



September 5, 2008

## THE HEART ACT OF 2008 AND YOUR FLEX PLAN: "Qualified Reservist Distributions"

The Heroes Earnings Assistance and Tax Relief Act (the HEART Act) was signed into law on June 17, 2008. This Act eases the rules and requirements for taking withdrawals from retirement accounts and health flexible spending accounts (Med-FSA) for eligible military personnel, and protects survivor and disability benefits for men and women in the military and their survivors. The Act also addresses the treatment of differential wage payments, imposes new tax and withholding requirements on the property of some expatriating individuals and extends the Mental Health Parity Act.

The HEART Act allows the Employer to amend their Flex Plan to allow for "**qualified reservist distributions**" from their medical flexible spending arrangements (Med-FSA). A "qualified reservist distribution" is a distribution of the account of a participant who was called to active military service for a period of at least 180 days or indefinitely as a result of being a reservist.

While not defined in the HEART Act, it appears that the "qualified reservist distribution" would be:

- 1) A taxable event, with the qualified reservist distribution paid as a taxable income; and,
- 2) The employer can decide if they will pay out either the remaining cash balance (year-to-date contributions less previous year-to-date withdrawals) or the remainder of the annual election after benefits previously paid (annual election less previous year-to-date withdrawals).

The qualified reservist distribution may be paid at any time beginning on the date of the order calling the individual to active military service and ending on the last date that reimbursements could otherwise be made for the plan year on or after June 17, 2008.

The HEART Act offers a limited exception from the "use-or-lose" requirement that all amounts contributed to a health FSA must be used for qualified medical expenses or the amounts will be forfeited at the end of the year. The HEART Act "use-or-lose" exemption relates only to the Medical Flex Spending Account (Med-FSA) benefit. This does not apply to any other Flex Plan benefits, such as the Dependent "Day Care" reimbursement benefit or insurance premium elections.

For more information, please refer to:

<http://www.house.gov/jct/x-44-08.pdf>