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March 27, 2020

## **CLIENT ALERT**

### **PROVISIONS AFFECTING RETIREMENT PLAN DISTRIBUTIONS AND LOANS IN THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)**

Dear Client:

Many of our clients have been receiving questions from employees who want to know whether they can receive distributions or loans from their company's §401(k) plan to confront financial challenges resulting from the COVID-19 virus. On March 27, 2020, Congress enacted and President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act, Pub. L. No. 116-136). The CARES Act includes several provisions affecting §401(k) distributions and loans related to the COVID-19 virus that I discuss below.

**Distributions:** Under §2202(a) of the CARES Act, a §401(k) plan may allow employees to receive Coronavirus-related distributions for any taxable year from an employer that do not exceed \$100,000 in the aggregate from all plans maintained by the company (and any member of any controlled group that includes the company). The 10% additional tax that applies to distributions received by employers who have not attained age 59½ is waived for Coronavirus-related distributions that are received between January 1, 2020, and December 31, 2020.

Coronavirus-related distributions are any distribution from a §401(k) plan or other qualified plan made to an individual (1) who is diagnosed with virus SARS-CoV-2 or COVID-19 by a test approved by the Centers for Disease Control and Prevention, (2) whose spouse or dependent, is diagnosed for such illness by such test, or (3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate). The plan administrator may rely on the employee's certification that the Coronavirus-related distribution requirements are met.

The employee may repay the amount of any Coronavirus-related distributions that is included in income ratably over the three-taxable-year period beginning with the taxable year the distribution is received. Employees also may repay the aggregated amount of the distribution (or any portion

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thereof) by making one or more contributions to their company's plan or any other eligible retirement plan of which the individual is a beneficiary that accepts eligible rollover contributions. Such distributions are treated as eligible rollover distributions if they are repaid within three years following the date of the distribution.

**Temporary Waiver of Required Minimum Distributions:** Section 2203 of the CARES Act temporarily waives required minimum distributions from §401(k) plans (as well as other defined contribution plans and IRAs) for participants who were required to receive such distributions in 2020. The waiver does not apply to required beginning dates beginning in calendar years after 2020.

**Plan Loans:** Plans may increase the amount of loans available to employees who are eligible to receive Coronavirus-related distributions. Specifically, §2202(b) of the CARES Act provides that, during the 180-day period following the date of enactment (March 27, 2020), such employees may receive plan loans that do not exceed the lesser of \$100,000 (increased from \$50,000) or 100% (increased from 50%) of the present value of the employee's nonforfeitable accrued benefit under the plan. The CARES Act also allows the due date for the repayment of any outstanding plan loans occurring between March 27, 2020, and December 31, 2020, to be delayed for one year. Plans adopting this provision must adjust subsequent repayments appropriately to reflect the delay in repayment and any interest accruing during the delay.

**Plan Amendments:** Please note that the distribution and loan provisions discussed above are optional. If your company decides to operate under these provisions, the company's plan document does not have to be amended until the last day of the plan year beginning in 2022 (December 31, 2022, because your plan is a calendar year plan).

After you have reviewed this letter, please contact me if you would like to set up a meeting to discuss whether adopting these new provisions is appropriate for your plan. Your prompt attention is required, because these provisions are effective immediately. We also should meet with your plan service providers to ascertain the fees associated with administering the provisions, which will include drafting employee communications and updating the plan's distribution and loan procedures.

I know this is an unprecedented time for your employees, and I look forward to meeting with you to discuss plan design changes that may be helpful to them.

Sincerely,  
**HARDESTY LAW GROUP, P.C.**

  
Leonard J.C. Hardesty, Jr.

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