



CARES Act Update: New Student Loan Reimbursement

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Employers are being inundated with decision points related to their employee benefit programs' response to the coronavirus and how to help their workforce. One recent addition in the law presents an entirely new benefit that is getting lost in the shuffle. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law on March 27, 2020. The CARES Act provides employers with the ability to make tax-deductible student loan payments on behalf of their employees without triggering any employee income tax by expanding Section 127 of the Internal Revenue Code to include student loan reimbursements. While the window for this benefit is only open until December 31, 2020, it may be the first step to a permanent solution.

WHAT IS A SECTION 127 PLAN?

Code Section 127 provides that an employee may generally exclude from income amounts received under an employer-sponsored tuition assistance or educational assistance program (EAP) established to fund employee education-related expenses, up to the maximum limitation of \$5,250 per calendar year. Prior to the CARES Act, "educational assistance," for purposes of an EAP, was limited to an employer's payment of employee-incurred educational expenses such as tuition, fees, books, supplies, equipment and employer-provided courses of instruction including books, supplies and equipment.

THE CARES ACT'S EXPANSION

The CARES Act expands Code Section 127 "educational assistance" to cover certain preexisting student loan payments (principal and interest), whether paid directly to employees or to lenders, for the period of March 27, 2020 to December 31, 2020. Qualifying student loans are limited to higher education expenses that an employee incurred within a reasonable period of taking classes and provided that the employee carried at least a half-time course load. The repayments do not extend to loans taken from other qualified employer plans, such as a loan from a 401(k). This benefit is available to all employees, regardless of whether an employee's ability to repay

student loans has been impacted by COVID-19. It is also available to sole proprietors, who can treat themselves as employer and employee, and partnerships who can be treated as the employer of all self-employed partners. Assistance can be provided to current employees (whether actively employed or on leave), as well as any former employees who retired, became disabled, were laid off or who terminated voluntarily. Spouses and dependents may not participate. For payments to qualify for income tax exclusion, the plan must meet the following requirements:

- **Written plan:** The program must be a separate written plan of the employer providing educational assistance for the exclusive benefit of the company's employees.
- **Employee notice:** Eligible employees must receive reasonable notification of the program's availability and benefits.
- **Nondiscrimination:** The program must not discriminate in favor of highly compensated employees, as defined in IRC Section 414(q). The plan can exclude employees covered by a collective bargaining agreement if educational assistance benefits were the subject of good faith bargaining.

NEXT STEPS

While the CARES Act is intended to respond to the coronavirus, this provision may have a future after 2020. Currently, the Employer Participation in Repayment Act is gathering bipartisan support in both the House and Senate. This would make the expansion permanent and apply to both federal and private loans. Most employers who currently have a Section 127 benefit program can simply amend their existing plan language to provide for the new tuition reimbursement. We would recommend contacting your current service provider to determine the steps needed and the notices required. If you do not currently offer a Section 127 plan, then you must create a written plan, which in relation to other employee benefits, is relatively easy. Should you have any questions, please contact your Lockton team.

Samuel A. Henson, J.D.

Senior Vice President

Director of Legislative & Regulatory Affairs

Lockton Retirement Services