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From: Arnold and Kajdan, LLP

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RE: $2 Trillion Coronavirus Stimulus Package (CARES Act)

In response to the Coronavirus Pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The bill is designed to stimulate the economy. There are three provisions that will likely affect members: 1) cash payments to individuals; 2) expanded unemployment; and 3) withdrawals from retirement plans

CASH PAYMENTS TO INDIVIDUALS

How much is the payment?

The legislation provides a one-time payment of $1,200 for individuals with annual incomes of $75,000 or less. (Sec. 6428(a)(1)). Married couples with incomes of $150,000 or less will receive a one-time payment of $2,400. *Id.* Additionally, the government will add to the payment $500 for each child (Section 6428(a)(2)). These payments will be reduced by five percent (5%) so much as the adjusted gross income exceeds $75,000 or an individual or $150,000 for a married couple. (Sec. 6428(c)). The payments are phased out completely for individuals making $99,000 or more and married couples making $198,000 or more.

For an approximate calculation of how much your stimulus payment will be, click the link in the footnote below.[1]

How do I receive the Payment?

Payments will be made by direct deposit into the bank account an individual uses for filing taxes electronically. (Section 6428(f)(2)(B). If no direct deposit is set up, the IRS will mail a check to the persons last known address.

When do I get the Payment?

The bill does not explicitly state when the payments will be made. However, the legislation states that payments will be made as "rapidly as possible." (Sec. 6248(f)(3)). Steven Mnuchin, the Secretary of the Treasury, said the payments will be made within three weeks.[2] However, in 2001

[1] https://www.cnn.com/2020/03/27/politics/stimulus-check-calculator/index.html
[2] https://www.cnn.com/2020/03/29/politics/treasury-secretary-steve-mnuchin-stimulus-checks/index.html

it took six weeks to send out rebate checks under a new tax cut, and in 2008 it took three months after a stimulus package was signed into law before payments were sent. *Id.* Therefore, payments could be made within three weeks, but based on prior history with stimulus payments, it will likely take a little longer.

What Happens if I Do Not Receive the Payment?

The IRS will send a notice no later than 15 days after the payment is made indicating: 1) the method by which the payment was made; 2) the amount of such payment; and 3) a phone number for the appropriate point of contact at the IRS for failure to receive such a payment. (Section 6248(f)(6)).

UNEMPLOYMENT BENEFITS

How much is the Unemployment Benefit?

The amount varies depending on the state where the individual is employed. (Sec. 2102(d)). Under the CARES Act, individual will receive the benefit that he or she would normally receive under the state law plus an additional \$600. (Sec. 2104(b)(1)). For example, in Illinois, the maximum weekly benefit is \$471. Under the CARES Act, an individual who is unemployed for a Coronavirus related reason would now receive \$1,071 in a weekly benefit (\$471 + \$600). In Indiana, the maximum benefit is \$390, so an individual could receive up to \$990. Under the legislation, an individual can receive up to 39 weeks of unemployment. (Sec. 2102(c)(2)).

Who is Eligible for the Additional Unemployment Benefit?

The CARES Act defines a covered individual as someone who is otherwise able to work and available to work but is unemployed, unable or unavailable to work because:

(1) The individual has been diagnosed with COVID-19 or is experiencing symptoms and is seeking a medical diagnosis;
(2) A member of the individual's household has been diagnosed with COVID-19;
(3) The individual is providing care for a family member or member of the individual's household diagnosed with COVID-19
(4) A child in the household is unable to attend school or another facility that is closed due to COVID-19
(5) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
(6) Individual is advised to self-quarantine by health-care provider
(7) The individual has to quit his or her job as a direct result of COVID-19
(8) The individual's place of employment is closed as a direct result of COVID-19
(9) The individual meets any additional criteria established by the Secretary for unemployment assistance (Sec. 2102(a)(3))

The expanded unemployment benefit **does not** apply to:

(1) An individual who has the ability to telework with pay; or
(2) An individual is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described above (Section 2102(a)(3)(B))

What if an Individual Quits Because of General Concern Over COVID-19

Generally, an individual is entitled to unemployment benefits if they leave employment through no fault of their own. In Illinois, an individual who voluntarily leaves a job without good cause is ineligible for unemployment benefits (820 ILCS 405/601).

The CARES Act explicitly states that an employee is eligible if that individual has to quit his or her job as a direct result of COVID-19. It is unclear from the plain text of the statue whether this covers an individual who quits over general concern over Coronavirus, or if it only applies to situations where an individual is forced to quit because a doctor orders self-quarantine or a state mandated quarantine.

The Illinois Department of Employment Security ("IDES") distinguishes between these situations. IDES has an FAQ page addressing various questions related to COVID-19.[3] In addressing the situation where an individual quits over general concern over COVID-19, IDES states that "the eligibility of an individual in this situation will depend on whether the facts of his or her case demonstrate that the individual had good reason for quitting and that the reason was attributable to the employer." This suggests that an individual will unlikely be able to collect unemployment for quitting over a general concern of COVID-19.

Whereas, IDES states that an individual would likely qualify for unemployment when he or she is ordered to self-quarantine by a medical professional, take care of a family member diagnosed with COVID-19 or as a result of a state ordered quarantine.

This could mean an individual may be entitled to $0 under the State law and $600 under the CARES Act. The facts of each situation may determine the eligibility for coverage. As of the date of this memorandum, construction is considered an essential job in both Illinois and Indiana and able to work under each state's stay-at-home orders. Therefore, it is unlikely that general concern over Coronavirus, without more, would entitle an individual in the construction industry to unemployment.

What if an Individual Lives in One State and Works in Another State

An individual is entitled to receive unemployment benefits in the state in which their job was located. For example, an individual could live in Indiana but work in Illinois. In this situation, the employee would be entitled to receive unemployment benefits in Illinois, because Illinois is the state where the job is located.

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[3] https://www2.illinois.gov/ides/Pages/COVID-19-and-Unemployment-Benefits.aspx

WITHDRAWALS FROM RETIREMENT PLANS

These provisions only apply to individual account or defined contribution plans. These provisions **do not** apply to multiemployer defined benefit plans.

10 Percent Tax Penalty Waived for Coronavirus-related Distribution

The tax code provides that if a taxpayer receives any amount from a qualified retirement plan, the taxpayer is required to pay a 10% penalty on the early distribution. (26 U.S.C. § 72(t)). However, the legislation removes this 10% penalty for a Coronavirus-related Distribution made between January 1, 2020 through December 31, 2020 up to $100,000. (Sec. 2202(a)(2)).

What is a Coronavirus-related Distribution?

The eligibility of a Coronavirus-related distribution is very broad. An individual is entitled to a Coronavirus-related distribution when an individual, their spouse, or dependent is diagnosed with Coronavirus. (Section 2202(a)(4)(B). Additionally, an individual is entitled to a distribution when he or she has experienced **adverse financial consequences** from Coronavirus resulting from: 1) being quarantined, furloughed, or laid off; 2) having their work hours reduced; 3) being unable to work due to lack of child care; or 4) closing or reducing hours of a business they owned or operated. *Id.*

The phrase "experienced adverse financial consequences" is very broad. This gives the Plan wide discretion in approving distributions. Additionally, this definition would include owner-members who have either stopped operating their company or having a hard time finding work as a result of the pandemic.

What is Evidence is Required to Approve a Coronavirus-related Distribution?

The administrator of an eligible retirement plan may rely on an employees' certification that the employee satisfies the conditions of a Coronavirus-related distribution. (Section 2202(a)(4)(B)).

Repayment of Distribution

The Coronavirus-related distribution can be repaid to the plan within three years to gain tax-free rollover treatment. (Section 2202(a)(3)(A)).

What is the Effect of a Coronavirus-related Distribution on an Individuals Gross Income?

Generally, when an individual takes a distribution form a qualified plan, the amount received is treated as part of the individual's gross income for tax purposes. However, when an individual has a Coronavirus-related distribution, the amount required to be included in gross income can be spread over three (3) years. (Section 2202(a)(5)(A)).

This only applies to an individual's federal income tax. An individual may still be required to report the entire distribution in the year it is received on the individual's state income tax return.

Temporary Waiver of Minimum Distributions

The legislation eliminates the requirements that Plans make Required Minimum Distributions during 2020. (Sec. 2203). This avoids plan participants liquidating investments when the stock market is adversely affected by COVID-19.

Increase in Limits on Loans Not Treated as Distributions

For retirement plan loans made between March 27, 2020 and September 23, 2020, the CARES act increases the maximum loan amount to $100,000; and permits participants to take the full amount of their vested benefit as a loan. (Sec. 2202(b)(1)). Previously, an individual would only be entitled to take half of these amounts (the lesser of 50% of the account balance or $50,000) (26 U.S.C. § 72(p)(2)(a)).

This relieves the financial burden placed on an individual

Delay on plan loan repayments

In the case of a qualified individual (meaning an individual with a Coronavirus-related need) with an outstanding loan, the payment **shall** be delayed for one (1) year and the repayment schedule is adjusted accordingly. (Sec. 2202(b)(2)).

The term qualified individual for the purposes of this section includes anyone who is diagnosed with Coronavirus; or whose spouse or dependent is diagnosed with the virus; or **who experiences adverse financial consequences** as a result of Coronavirus. (Sec. 2202(a)(4)(ii)).

This broad definition includes an individual who experiences adverse financial consequences as a result of Coronavirus. Almost all individual with an outstanding loan arguably would qualify for this definition. The individual was already in financial need before Coronavirus, which is why he or she had taken out the loan. Therefore, the Plan may need to consider this section to apply to almost all outstanding loans.

PROVISIONS FOR HEALTH CARE AND OTHER BENEFIT PLANS

Coverage of COVID-19 Testing

Plans must cover at no cost to participants Coronavirus tests approved by the FDA and other forms of testing developed during the COVID-19 emergency period. (Sec. 3201). This expands the requirements under the Families First Coronavirus Response Act, which only required coverage of FDA approved tests.

COVID-19 Testing Performed by an Out-of-Network Provider

The Cares Act amends and expands testing included in the Families First Coronavirus Response Act to include testing services provided by an out-of-network provider setting the rate the provider must publicly post on its website or at a lower rate negotiated with the provider. (Sec. 3202(a)(2).

Coverage of Over-the-Counter (OTC) Medication Without a Prescription

The CARES Act allows Flexible Spending Accounts (FSAs), Health Savings Accounts (HSAs), and Health Reimbursement Arrangements (HRAs) to cover over-the-counter medications (i.e. Advil, Tums, Dayquil) without a prescription. (Sec. 3702(c) striking 26 U.S.C.§106(f)). Additionally, the CARES Act expands coverage to include menstrual care. (Sec. 3702). This applies to expenses made after December 31, 2019.