Providers who fail to publish their COVID-19 test price on their web sites could face up to a \$300/day penalty.

COVID-19 Vaccine Coverage

The CARES Act provides that DOL, HHS and IRS will be authorized to require group and individual health plans, to cover any item, service, or immunization with no cost sharing (e.g., deductibles, copayments or

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coinsurance) that is intended to prevent or mitigate COVID-19 within 15 days following its approval and recommendation by the United States Preventive Services Task Force or the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Emergency Paid Sick Leave and Emergency Expanded FMLA Leave Pay Caps (Employers with fewer than 500 employees)

The CARES Act clarifies that the maximum payment required to be paid to any individual under the Emergency Paid Sick Leave Act will be no greater than \$511/day and \$5,110/period of leave for leave due to an employee:

- is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

Further, the maximum payment required to be paid to any individual under the Emergency Paid Sick Leave Act will be no greater than \$200/day and \$2,000/period of leave for leave taken because an employee:

- is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- is caring for a son or daughter whose school or place of care has been closed, or the son or daughter's child care provider is unavailable, due to COVID-19 precautions; or
- is experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor.

Additionally, the maximum payment required to be paid to any individual under the Emergency Expanded Family and Medical Leave Act will be no greater than \$200/day and \$2,000/period of leave.

Also, the CARES Act specifies that individuals who were laid off on March 1, 2020, or later, but who worked at least 30 days within the last 60 calendar days prior to being laid off, would be eligible for emergency expanded FMLA leave when they are rehired. This is intended to not have these employees subject to a new 30-day waiting period before being eligible for emergency FMLA benefits should they otherwise be eligible due to circumstances following their reemployment.

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Expanded Telehealth Coverage

The CARES Act creates a safe harbor for telehealth services to be provided with no deductible without jeopardizing a plan's status as a high-deductible health plan or preventing employees from being eligible to contribute to a Health Savings Account (HSA). The safe harbor will apply to plan years starting on or before December 31, 2021.

Expanded Reimbursable Expenses under HSA

Starting with expenses incurred on or after January 1, 2020, the CARES Act provides that costs for over-the-counter drugs and menstrual care products will be reimbursable under an HSA. Additionally, Archer Medical Savings Accounts, Health Care Flexible Spending Accounts, and Health Reimbursement Arrangements will be able to reimburse these expenses.

Unemployment Insurance

The CARES Act creates the Pandemic Unemployment Assistance program to be in effect through December 31, 2020. Individuals will be able to get an amount equal to the applicable amount available under state unemployment insurance laws, plus up to \$600/week, for a period of up to 39 weeks. To be eligible, an individual may self-certify that he or she is otherwise able to work and available for work within the meaning of applicable state law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because:

- He or she has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- a member of the individual's household has been diagnosed with COVID-19;
- the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency, and such school or facility care is required for the individual to work;
- the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

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- the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- the individual has to quit his or her job as a direct result of COVID-19;
- the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- the individual meets any additional criteria established by the DOL for unemployment assistance under this section; or
- is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107

Individuals who can telework with pay or who are receiving paid sick leave or other paid leave benefits will not be eligible for payments under the Pandemic Unemployment Assistance program.

Pandemic Unemployment Assistance benefits will be available for any week beginning on or after January 27, 2020, and ending on or before December 31, 2020, as long as an individual remains unemployed, partially unemployed or unable to work due to COVID-19.

You no doubt will be getting many questions regarding expanded unemployment rights at the state and federal level, and we encourage you and your affected employees and former employees to go directly to the applicable state unemployment web site for details of how these benefits will affect you and your employees. If there are particular sites established by the federal government or the various states, we will update those on our coronavirus task force page.

Relaxed Retirement Plan Distribution and Loan Restrictions

The CARES Act permits plan sponsors to amend qualified retirement plans to allow for "coronavirus-related distributions" of up to \$100,000 without triggering the standard 10% early withdrawal penalty. To qualify for a coronavirus-related distribution, a distribution must occur during the 2020 calendar year and be made to a participant who has been (or whose spouse or tax dependent has been) diagnosed with SARS-CoV-2 or with

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coronavirus disease 2019 (COVID-19) by a CDC-approved diagnostic test. Additionally, an individual can receive a distribution if he or she:

- experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to such virus or disease;
- is unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease; or
- due to other factors as determined by the Secretary of the Treasury.

Individuals will be able to repay a coronavirus-related distribution within the three-year period starting the day after receiving the distribution without regard to typical annual contribution limits. Also, any taxable income to an employee for receiving a coronavirus-related distribution that is not repaid can be spread over three years from the date the individual received the distribution.

The CARES Act also allows qualified retirement plan sponsors to expand the terms on which an individual can take a qualified plan loan. The cap for a qualified plan loan taken within 180 days following enactment of the law will expand to \$100,000, and the loan can be for up to the full vested balance of the retirement account. Additionally, any outstanding qualified plan loan repayment that is scheduled to be due between the enactment date and December 31, 2020, will be delayed for one year.

Student Loan Payments under Qualified Educational Assistance Plan

Employers who sponsor a qualified Educational Assistance Plan under Code Section 127 will be permitted to make student loan repayments, either directly to a lender or to the borrower, of up to \$5,250 between the enactment date and December 31, 2020.

Small Business Loan Expansion

The CARES Act creates new loans to be administered by the Small Business Administration (SBA) to help employers meet payroll costs, healthcare, rent, utilities, and other debts. The CARES Act excludes from the definition of payroll any paid leave expenses incurred under the FFCRA which are to be recouped through allowable tax credit process under that law.

Businesses with fewer than 500 employees can get a loan for a period between February 15, 2020, and June 15, 2020. Also, a hospitality business with a NAICS Code 72 can get a loan as long as it employs no more than

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500 employees per physical location. Moreover, franchisees and certain other businesses who receive financial aid from an SBA-licensed small business venture company are eligible for these new loans.

These loans will be capped at the lesser of average monthly payroll costs during the previous year times 2.5 or \$10 million and will be forgivable in an amount equal to the amount of qualifying costs spent during an eight-week period after the origination of the loan. These qualifying costs include payroll costs (except for wages over \$100,000/employee), interest on secured debt obligations, and rent and utilities in place prior to February 2020.

Loan forgiveness will be reduced if an employer reduces its workforce during the eight-week period compared to prior periods or reduces the salary or wages paid to an employee by more than 25% during the eight-week period compared to the most recent calendar quarter.

Loan forgiveness reduction will not apply at all if an employer rehires all employees it had laid off since on or after February 15, 2020, or increases their previously reduced wages, no later than June 20, 2020.

You no doubt will be getting many questions regarding expanded SBA loans, and we encourage you to go directly to the [SBA web site](#) for more details. Additionally, you should consult qualified business and employment counsel regarding the details regarding applying for and receiving these loans.

Conclusion

We will continue to monitor developments, including expected departmental and agency guidance and possibly a fourth round of COVID-19 relief legislation, and will provide the latest updates as we receive them.

We express to all of our clients and friends our deep appreciation for our ongoing relationships, and we look forward to strengthening those ties as we all work through this shared adversity. Stay safe and be well.

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