COVID-19: EMPLOYEE BENEFITS PROVISIONS IN CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT

Date: 27 March 2020

U.S. Employee Benefits Alert

By: Michael A. Hart

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), which provides for $2 trillion of economic stimulus, includes a number of relief provisions for employee benefit plans, including relief related to retirement plan distributions and loans, pension funding relief, and expansion of educational assistance programs to include an employer's repayment of employees' student loans.

CORONAVIRUS-RELATED RETIREMENT PLAN DISTRIBUTIONS

The CARES Act provides relief on several fronts with respect to "**Coronavirus-Related Distributions**" from employer-sponsored retirement plans and individual retirement accounts.

A Coronavirus-Related Distribution is a distribution from a an employer-sponsored tax-advantaged retirement plan (including a tax-qualified 401(k), profit sharing or defined benefit pension plan, a 403(b) plan sponsored by a tax-exempt organization or public school, and a government 457(b) plan) or an individual retirement account made on or after January 1, 2020 and before December 31, 2020, to a "**Qualified Individual**."

A Qualified Individual is an individual (i) who is diagnosed with SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention ("**CDC**"), (ii) whose spouse or dependent is so diagnosed, or (iii) who experiences adverse financial consequences as a result of (A) being quarantined, being furloughed or laid off, or having work hours reduced due to the virus or disease, (B) being unable to work due to lack of child care due to the virus or disease, or (C) closing or reducing hours of a business owned or operated by the individual due to the virus or disease. The administrator of a retirement plan may rely on an employee's certification regarding whether the employee satisfies the conditions for Coronavirus-Related Distribution.

The aggregate amount that may be treated as Coronavirus-Related Distributions by any Qualified Individual is $100,000.

In-Service Distribution Relief

Generally, an employee who has not attained age 59-1/2 cannot receive a distribution from a 401(k), 403(b), or government 457(b) plan attributable to his or her pre-tax or Roth payroll reduction contributions except in the case of hardship. The CARES Act provides an exception to that prohibition so that a Qualified Individual may receive an in-service Coronavirus-Related Distribution prior to age 59-1/2 without regard to normal hardship standards.

Relief from 10% Excise Tax for Distributions Prior to Age 59-1/2

Generally, with certain exceptions, an individual who receives a taxable distribution prior to age 59-1/2 from an employer-sponsored tax-advantaged retirement plan (including tax-qualified 401(k), profit sharing and defined benefit pension plans, 403(b) plans sponsored by tax-exempt organizations and public schools, and government 457(b) plans) or an individual retirement account, is subject to an additional 10% excise tax.

The CARES Act provides that the 10% excise tax does not apply to any Coronavirus-Related Distribution.

Delayed Income Inclusion

A Coronavirus-Related Distribution is included in income ratably over a three-year period beginning with the year of distribution unless the individual receiving the distribution elects otherwise.

Withholding

Coronavirus-Related Distributions from employer-sponsored retirement plans are not subject to the mandatory 20% federal income tax withholding that generally applies to distributions. Rather, they are subject to 10% withholding and the employee has the right to opt out of that withholding.

Repayment Rights

An individual who receives a Coronavirus-Related Distribution may repay the distribution to any eligible employer-sponsored retirement plan or individual retirement account during the three-year period that begins on the day after the date of the distribution. The repayment is treated as a rollover.

REQUIRED MINIMUM DISTRIBUTIONS

The CARES Act waives the requirement to take a required minimum distribution from a tax-qualified defined contribution retirement plan (such as a 401(k) or profit sharing plan), a 403(b) plan sponsored by a tax exempt organization or public school, a government 457(b) plan, or an individual retirement account that is otherwise required to be received in 2020. This includes any distribution that would have been required by April 1, 2020, by reason of the individual having attained age 70-1/2 during 2019.

Certain beneficiaries of retirement plan participants and individual retirement account owners are required to receive distribution of benefits within five years following the death of the participant or owner. The CARES Act states that the 2020 calendar year will not be counted toward that five-year period (thereby extending the post-death payment deadline for those beneficiaries).

RETIREMENT PLAN LOANS

Generally, loans from employer-sponsored tax-advantaged retirement plans, such as tax-qualified 401(k) and profit sharing plans, and 403(b) plans sponsored by tax exempt organizations and public schools, cannot exceed $50,000 or 50% of a participant's vested account balance. The CARES Act increases those limits to $100,000 and 100%, respectively, for any loan to a Qualified Individual during the 180-day period beginning on the date of enactment of the CARES Act.

In addition, the CARES Act postpones any loan repayment due from a Qualified Individual under any such plan between the date of enactment of the CARES Act and December 31, 2020, for a period of one year. Any delayed repayment must include accrued interest during the period of the delay.

PENSION FUNDING RELIEF

The CARES Act contains two provisions intended to provide funding relief to sponsors of tax-qualified defined benefit pension plans.

Postponement of Minimum Contributions

The CARES Act postpones until January 1, 2021, the due date of any minimum required contribution payment otherwise due during 2020. The delayed payment is subject to interest at the plan's effective rate of interest.

Funding Triggers for Benefit Restrictions

Under the Internal Revenue Code, certain limitations on tax-qualified defined benefit pension plans are triggered when the plan's funding level is less than 60% or 80%. For example, if a plan is less than 80% funded, the plan sponsor generally cannot amend the plan to increase benefits and the plan's ability to pay benefits in the form of a lump sum is limited. If a plan is less than 60% funded, certain contingent event benefits such as plant shutdown benefits cannot be provided. Generally, these funding thresholds are determined by reference to the current plan year.

For plan years that include the 2020 calendar year, the CARES Act provides that the funding thresholds may be determined by reference to the plan's funding status for the last plan year ending before January 1, 2020. This provision is intended to prevent benefit restrictions from being triggered in 2020 due to funding deficits resulting from the economic crisis.

EXPANSION OF EDUCATIONAL ASSISTANCE PLANS TO INCLUDE STUDENT LOAN REPAYMENT ASSISTANCE

The CARES Act expands the types of education expenses that may be paid by an employer on behalf of an employee tax-free under an educational assistance plan to include any payment by an employer before January 1, 2021, of an employee's college student loans. The payment can be made by the employer either to the employee or to the lender.

IMPLEMENTATION AND PLAN AMENDMENTS

Employers may implement any or all of these relief provisions immediately. With respect to the retirement plan distribution and loan provisions of the CARES Act, the employer will generally have until the last day of the first plan year beginning on or after January 1, 2022, (or January 1, 2024, for governmental plans) to adopt conforming plan amendments.

KEY CONTACTS

MICHAEL A. HART
PARTNER

PITTSBURGH
+1.412.355.6211
MICHAEL.HART@KLGATES.COM