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April 15, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

David J. Kautter, Assistant Secretary
Office of Tax Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Office of the Chief Counsel
Attention: Michael Desmond
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: CARES Act – Request for Retirement Plan Relief for Participants Who Experience Adverse Financial Consequences Due to a Reduction in Wages

Dear Secretary Mnuchin, Secretary Kautter, Commissioner Rettig, and Mr. Desmond:

CARES Act Retirement Plan Relief. Section 2202 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) permits participants who are adversely impacted by Covid-19 in a manner that qualifies them as “qualified individuals” to:

- (i) Take tax-advantaged coronavirus-related distributions of their vested plan accounts, up to an aggregate of \$100,000;
- (ii) Borrow from their plan accounts an enhanced amount of 100% of their account balances, up to an aggregate of \$100,000; and
- (iii) Defer loan payments due during the remainder of 2020.

For individuals adversely impacted by Covid-19, these new temporary provisions provide access to retirement plan assets, which is sorely needed, at a time during which these individuals may not have access to any other funds.

Reduction in Wages. As an Am Law 200 law firm, we routinely work with companies and retirement plan sponsors of all sizes throughout the United States. All of these companies are taking drastic steps to survive while also trying to protect their employees. Many have forgone employee furloughs, layoffs and terminations of employees to the greatest extent possible and, instead, have reduced the wages of all employees, in many cases without reducing hours. In this way, the financial pain is spread throughout the workforce, while allowing all employees to continue gainful employment.

For example, our law firm has not furloughed, laid off or terminated any employees. Instead, all partners and employees have had their wages (but not hours) reduced, with the largest reductions incurred by the more highly compensated individuals.

Requested Relief - Reduction in Wages as a Qualifier for Retirement Plan Relief. In addition to individuals who are diagnosed with Covid-19 (or whose spouse or dependents are so diagnosed), Section 2202 of the CARES Act defines a “qualified individual” who is eligible for relief under the retirement plan relief provisions of the CARES Act as an individual:

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 disease¹... or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate).

Many employees in all companies live paycheck-to-paycheck, and the reduction in wages has resulted in serious, adverse financial consequences for them. An individual who has his/her wages (but not hours) reduced can suffer the same adverse financial consequences as will an individual whose hours are reduced such that they incur a reduction in wages. In some ways, the reduction in wages without a reduction in hours can be more financially disadvantageous, as the full-time worker may have to pay others for more child care and other services than a worker with reduced hours.

However, as described above, a reduction in wages does not qualify an individual for relief under the retirement plan relief provisions of the CARES Act. We respectfully submit that this omission was an oversight in the drafting of the CARES Act. In any event, this omission will prevent needy individuals from accessing retirement plan relief that was intended for these very individuals financially harmed by the Covid-19 crisis.

¹ The list also includes an individual who experiences adverse financial consequences as a result of being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of a business owned or operated by the individual due to such virus or disease.

To remedy this omission and help these individuals, we respectfully request that Secretary Mnuchin (or his delegate) use the authority granted to him under the CARES Act to expand the list of individuals, who qualify for this relief under the retirement plan relief provisions of the CARES Act, to include individuals who “experience adverse financial consequences” as a result of a reduction in wages due to the Covid-19 crisis.

Conclusion. Employees who have incurred a reduction in wages can incur the type of financial distress that applies to the group of employees who are included in the definition of “qualified individual”. These employees have the same, if not greater, need for relief under the CARES Act retirement plan relief provisions as employees whose hours are reduced with a corresponding reduction in wages.

The CARES Act has authorized Secretary Mnuchin (or his delegate) to broaden the group of “qualified individuals” who are eligible for retirement plan relief as a result of experiencing adverse financial consequences as a result of the Covid-19 crisis. We respectfully request this authority be exercised to grant relief to individuals who have incurred a reduction in wages.

We will be happy to discuss the request above.

Very truly yours,



Don A. Mazursky
Co-Chair of the Employee Benefits and
Compensation Department



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