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While we all try to navigate our way through these unprecedented times, I want to address concerns you may be having about your Qualified Pension Plan (401k, Profit Sharing or Cash Balance Plans).

I will first review changes that have become law and then review possible additional remedies for Qualified plans.

Congress and the White House recently passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to try to stimulate our economy.

Below are the key provisions affecting retirement plans.

Distributions in 2020: The CARES Act waives the 10% early withdrawal penalty tax under Internal Revenue Code Section 72(t) on early withdrawals up to $100,000 from a retirement plan or IRA for an individual:

- who is diagnosed with COVID-19;
- whose spouse or dependent is diagnosed with COVID-19;
- who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19; or
- other factors as determined by the Treasury Secretary.

The legislation also permits those individuals to pay tax on the income from the distribution ratably over a three-year period and allows individuals to repay that amount into the plan over the next three years (presumably filing for a tax deduction on the taxes they will have paid as a result of the premature distribution). Those repayments would not be subject to the retirement plan contribution limits.

Plan Loans: Doubles the current retirement plan loan limits to the lesser of $100,000 or 100% of the participant's vested account balance in the plan for loans taken before September 27, 2020. Individuals with an outstanding loan from their plan with a repayment due from the date of enactment of the CARES Act through Dec. 31, 2020, can delay their loan repayment(s) for up to one year. The loan maturity date may also extended for one year. Loan interest will continue to accrue.

Plan Amendments: The legislation further permits retirement plans to adopt these rules immediately, even if the plan does not currently allow for hardship distributions or loans, provided the plan is amended on or before the last day of the first plan year beginning on or after Jan. 1, 2022, or later if prescribed by the Treasury Secretary.

Temporary Waiver of Required Minimum Distribution Rules: Waives RMDs for calendar year 2020 for DC plans, including 401(k), 403(b), 457(b) and IRA plans, allowing individuals to keep funds in their retirement plans. Under current law, individuals generally at age 72 must take an RMD from their DC plans and IRAs.

Single-employer DB Plan Funding Rules: Provide single-employer defined benefit plan funding relief by giving companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until Jan. 1, 2021. At that time, contributions due earlier would be due with interest.

Expansion of DOL Authority to Postpone Certain Deadlines: The legislation provides the Department of Labor with expanded authority to postpone certain deadlines under ERISA. In general, the legislation increases the circumstances to go beyond a terroristic or military action to also include a public health emergency declared by the Secretary of Health and Human Services under the Public Health Service Act.

In addition to this recent legislation, the American Society of Pension Professionals (ASPPA)/American Retirement Association (ARA) has lobbied the Department of Labor and IRS for additional relief.

The ARA pressed the agencies to provide relief from various filing requirements, including an automatic extension of the Form 5500 series for retirement plans, an extension to the deadline for correcting a failed ADP or ACP test and an extension of the period for distributing excess aggregate contributions under a plan, among others.

ARA continues to push for additional assistance, including defined contribution funding relief. The ARA called on the Treasury Department to provide relief to help employers facing significant financial burdens relating to the Coronavirus, especially for retirement plans sponsored by small businesses.

While we await guidance on these requests to the DOL and IRS know that there are things we can do other than terminate your plan if you are having financial difficulties. Terminating a plan is costly and can be cumbersome. In addition, you would also have to wait for a 12 month period to implement a new successor plan.

If you would decide to remove the Required Safe Harbor provision from your plan please note a 30 day notice may apply. This would apply to 3% Non Elective Safe Harbor plans and Safe Harbor Match plans.

- SH plans that remove SH provisions for the remainder of the year are subject to Top Heavy testing and Average Deferral Percentage (ADP)/ Average Contribution Percentage (ACP) testing. Highly Compensated Employees may be limited in the amount they can defer.
- Plan Sponsor would be required to fund the SH contributions through the date of suspension.
- Any such change will require a plan amendment

Deferral changes can be made in accordance with plan provisions:

- Participant can stop their deferral election at any given time and are able to re-enter on the next modification date. Deferral modification dates can be changed with a plan amendment

Partial Plan Terminations:

- Current law states If you terminate more than 20% of your workforce, your plan could experience a partial plan termination. These affected individuals may require any of their non-vested account balances to be 100% vested

Please keep in mind the DOL rule for timely depositing 401k funds withheld from your employees pay still stands. For small business the funds must be deposited to the plan's trust within 7 business days of the payroll date or penalties and late interest charges may apply.

Please feel free to contact our office if you wish to discuss your concerns. We are hopeful there will be more relief on the way and will notify you of any updates affecting your plan.