



ILLINOIS
MANUFACTURERS'
ASSOCIATION

Return-to-Work Employee Benefits Considerations

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Health and Welfare Plan Issues

- Review plan eligibility provisions to determine how lay-offs, furloughs, and compensation reductions affect eligibility and benefits
 - Waiting periods
 - Reentry into insured benefits – coordinate with insurers
 - Recovering premiums
- Mid-Year Election Changes
 - Elections under cafeteria plan are generally irrevocable for the whole year
 - Special mid-year election changes may be available
 - If furloughed employees or terminated employees return and are eligible for benefits again
 - If gone for less than 30 days, must return to prior elections

Health and Welfare Plan Issues

- Mid-Year Election Changes (cont'd)
 - Dependent care flexible spending account
 - Decrease if not working and staying home with kids
 - Increase if coming back to work from furlough and need childcare again
 - Increase or decrease if have to change child care provider and price changes
 - Medical Flexible Spending Accounts
 - Usually very little flexibility to change elections – limited to life events that change eligibility status
 - Simply not being able to get a cancelled elective procedure is normally not enough to make an election change

Health and Welfare Plan Issues

Notice 2020-29 greatly expands the mid-year election change events for 2020. An employer may amend its cafeteria plan to allow employees to:

- make a new election for employer-sponsored health coverage on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
- revoke an existing election for employer-sponsored health coverage and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis (including changing enrollment from self-only coverage to family coverage);
- revoke an existing election for employer-sponsored health coverage on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer (Notice 2020-29 provides a sample attestation);
- revoke an election, make a new election, or decrease or increase an existing election regarding a health FSA on a prospective basis; and
- revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care FSA on a prospective basis.

Health and Welfare Plan Issues

- An employee taking advantage of these election change opportunities does not have to provide a reason for making the change, nor does the employee have to demonstrate that he or she was directly affected by COVID-19.
- The election changes may only be prospective – an employee may not seek a refund of contributions that have already been made to a health FSA or a dependent care FSA.
- An employer may adopt some, all, or none of these election changes.
- Employers may limit elections to manage adverse selection (e.g., by electing to switch from self-only coverage to family coverage, or from a low option plan covering in-network expenses only to a high option plan covering expenses in- or out-of-network).
- Employers are allowed to limit health FSA and dependent care FSA election changes to amounts no less than the amount already reimbursed.
- Notice 2020-29 relief is retroactive to January 1, 2020, if a cafeteria plan permitted mid-year elections consistent with the Notice prior to issuance of the Notice.

Health and Welfare Plan Issues

- Notice 2020-29 also allows an employer to amend its cafeteria plan to allow employees to use amounts remaining in a health FSA or dependent care FSA after the end of a grace period or plan year that ends in 2020 to pay or reimburse expenses incurred through December 31, 2020.
 - For example, if an employee has \$400 remaining unused in his health FSA at the end of the 2019 grace period that ended on March 15, 2020, the employer may allow the employee to use that \$400 for medical expenses that the employee incurs through December 31, 2020.
- Employers adopting this extended claims period should exercise caution if they sponsor an HDHP because this extended FSA coverage could make an employee ineligible to make HSA contributions.

Health and Welfare Plan Issues

- Normally, an amendment must be made to a cafeteria plan before a change can take effect.
- Notice 2020-29 allows cafeteria plans to be amended for the 2020 plan year to adopt the expanded mid-year election changes and/or the extended claims periods for health FSAs and dependent care FSAs on or before December 31, 2021.
- Those amendments may be retroactive to January 1, 2020, as long as the cafeteria plan operates in accordance with Notice 2020-29, and the employer informs all employees who are eligible to participate in the cafeteria plan of the changes.

Health and Welfare Plan Issues

- Notice 2020-29 clarifies that HDHPs can cover medical services and items relating to testing and treatment for COVID-19 prior to the satisfaction of the HDHP's deductible retroactive to January 1, 2020 and individuals will remain HSA-eligible.
- Notice 2020-33 increases the medical FSA "carryover" amount from \$500 to \$550 for 2020 carryovers into 2021. This will be indexed for inflation from now on.

Health and Welfare Plan Issues

- Affordable Care Act Issues
 - Full-time employees in a stability period should continue to offered health coverage
 - If an employee works zero hours for 13 weeks (26 for educational institutions), then employee can be considered a new hire for ACA purposes upon return
 - Fluctuating compensation can make health coverage "unaffordable" under the ACA and expose employer to penalties
- COBRA Issues

Health and Welfare Plan Issues

- COVID-19 Related Benefits Changes
 - Mandatory coverage of COVID-19 testing and services in group health plans through duration of public health emergency
 - Rapid coverage of preventive services and vaccines for coronavirus in non-grandfathered health plans
 - High deductible health plans may cover telehealth services (regardless of reason for visit) without a deductible for a temporary period (to 12/31/21 for calendar-year plans)
 - Permitted coverage of OTC drugs and menstrual care products under FSAs, HSAs, HRAs, and Archer MSAs – permanent change

Retirement Plan Issues

- Review plan eligibility provisions to determine how lay-offs, furloughs, and compensation reductions affect eligibility, vesting, and benefits
 - Consider service crediting provisions
 - Be sure to reinstate elective deferral elections when pay begins again
- Employees can generally change their elective deferrals at any time
- Plan loan repayments are delayed until July 15 with no interest (but all missed payments are due on July 15)

Retirement Plan Issues

- COVID-19 Related Benefits Changes
 - Coronavirus-related distributions (CRDs) of up to \$100,000 from qualified retirement plans, 403(b) plans and governmental 457(b) plans (through 12/30/20)
 - Optional provision
 - Available to "qualified individuals"
 - Participant or spouse has a confirmed COVID-19 diagnosis
 - Participant has experienced adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, the inability to work due to lack of childcare, the close or reduction of a business, or other factors

Retirement Plan Issues

- Coronavirus-related distributions (cont'd)
 - Not subject to 10% early withdrawal penalty
 - Can spread tax and repay (if desired) over 3 years
 - Not subject to 20% withholding
- Increased plan loans for "qualified individuals" (see last slide)
 - Effective through September 23, 2020
 - Optional provision
 - Increases max loan amount to \$100,000 (from \$50,000) and permits loans up to 100% (from 50%) of participant's account

Retirement Plan Issues

- Delayed repayment of plan loans
 - Optional provision
 - Loan payments for "qualified individuals" due between March 27 and December 31, 2020 can be delayed up to one year
 - Must be paid back with interest
- Suspension of required minimum distributions for defined contribution plans

Delayed Deadlines

- An EBSA/IRS Joint Notice automatically delayed many deadlines in benefits plans from March 1 until 60 days after the national emergency ends
 - Special enrollment
 - COBRA 60-day election periods
 - COBRA premium payments
 - Making initial claims and appeals under a benefit plan
 - This extends FSA run-out periods
 - Requesting external review
- This could require looking back into early 2020 and providing notice to affected participants
- Delays are optional for self-funded non-Federal governmental health plans

Delayed Deadlines

- In EBSA Notice 2020-01, the DOL will not consider a plan or fiduciary to violate ERISA for failing to furnish a notice, disclosure, or document that is required to be furnished by Title I of ERISA during the Outbreak Period if the plan and fiduciary:
 - act in good faith; and
 - furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances.

Delayed Deadlines

Examples:

- Blackout notice
- Summary Plan Description
- Summary of Material Modification
- Summary Annual Report
- Notification of Benefit Determination (Claims Notices and Explanation of Benefits)
- Plan Document

Delayed Deadlines

- EBSA Notice 2020-01 also provided other relief:
 - Deadline for Adopting Loans and Distributions Permitted by CARES Act
 - Plan Loans under CARES Act
 - Deadline for Forwarding Participant Contributions and Loan Repayments to Plan
 - Form 5500 and Form M-1

Consider New Benefits

- Consider new benefits in light of new challenges for employees
 - EAPs for stress and anxiety
 - On-site programs such as day care or meal services
 - On-site medical clinics
 - Telehealth options in health plans
 - Tuition reimbursement plans (and student loans repayment)
 - Financial wellness programs

Questions?



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