Legal Update

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Retirement Plan Relief for Employees and Employers Under the CARES Act

March 27, 2020

On Wednesday night, the Senate unanimously adopted the Coronavirus, Aid, Relief and Economic Security (CARES) Act. On March 27, 2020, the House of Representatives passed the CARES Act, which is now awaiting the President's signature. The CARES Act is an unprecedented bill that will impact almost every area of the U.S. economy, including employer retirement plans.

EMPLOYEE RELIEF UNDER DEFINED CONTRIBUTION PLANS

The CARES Act includes at least three provisions that could help employees access money from their defined contribution plans, such as 401(k) plans, 403(b) plans and governmental 457(b) plans.

> **Note:** *Employers are <u>not</u> required to include any of these changes into their retirement plan. Employers who do want to include any change can do so retroactively to January 1, 2020, provided that they amend their retirement plan to reflect such change(s) no later than the last day of the first Plan Year that begins on or after January 1, 2022.*

Financial Hardship. The CARES Act effectively creates a new hardship distribution option that will allow eligible individuals to withdraw up to $100,000 for "corona-virus related distributions." For this purpose, a corona-virus related distribution is a distribution that is made to a participant who meets one of the following requirements:

- The participant is diagnosed with COVID-19;
- The participant's spouse or dependent is diagnosed with COVID-19;
- The participant 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
- Other factors as determined by the Treasury Secretary.

The employer can rely upon an employee's self-certification to prove the existence of one or more of these factors.

A corona-virus related distribution will also qualify for some special tax treatment:

- These distributions will be exempt from the normal 10% penalty that applies to individuals who have not yet attained age 59-1/2 or one of a few other early withdrawal exceptions; and
- Although still subject to regular income taxes, an individual can recognize the income and pay the related taxes over three years and the employee can avoid those taxes as well by repaying some or all of the distribution over those same three years.

Plan Loans. The CARES Act also makes several changes to the normal loan rules that apply to defined contribution plans.

- The maximum amount of a plan loan is increased to the lesser of $100,000 or 100% of the participant's vested account in the plan (the ordinary limit is the lesser of $50,000 or 50% of the participants vested account in the plan). This change is effective for the first 180 days after the CARES Act is enacted.
- Participants who have existing plan loans can now suspend their loan payments for up to 12 months, while on a leave or furlough and extend the term of the loan by the length of time that the payments were suspended. Participants should understand that they will owe extra interest as a result of the suspension and the payments that will be required when they resume will be higher to reflect this extra interest. This additional suspension right applies to loans with payments due before December 31, 2020.

Required Minimum Distributions. The CARES Act waives the required minimum distribution ("RMD") requirement for 2020. This waiver also applies to Individual Retirement Accounts ("IRAs").

EMPLOYER RELIEF UNDER DEFINED BENEFIT PLANS

Minimum Contributions. The CARES Act will allow employers to delay "any contribution otherwise due" to a single-employer defined benefit plan in 2020. This includes minimum funding contributions that may be due on April 15, 2020. The delayed contributions can be paid as late as January 1, 2021, but must be paid with interest, calculated using the plan's effective interest rate.

Funded Status. The CARES Act also provides that a single employer defined benefits plan can use the plan's 2019 adjusted funding target attainment percentage ("AFTAP") for 2020. The AFTAP is one factor that is used to determine whether the employer must restrict certain benefits under that plan and/or funding limitations on certain executive compensation.

CONCLUSION

The CARES Act includes several retirement plan changes that could help individuals and employers who have been financially harmed by the current situation. Some of the changes would affect the administration and design of long-standing employee benefit plans and some employers may not want to make any of these changes. Employers who are interested in adopting any of the CARES Act provisions should seek appropriate legal, record keeping and, for defined benefit plans, actuarial advice to evaluate the changes and prepare possible amendments to existing plan documents and other documentation needed to implement any of those changes.

If you have any questions or concerns regarding the CARES Act, please contact Matthew Flanary at mflanary@buelowvetter.com or (262) 364-0253 or Brett Schnepper at bschnepper@buelowvetter.com or (262) 364-0262 or your Buelow Vetter attorney.

This Legal Update is intended to provide information only on general compliance issues and should not be construed as legal advice. Please consult an attorney if you have any questions concerning the information discussed in this Legal Update.

In order to comply with Treasury Circular 230, we are required to inform you that any advice we provide in this Legal Update concerning federal tax issues is not intended or written to be used, and cannot be used, to avoid federal tax penalties or to promote, market, or recommend to another person any tax advice addressed herein.

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