

## **EMPLOYMENT LAWSCENE ALERT: CARES ACT PROVIDES EMPLOYERS A TEMPORARY WINDOW TO ASSIST EMPLOYEES BY MAKING TAX-FREE STUDENT LOAN PAYMENTS**

For the period from March 27, 2020 through December 31, 2020, the CARES Act permits employers to pay directly, or to reimburse employees for, up to \$5,250 of qualifying employee student loan payments.

Like many CARES Act provisions, this new opportunity results from an expansion of an existing law or program. In this case, the ability for an employer to assist employees with student loan payments arises from an amendment to Internal Revenue Code Section 127, which governs Educational Assistance Programs (EAPs). Qualifying payments made as a fringe benefit under an EAP are excluded from the employee's income and are deductible to the employer.

The \$5,250 limit is the amount that employers are currently permitted to contribute, tax-free, for tuition assistance under an EAP. Through the end of this calendar year, it is also the combined limit for student loan repayment assistance and any other education-assistance payments that an employee may receive.

Essential business employers seeking ways to reward or retain employees during the pandemic should consider whether tax-free payment of student loan debts would meet payroll and employee-acknowledgment objectives. If your company currently sponsors an EAP, student loan payments may now be made under the current EAP document. Companies wishing to newly implement an EAP in order to take advantage of this tax-favored student loan repayment assistance opportunity can do so by properly adopting a written plan document satisfying IRS content requirements.

### Existing Educational Assistance Program Requirements

The existing tax code EAP rules remain in effect. To qualify for tax (and payroll tax) exclusion under Internal Revenue Code Section 127, an EAP must:

- provide benefits exclusively to employees of the employer;

- provide only qualified educational assistance benefits (and only up to \$5,250 per employee);
- be documented as a separate written program established by the employer and disclosed to employees;
- be funded solely by the employer;
- not allow employees a choice between educational assistance benefits and cash (or other taxable remuneration); and
- not discriminate in favor of highly compensated employees (\$130,000 in 2020) or provide more than 5% of total benefits in any year to 5%-or-more owners.

### Additional Detail

The student loan payments made under an EAP must relate to education of the employee, not of their child or spouse. Employer payments may be for principal or interest, but employees are not permitted to deduct any interest payment made by employers. Where appropriate, employers making student loan payments under an EAP may, therefore, wish for such payments to be allocated only to principal so as to maximize the tax benefit to employees.

Employers interested in providing tax-free student loan payment assistance to employees should consider doing so, either by amending the operation of an existing, or by adopting a new, EAP. Employers who may already be providing post-tax student loan payment assistance to employees can now temporarily convert this form of compensation into a pre-tax benefit, which will permissibly reduce both employee income taxes and employer payroll tax expenses.

O'Neil Cannon remains open during this time and is here to help. We encourage you to reach out with any questions, concerns, or legal issues you may have, including those related to employee benefits and fringe benefits as impacted by COVID-19-related business changes or legislation.