The information in this article is current through March 27, 2020. However, given the fast changing nature of the nation's response to the COVID-19 pandemic, we acknowledge that facts will change and invite you to visit our pandemic **site** where we maintain up-to-date information.

President Signs $2 Trillion Stimulus Bill into Law

The 2019 Novel Coronavirus (COVID-19) pandemic is an unprecedented shock to the nation and its economy. In response, President Donald J. Trump signed the largest fiscal stimulus package into law. The focus of the Coronavirus Aid, Relief, and Economic Security (CARES) Act is to provide economic relief for the individuals and businesses hit hardest by the pandemic and the resulting financial downturn. While the focus of the CARES Act is to inject money into the system, it does include a number of important provisions for employee benefit plan sponsors.

Retirement Provisions

The CARES Act includes provisions that loosen retirement plan hardship and loan rules to free up funds for individuals impacted by the pandemic.

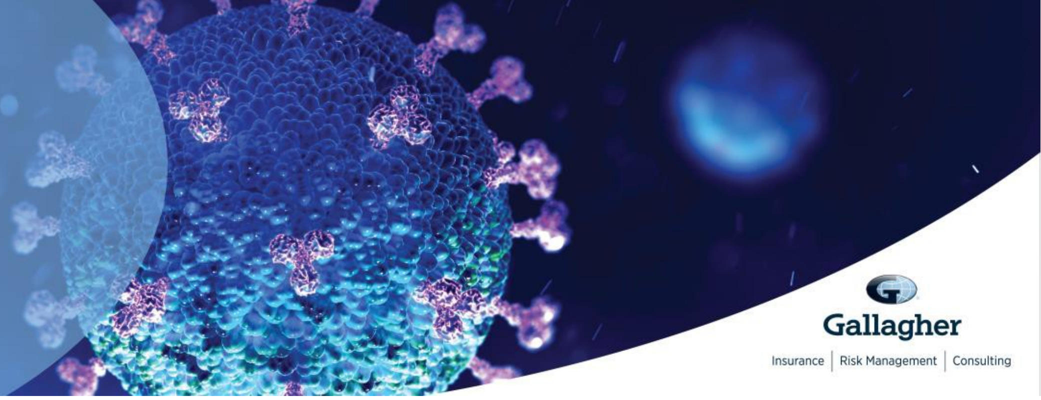
Hardship Distributions

The CARES Act waives the Internal Revenue Code Section 72(t) additional 10% tax on early withdrawals up to $100,000 from a retirement plan or an IRA for an individual who has a "coronavirus-related distribution," which means a distribution between January 1 and December 31, 2020 made to an individual:

1. diagnosed with COVID-19;
2. whose spouse or dependent is diagnosed with COVID-19;
3. who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; or
4. other factors as determined by the Treasury Secretary or his delegate.

The plan can rely on the participant's certification of the requirements above. The total amount is limited to $100,000 from all plans and IRAs.

The CARES Act permits those individuals to pay taxes on the income from the distribution ratably over a three-year period unless the participant elects immediate taxation. Individuals are also permitted to repay that amount tax-free back into the plan over the next three years. Those repayments would not be subject to the retirement plan contribution limits.



Plan Loans

The CARES Act doubles the current retirement plan loan limits to the lesser of $100,000 or 100% of the participant's vested account balance in the plan. Individuals with an outstanding loan from their plans with a repayment due from the date of enactment of the CARES Act through December 31, 2020, can delay their loan repayment(s) for up to one year.

Moreover, the general five-year limit on the duration of the loan is extended by one year. Principal residence loan periods are also extended by one year. Subsequent loan repayments must be "appropriately adjusted" to reflect the extended due dates and interest accruing during that period.

Temporary Waiver of Required Minimum Distributions (RMDs)

Waives RMDs for calendar year 2020 for DC plans, including 401(k), 403(b), 457(b) and IRA plans, allowing individuals to keep funds in their retirement plans. Under current law, individuals generally at age 72 must take an RMD from their DC plans and IRAs. The legislation also includes special rules regarding the waiver period to, in essence, hold harmless those individuals (and plans) who took advantage of the RMD waiver for 2020.

Plan Amendments

Retirement plans can adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans. For non-governmental plans, conforming plan amendments must be made on or before the last day of the first plan year beginning on or after January 1, 2020, or such later date as the Secretary of the Treasury may prescribe. For governmental plans, amendments must be made two years later. Plan must be operated in accordance with the amendment during the relevant time periods.

Single-employer DB Plan Funding Rules

Provides single-employer defined benefit plan funding relief for plan sponsors by providing more time to meet their funding obligations. The CARES Act will delay the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due from 2020 would accrue interest charges through the new due date of January 1, 2021. The relief provision also provides that a plan's funded status as of December 31, 2019 for benefit restriction purposes will apply throughout 2020, such 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 plan years which include calendar year 2020.

Expansion of DOL Authority to Postpone Certain Deadlines

Amends ERISA to provide the Department of Labor (DOL) the ability to postpone certain ERISA filing deadlines and to provide other relief for a period of up to one year in the case of a public health emergency

Other provisions

IRA contributions for 2019 may now be made by July 15, 2020 rather than April 15, due to extended filing dates for federal returns.

Health and Welfare Provisions

The CARES Act also contains provisions, which will impact employer-sponsored benefits.

- Amends the Families First Coronavirus Response Act (FFCRA), which requires group health plans to cover COVID-19 screening and related office visits without cost sharing, to include additional categories of COVID-19 tests even though they may not have been approved by the U.S. Food and Drug Administration.
- Provides that group health plans must reimburse providers for COVID-19 screening and related office visits by either of the following methods. The negotiated rate, if the plan has a negotiated rate with the provider in effect before the public health emergency began. Alternatively, an amount equal to the cash price listed by the provider on a public internet website (or, the plan may negotiate a rate with the provider for less than the cash price).
- Within 15 business days after the recommendation is made by the United States Preventive Services Task Force (USPSTF) or the Advisory Committee on Immunization Practices (ACIP), group health plans will be required to cover, without cost sharing, “qualifying coronavirus preventive services,” which are items, services and immunizations intended to prevent or mitigate COVID-19. This is a stark acceleration for group health plans. Usually, there is at least a one-year lag between when preventive services are recommended by the applicable agency and when they are required to be covered without cost-sharing.
- Allows high-Deductible health plans (HDHP) with a health saving account (HSA) to cover telehealth services before a patient reaches the deductible, without regard to whether the telehealth services relate to COVID-19. This provision is effective upon enactment and lasts through plan years beginning in 2021.
- Allows patients to use funds in HSAs and Flexible Spending Accounts (FSAs) to purchase over-the-counter menstrual care products. These changes are effective for amounts paid and expenses incurred in 2020 and apply indefinitely.
- Amends ERISA to provide the DOL the ability to postpone certain ERISA filing deadlines and to provide other relief for a period of up to one year in the case of a public health emergency.

Paid Leave

The CARES Act also contains provisions impacting the Public Health Emergency Leave and Emergency Paid Sick Leave under the Families First Coronavirus Response Act (FFCRA).

- Employers will not be required to pay more than $200 per day ($10,000 in aggregate) for each employee for Public Health Emergency Leave. Employers will not be required to pay more than $511 per day ($5,110 in aggregate) for sick leave or more than $200 a day ($2,000 in aggregate) to care for a quarantined individual or child for each employee under the Emergency Paid Sick Leave provisions of FFCRA.
- An employee who was laid off any time after March 1, 2020, will be eligible for paid family and medical leave if he or she is then rehired by the same employer.

Fiscal Stimulus Provisions

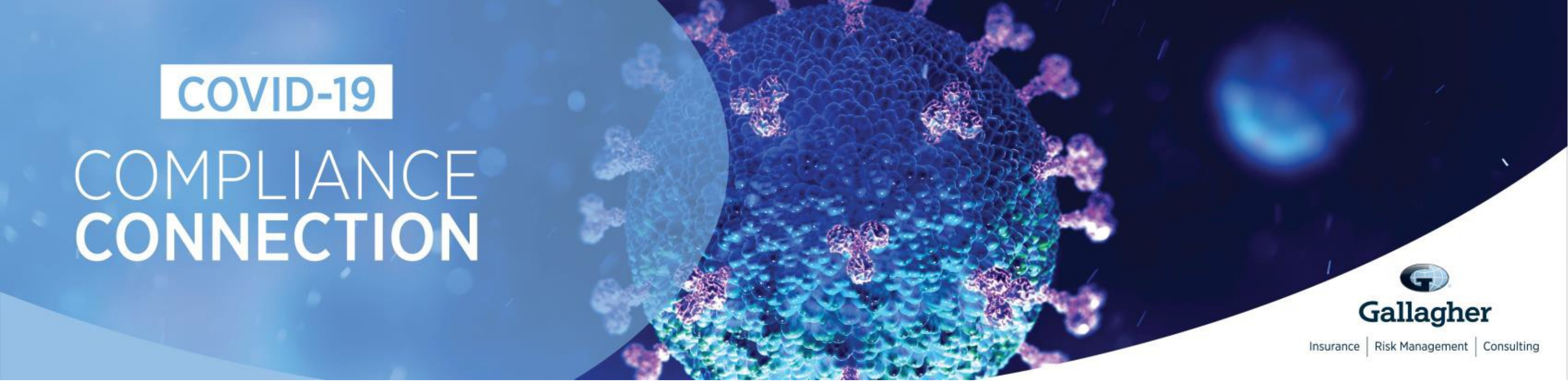
The CARES Act includes stimulus provisions, several of which are highlighted below.

- Gives $350 billion in loans for small business (those under 500 employees). In counting 500 employees, those employed on a full-time, part-time, or “other” basis are included. Loans can be used for payroll as well as paid sick, medical, or family leave, costs related to the continuation of group health care benefits, mortgage payments and rent, utilities, and other debts. However, payroll costs exclude compensation paid to individuals, including the self-employed, above $100,000 a year. No collateral would be required, nor any personal guarantee. The maximum loan amount is $10 million and the loan amount is eligible for forgiveness if specific criteria is met.
- Creates a $500 billion pool of taxpayer money to make loans, provide loan guarantees or make investments to or in eligible businesses, states and municipalities damaged by the crisis. Loans and loan guarantees will include conditions, including restrictions on stock buybacks and the payment of dividends, the requirement that the recipient not reduce its March 24, 2020 employment levels by more than 10 percent until September 30, 2020, and, in certain circumstances, limitations on compensation. The Treasury Secretary may waive these conditions under certain circumstances.
- Provides employers with a refundable payroll tax credit of up to 50 percent of wages paid by employers to employees during the COVID-19 crisis for those companies whose operations were fully or partially suspended or whose gross receipts declined by more than 50 percent when compared to the same quarter in a prior year
- Provides a tax credit of up to $10,000 of compensation for wages or health benefits paid or incurred from March 13, 2020 to December 31, 2020 for employers with 100 or fewer employees, regardless of whether the employer was open or shut down as a result of the crisis. Employers with more than 100 employees can qualify in certain cases.
- Extends the time to submit payroll taxes. The provision requires that the tax be paid over the next two years, with half due by December 31, 2021, and the remainder due by December 31, 2022.
- Gives one-time payments of up to $1,200 for individuals ($2,400 for couples) with $500 added for each child. The payment is reduced for individuals making over $75,000 ($150,000 for couples) and is eliminated for individuals making over $99,000 ($198,000 for couples).
- Boosts unemployment insurance by adding $600 per week, for up to four months, in addition to whatever amount the unemployed individual would receive from his state. Moreover, the CARES Act expands eligibility to self-employed individuals and independent contractors and increases the overall limit of benefits from 26 weeks to 39 weeks.

Student Loans Provisions

The CARES Act also introduces student loan relief.

- Expands Section 127 of the Internal Revenue Code, which allows employers to pay up to $5,250 per year for certain educational expenses, to include student loan payments made by the employer after the enactment of the Act and before January 1, 2021. Any payment made by the employer on behalf of the employee is excluded from the employee’s income.
- Suspends payments for student loans under the Federal Family Education Loan and Direct Loan programs, without interest, through September 30, 2020. Moreover, the CARES Act stops all collection efforts for those loans during that time, including garnishments and tax refund offsets.



Additional Resources

WHO, Q&A on Corona Viruses: https://www.who.int/news-room/q-a-detail/q-a-coronaviruses

WHO, Coronavirus Disease (COVID-19) Advice for the Public: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public

CDC, Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19): https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html

EEOC, What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

Department of Labor, COVID-19 or Other Public Health Emergencies and the Family and Medical Leave Act Questions and Answers: https://www.dol.gov/agencies/whd/fmla/pandemic

For further information on organizational responses to COVID-19, please see Gallagher News & Insights: https://www.ajg.com/us/news-and-insights/2020/mar/gallagher-report--responding-to-the-coronavirus

The intent of this article is to provide general information on employee benefit issues. It should not be construed as legal advice and, as with any interpretation of law, plan sponsors should seek proper legal advice for application of these rules to their plans.