

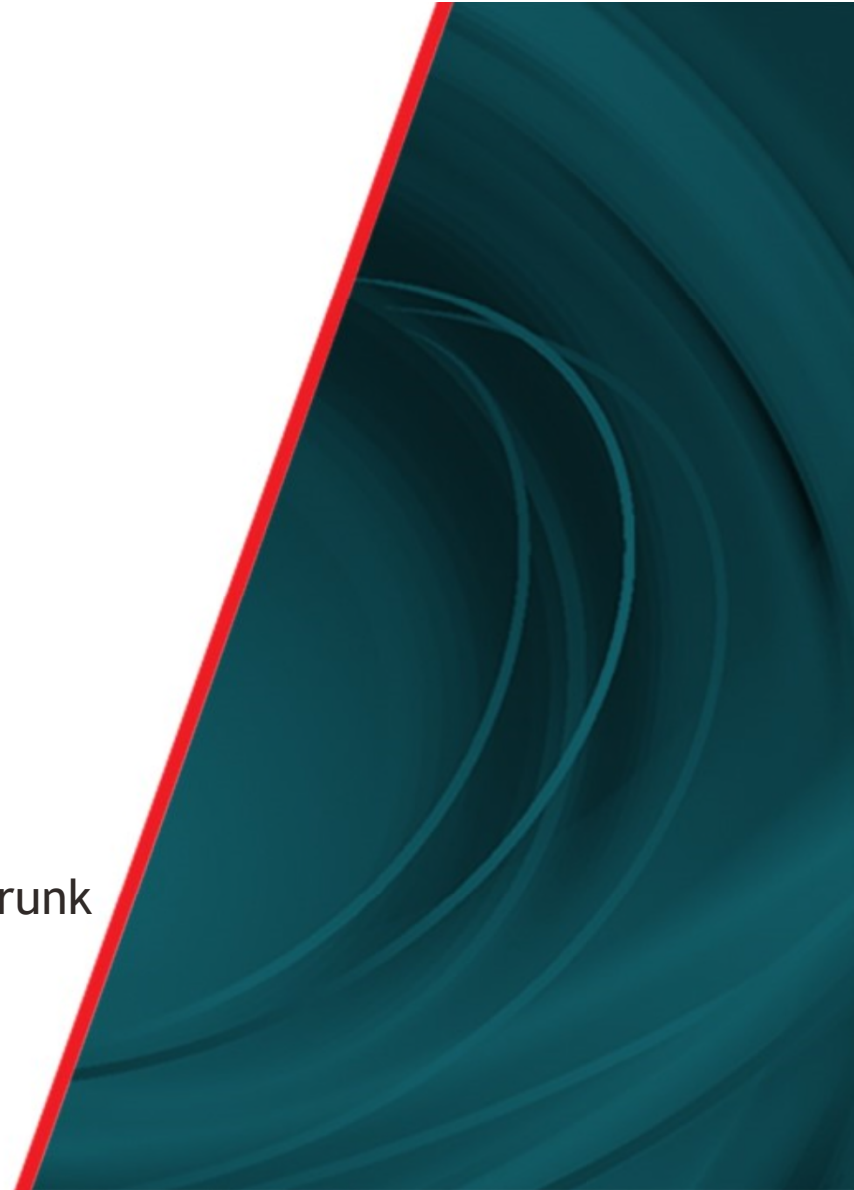


# Supporting Employees and Reducing Costs: Employee Benefits in a Pandemic



Caryn C. McNeill, Jamison H. Hinkle & Kara M. Brunk  
October 13, 2020

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# Overview

- Recent legislation providing ways to support employees
- Cost reduction measures
- Impact of layoffs and furloughs under retirement and welfare plans



# Recent Legislation and Guidance

Qualified Retirement Plans

# CARES Act and Retirement Plans

- CARES Act-Related Distributions (CRDs)
- CARES Act-Related Loans (CRLs)
- Loan Suspension
- Suspension of RMDs



## CARES Act-Related Distributions (CRDs)

Special distributions from eligible retirement plans up to \$100,000 made prior to Dec. 31, 2020:

- Exempt from 10% early withdrawal penalty
- Still subject to income taxes but exempt from usual 20% automatic withholding; income (and taxes) may be spread across 3 tax years (2020, 2021, and 2022)
- CRDs may be repaid or rolled over to IRA or other qualified plan within 3-year period
- No consideration of financial need to qualify

## CARES Act-Related Distributions (CRDs) (cont'd)

CRDs limited to certain “qualified individuals:”

- Participant (or spouse or dependent) diagnosed with COVID-19 or SARS-CoV-2;
- Participant (or spouse or member of household) experiences adverse financial consequences due to pandemic-related shutdown, furlough, layoff, lack of child care, quarantine, or other factors;
- Business owners who shut down their business or reduce their hours due to pandemic; or
- Individuals who meet other criteria set by IRS.

# CARES Act-Related Loans (CRLs) and Loan Suspensions

## Increase in Loan Amounts:

- Loan limits raised to maximum of 100% of vested account balance or \$100,000 for “qualified individuals” receiving loans between March 27, 2020 and September 22, 2020

## Suspension of Current Loan Repayments:

- Loan payments coming due between March 27, 2020 and December 31, 2020 may be suspended for up to one year, the term of the loan extended for the length of the suspension, and loan re-amortized



## Suspension of Required Minimum Distributions (RMDs) for 2020

RMD Waiver: CARES Act provides 1-year waiver of RMDs from IRAs and qualified plans in 2020

- RMDs previously paid to a participant in 2020 were eligible to be rolled over to a qualified retirement plan or IRA by August 31, 2020





# CARES ACT-Related Plan Amendments

- Adoption of CRD and CRL provisions are optional
- Amendment deadline for employer plans (other than governmental plans) is the last day of the first plan year beginning on or after January 1, 2022 (governmental plans have until 2024)
- Prototype plan practices vary; many adopting changes automatically unless employers expressly opt out
- Employers may desire to batch with other discretionary amendments
- For RMDs, amendments may not be required depending upon plan terms; amendment deadline is last day of the first plan year beginning on or after January 1, 2022 (Notice 2020-51 provides sample amendment)


# CARES Act - Employers' Adoption of Optional Provisions

Relief	Employers Adopting
CRDs	63.5%
CRLs	36.5%
Suspend Loans	48.2%
Undecided/none	30.7%

Source: [https://www.psca.org/research/cares\\_snapshot2](https://www.psca.org/research/cares_snapshot2)



# CARES Act - Participants' Use of Optional Relief



Relief	0%	< 1%	1-5%	6-10%	11-15%	16-20%	21-25%
CRD	18.4%	34.5%	37.9%	4.6%	0%	1.1%	1.1%
CRL	26%	52%	16%	0%	0%	2%	0%

Source: [https://www.psca.org/research/cares\\_snapshot2](https://www.psca.org/research/cares_snapshot2)



# Recent Legislation and Guidance

Health and Welfare Plans

# IRS Notices 20-29 and 20-33: Optional Cafeteria Plan and FSA Relief

- Notice 2020-29 permits the following mid-year election changes:
  - Enroll in the health plan by an eligible employee who previously declined coverage
    - E.g., someone who waived coverage during open enrollment
  - Change plan options or add dependents
  - Drop coverage (must attest to enrolling in other “comprehensive” health coverage)
  - Health FSA or Dependent Care FSA coverage changes (including revoking, increasing, or decreasing coverage, or making a new election)
- Important: Retroactive election changes are generally not permitted and amounts that have already been contributed cannot be returned to employees or applied to another benefit.

## IRS Notices 20-29 and 20-33: Optional Cafeteria Plan and FSA Relief (cont'd)

- General Rule: “Use it or lose it”
- Notice 2020-29 permits the use of unused Health FSA and Dependent Care FSA amounts through December 31, 2020
  - *Caution: If the health FSA is not HSA-compatible then employees with unused amounts remaining at end of plan year or grace period ending in 2020 will not be eligible to contribute to an HSA during the extended period*
- Notice 2020-33 increased the maximum health FSA carryover amount to \$550

## IRS Notices 20-29 and 20-33: Optional Cafeteria Plan and FSA Relief (cont'd)

- Must disclose changes to employees and amend plan document by December 31, 2021

# IRS/DOL Joint Notice: Mandatory Extension of Certain Plan Deadlines

- Joint Notice issued by the DOL and IRS requires group health plans to extend certain timeframes for participants during the “outbreak period”
- “Outbreak period” begins March 1, 2020 and ends 60 days after the announced end of the national emergency for COVID-19
- Plans must disregard the outbreak period for purposes of determining the following periods and days:
  - HIPAA 30-day/60-day special enrollment period
  - COBRA 60-day election period
  - COBRA premium payment deadlines
  - Deadline for an individual to notify the plan of COBRA certain qualifying events (e.g., divorce)
  - Deadlines for a participant to file benefit claims, appeals, and external review requests with the plan (or to perfect an external review request).



## FFCRA and CARES Act: Impact on Group Health Plans

- Mandated Coverage for COVID-19 Testing and Procedures
- Expanded FMLA Leave for Emergency Childcare and Emergency Paid Sick Time
  - Maintain coverage on same conditions
  - Employee remains responsible for premiums



# Cost-Reduction Measures

# Reducing or Suspending Contributions to 401(k) Plans

Type of Matching or Nonelective Contribution	Can we reduce or suspend mid-year?	Is a plan amendment required?	Do we have to give advance notice to employees?
Safe Harbor* *IRS Notice 2020-52 provided temporary relief for some requirements in amendments adopted between March 13, 2020 and August 31, 2020	Yes if (1) operating at loss or (2) for any reason, if “maybe” statement in Safe Harbor Notice	Yes; can’t take effect any earlier than later of when adopted or 30 days after notice	Yes
Non-Safe Harbor Required	Yes. Can be done prospectively in all cases, and perhaps for period prior to change if conditioned on 1,000 hours or last day	Yes	Generally, no
Discretionary	Yes. Same as non-safe harbor required	No	Generally, no

# Changes to Employer Contributions

Change	1-199	200-999	1,000-4,999	5,000+	All Plans
None	97.2%	92.7%	82.4%	83.7%	89.8%
Suspend Match	0%	2.4%	5.9%	11.6%	5.1%
Reduce Match	0%	0%	0%	2.3%	0.7%
Suspend Nonelective	0%	2.4%	5.9%	0%	0.7%
Reduce Nonelective	0%	0%	0%	0%	0.7%

Source: [https://www.psc.org/research/cares\\_snapshot2](https://www.psc.org/research/cares_snapshot2)



# Impact of Layoffs and Furloughs

Group Health, Other Welfare, and Retirement Plans

# Continued Eligibility in Termination vs. LOA / Furlough

Benefits	Termination	Furlough
Group health	No, but a termination of employment that triggers a loss of coverage will trigger COBRA (or state “mini COBRA” if < 20 employees)	Yes, depending on the terms of the plan.
Other health and welfare	No, but conversion options may be available	Yes, depending on the terms of the plan
401(k) or other retirement	No except as to vested amounts	Yes, but may impact future vesting and benefit accruals



## Continuing Group Health Plan Coverage

- A reduction in hours or leave of absence/furlough could make employees ineligible to participate.
  - Important: Check plan document terms
- If coverage is lost because of a termination of employment or reduction in hours, COBRA (or “mini COBRA”) coverage is triggered.



## Paying for Coverage During Unpaid Leave

- Employers may provide options similar to what is offered during FMLA leave
  - E.g., employer covers employee portion
- Check plan document terms



## Partial Terminations of 401(k) or Other Retirement Plans

- Generally, a partial termination occurs when a single or series of events in a Plan Year results in a reduction of 20% or more of the workforce
- Separate RIFs or layoffs can be aggregated when determining whether the 20% threshold is exceeded
- Triggers 100% vesting for affected participants



# QUESTIONS?



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