

## Significant legislation impacting 403(b)/457(b) plans and sick leave

In light of the COVID-19 pandemic, significant legislation impacting 403(b)/457(b) plans, and sick leave has been passed to help relieve financial stress during these unprecedented times.

### 403(b) and 457(b) plans

#### The Coronavirus Aid, Relief and Economic Security Act

The Coronavirus, Aid, Relief and Economic Security Act, also known as the CARES Act, relieves some restrictions around withdrawals, loans, and a waiver of Required Minimum Distributions for 2020.

Specifically, the CARES Act permits a Coronavirus related distribution for up to \$100,000 for an individual:

- > who is diagnosed with COVID-19;
- > whose spouse or dependent is diagnosed with COVID-19; or
- > 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.

The legislation also waives the 10% early withdrawal penalty tax and permits those individuals to pay tax on the income from the distribution ratably over a three-year period, with an option to repay all or a portion of the distribution into the plan over the next three years. Those repayments will not be subject to the maximum allowable contribution limits, and will be treated as a rollover contribution.

The CARES Act also 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. The loan increase, however, only applies to individuals that would qualify for the Coronavirus related distribution (detailed above) and only until September 23, 2020. Individuals with an outstanding COVID loan from their plan with a repayment due from March 27, 2020 through Dec. 31, 2020 can delay their loan repayment(s) for up to one year.

Finally, the CARES Act waives Required Minimum Distributions for 2020.

### Paid sick leave and expanded family and medical leave under The Families First Coronavirus Response Act

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

## Paid Leave Entitlements

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- > 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- > 2/3 for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- > Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

## Eligible Employees

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers such as public schools to provide their employees with paid sick leave or expanded family and medical leave related to COVID-19. Employees are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

## Qualifying Reasons for Leave Related to COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

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| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;              | 5. is caring for a child whose school or day care is closed because of COVID-19; or   |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19;                       | 6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;                                    |   |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); |   |

## Enforcement

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.