Knox McLaughlin Gornall & Sennett, P.C.
Erie • Pittsburgh • Jamestown, NY
814-459-2800 • www.kmgslaw.com

CARES Act Retirement Plan Relief

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The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") permits greater access to retirement plan distributions and loans, and a one-year waiver of the Internal Revenue Code's ("Code") required minimum distribution rules. Employer sponsors of retirement plans may amend their plans to adopt the relief measures afforded by the CARES Act.

The distribution and loan relief measures are optional. However, some third party administrators are implementing the CARES Act relief as the default. Accordingly, if the employer elects to modify the CARES Act relief, they should inform its third party administrator and trustee promptly to advise them of the employer sponsor's elections.

Following is a summary of the relief provisions:

Distributions and Loans: Participants who are diagnosed with coronavirus, whose spouse or dependent is diagnosed with coronavirus, or who experience adverse financial consequences due to virus-related events including quarantine, furlough, or layoff, having hours reduced, or losing child care ("qualified participant) shall be eligible for certain distribution and loan relief. This is a self-certification by the Participant.

Coronavirus-Related Distributions: Distributions taken by a qualified participant from the Plan on or after January 1, 2020, and before December 31, 2020, are considered "coronavirus-related distributions" to the extent they do not exceed the lesser of 100% of a participant's vested benefit or $100,000 in the aggregate. These distributions are not subject to the 10% penalty tax under Internal Revenue Code ("Code") Section 72(t), are treated as satisfying distribution restrictions that may otherwise be applicable to elective deferrals, and are exempt from 20% withholding and the Code Section 402(f) rollover notice requirement. The employer may modify this to any amount from $0 [not allowing a distribution] up to $100,000. Employers may wish to consider a protective step approach by initially allowing a distribution [e.g. $25,000] and as the economic picture becomes clearer, increasing this amount, if necessary, later in the year.

Taxation: Coronavirus-related distributions, to the extent taxable, are treated as income received ratably over a three (3) year period unless the qualified participant elects otherwise.

Repayment: During the three-year period after a coronavirus-related distribution, the qualified participant may contribute up to the full amount of the distribution to the Plan (or to another eligible retirement plan) as if the contribution were a timely rollover of an eligible rollover distribution.

Increased Limit for New Plan Loans: Qualified participants may take plan loans up to the lesser of $100,000 (instead of $50,000) or 100% (instead of 50%) of their vested account balance. Eligible loans must be taken no later than September 22, 2020. The $100,000 and 100% are the statutory maximums. The employer may modify these to any amount from $0 [no increase above the existing limit, which is the lesser of $50,000 or ½ of the account balance] to the full $100,000. Depending upon the plan population, the employer may want to take a conservative approach and either not expand the loan feature or establish an amount lower than the $100,000 statutory maximum. The employer has to ask itself whether allowing a $100,000 loan could set participants up for a default. An approach may be to allow the expanded loan amount [up to $100,000], but not change the percentage of account balance [i.e. the loan not exceed 50% of the participant's account balance.

This protects 50% of the account balance.] Pre-existing loans count against the $100,000 limit. If there are any outstanding loans, the maximum amount allowed under new law has be reduced by the aggregate amount of outstanding loans. For example, if a participant has already borrowed $10,000, they can borrow up to $90,000 under CARES Act.

If the employer anticipates workforce reductions, special caution needs to be taken in authorizing enhanced loans because the termination will negate the typical repayment via payroll requirement and trigger a participant default.

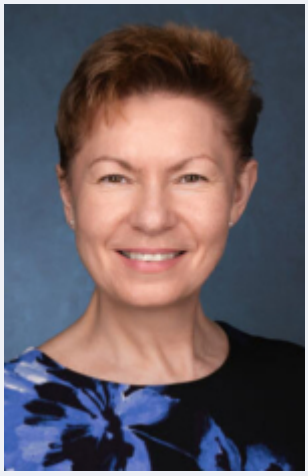
Delayed Repayment for Existing Loans: Qualified participants with an existing loan may delay for one year any loan payments coming due during the period from March 27, 2020 through December 31, 2020.

Required Minimum Distributions: There is a temporary waiver of the Code Section 401(a)(9) required minimum distribution requirements for the calendar year 2020. The waiver applies to distributions for 2020 and to distributions for 2019 that were due by a required beginning date in 2020 (and not paid in 2019). The waiver will not alter a participant's required beginning date for purposes of applying the minimum distribution rules in future years. Because the distribution requirement is waived, the distributed RMD; amounts can be returned back to the plan. It is not clear whether the sixty (60) day rule still applies under this circumstances.

The foregoing CARES Act distribution, loan and required minimum distribution relief provisions are effective as of March 27, 2020. The written amendment to reflect the application is not required until the last day of the first plan year beginning on or after January 1, 2022.

Because this will be a retroactive amendment, employers should notify their plan administrators as to the manner in which their plans should be administered in the interim.

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Nadia A. Havard

Nadia A. Havard concentrates her practice in all areas of qualified and nonqualified retirement plans and employee benefits; transfer taxes; fiduciary income tax and trust administration; business; as well as estate planning and administration. She also helps nonprofits obtain and maintain their tax-exempt status.

nhavard@kmgslaw.com • 814-459-2800

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