How the CARES Act Changes Health, Retirement and Student Loan Benefits

401(k) withdrawals are eased, but loss to savings could be costly

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The Coronavirus Aid, Relief and Economic Security (CARES) Act (www.shrm.org/hr-today/public-policy/Documents/SHRM%20Analysis%20CARES%20Act%20-%20Employer%20Provisions.pdf), signed into law March 27, includes one-time payments to individuals (https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know); strengthens unemployment insurance; and provides additional health care funding, as well as loans and grants to businesses (https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources) to deter layoffs.

But this sweeping measure also alters the rules for employee benefits, affecting health coverage, retirement savings and student loan assistance. The most significant changes are explained below.

Group Health Plans

Expanded use of HSAs

The CARES Act allows high-deductible health plans paired with health savings accounts (HSAs) to cover telehealth services before a patient has met the plan deductible. Normal cost-sharing can still be imposed for telehealth visits, such as through co-pays that the plan may require after the deductible is paid. This provision is temporary and will sunset Dec. 31, 2021, unless Congress extends it or makes it permanent.

The Society for Human Resource Management (SHRM) "has long advocated for modernizing the rules governing HSAs to allow employers to offer benefits that meet the needs of employees and their families," said Chatrane Birbal, director of policy engagement at SHRM. "Altering the rules to include telehealth during the COVID-19 crisis will help to ease the burden on in-person facilities and help limit the spread of the virus by allowing people to receive care remotely without exposing themselves unnecessarily."

The law also lets account holders use their HSAs, health reimbursement arrangements (HRAs) or flexible spending accounts (FSAs) to buy over-the-counter medical products, such as drugs and surgical masks, without a prescription. Further, it allows HSAs, HRAs and FSAs to pay for certain menstrual care products, such as tampons and pads, as eligible medical expenses. These are permanent changes and apply retroactively to purchases beginning Jan. 1, 2020.

"This will be welcome relief for those who are able to treat at home," said Kim Buckey, vice president of client services at DirectPath, a benefits education, enrollment and health care transparency firm.

Being able to use an HSA to pay for over-the-counter medications "empowers individuals to better manage their own health care needs and reduces the administrative load on doctors' offices facing a strain on resources," said Alison Moore, vice president of marketing at HealthSavings Administrators, a firm that manages consumer-directed health accounts. She called HSA eligibility for menstrual care products "important for women who, on average, manage much higher health care costs on lower wages."

COVID-19 testing without cost-sharing

The CARES Act extends coronavirus testing (covered without cost-sharing and outside the deductible by fully insured and self-insured plans), as required by the Families First Coronavirus Response Act (https://www.natlawreview.com/article/families-first-coronavirus-response-act-mandates-employer-provided-coverage-covid-19), to any services or items provided during a medical visit that results in coronavirus testing, including an in-person or telehealth visit to a doctor's office, an urgent care center or an emergency room. This coverage requirement remains in effect only while there is a declared public health emergency as defined under federal law.

"Eliminating cost-sharing will hopefully encourage more people who should be tested to get tested" once tests become widely available, Buckey said. "I'll be interested to see if self-administered tests will similarly be covered," she noted. "A newly developed Abbott Labs test (https://www.bloomberg.com/news/articles/2020-03-27/abbott-launches-5-minute-covid-19-test-for-use-almost-anywhere)will hopefully relieve some of the backlog, since results are available so quickly."

After testing, however, the cost of treatment "could deter some individuals from seeking care on a timely basis," Buckey warned. "Hopefully, the news that some insurers are now waiving treatment cost-sharing will counterbalance this."

Retirement Plans

Coronavirus-related 401(k) distributions

As hourly workers see their shifts canceled or cut back (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/hourly-workers-could-see-pay-losses-due-to-coronavirus.aspx) and salaried workers begin to fear layoffs (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/employers-ponder-worst-case-scenarios.aspx), 401(k) plan loans, which participants repay, and hardship withdrawals, which they don't, are likely to increase.

Through the end of 2020, the CARES Act allows a new type of hardship withdrawal for participants in 401(k)-type defined contribution plans or individual retirement accounts (IRAs) who are affected by COVID-19. The new coronavirus-related distribution (CRD) is not subject to the 10 percent early-distribution penalty and may be repaid over three years. Distributions may not exceed $100,000 per eligible participant.

Income taxes will still be owed on withdrawn amounts, but the law also lets individuals pay tax on the CRD income over a three-year period. Those repayments would not be subject to annual retirement plan contribution limits.

"Significantly, this is an optional benefit that may be—but is not required to be—made available by plan sponsors (https://www.spencerfane.com/publication/cares-act-requires-immediate-decisions-by-retirement-plan-sponsors/)," wrote Gregory Ash, a partner at law firm Spencer Fane in Overland Park, Kan. "Some of the nation's largest record-keepers are forcing employers to decide within days whether to offer this new form of distribution," he said, and plan sponsors may want to first consult with their investment advisors and legal counsel before doing so.

The waiving of the 10 percent penalty applies retroactively to withdrawals beginning Jan. 1, 2020, for account holders if:

- They have received a diagnosis of COVID-19.
- A spouse or dependent has received a diagnosis of COVID-19.

- They experience, due to COVID-19, adverse financial consequences as a result of being quarantined, furloughed or laid off; having work hours reduced; or being unable to work due to lack of child care, or other factors as determined by the Treasury secretary.

"Because of the uncertainty about how repayment of coronavirus-related distributions will be handled, and the tax impact of such repayment, it may be advisable for participants to take loans first (https://ferenczylaw.com/flashpoint-coronavirus-relief-from-congress-the-cares-act/)," noted attorneys at the Ferenczy Benefits Law Center in Atlanta.

Permanent Withdrawals Take a Toll

Making hardship withdrawals from a 401(k) plan, even without a 10 percent penalty, can dramatically shrink employees' retirement savings, given the loss of compound growth from withdrawn funds. Financial firms that provide plan services may have resources to help participants create budgets, manage expenses, "and, if at all possible, prevent them from permanently taking money out of their 401(k), which is meant to be long-term savings for employees' future retirement," said Katie Taylor, vice president of thought leadership at Fidelity Investments, which administers 401(k) plans.

"While many loan-takers default, at least there's a good chance that the loan will be repaid," said Aaron Tabela, chief marketing officer at Custodia Financial, which provides retirement savings loan insurance. "With hardship withdrawals, the leakage is permanent."

Yanela Frias, president of Prudential Retirement, which provides 401(k) services, said, "While we recognize that too many Americans will need to make tough financial decisions in the near term, we encourage those savers without an urgent need to maintain focus on their long-term saving goals and strategies."

Loans from 401(k) plans

Repaying a loan from 401(k) savings generally is a better alternative to permanent withdrawals, financial advisors say.

Through Dec. 31, 2020, the CARES Act doubles the current retirement plan loan limits to the lesser of $100,000 or 100 percent of the participant's vested account balance for the next six months. Generally, loans are limited to the lesser of $50,000 or 50 percent of the participant's vested balance and must be paid back within five years.

Individuals with an outstanding loan from their plan with a repayment due between March 27, 2020, and Dec. 31, 2020, can delay their loan repayments for up to one year.

Plan amendments for withdrawals and loans

"These options are available now, even without the need to immediately adopt authorizing plan amendments (https://cohenbuckmann.com/insights/2020/3/27/employer-responses-to-covid-19-stimulus-bill-includes-new-relief-for-401k-plans-and-iras)," noted Carol Buckmann, a co-founding partner of law firm Cohen & Buckmann in New York City. "Even plans that do not currently authorize participant loans or in-service distributions will be able to use these tools."

Plan sponsors "will eventually need to adopt plan amendments to reflect the changes (https://www.erisapracticecenter.com/2020/03/coronavirus-stimulus-deals-impact-on-employee-benefit-plans/)," attorneys at Proskauer Rose wrote. "The deadline to adopt the amendments is extended to Dec. 31, 2022 (or, for noncalendar year plans, the end of the plan year that starts in 2022)."

Minimum distributions suspended

For retirees, the law suspends in 2020 the required minimum distributions (RMDs) that account holders must take from tax-deferred 401(k)s and IRAs starting at either age 70 1/2 or 72 (for those who turned 70 on July 1, 2019, or later). This provision provides relief to those who would otherwise be required to withdraw funds from their retirement accounts during the stock market decline linked to COVID-19.

Unlike other retirement plan provisions in the CARES Act, the 2020 RMD suspension is not limited to participants affected by the coronavirus.

[SHRM members-only toolkit: Designing and Administering Defined Contribution Retirement Plans (www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/designingandadministeringdefinedcontributionretirementplans.aspx)*]*

Student Loan Assistance

From March 27 through Dec. 31, 2020, the CARES Act expands tax code Section 127 to allow employers to reimburse employees up to $5,250 for most student loan payments, which can be excluded from taxable income.

The $5,250 limit is the amount that employers may currently contribute, tax-free, for tuition assistance (www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/educationalassistanceprograms.aspx) under Section 127. Through the end of 2020, it becomes the combined limit for loan repayment assistance or other education-assistance payments employees receive.

Advocates of tax-free loan repayment benefits are expected to lobby Congress to make this change permanent. Meanwhile, employers that are currently providing student loan assistance with post-tax dollars—around 8 percent of organizations (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/pass-tax-relief-for-student-loan-repayment-benefits-shrm-says.aspx)—are most likely to take advantage of this temporary option.

Feedback

The new law stipulates:

- The payments must be for a student loan incurred for the education of the employee (i.e., they cannot be for an employee's child's or spouse's student loans).
- The rules for education-assistance programs under Section 127 will apply. For instance, an employer must adopt a written plan describing the benefit and communicate the terms of the program to eligible employees, and the program cannot favor highly compensated employees.

The law also allows most holders of federal student loans to suspend their monthly payments through Sept. 30, 2020, without any interest accruing.

"Providing a tax subsidy for employer student loan repayment doesn't just benefit individual workers; it will help reduce a major drag on the overall economy as we recover from the COVID-19 shock," said Scott Thompson, CEO of Tuition.io, a benefits platform for employee student loan contributions.

Mike Pizzi, CEO of financial services firm E-Trade, which handles student loan benefits through its subsidiary Gradifi, called the change "a commonsense solution that will help employers attract, retain and motivate a modern workforce."

Many employers haven't offered student loan benefits, Gradifi managing director Kate Winget explained, "because the tax treatment created a burden for their employees and companies."

Birbal said, "SHRM is also pleased to see employer student loan repayment as a benefit included in the package. This will provide some relief to employees who are currently repaying student loan debt."

Other Benefit Changes

Among other employee benefit provisions, the CARES Act also stipulates the following:

- An employee who was laid off by an employer on or after March 1, 2020, can have access to paid family and medical leave in certain instances if rehired by the employer. The employee would have had to have worked for the employer at least 30 days prior to being laid off. This is in addition to paid-leave benefits required under the Families First Coronavirus Response Act (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-and-DOL-unveil-employer-tax-credits-for-covid-related-leaves.aspx).
- Section 518 of the Employee Retirement Income Security Act (ERISA) will be amended to let the Department of Labor postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- Single-employer defined benefit pension plan sponsors can have more time to meet their funding obligations by delaying any contribution otherwise due during 2020 until Jan. 1, 2021. At that time, delayed contributions will be due with interest.
- Federal contractors that, due to COVID-19, can't perform work at their duty station nor telework because of the nature of their jobs will continue to get paid.
- A new Pandemic Unemployment Assistance program (https://www.nelp.org/publication/unemployment-insurance-provisions-coronavirus-aid-relief-economic-security-cares-act/) through Dec. 31, 2020, will help those not traditionally eligible for unemployment insurance, including self-employed individuals, independent contractors, those with limited work history, and those who are unable to work as a result of the public health emergency.

Related SHRM Resources:

The Coronavirus Aid, Response, and Economic Security Act “CARES Act,” (https://bit.ly/SHRMCARESAnalysis) SHRM Government Affairs

COVID-19/Coronavirus Express Requests (www.shrm.org/resourcesandtools/tools-and-samples/exreq/pages/details.aspx), SHRM Knowledge Center

Related SHRM Articles:

DOL Continues to Clarify Scope of CARES Act Unemployment Benefits (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/dol-continues-to-clarify-scope-of-cares-act-unemployment-benefits.aspx), *SHRM Online*, April 2020

Employers’ Health Care Costs Expected to Rise Due to Coronavirus (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/employers-health-care-costs-expected-to-rise-due-to-coronavirus.aspx), *SHRM Online*, April 2020

IRS Relaxes High-Deductible Terms for COVID-19 Testing and Treatment (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-relaxes-high-deductible-requirements-for-COVID-testing-and-treatment.aspx), *SHRM Online*, March 2020

IRS and DOL Unveil Employer Tax Credits for Coronavirus-Related Leaves (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-and-DOL-unveil-employer-tax-credits-for-covid-related-leaves.aspx), *SHRM Online*, March 2020

Help Panicking 401(k) Participants Stay the Course, (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/pandemic-market-plunge-help-panicking-401k-participants-stay-the-course.aspx) *SHRM Online*, March 2020

Consider These Benefit Issues Before You Furlough or Terminate Employees During the Pandemic (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/consider-these-benefit-issues-before-you-furlough-or-terminate-employees-due-to-COVID19-pandemic.aspx), *SHRM Online*, March 2020

When Employers Must Cut Their 401(k) Contributions to Stay Afloat (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/when-employers-must-cut-their-401k-contributions.aspx), *SHRM Online*, March 2020

Health, Wellness and Leave Benefits Help Employees with Coronavirus (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/health-wellness-leave-benefits-help-employees-with-coronavirus.aspx), *SHRM Online*, March 2020