

Consolidated Appropriations Act, 2021: Employer-Sponsored Retirement Plans

By Suzanne G. Odom & Stephanie O. Zorn

December 28, 2020

Meet the Authors



Suzanne G. Odom

Principal
864-672-8091
Suzanne.Odom@jacksonlewis.com



Stephanie O. Zorn

(She/Her)
Principal
314-827-3970
Stephanie.Zorn@jacksonlewis.com

Related Services

COVID-19
Employee Benefits
ERISA Complex Litigation
Wellness Programs

The Consolidated Appropriations Act, 2021 generally provides the annual funding for the federal government and also contains several important rules giving further COVID-19 relief. The comprehensive relief package funds certain hard-hit industries, expands eligibility for the Paycheck Protection Program (PPP), and extends and expands the Employee Retention Tax Credit.

The Act also relaxes several normally rigid health, welfare, and retirement plan rules in light of the on-going COVID-19 pandemic, easing the financial impact of pandemic-caused employment changes, while instituting new rules related to surprise medical billing.

The Act was approved by Congress on December 21, 2020, and signed into law by President Donald Trump on December 27, 2020.

This article covers the Act's effects on employer-sponsored retirement plans. (We discuss other parts of the Act in related articles.)

Partial Termination Relief

As a condition of qualification, Section 411(d)(3) of the Internal Revenue Code requires retirement plans to provide for 100% vesting upon termination or partial termination of a plan. The Act grants a brief reprieve to employers with calendar year plan years concerned that employment actions because of the COVID-19 pandemic may have caused them to lose the financial benefit of utilizing annual plan forfeitures with respect to those who were separated.

Section 209 of the Act provides that a plan will not be treated as having had a partial termination during any plan year which includes the period beginning March 13, 2020, and ending March 31, 2021, if the number of active participants in the plan covered on March 31, 2021, is at least 80% of the number on March 13, 2020. This means businesses that may have suffered greatly from the pandemic, forcing layoffs and plant closings, but whose employment numbers rebound by the end of March of 2021, will not be required to fully vest those who were terminated.

Money Purchase Pension Plan Distributions Can Qualify as COVID-19-Related Distributions (CRDs)

The COVID-Related Tax Relief Act of 2020, which is Subtitle B of the Act, amends the [CARES Act](#) to provide that in-service distributions from money purchase pension plans can qualify as CRDs. This change is effective as if made part of the CARES Act.

Disaster-Related Distribution and Loan Relief

In response to recent wildfires and hurricanes, Congress included its go-to disaster relief distribution, loan, and recontribution rules as part of the Act, liberalizing distribution rules and providing penalty relief for qualified disasters. These types of provisions are not new.

They regularly appeared before 2020 in response to many disasters.

For this purpose, “qualified disasters” include those occurring from December 28, 2019, until the date of the Act that are declared disasters by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act during the period beginning January 1, 2020, and ending 60 days after the enactment of the Act. “Qualified disaster areas” are those areas with respect to which a qualified disaster was declared, but do *not* include areas that are disaster areas solely due to the COVID-19 pandemic, relief for which was provided by the [CARES Act](#).

Employers interested in implementing these provisions have until the last day of the plan year beginning on or after January 1, 2022 (*i.e.*, December 31, 2022, for calendar year plans) to amend their plans.

Qualified Disaster Distributions

The Act adds relief in the form of “Qualified Disaster Distributions” or “QDD.” Like CRDs, QDD permit up to \$100,000 to be withdrawn from eligible retirement plans without penalty or withholding. The distribution is taxed ratably over a 3-year period and may be recontributed in 3 years, with repayments receiving direct rollover treatment.

For purposes of the Act, a QDD is a distribution made to a qualified individual on or after the first day of the incident period of a qualified disaster and before 180 days after the enactment of the Act.

A “qualified individual” is someone:

1. Whose principal place of abode is located in a qualified disaster area; and
2. Who suffered an economic loss as a result of the qualified disaster.

Disaster-Related Plan Loans

The Act also enables “qualified individuals” to receive plan loans in amounts up to \$100,000 or 100% of the present value of the participant’s vested account balance. Repayment on these loans may be suspended for a period of up to one year (or up to 180 days after enactment of the Act, if longer) if repayment of the loan normally would be due during the period beginning on the first day of the disaster incident period and ending 180 days from the last day of such incident period. Interest on the plan loan must accrue during the suspension period.

Recontributions of Pre-Disaster Hardship Distributions for Principal Residence

Special recontribution rules allow recipients to recontribute hardship distributions initially taken to purchase or construct a principal residence in a qualified disaster area, but which were used for a different purpose due to the qualified disaster. The hardship distribution must have been received 180 days before and up to 30 days after the qualified disaster incident. The repayment period ends 180 days after enactment of the Act.

Phased Retirement In-Service Distribution Relief for Certain Multiemployer Plans

Section 401(a)(36) was added to the Internal Revenue Code in 2006 as part of the Pension Protection Act. It permits employers with pension plans to offer “phased retirement” options to employees who have attained at least age 62, enabling older workers to afford to reduce their hours as they approach retirement age. The [SECURE](#)

Act dropped the age limit from 62 to 59½.

The Act drops this minimum age to 55 for certain multiemployer plans for individuals who were participants in the plan before April 30, 2013. To qualify for this grandfather rule, the trust must have been in existence as of January 1, 1970, and the plan must have received at least one IRS favorable determination letter before December 31, 2011, affirming the age 55 in-service distribution provision.

Jackson Lewis attorney are available to help you understand these issues. Please contact the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

Related:

- [Consolidated Appropriations Act, 2021: PPP and Tax Provisions](#)
- [Consolidated Appropriations Act, 2021: Employer-Sponsored Health and Welfare Plan Components](#)
- [Consolidated Appropriations Act, 2021: Unemployment Relief](#)
- [Consolidated Appropriations Act, 2021: Top Practical Considerations on FSA, Election Change Relief](#)
- [Consolidated Appropriations Act, 2021: Workshare Back in Play](#)

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.