



# Employee Benefits in the Time of COVID-19

**What Should Employers Know?**  
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# Legislative and Regulatory Update

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## Retirement Plans: Distributions and Loans

### Distributions

- During 2020, for participants affected by the coronavirus, 401(k), 403(b), and 457(b) plans may make in-service distributions of up to \$100,000.
- Distributions of up to \$100,000 from qualified and 403(b) plans are exempt from the 10% penalty for premature distribution.
- These distributions may be included in the participant's income over a 3-year period and may be repaid to an eligible retirement plan over a 3-year period.

### Loans

- Between March 27, 2020, and September 23, 2020, for participants affected by the coronavirus, the generally applicable limits for loans from qualified, 403(b), and governmental plans are expanded to the lesser of \$100,000 or 100% of the vested account balance.
- Any loan repayments otherwise due between March 27, 2020 and December 31, 2020 may be deferred for 1 year from each payment due date, and the otherwise applicable maximum loan term may be extended by the deferral period.

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## Retirement Plans: Required Minimum Distributions

- Required minimum distributions otherwise due during 2020 from qualified defined contribution plans (including 401(k) plans, 403(b) plans, and governmental 457(b) plans) need not be made.
  - This applies even if the participant reached age 70½ during 2019 and had been waiting until April 1, 2020 to take the first required minimum distribution.
- For beneficiaries of a deceased participant who will take distributions of their entire interest by the end of the fifth year following the participant's death, 2020 does not count toward the 5-year period.
- Amounts distributed during 2020 that would otherwise be required minimum distributions are not eligible for rollover and are not subject to 20% mandatory federal income tax withholding.

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## Retirement Plans: DB Funding

- Single-employer defined benefit plans may defer until January 1, 2021 any minimum required contributions otherwise due during 2020. Deferred contributions are subject to interest.
- Single-employer defined benefit plans may elect to use the AFTAP determined for the 2019 plan year for purposes of applying the benefit and distribution restrictions under Code Section 436 for the 2020 plan year.

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## Executive Compensation: New Limitations

- The recipient of any loan or loan guarantee under the CARES Act must cap employee compensation (including salary, stock and bonus, and severance) for the period of the loan through 1 year following repayment of the loan.
  - Officers and employees who received more than \$425,000 in calendar year 2019, may not receive (i) more compensation in any 12-month period than they received in 2019, or (ii) severance pay or other benefits upon termination that exceed twice the 2019 compensation amount.
  - Officers or employees who received more than \$3 million in 2019 may not receive total compensation during any 12-month period in excess of (i) \$3 million plus (ii) 50% of the excess over \$3 million.

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## Health & Welfare: Major Medical Plans

### COVID-19 Testing

- Coverage Requirements
- No-Cost Sharing
  - In-Network
  - Out-of-Network
- No Medical Management or Pre-Authorization

### COVID-19 Preventive Care

- Coverage Requirements
- Timing Requirements

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## Health & Welfare: HDHPs and HSAs

### General Rule:

- To be eligible to contribute to an HSA, individual must be enrolled in an HDHP.
- An HDHP cannot pay for any benefits, except preventive care, until the enrollee meets the minimum deductible.

### COVID-19 Exceptions:

- COVID-19 Testing
- COVID-19 Preventive Care
- COVID-19 Treatment
- Telehealth

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## Health & Welfare: Over-the-Counter Medical Expenses

### General Rule:

Health Accounts (FSAs, HRAs, HSAs) may cover expenses for “medical care” as defined in the tax code, with some exceptions.

### OTC Exception:

Health Accounts must not cover OTC medical items, other than insulin, without a prescription from a healthcare provider.

### New:

- OTC exception is eliminated.
- Result is that Health Accounts may cover OTC medical items without a prescription.

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## Frequently Asked Questions

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## Retirement: Mid-Year Cessation of Employer Contributions

**Can we stop employer contributions to our defined contribution plan in the middle of the plan year?**

- Safe Harbor Plan
  - Advance participant notice and plan amendment requirements
  - Nondiscrimination testing
- Non-Safe Harbor Plan
  - Allocation period for employer contributions?
  - Allocation conditions for employer contributions?
- Other Considerations
  - Impact on NHCE deferral rate of stopping match
  - Social Security integrated formulas

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## Retirement: Impact of Furloughs

- Eligibility and Vesting
  - Hours-Based Service Provisions
  - Elapsed Time Service Provisions
  - Break in Service
- Impact of Loss of Compensation
- Satisfaction of Allocation Conditions

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## Retirement: Partial Plan Termination

- Significant Reduction (20%) of Active Participants Due to Employer Action
- Requires “Affected Participants” to be 100% Vested
  - Terminated Participants are “Affected”
  - Are Furloughed Participants “Affected”?
    - Depends on Plan Service Crediting Method (Hours or Elapsed Time)
    - Depends on Length of Furlough Period
    - Impact of Termination Following Furlough

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## Health & Welfare: Furloughs

- We want to furlough some employees. May we or must we continue benefits?
- Define Your Terms
  - Furlough vs. Layoff vs. Leave
  - Furlough (for us) = unpaid leave for someone who is still employed
- Know the Rules
  - Express Plan Terms – eligibility generally and during leave
  - Federal Law – FMLA, FFCRA, CARES
  - State and Local Law – paid family leave, paid sick leave, termination
- Medical Coverage
  - Are you continuing active coverage or is it COBRA coverage?
  - What are the payment arrangements?

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## Health & Welfare: Reporting

- My business is essential and needs to stay open, but I'm worried that my employees will bring COVID-19 to the workplace. What can I do to prevent that?
  - Applicable Law – HIPAA no, ADA yes
  - Medical Exams: temperature checks
  - Medical Inquiries: fever-reducing medication
  - Non-Medical Inquiries
- I have an employee who has tested positive for COVID-19. What information must or may I share with the other employees?
- What about OSHA issues?

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## Health & Welfare: Flexible Benefit Plans

- We have told everyone to work from home. Is that a “qualifying life event” or “change of status” that will allow them to change their elections?
- Our insurance carrier said it will allow a new “open enrollment” window for employees to add dependents or enroll in coverage. Can we let our employees change their pretax elections for that?
- All of the schools and daycare centers are shut down due to COVID-19. Does that mean employees can change their Dependent Care FSA elections?
- If we amend our FSA to allow it to reimburse OTC items, may we or must we let employees change their FSA elections?

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