

The Impact of Current Legislation on Employee Benefit Plans

An Update for Plan Sponsors

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Learning Objective

At the end of this session, you will be able to:

- Describe the impact current legislation has on employee benefit plans

Required Minimum Distributions (RMDs)

- RMDs are not required to be paid in 2020
- Includes first-time distributions due on 4/1/2020
- Covers RMDs from 401(k), 403(b), IRAs and governmental 457(b) plans, non-applicable for Defined Benefit and Pension Plans
- For distributions due to death, 2020 is excluded
- RMDs paid **after 1/31/20** within the last 60 days can be rolled back to original plan, new plan or IRA – **7/15/20 due date**



Qualified Individuals (QI) Defined – New IRS Notice 2020-50

- Participant has tested positive for the virus
- Participant's spouse or dependent has tested positive for the virus
- QI has suffered financially from the pandemic due to the individual, the individual's spouse or member of the individual's household experiencing the following due to Covid-19:
 - Layoff, furlough, quarantined or hours reduced
 - Can't work due to childcare because of pandemic
 - Closing or reducing hours of a business that they operate
 - Reduced pay or self-employment income
 - Having a job offer rescinded or start date for a job delayed

Qualified Individuals (QI) Defined – New IRS Notice 2020-50

Member of a Participant's household is defined as:

Someone who shares the QI's principal residence. Presumably this could include a significant other, roommate, other relative or anyone else with whom the individual is sharing a home.

Hardship Distributions – Employer Provisions

- Can allow QI to take up to \$100,000 by 12/31/2020
- QI self certifies the hardship – Sample Certification is included in IRS Notice 2020-50
- The amount requested doesn't have to match the financial “need” of the plan participant
- Qualified plans, IRAs, 403(b) and gov. 457(b)-eligible Pension and Money Purchase Pension Plan (MPP) plans don't qualify
- 1099R is coded either “1” early distribution, exception applies or “2” early distribution, no known exception



Hardship Distributions – Employee Provisions

- QI can take up to \$100,000 by 12/31/20
- 10% penalty tax does not apply if under 59 1/2
- Distribution is taxable but 3 year spread available
- Distributions can be taken in increments
- If plan allows QI can repay over a 3 year period
- Repayment treated as tax-free rollover-amend 1040
- QI can claim tax benefits of these rules even if the plan isn't amended



Hardship Distributions – Employee Provisions

- QI makes one of two elections on new Form 8915-E
 1. Recognize the entire distribution as income in 2020
 2. Spread the income ratably over tax years 2020, 2021 and 2022
- The election made by the QI applies for all Covid Retirement Distributions (CRD) received
- Excess recontributed amounts are either carried back or rolled forward for offset against distribution income
- Any re-contributions (rollovers) made by the due date of 1040 including extensions is offset against the income



Plan Loans

- Plan sponsor can increase loan limits for QI's to:
 - 100% of vested balance
 - \$100,000 maximum loan
- Covers new loans from 3/27/2020 to 9/22/2020
- Loan payments between 3/27/20 to 12/31/20 can be delayed by 1 year
 - Interest still accrues
 - Loan is re-amortized



Plan Loans – Re-amortization Options

- Loan balance plus accrued interest during the postponement period (3/27/20 to 12/31/20) is re-amortized from 1/1/2021 through the period one year later than the original loan due date
- Loan balance plus accrued interest during the postponement period (2020 date through 2021 date) **less original payments from 1/2021** is re-amortized over a period one year later than the original loan due date
- Other reasonable options possible



The Coronavirus Aid Relief and Economic Security (CARES) Act Implementation

- Implementation of plan provisions by the Plan Sponsor is optional – **Clarified by IRS Notice 2020-50**
- Provisions are mutually exclusive
- Document adoption of CARES Act
 - Prepare resolution documenting provisions adopted
 - Document adoption in Plan minutes
 - Send communication to plan participants
- Formal amendment due on last day of 2022 PY

Additional Guidance Issued

- Multi-agency guidance issued by Department of Labor (DOL), Treasury, Health and Human Services
 - Joint Notice 4/28/2020; DOL Notice 2020-01; DOL FAQs
 - Impacts all ERISA Plans during the “Outbreak Period”
 - Introduces the “Outbreak Period”
 - ◇ The period beginning March 1, 2020 and ending 60 days after the announced end of the National Emergency, or such other date announced by the Departments in a future notification
- The Departments continue to issue guidance to provide relief for plan participants and plan sponsors



Additional Guidance on Relief for Operational Failures on Plan Loans and Distributions

- DOL Employee Benefit Security Administration (EBSA) Notice 2020-21 provides relief if a failure is solely attributable to the COVID-19 outbreak;
- The plan administrator makes a good-faith, diligent effort under the circumstances to comply with the procedures; and
- The plan administrator makes a reasonable attempt to correct any procedural deficiencies as soon as administratively practicable.

Participant Deferral and Loan Repayments

- DOL states in EBSA Notice 2020-21, that they will not take enforcement with a temporary delay of participant deferral deposits and payments to Plans past normal remittance timeline:
 - If the delay is due to COVID-19 related issues beginning from March 1, 2020 through the 60th day following the announced end of the National Emergency.
 - Employers and the plan's service providers must act reasonably, prudently, and in the interests of the employees, and make the deposits as soon as administratively practicable under the circumstances.
 - Unclear if will be reportable on Form 5500 and, if applicable, in a Plan's audit report and Supplemental Schedule.



IRS Notice 2020-23 Extensions

- 2019 Deductible IRA contribution – 7/15/20
- Tax-Free Rollovers after 1/31/20 including RMD's – 7/15/20
- Due date for deductible retirement plan contributions, due date of employer return – non-corporations 7/15/20
- Repayment on traditional loan to eliminate default 7/15/20



Electronic Elections – IRS Notice 2020-42

- Specifically, [Notice 2020-42](#) provides participants, beneficiaries and administrators of qualified retirement plans and other tax-favored retirement arrangements with temporary relief from the physical presence requirement for any participant election witnessed by either:
 - A notary public in a state that permits remote notarization; or
 - A plan representative using certain safeguards.
 - The IRS explains that the guidance “accommodates local shutdowns and social distancing practices and is intended to facilitate the payment of coronavirus-related distributions and plan loans to qualified individuals, as permitted by the CARES Act.”



The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act Provisions as Passed by House of Representatives

- RMD's made for 2019 or 2020 years could be rolled back to the plan that they came from by November 30, 2020 without regard of the 60 day rule
- Retirement plans which adopted the expanded loan rules of the CARES Act can rely of plan participant's self-certification
- Clarification that the CARES Act applies to Money Purchase Pension Plans

Other Qualified Plan Considerations

- Plan restatements due between August 1, 2020 and July 31, 2022
- Beware of Cyber Crime related to plan transactions especially when plan participants and plan administrators are working remotely





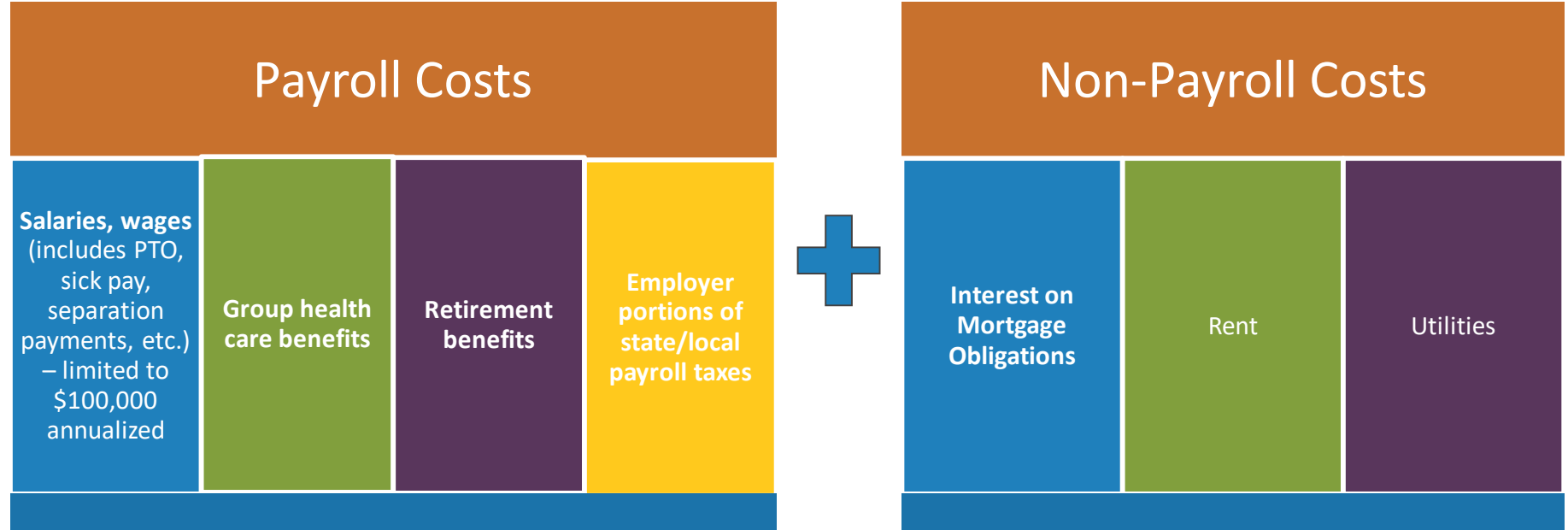
Paycheck Protection Program (PPP)

Retirement Plan Considerations

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PPP Basics: What's Eligible for Forgiveness



Restrictions on Retirement Benefits

Employees

- Considered non-cash benefit
- Not subject to \$100,000 limit
- Employer contributions only (Exclude employee contributions)

Self-Employed and General Partners

- Not eligible for forgiveness

Owner- Employees

- Capped at 2.5 months' worth of the 2019 contribution amount

Timing of Payroll Costs

Basics

- Paid during covered period (CP) or alternative period (APCP)
- Incurred during CP or APCP and paid by next regular payroll date

Uncertainty

- Limited to 8 or 24 weeks or is more OK?
- Compensation in arrears?
- Incurred now, but not paid by next pay date?
- Prepayments?





Health & Welfare

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Additional Guidance – Group Health Plans

- In Joint Notice 4/28/2020, the DOL and Treasury extend certain deadlines under ERISA and the Internal Revenue Code in order to preserve benefits for participants and beneficiaries during the COVID-19 emergency
 - Effective 5/4/2020, the Joint Notice requires group health plans to disregard the “Outbreak Period” when determining certain deadlines for COBRA, special enrollment, and benefit claims and appeals.
 - Employer with group health plans will have to deal with an unknown end-date while at the same time notify participants as soon as possible regarding these extensions.
 - The Joint Notice includes various examples to illustrate.



Health and Welfare – Section 125 Plans

- IRS Notices 2020-29 and 2020-33 released on 5/12/2020 to help taxpayers address health and dependent care expenses due to the COVID-19 pandemic.
 - Employers may amend plans to allow employees to make prospective mid-year elections for health coverage, health FSAs and dependent care assistance programs, or amend plans to add a grace period.
 - Unused amounts remaining in a taxpayer's health FSA or dependent care assistance program for expenses incurred for those same qualified benefits are extended through 12/31/2020, fiscal year Plans may differ with timing.
 - An employer electing to provide mid-year election flexibility, or allow additional time to apply unused amounts in a health FSA to pay expenses for the remainder of the 2020 year, must adopt a plan amendment by 12/31/2021.



Health and Welfare – Section 125 Plans

- IRS Notices 2020-29 and 2020-33 released May 12, 2020 to help taxpayers address health and dependent care expenses due to the COVID-19 pandemic.
 - The permitted carryover amount for health care FSAs amount increased to \$550 from \$500. May use for expenses incurred through Dec. 31, 2020.
 - Previously provided temporary relief for high deductible health plans (HDHPs) may be applied retroactively to Jan. 1, 2020.





Questions?

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