

CLIENT ALERTS

More Changes for Employee Benefit Plans for 2021 (part 2)

2.17.2021

A number of significant new legal requirements for employee benefit plans were packed into the Consolidated Appropriations Act, 2021 (the “Act”), which passed on December 27, 2020.

Additionally, new employee benefit plan design options were made available, under the guise of providing relief to individuals and businesses during the continuing COVID-19 pandemic.

These new requirements and options also directly impact plan administration for qualified retirement plans and group health plans, and many of the new requirements will apply very soon, giving plan administrators little time to prepare.

This is the second of two summaries of the changes impacting employee benefit plans – focusing on retirement plans. The first summary focusing on group health plans can be found [here](#).

Temporary Rule Preventing Partial Plan Termination

If the number of participants in a retirement plan drops by at least 20% during a plan year due to involuntary terminations, the general rule is that a partial plan termination is presumed to have occurred. As a result, the terminated participants must be made fully vested in their accounts, even if the participants are eventually rehired. The Act provides temporary relief from this rule. A plan will not experience a partial termination during any plan year which includes the period beginning on March 13, 2020 and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021 is at least 80% of the number of active participants covered by the plan on March 13, 2020. ***Employers that furloughed, laid off, or terminated employees due to the pandemic, have until March 31, 2021, to rehire employees to avoid triggering a partial plan termination.***

Money Purchase Pension Plan CARES Act Distributions

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The CARES Act permitted up to \$100,000 of in-service withdrawals through December 31, 2020 to qualifying coronavirus-affected individuals from certain defined contribution plans, but not from money purchase pension plans. The Act retroactively adds money purchase pension plans to the list of plans that could provide these CARES Act distributions, as if such distributions were permitted by the CARES Act all along. ***Note that a plan amendment will still be required.***

Election to Terminate Transfers to 401(h) Retiree Medical Accounts

Employers making transfers from an overfunded defined benefit plan to a retiree medical account in the pension plan may elect to stop such transfers beginning in 2022, provided the election is made no later than December 31, 2021. In the event of such election, unused amounts must be returned to the transferor plan. ***This election must be documented, and restrictions apply.***

Disaster-Related Tax Relief

The Act permits plan sponsors to allow tax-favored withdrawals from retirement plans of up to \$100,000 for a “qualified disaster distribution” to an individual who lives in a qualified disaster area and who has sustained an economic loss by reason of the disaster. The distributions must occur between the first day of an incident period for a declared disaster and June 26, 2021. Recipients can repay the distributions to the retirement plan, with such repayments receiving rollover treatment. Additionally, the Act increases the loan limit from retirement plans to \$100,000 of the accrued vested account benefit, and delays the due date for loan repayments occurring during the incident period up to one year. Finally, any individual who received a hardship withdrawal between 180 days before the first day of the incident period of the disaster and ending 30 days after the last day of the incident period of the disaster in order to purchase or construct a principal residence in a qualified disaster area but could not do so because of the disaster may repay the amount to the retirement plan, with such repayments receiving rollover treatment.

A “qualified disaster area” is any area with respect to which a major disaster was declared between January 1, 2020 and February 25, 2021 if the incident period of the disaster occurred between December 28, 2019 and December 27, 2020, but does not include any disaster only declared by reason of COVID-19.

The distribution and loan relief for non-COVID disasters are optional provisions available to plan sponsors. Amendments need not be made until the last day of the first plan year beginning on or after January 1, 2022 (or 2024 if a governmental plan), unless regulations adopt an extended due date. However, to gain such relief, the plan must be operated consistent with the amendment that is adopted.

If these permitted changes are administratively adopted, the Plan Administrator needs to quickly communicate the changes to participants, despite the fact that the Plan amendment and Summary of Material Modifications may be generated later.

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Please contact your Employee Benefits attorney at Butzel Long for help in ensuring compliance with these new legal requirements and permitted options.

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