Congress Provides New Round of COVID-19 Relief

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The Consolidated Appropriations Act, including the Taxpayer Certainty and Disaster Relief Act 2020 (collectively, the ?Act?) was signed into law on December 27, 2020. The Act expands prior COVID-19 relief and includes new assistance for employers and employees coping with the ongoing crisis.

Paid Sick and Family Leave Mandate and Credits Extension. The Families First Coronavirus Response Act (?FFCRA?) requires employers to provide paid Family and Medical Leave Act leave and sick leave to certain employees who are unable to work due to the COVID-19 pandemic. Employers who provide FFCRA paid leave are eligible for refundable credits against employment taxes. The FFCRA mandate and credits were to expire at the end of 2020. The Act extends the paid leave credits through March 31, 2021, but not the mandate.

Employee Retention Credit Enhancement. Under the Coronavirus Aid, Relief, and Economic Security Act (the ?CARES Act?), an employer whose operations are fully or partially suspended due to a government order limiting commerce, travel, or group meetings due to COVID-19 or who suffers a decline in gross receipts of more than 50% when compared to the same quarter in the prior year is eligible for a tax credit for 50% of the ?qualified wages? (of up to $10,000 per employee) paid to employees between March 2, 2020, and December 31, 2020. For large employers with more than 100 full-time employees, ?qualified wages? are limited to wages paid to employees who do not work due to the COVID-19 circumstances. For smaller employers, ?qualified wages? are all employee wages.

The Act expands and enhances the CARES Act employee retention credit (?ERC?), effective from January 1, 2021, through June 30, 2021, as follows:

- The large employer threshold is increased from over 100 full-time employees to over 500 full-time employees for purposes of determining an employee?s ?qualified wages.?
- The ERC is increased from 50% of qualifying wages to 70% of qualifying wages.
- The $10,000 qualifying wage per employee per year limit is increased to $10,000 per employee per

calendar quarter.

- The required decline in gross receipts for an employer to be eligible for the ERC is reduced from 50% to 20%, and employers are allowed to use the preceding calendar quarter for determining eligibility for the ERC.
- The CARES Act limit on qualifying wages to the amount an employee would have been paid during the 30 days immediately preceding the applicable period is removed.

Deferred Payroll Taxes Extension. The deadline for repaying payroll taxes deferred under IRS Notice 2020-65 is extended until December 31, 2021, and the date on which interest, penalties, and additions to tax will begin to accrue is delayed to January 1, 2022.

Exclusion of Employer Payments of Student Loans. The exclusion from gross income of employer payments for employee student loans is extended for five years through December 31, 2025.

Partial Plan Termination Relief. The Act provides that a qualified retirement plan will not be treated as having a ?partial plan termination,? which would require full vesting of affected participants, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020.

Temporary Rules for Flexible Spending Arrangements. The Act provides the following temporary relief for health and dependent care flexible spending arrangements.

- The permitted carry over of unused funds from the 2020 plan year to the 2021 plan year and from the 2021 plan year to the 2022 plan year is unlimited.
- The grace period for claims for a plan year ending in 2020 or in 2021 may be extended to 12 months after the end of such plan year.
- A plan may allow an employee who ceases plan participation in 2020 or 2021 to receive reimbursements from unused contributions through the end of the plan year in which participation ended, including any grace period.
- A special carry forward rule is permitted for dependent care flexible spending arrangements where a dependent aged out of eligible status during the pandemic.
- A plan may allow participants to modify contribution amounts during 2021 for any reason.

The flexible spending arrangement relief is optional. If any, or all, of the flexible spending arrangement provisions are adopted, the plan must be amended no later than the end of the following calendar year.

Retirement Plan Qualified Disaster Relief. The Act allows eligible retirement plans to make ?qualified disaster distributions? of up to $100,000, reduced by the amount of any prior qualified disaster distributions, to a ?Qualified Individual.? A ?Qualified Individual? is a participant residing in a qualified disaster area who sustains economic loss due to a qualified disaster. Qualified disaster distributions contributed to an eligible retirement plan, including an individual retirement account (?IRA?), within three years are treated as tax-free rollovers.

Although similar, qualified disaster distributions and CARES Act coronavirus-related distributions are different types of distributions. The COVID-19 National Emergency does not qualify an individual for a qualified disaster distribution. Coronavirus-related distributions do not reduce the qualified disaster distribution $100,000 limit.

The Act also increases the maximum permitted plan loan amount from $50,000 to $100,000 for Qualified Individuals receiving a loan during the 180-day period beginning on the date the Act is enacted (a similar increase under the CARES Act expired on September 23, 2020) and delays loan repayments for Qualified Individuals.

Williams Mullen is closely monitoring coronavirus developments. Please contact any member of the Williams Mullen Employee Benefits Group if you have any questions.

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