



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

January 8, 2021

COVID-19 Stimulus Bill Provisions Affecting Employee Benefits

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On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021 (the CAA), a second stimulus package and the most recent of several major pieces of legislation to be enacted since the start of the COVID-19 pandemic last March. Many of the provisions in the CAA extend or clarify relief provided in the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act) and the [Families First Coronavirus Response Act](#) (FFCRA) enacted earlier this year. The following is a general overview of key provisions of the CAA as it relates to employee benefits. Please note that this is a new law and agency guidance is likely to be issued over the next year or so, therefore you may wish to seek advice of counsel with respect to these issues.

Health and Welfare Provisions

- *Special Rules for Health and Dependent Care Flexible Spending Arrangements.* The CAA offers much-needed guidance and relief with respect to health and dependent care flexible spending arrangements. The CAA provides, in part:
 - For plan years ending in 2020, a plan may permit participants to carry over unused amounts in their health care or dependent care flexible spending account (FSA). Similarly, in 2021, a plan may permit participants to carry over unused amounts in their health care or dependent care FSA into 2022. If a participant was not in a high deductible health plan for the prior year, but is in one for the affected year(s), this could affect their ability to contribute to a health savings account.
 - A health care or dependent care FSA may extend the grace period for a plan year ending in 2020 or 2021 to 12 months after the end of that plan year. For example, a plan with a December 31, 2020 plan year can extend the grace period to December 31, 2021. If a participant was not in a high deductible health plan for the prior year, but is in one for the affected year(s), this could affect their ability to contribute to a health savings account.
 - A health care or dependent care FSA may permit prospective election changes without regard to a change in status for plan years ending in 2021. However, with respect to a health care FSA, remember that a participant can use amounts elected for the year even if they have not been contributed, so prospective changes could cause a cost risk to an employer.
 - A health care FSA only may permit a participant who ceases participation in the calendar year 2020 or 2021 to continue to receive reimbursements through the end of the plan year in which they ceased to be a participant (including any grace periods). For example, in a calendar year plan with an extended grace period, someone who terminated on July 1, 2020, could continue to receive reimbursements from their account until December 31, 2021.
 - For dependent care FSAs only, a participant can receive reimbursements for children under the age of **14** if certain conditions are met. This is intended to provide benefits for dependents who "aged out" (turned 13) during the pandemic.

Other Fringe Benefits

- *Employer Payments for Student Loans.* The CARES Act permitted employers to make student loan repayments during 2020 pursuant to an educational assistance program on behalf of their

employees. Provided that such payments were made prior to January 1, 2021, and were made pursuant to a qualified educational assistance program under Code Section 127, the amounts would not be taxable to the employee. The CAA extends this provision of the CARES Act for five years (for payments made before January 1, 2026).

- *Temporary Allowance of Full Deduction of Business Meals.* In an effort to aid the restaurant industry, business meals after December 31, 2020 and before January 1, 2023 will be fully tax deductible.

Retirement Plan Provisions

- *Temporary Rule Providing Safe Harbor for Partial Plan Terminations.* The CAA provides a safe harbor for partial plan terminations and permits a plan to not be treated as having a partial plan termination during any plan year that includes the period beginning March 13, 2020 and ending March 31, 2021, if certain conditions are met (the plan has at least 80 percent of the number of active participants covered by the plan on March 31, 2021 as it did on March 30, 2020). Plans that already have had a partial plan termination and provided full vesting as a result may find it difficult to rescind full vesting and may wish to consult with their legal counsel.
- *CARES Act Distributions Extended to Money Purchase Plans.* The CARES Act contained provisions that allow participants in certain eligible retirement plans to receive coronavirus-related distributions without incurring the 10 percent early distribution excise tax that would otherwise apply to distributions made prior to age 59 ½. The CAA extends this relief to money purchase pension plans. This provision applies as if it were originally included in the CARES Act.
- *Termination of Future Transfers.* The CAA permits employers who had previously elected to make a "qualified future transfer" under Code Section 420 to terminate those elections in 2020 and 2021. Elections to terminate a qualified future transfer must be made before December 31, 2021.

Employer Tax Credits

- *Extension of Certain Deferred Payroll Taxes.* In August, President Trump issued a memorandum permitting employers to temporarily stop withholding payroll taxes from employee paychecks, provided the employer increased withholding and repaid those amounts between January 1, 2021 and April 30, 2021. The CAA extends the repayment period for the deferred payment amounts through December 31, 2021.
- *Tax Treatment of Wages Paid with PPP Forgiven Loans.* The CAA clarifies that an employer may take a deduction for wages paid to employees with monies received from a loan pursuant to the Paycheck Protection Program (PPP) created as a part of the CARES Act (PPP loan). This is a significant shift away from the IRS's position, as outlined in guidance issued by the IRS last April.
- *Extension of Tax Credits for Paid Sick and Family Leave.* The FFCRA required many employers to provide paid sick and family leave and offered tax credits to employers to cover 100 percent of the paid sick or family leave wages paid to employees, up to certain limits. Although the FFCRA expired on December 31, 2020, the CAA extends the tax credit until March 31, 2021. Therefore, although paid sick and family leave is no longer required after December 31, 2020, an employer offering leave between January 1, 2021 and March 31, 2021 may still claim the payroll tax credit.
- *Benefits Provided to Volunteer Firefighters and Emergency Medical Responders.* The Setting Every Community Up for Retirement Enhancement Act (SECURE Act), which was passed on December 20, 2019, temporarily reinstated a prior expired provision that exempted from gross income tax amounts paid to volunteer firefighters and emergency medical responders, up to certain limits. The CAA makes the exclusion permanent.
- *Tax Credit for Employer Paid Family and Medical Leave (Non-FFCRA Leave).* The Tax Cuts and Jobs Act that was passed on December 22, 2017, provided a general business tax credit to employers that provided at least two weeks of paid leave annually to employees whereby they received at least 50 percent of their normal wages. The tax credit was made available only for the 2018 and 2019 tax years. The CAA extends this credit for five years, making it available to employers through December 31, 2025.
- *Clarification and Technical Improvements to the CARES Act Employee Retention Credit.* The CAA made several clarifying improvements to the employee retention credit provided under the CARES Act. Specifically, the CAA offered three major clarifying improvements: (i) group health plan expenses are permitted to be considered wages even if no other wages are paid to the employee, but only to the extent such amounts are excluded from the gross income of the employee under Section 106(a) of Internal Revenue Code of 1986, as amended (the Code); (ii) tax-exempt organizations can use the definition of "gross receipts" found in Section 6033 of the Code for purposes of determining the employee retention credit; and (iii) if an employer receives a PPP loan, the employer is still permitted to use the employee retention tax credit for wages that were not paid with a PPP loan that has been forgiven.
- *Employee Retention Tax Credit is Extended and Modified.* The CAA significantly enhances the employee retention tax credit previously enacted under the CARES Act. Specifically:

- The availability of the tax credit is extended to wages paid after March 12, 2020 and before July 1, 2021 (previously January 1, 2021).
- Effective January 1, 2021:
 - the amount of the credit is increased to 70 percent of wages (up from 50 percent);
 - the maximum credit amount is increased to \$7,000 (\$10,000 in qualified wages multiplied by the 70 percent tax credit rate) for the first two quarters in 2021;
 - the tax credit will be available to employers with up to 500 employees (previously up to 100 employees) even if the employees are working; and
 - the tax credit is now available to many governmental employers and new employers that were not in existence in 2019.

In addition to the above provisions, the CAA also provides special disaster relief for distributions and loans from qualified retirement plans (but excludes areas in which the only declared major disaster is COVID-19). Additionally, many of the health and welfare provisions in the CAA relate to surprise medical billing and how plans and insurers must provide coverage in certain situations.

Most, if not all, employee benefit plans will need to be amended to take advantage of any of the relief provided for in the CAA. Any plan sponsor considering taking advantage of any of the relief provided for in the CAA may wish to consult with their legal and tax counsel prior to implementing or communicating any changes to its employees and participants.

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