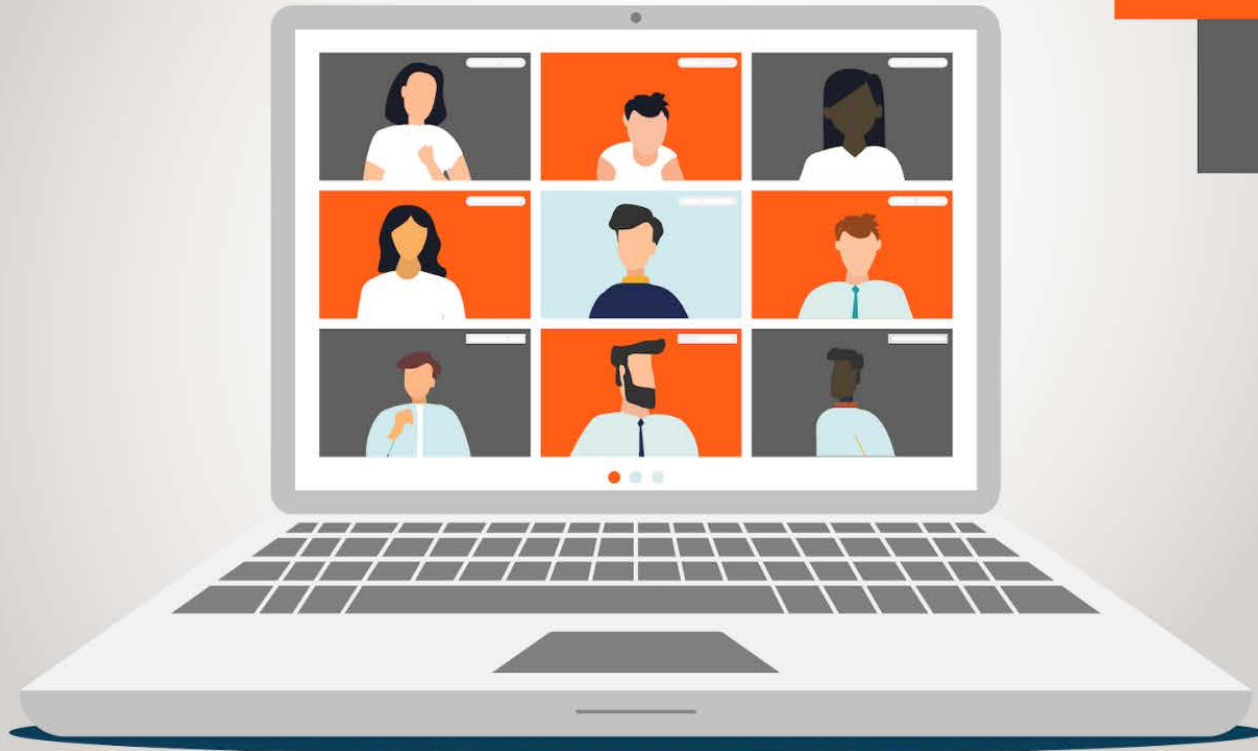


# Employee Benefits

## Webinar



# 2021

## Annual Employee Benefits Update

**2021** Update for Public Agency Employers



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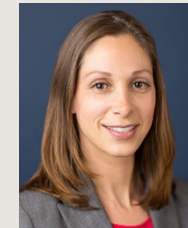


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# Agenda – Public Agency Update – February 10, 2021

- 1) Health & Welfare Plan Updates
- 2) Cafeteria Plans
- 3) Qualified Plan Updates
- 4) Vested Rights
- 5) CalPERS Updates
- 6) COVID-19 Benefits, Leave Requirements, Payroll Tax Credits, and Deferrals
- 7) Executive Compensation
- 8) Other Topics

# HEALTH & WELFARE PLAN UPDATES

# Can an Employer Require Employee Vaccinations?

- It depends.
- ADA: disability-related inquiries and medical examinations must be job-related and consistent with business necessity – reasonable belief based on objective evidence
  - The employee’s ability to perform essential job functions will be impaired by a condition
  - The employee will pose a direct threat due to a condition
- 12/16/2020 EEOC guidance: administration of a COVID-19 vaccine to an employee by an employer itself is **not** a medical examination
- But because prescreening for information required to determine whether an employee can be vaccinated may trigger the ADA disability-related inquiry rules, an employer that administers the vaccine itself must show it is job-related
- Employers can avoid this by requiring employees to be vaccinated by an independent (no contract with employer) outside provider

# Wellness Programs – Proposed EEOC Regulations

- EEOC issued rules for compliance with ADA and GINA for wellness programs that use “health risk assessments” or otherwise collect medical or genetic information
  - Participation must be “voluntary” = incentive cannot render participation “involuntary”
- Two types of wellness programs: “participatory” and “health-contingent”
  - Under HIPAA, incentive limit is 30% of total premium cost for “health-contingent” (or 50% for tobacco use); other requirements apply, including “reasonable alternative standard”
- For ADA compliance:
  - Health-contingent programs that meet HIPAA requirements can offer 30% premium reduction (50% for tobacco use) – must be tied to health plan
  - Rewards for other programs = “de minimis” only
- For GINA compliance: “de minimis” reward only for providing employee’s family medical history in form of information about manifestation of disease/disorder in family members who participate in program
- EEOC guidance on ADA compliance related to COVID-19 vaccines = prescreening questions are “disability-related”

# Affordable Care Act (“ACA”) Update

- Supreme Court heard oral argument in latest challenge to ACA in November 2020
  - Lower courts held “individual mandate” is unconstitutional without penalty
    - If so, is entire ACA is unconstitutional or can individual mandate be “severed”
  - Employer Shared Responsibility Payments and reporting requirements (Forms 1095-C) still apply
- Final rule on “grandfathered” plans issued in December 2020, to increase flexibility for making changes without losing grandfathered status
  - Grandfathered plans don’t have to cover preventive services without cost-sharing
  - Two modifications to types of changes plans can make and retain grandfathered status
    - HDHP plans can increase fixed amount cost-sharing as necessary to comply with IRS rules
    - New alternative method for calculating maximum increase in fixed-amount cost-sharing
- PCORI fee adjusted for plan years ending between 10/1/20 and 10/1/21 to \$2.66



# Mental Health Parity & Addiction Equity Act Changes (“No Surprises Act” in CAA 2021)

- MHPAEA generally prohibits having more restrictive financial and treatment limitations for mental health/substance use disorder (MH/SUD) benefits than for medical/surgical benefits
- “Non-quantitative treatment limitation” (NQTL) = limit on scope or duration of benefits, e.g., prior authorization, medical necessity, UCR, step therapy, exclusion for experimental treatment
  - Subject to “comparable processes” parity rule = processes used in applying NQTL to MH/SUD must be comparable to, and applied no more stringently than medical/surgical
- Group health plans must formally analyze and document compliance with parity requirements for NQTLs and be prepared to disclose by February 10, 2021
- Departments of Labor and Health and Human Services must obtain analysis documents in response to complaints or when deemed appropriate

# Plan Deadlines Extended Due to COVID-19

- Under IRS and DOL guidance, ERISA plan administrators must disregard the “Outbreak Period” in determining the following periods and dates:
  - 30-Day (or 60-Day) HIPAA Special Enrollment Period
  - 60-Day COBRA Coverage Election Period
  - 45-Day Initial COBRA Premium and 30-Day Monthly COBRA Premium Due Dates
  - 60-Day Period for Providing Notice to Plan of COBRA Qualifying Events
  - Time Periods for Filing Plan Claims and Appeals
  - Four-Month Period for Requesting External Review of Denied Health Plan Appeal
  - 14-Day Period for Plan to Furnish COBRA Election Notice to Qualified Beneficiary
- Outbreak Period = from March 1, 2020, until 60 days after the announced end of the COVID-19 national emergency

# Plan Deadlines Extended Due to COVID-19 *(continued)*

- Only applies to ERISA plans, but HHS encourages governmental health plan sponsors to provide similar extensions
- Plan Administration Issues
  - Coordinating with insurance carriers and third-party administrators
  - Plan amendment to reflect extended deadlines
  - New COBRA Model Notices

# Final Rule on Price Transparency in Health Care

- HHS/CMS, DOL, IRS issued final rule on price transparency in late October 2020
- Requires group health plans and health insurance issuers to provide individualized information on cost-sharing **and** to publically disclose provider rates for specific services
  - Effective 1/1/2022 make publicly available standardized and regularly updated data files that can be used for research and by private online plan comparison tools
  - Effective 1/1/2023 health plans must offer an online “shopping tool” that will allow covered individuals to see the negotiated rate between the provider and the plan, as well as receive a personalized estimate of their out-of-pocket cost for 500 of the most “shoppable” items and services
  - Effective 1/1/2024, these “shopping tools” will be required to show the costs for the remaining procedures, drugs, durable medical equipment, and any other item or service the covered individual may need
- New transparency provisions also included in Consolidated Appropriations Act—See discussion earlier and later in this Webinar

# 2021 Health and Welfare Plan Limits

	2021	2020
Health FSA Contribution Limit	\$ 2,750	\$ 2,750
Dependent Care FSA Contribution Limit (single)	\$ 2,500	\$ 2,500
Dependent Care FSA Contribution Limit (married, filing jointly)	\$ 5,000	\$ 5,000
HSA Contribution Limit (individual)	<b>\$ 3,600</b>	\$ 3,550
HSA Contribution Limit (family)	<b>\$ 7,200</b>	\$ 7,100
HSA Catch-up Contribution Limit	\$ 1,000	\$ 1,000
Qualified Small Employer HRA Contribution Limit (individual)	<b>\$ 5,300</b>	\$ 5,250
Qualified Small Employer HRA Contribution Limit (family)	<b>\$10,700</b>	\$10,600

# CAFETERIA PLANS

# New Cafeteria Plan (IRC § 125) Plan Relief (“Taxpayer Certainty and Disaster Tax Relief Act of 2020”)

- Both health care and dependent care FSAs can permit employees to carry over all unused amounts
  - At the end of the 2020 plan year to the 2021 plan year
  - At the end of the 2021 plan year to the 2022 plan year
- Both types of FSAs can extend the grace period from 2½ months to 12 months for 2021 and 2022 plan years
- Both types of FSAs can allow prospective mid-year elections for plan years ending in 2021, regardless of whether a “change in status event” occurs
  - Unlike the mid-year election relief provided for 2020, this does not permit employees to make mid-year election changes regarding medical coverage, e.g., drop major medical or switch plan options
- Health care FSAs can allow employees whose participation ceased during 2020 or 2021 to receive reimbursements from unused benefits after their participation in the FSA ceases for the rest of the plan year (i.e., implement a spend-down feature, regardless of COBRA election)
- Dependent care FSAs may allow employee with unused balance at the end of the 2020 plan year, whose child turned age 13 during the 2020 plan year, to be reimbursed for qualifying expenses up to the amount of their 2020 plan year-end balance during the 2021 plan year, until the child turns age 14.

# Cafeteria Plan (IRC § 125) Plan Relief and Other Changes in 2020 *(Please refer to our alerts found in “Resources”)*

- Under the CARES Act, health FSAs (and HRAs) may reimburse expenses for over-the-counter drugs without a prescription and menstrual products
- HDHP can cover health benefits associated with testing for and treatment of COVID-19 without a deductible, so employees remain eligible for HSA contributions
- Plan amendments for temporary cafeteria plan changes allowed under COVID-19 relief provided in 2020 must be adopted by 12/31/21, can be retroactive to 1/1/20
- Maximum carryover amount for health FSAs after 2022 will increase annually based on increase in maximum contribution amount (\$550 for 2021 before CAA 2021)
- Deadline for filing health FSA claims and HIPAA special enrollment right period extended indefinitely from March 1, 2020, under “Outbreak Period” guidance
  - Required for ERISA plans; “encouraged” for governmental plans



# QUALIFIED PLAN UPDATE

# Coronavirus Aid, Relief and Economic Security Act (“CARES Act”)

- The Coronavirus Aid, Relief and Economic Security Act of 2020 (P.L. No. 116-136)
- Coronavirus-Related Distributions (Section 2202(a))
  - Distributions available to “Qualified Individuals”
  - Distributions available from January 1, 2020, to December 31, 2020
  - Distribution limit: \$100,000 per qualified individual
  - Not subject to 10% early distribution penalty for distributions taken before age 59 ½
  - Income tax can be paid prorated over 3-years
  - Permissible re-contribution within 3-years of distribution (not include in income if repaid)
- Increased Loan Limit (Section 2202(b))
  - Loans made from March 27, 2020, to September 22, 2020
  - Limit increased to lesser of (1) \$100,000 (minus outstanding plan loans) and (2) 100% of the individual's vested benefit under the plan

# CARES Act – Coronavirus-Related Distributions & Loans *(continued)*

- Loan Repayment Suspension (Section 2022(b))
  - Payments due between March 27, 2020, to December 31, 2020
  - Loan term can be extended by up to one year from the date the loan repayment was originally due without triggering a deemed distribution
  - Interest continues to accrue during the suspension period
- IRS Notice 2020-50: Guidance for Coronavirus-Related Distributions and Loans under the CARES Act
  - Expands definition of “Qualified Individual”
  - Expands definition of “Coronavirus-Related Distribution”
  - Employers can rely on employee self-certification of eligibility for relief
  - Expands opportunity to recontribute Coronavirus-Related Distributions to an eligible retirement plan

# CARES Act – Coronavirus-Related Distributions & Loans *(continued)*

- IRS Notice 2020-50: Guidance for Coronavirus-Related Distributions and Loans under the CARES Act *(continued)*
  - Form 1099-R reporting guidance
  - Safe harbor for loan suspensions
  - Cancellation on deferral elections under NQDCP
- Sections 2022(a) and 2022(b) Summary
  - Eligible plans: certain 401(a) plans (including 401(k)), 403(a), 403(b) and governmental 457(b) plans
  - Amendment deadline: last day of the first plan year beginning on or after January 1, 2024
  - Optional law change

# CARES Act – 2020 Required Minimum Distribution Waiver

- 2020 Required Minimum Distributions Waiver (Section 2203)
  - Eligible Plans: 401(a), 403(a), 401(k), 403(b) and governmental 457(b) defined contribution plans
  - 2020 Required Minimum Distribution (“RMD”) Waiver applies to (as clarified by Notice 2020-51):
    - Initial RMDs due by April 1, 2020 (if not paid in 2019)
    - Ongoing RMDs that would have been due by December 31, 2020
    - Initial RMDs due by April 1, 2021
    - 5-year period is determined without regard to 2020 for beneficiaries whose entire amount must be distributed within 5 years of the participant’s death
  - Waiver does **not** apply to ongoing RMDs due by December 31, 2021

# CARES Act – 2020 Required Minimum Distribution Waiver *(continued)*

- Notice 2020-51 (June 23, 2020)
  - Transition Relief:
    - Permits rollovers of 2020 RMDs and extends the rollover deadline for those distributions until at least 8/31/20
  - Clarifications
    - Deadline to elect between 5-year and life expectancy rule extended until 12/31/21
    - Deadline for non-spouse designated beneficiary rollovers using the life expectancy rule is extended to 12/31/21 (if employee died in 2019)
    - The 2020 RMD Waiver does not change participant's Required Beginning Date
    - 2020 RMDs that have been taken can be rolled back into the same plan
  - Sample Plan Amendment
- Amendment Deadline: Last day of the first plan year beginning on or after Jan. 1, 2024

# Notice 2020-68 – SECURE Act Guidance

- Qualified Birth or Adoption Distributions (Plan Years Beginning After 12/31/2020)
  - Any distribution up to \$5,000 from eligible retirement plan within 1-year of birth/adoption
    - Excepted from 10% early distribution tax; recipient may recontribute all/part to eligible plan in which he/she is a beneficiary and to which rollover can be made
    - Recipient must include name, age, and TIN of child/adoptee on distribution-year tax return
    - Eligible adoptee: < 18 or physically/mentally incapable of self-support; not spouse's child
    - Each parent eligible for QBAD for same child/eligible adoptee; multiple QBADs permitted
  - Eligible plans: qualified, 403(b), and governmental 457(b) plans
    - In-service QBADs optional, not required; treated as meeting applicable distribution restrictions
      - If not permitted, participant may still treat otherwise permitted in-service distribution as a QBAD on his/her tax return and recontribute to eligible retirement plan/IRA
    - May rely on participant's reasonable representations absent actual knowledge to the contrary
    - Not subject to direct rollover, 402(f) notice, or 20% mandatory tax withholding requirements
    - Must allow re-contribution if QBAD permitted, received from plan, and rollover contribution-eligible; treated as a direct rollover

## Notice 2020-68 *(continued)*

- Miners Act: In-Service Distributions From Pension and Governmental 457(b) Plans at Age 59½ (Plan Years Beginning After 12/31/2019)
  - Optional, not required
  - No impact on plan's definition of normal retirement age
- Plan Amendment Deadline: last day of first plan year beginning on or after 1/1/2022 (2024 for governmental and certain collectively bargained plans)



# Escheat – IRS Missing Plan Participant Guidance

- Rev. Rul. 2020-24 (October 16, 2020)
  - Withholding and reporting of qualified plan payments to state unclaimed property funds:
    - Presumptive 20% withholding on qualified plan payments to state unclaimed property fund.
    - Distribution to unclaimed property fund is reportable to the missing participant on Form 1099-R at the time of escheatment.
  - Transition relief: Will not be treated as failing to comply with these withholding and reporting requirements with respect to payments made before January 1, 2022, or the date it becomes reasonably practicable to comply with these requirements.
- Rev. Rul. 2020-46 (October 16, 2020)
  - Missing participants whose retirement plan balances are escheated to a state unclaimed property fund who later locate their money are eligible to rollover the funds
  - Eligible to self-certify meeting the requirements for waiver of the 60-day rollover period

# Default withholding Rules – Certain Periodic Retirement and Annuity Payments

- 85 FR 61813 (October 1, 2020)
  - Response to change in the default withholding rules made by the Tax Cuts and Jobs Act of 2017 (“TCJA”)
  - TCJA changes the default income tax withholding rate for certain periodic retirement and annuity payments (those ineligible for rollovers)
  - Beginning with certain periodic retirement and annuity payments made after December 31, 2020, the Treasury Department and the IRS will provide the rules and procedures for determining the default rate of withholding on periodic payments in applicable forms, instructions, publications, and other guidance
  - Default withholding rate for 2021 is determined by treating the taxpayer as a married individual claiming three withholding allowances

# Consolidated Appropriations Act of 2021

- MPPs qualify for temporary in-service distribution exception for CARES Act CRDs
- Optional Limited Retirement Plan Disaster Relief
  - Qualified Disaster: between 12/28/19 and 12/27/20 and declared major disaster by President under Stafford Act between 1/1/20 and 2/25/21 (excluding disasters declared solely due to COVID-19)
  - Qualified individual: principal abode in disaster area during incident period and economic loss sustained due to disaster
  - Qualified Disaster Distribution: any distribution of up to \$100,000 from a qualified, 403(b) or governmental 457(b) plan from when the qualified disaster began until 6/25/2021
    - 10% early distribution tax does not apply
    - May be included ratably in income over three years
    - May be recontributed within three years
    - Temporary exception to applicable in-service distribution restrictions

# Consolidated Appropriations Act of 2021 *(continued)*

- Temporary loan relief
  - Limit on loans from eligible retirement plan to a qualified individual from 12/27/20 to 6/25/21 increased to the lesser of \$100,000 or 100% of vested account balance
  - Repayments on loan to qualified individual with outstanding loan after the first day of the qualified disaster incident period from an eligible retirement plan that are due during the qualified disaster incident period and up to 180 days after it ends may be suspended for up to one year
    - Loans must be reamortized to take into account the missed payments
    - Suspension period disregarded for purposes of the five-year loan term limit
- Re-contribution of Hardship Distributions
  - An individual who received a hardship distribution from a 401(k) or 403(b) plan to purchase a principal residence in a qualified disaster area from 180 days before the first of the incident period to 30 days thereafter may recontribute it to the plan between the first of the incident period and 6/25/21
- Plan Amendment Deadline: last day of the first plan year beginning on or after 1/1/2022 (2024 for governmental plans)

# Consolidated Appropriations Act of 2021 *(continued)*

- Temporary Partial Plan Termination Relief
  - Plan will not be treated as partially terminated from 3/13/20 to 3/31/21, if # of active participants on 3/31/21 is at least 80% of the number of those participants on 3/13/20

# 2021 Retirement Plan Limits

	2021	2020
Elective Deferral Limit (4019k), 403(b) and eligible 457(b)	\$ 19,500	\$ 19,500
Catch-up Contribution Limit– Age 50 or Older	\$ 6,500	\$ 6,500
415(b) Dollar Limit on Annual Benefits under Defined Benefit Plan	\$230,000	\$ 230,000
415(c) Dollar Limit on Annual Allocations under Defined Contribution Plan	<b>\$ 58,000</b>	\$ 57,000
401(a)(17) Annual Compensation Limit	<b>\$290,000</b>	\$ 285,000
Annual Compensation Limit for Eligible Participants in Certain Gov't Plans	<b>\$430,000</b>	\$ 425,000
Highly Compensated Employee	\$130,000	\$ 130,000
Key Employees	\$185,000	\$185,000
Social Security Wage Base	<b>\$142,800</b>	\$137,700

# VESTED RIGHTS

# Vested Rights and the “California Rule”

*Alameda County Deputy Sheriff's Association, et al. v. Alameda County Employees' Retirement Association, et al. (470 P.3d 85 (Cal. 2020))*

- Addresses two issues:
  - Whether settlement agreements entered into by retirement boards can create contractual or equitable rights that supersede legislative amendments made by Public Employee Pension Reform Act (“PEPRA”)
  - The constitutionality of applying PEPRA to legacy ‘37 Act System members
- Holding:
  - Legacy members do not have an express contractual or equitable right to receive benefits calculated in a manner inconsistent with PEPRA
  - PEPRA’s amendment to the definition of “compensation earnable” did not violate the contracts clause of the California Constitution



# Vested Rights and the “California Rule” *(continued)*

- Key Takeaways:
  - Retirement benefit protections under the “California Rule” are not absolute.
  - Settlement agreements and other types of agreements (e.g., board regulations, resolutions, etc.) interpreting a pension system’s governing statutes are valid only so long as they are consistent with prevailing law and do not prevent the Legislature from making future changes that have retroactive effect on pension calculations.

# CALPERS UPDATES

# CalPERS Updates

- Circular Letter 200-015-20 – Suspension of Reinstatement/Work Hour Limitations
  - Executive Order N-25-20 suspended the reinstatement and work hour limitations applicable to CalPERS (and other California public retirement systems subject to PEPRA)
  - The Circular Letter clarifies that:
    - Hours worked by a retired annuitant to ensure adequate staffing during state emergency will not be counted towards the 960-hour limit
    - The 180-day break in service requirement is also suspended
    - The 60-day separation from service requirement is also suspended
    - But the prohibition against predetermined arrangements between employers and impending retirees who have not reached NRA for the retiree to return to work remains in effect
    - These suspensions remain in effect from 3/4/2020 until the state of emergency is lifted

# CalPERS Updates *(continued)*

- Circular Letter 200-016-20 – FAQs re COVID-19 Impacts
  - Late reporting penalty and interest will automatically generate even if public agency/school employer's closure impacts timely submission of payroll reports
  - Employers may generally submit an extension request for all impacted periods through myCalPERS
  - CalPERS will work with employers case-by-case to determine if late reporting penalties and interest should be waived through the established dispute process
  - CalPERS will still enforce administrative costs and penalties (member and employee contributions and \$500 administrative cost) when membership enrollments are reported 90 days or later
  - Earnings should continue to be reported for a member on paid administrative leave
  - Compensatory time off such as vacation or sick is still reportable, but unemployment insurance is not reportable as compensation earnable
  - CalPERS will accept advance estimated contribution payments for a future period

# **COVID-19 BENEFITS, LEAVE REQUIREMENTS, PAYROLL TAX CREDITS AND DEFERRALS**

# COVID-19 Leave Donation Programs

- Employers may establish leave-based donation programs to allow employees to donate vacation, sick, or personal leave that the employer contributes to an Internal Revenue Code Section 170(c) charitable organization for COVID-19 relief
- If program meets requirements, employees do not recognize income on the amount of the donation.
- Payments must be made to a 170(c) charity for the relief of victims of the pandemic in the U.S. areas covered by the Presidential declaration of disaster under the Robert T. Stafford Disaster Relief and Emergency Act and paid to the charity before January 1, 2021.

# FFCRA Extended Leave and W-2 Reporting for Governmental Employers

- IRS issued guidance in Notice 2020-54 regarding reporting of required COVID-19 extended sick leave and family leave on Form W-2 for 2020 by “eligible employers”
  - To the extent a self-employed individual’s employer took tax credits for FFCRA leave paid to the individual, the individual will not also be able to take self-employment income tax credits—FFCRA included provisions to eliminate any "double" credit-taking
  - To prevent any double credit-taking, “eligible employers” must report in Box 14 or on a separate statement provided at the same time as the W-2 the amount of FFCRA sick leave or family leave paid to an employee
  - Government agencies are not eligible for the tax credits and are not “eligible employers” and therefore should not report amounts of FFCRA leave paid in Box 14 or on a separate statement as provided in Notice 2020-54
  - Government agencies should report leave paid in Boxes 1, 3 and 5

# Consolidated Appropriations Act of 2021 (“CAA”)

- CAA included a number of benefits and tax credit provisions as part of the coronavirus relief package
  - Required extended sick and family leave under FFCRA terminated as of 12/31/2020 (may allow employees to use remainder but not required to continue)



## CAA *(continued)*

- **New Payroll Tax Credit in 2021 for Public Colleges, Universities, and Governmental Healthcare Entities**
  - Effective 1/1/2021, public colleges, universities and governmental entities whose primary purpose is providing medical or hospital care are eligible for the employee retention and rehiring tax credit
  - The amount of the credit is equal to 70% of up to \$10,000 in eligible wages per employee per quarter for the first two quarters of 2021 (including health benefits)
  - The credit is claimed as an off-set to payroll taxes otherwise owed by the employer

## CAA *(continued)*

- **New Payroll Tax Credit in 2021 for Public Colleges, Universities, and Governmental Healthcare Entities** *(continued)*
  - For employers that averaged 500 or fewer FT employees during 2019, qualified wages include any wages paid to any employee during a calendar quarter in which business operations are fully or partially suspended due to a government order or in which gross receipts have declined by more than 20%
  - For employers that averaged more than 500 FT employees during 2019, qualified wages include those paid to employees for time not worked during any calendar quarter due to either a full or partial suspension of the employer's business operations by a governmental order or a significant decline in gross receipts (more than 20%).

## CAA *(continued)*

- **New Payroll Tax Credit in 2021 for Public Colleges, Universities, and Governmental Healthcare Entities** *(continued)*
  - IRS is directed to provide guidance on how employers whose number of average FT employees in 2019 was not greater than 500 may receive advance payment of the employee retention payroll tax credit based on using 70 percent of the average quarterly payroll for the same quarter in 2019
    - If the amount of the actual payroll credit determined at the end of the quarter in 2021 is less than the amount of the advanced payment, the employer will have to repay the excess to the IRS
    - We expect the IRS to issue guidance regarding the process for claiming advanced payment (e.g., Form 7200)

# CAA *(continued)*

- **Business Meal Deductions**

- The 50% deduction for business meals is increased to 100% for expenses incurred from 1/1/2021 through 12/31/2022 for food and beverages provided by a restaurant

- **Student Loan Repayment Income Exclusion**

- Employer payments of student loans for employees will be non-taxable if provided under an educational assistance plan meeting the requirements of Internal Revenue Code section 127
- This relief is extended through 12/31/2025

# CAA *(continued)*

- **Extension of Time to Repay Deferred Employee Social Security Taxes**
  - CAA included an extension of the time to withhold and deposit any deferred employee portion of Social Security taxes for the period from 9/1/2020 through 12/31/2020 for employees earning less than \$4,000 per bi-weekly pay period
    - End of year IRS guidance in Notice 2020-65 required repayment ratably from wages paid 1/1/2021 through 3/31/2021
    - CAA extended the period of time to withhold and repay the deferred employee Social Security taxes to 12/31/2021, allowing the ratable amounts to be smaller since spread over a longer period

## CAA *(continued)*

- **“No Surprises Act” Included in CAA**
  - Builds on ACA structure; regulates providers as well as health plans and health insurance issuers
  - Focus on preventing surprise medical bills; Amends PHSA, ERISA, and the Code
    - Covers 3 categories: emergency services by non-network providers; non-network providers at network facilities; and air ambulance providers and their services

## CAA *(continued)*

- **“No Surprises Act” Included in CAA**
  - Emergency Services: must cover emergency services at network rate; no greater restrictions than in-network; cost-sharing applied to in-network deductible and out-of-pocket max
  - Prompt submission of either payment or denial within 30 days
  - New payment audit requirement applies to health plans and health insurers
  - Eliminates balance billings for emergency care

## CAA *(continued)*

- **“No Surprises Act” Included in CAA *(continued)***
  - Non-Emergency Services By Out-of-Network Provider at Network Facility: must use in-network cost-sharing; pay or deny within 30 days; pay provider directly, and count cost-sharing toward in-network deductible and in-network out-of-pocket max
    - May balance bill if provide qualifying written notice (including an estimate of charges and a list of network providers) and receive qualifying consent from the health plan member
    - Note: ancillary services (e.g., emergency medicine, anesthesiology) cannot use notice/consent so cannot balance bill
  - Similar provisions apply for air ambulance services



# CAA *(continued)*

- **“No Surprises Act” Included in CAA** *(continued)*
  - What if provider wants more?
    - Generally plan/insurer must pay at median contracted rate w/i 30 days
    - 30 days to negotiate
    - If don't agree, plan or insurer has 4 days to initiate the binding arbitration process
    - W/I 30 days, certified independent dispute resolution entity determines amount of payment by selecting one of the parties submitted offer of payment
    - Party whose offer not chosen must pay fees for arbitration process
    - HHS, DOL, IRS must establish process to certify arbitration entities

## CAA *(continued)*

- **“No Surprises Act” Included in CAA** *(continued)*
  - Effective for plan years beginning on or after **1/1/2022**
  - Regulations to implement processes are required for several components
    - Audit process for plans and health insurers: not later than 10/1/2021
    - Methodology for payment amounts: not later than 7/1/2021
    - Arbitration process, including certification process for arbitration entities: not later than 12/27/2021
    - Complaint process for providers: not later than 1/1/2022

# CAA *(continued)*

- **Other Health Provisions Included in No Surprises Act**

- Plans and insurers must provide advance estimate of benefits (EOB) within 1 day after receiving good faith estimate from provider or request from participant (as of 1/1/2022)
- All-payer claims data base to be established by states (DOL to establish standardized reporting format for voluntary reporting by health plans to State of claims, eligibility, and provider data)
- Transparency provisions: no gag clauses; disclosure of broker and consultant compensation (12/27/2021); required comparative analyses ensuring compliance with Mental Health Parity and Addiction Equity Act non-quantitative limitations (effective 2/10/2021 upon request from DOL or HHS or state insurance regulator); mandatory annual reporting on pharmacy benefits and drug costs (effective 12/27/2021)
- Many more detailed provisions—significant efforts will be required to comply

# EXECUTIVE COMPENSATION

# Executive Compensation – Excise Tax on Excess Comp

## *Applicable only to tax-exempt employers*

- Applicable tax-exempt organizations (AETO)
- Taxable year
- Covered employees
  - Current and former employees, officers or elected or appointed officials, certain officers
  - One of the five highest-compensated employees of the AETO for any preceding taxable year beginning after December 31, 2016
  - Medical services exception; other exceptions
- Remuneration; excess remuneration
- Excess parachute payments

# OTHER TOPICS

# California Privacy Rights and Enforcement Act (CPRA)

- CPRA replaces the California Consumer Privacy Act (CCPA)
- CPRA effective January 1, 2023, effectively delaying the CCPA rules applicable to employee information
- Notably, employers have a reprieve from responding to requests from employees to know, delete, or opt-out of the data of personal information held by employers; the CCPA notice requirements remain in effect
- Applicable to information regarding employees and dependents collected by employers to administer equity compensation and employee benefit plans

*CCPA and CPRA are not applicable to tax-exempt employers, including governmental entities – but are applicable to their service providers*

# Closing and Q&A

- Submit a question using the **Q&A** engagement tool
- We will do our best to answer all questions. If we do not get to your question, feel free to reach out to your Hanson Bridgett attorney after the event.
- Share your comments about the seminar under the ***Evaluation*** tool
- Remember to download your certificate under the ***Certification*** tool