



## Alerts

### CARES Act Program Expands Scope of Educational Assistance Plans to Include Employer Repayments of Student Loans

April 30, 2020

*Insights for Employers*

A new rule under the CARES Act could be beneficial for employees with outstanding student loan debt, and even provide some cost savings for employers as well. The CARES Act expanded the scope of Educational Assistance Programs under Section 127 of the code to include student loan repayments. Under prior law, that provision only allowed for an exclusion from an employee's income for educational assistance that was provided by an employer prospectively. Because of this change, an employer may now repay up to \$5,250 of an employee's student loans, and those repayments would not be subject to income or payroll tax for 2020.

#### Requirements for Educational Assistance Plans under Code Section 127

To take advantage of this new rule, an employer will have to adopt a Section 127 Educational Assistance Plan. While there is significant flexibility in how an employer can structure such a plan, there are also some limitations. First, to qualify as an educational assistance program, an employer must provide reasonable notification of the availability and terms of the program to all eligible employees. Eligibility requirements for the program may not be discriminatory in favor of highly compensated employees or their dependents. Further, no more than five percent of the amounts paid by the employer for educational assistance may be provided to shareholders and owners who own more than five percent of the stock or capital, or profits interest in the employer.

Another critical limitation of a Section 127 program is that the program **must not provide eligible employees with a choice between educational assistance and other remuneration included in gross income**. As a result, an employee cannot elect either regular pay or an employer payment of educational assistance and loan repayments. This means that any such program will only benefit those who have outstanding student loans. An employee who does not have an outstanding student loan cannot receive extra compensation because he or she elects to "opt-out" of an employer's student loan repayment program.

#### Attorneys

Anthony E. Antognoli

#### Service Areas

Employee Benefits

Labor & Employment



A Section 127 plan must be maintained pursuant to a separate written plan document. For employers that already have such a plan in place, the plan will need to be amended to reflect the expanded scope of available educational assistance. The Section 127 plan may be structured to limit educational assistance to only certain forms (e.g., only repayment of student loans) and to certain classes of employees. The program may benefit common law employees as well as self-employed persons, such as partners in a partnership.

## Significant Tax Savings for Impacted Employees, with Savings for Employers Too

This new change to the rules for tax-free educational assistance could offer a significant benefit to employees with outstanding student loan debt. Assuming an employee receives the full \$5,250 in student loan repayments, that could result in over \$1,800 in extra after-tax income for those recipients—assuming a 35% marginal state + federal + FICA tax rate. Further, by avoiding the employer portion of FICA on those payments, the employer would recognize savings as well.

This new program is one of many that could provide employers with tax savings, credits, or similar benefits that have been implemented in response to the COVID-19 crisis.