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Benefits Bulletin

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New COVID-19 Relief Bill: Highlights for Employers

On **December 27, 2020**, President Trump signed into law the much-anticipated COVID-19 relief bill (the “Bill”), which was approved by Congress a week earlier. The Bill, a follow-up to the March 2020 CARES Act, provides a second round of stimulus dollars and economic relief measures; it also contains several provisions of particular importance to employers.

Temporary Provisions for Flexible Spending Accounts

The Bill includes a number of temporary relief measures for Flexible Spending Accounts (“FSAs”). These measures are permissible, not mandatory. Employers who wish to incorporate some or all of these relief measures must make appropriate plan amendments no later than the last day of the calendar year following the plan year in which the change is effective.

- **Balance Carryovers:** For 2020 and 2021 plan years only, participants may be permitted to carry over unused balances of any amount in both a Health and Dependent Care FSA. This means that carryover amounts are unrestricted going into plan years 2021 and 2022. Note that ordinarily, Dependent Care FSAs cannot offer a carryover feature.
- **Grace Periods:** Health and Dependent Care FSAs that do not incorporate a carryover feature can provide a grace period of up to 12 months for plan years ending in 2020 and 2021. The extended grace period will allow participants additional time to incur eligible expenses.
- **Election Changes:** The mid-year election change rules for Health and Dependent Care FSAs may be relaxed to permit employees to make prospective changes to election amounts absent a qualifying event. This relaxation of the election change rules is similar to the relief previously provided for cafeteria

plans in 2020 (Benefits Bulletin: IRS Provides Temporary Flexibility for Cafeteria Plans, Health FSAs, and DCAPs) and is available through plan years ending in 2021.

- **Eligible Dependent Age:** Dependent Care FSAs may temporarily increase the age of eligible dependents by one year (from 13 up to age 14).
- **Terminated Employees:** Participants in a Health FSA who terminate employment in 2020 or 2021 may spend down their account balances through the end of the plan year in which the termination occurs.

Extension of FFCRA Tax Credits

While the paid sick and family leave mandate under the Families First Coronavirus Response Act ("FFCRA") expires on December 31, 2020, the associated tax credits available to employers who provide this leave will remain available through March 31, 2021. Thus, employers who voluntarily continue to provide FFCRA leave may also take advantage of the available tax credits through the first quarter of 2021.

Continuation of the Employee Retention Tax Credit

Originally set to expire on December 31, 2020, the Bill authorizes a continuation of the Employee Retention Tax Credit through June 30, 2021. This tax credit allows businesses to claim a refundable payroll tax credit for up to 70% of qualified wages paid to employees (an increase from the previous cap of 50%). Despite the increase in percentage of qualified wages, the wage dollar limit remains $10,000 per employee per quarter. This limits the per-employee credit amount to no more than $7,000 per quarter.

Reauthorization of the Paycheck Protection Program

Finally, the Bill allocates additional funding for the Paycheck Protection Program (the "PPP"). This new round of funding means that businesses will have another opportunity to apply for and receive PPP funds – even those that received funding during the first round of PPP – in order to retain employees and cover basic operating expenses. The Bill also expands the list of expenses that are considered forgivable.

Next Steps

For provisions relating to FSAs, employers should carefully consider which measures, if any, it wishes to incorporate, and should then coordinate with third party administrators to make timely plan amendments and distribute necessary participant communications such as Summaries of Material Modifications ("SMMs"). For provisions relating to tax credits and lending programs, employers should reach out to their tax advisor to determine how best to tap into the available assistance.

Additional Resources

[Consolidated Appropriations Act, 2021 (the Bill)]

[FFCRA Tax Credits]

[Employee Retention Tax Credit]

[Paycheck Protection Program]