

Electronic Alert

Volume 23, Issue 26

May 21, 2020

COVID-19 Employee Benefits Round-Up

By Gabrielle Hansen & Jeff Robertson

The legal and regulatory response to COVID-19 continues to modify the compliance landscape for employers, and this includes new requirements and options for employer-sponsored health and retirement plans. Read on to learn more about some of the recent changes.

Flexibility for Section 125 Plans

Section 125 plans have specific rules that restrict a participant's ability to change their elections mid-year, as well as deadlines for when participants must spend the funds held in plan accounts.

Internal Revenue Service (IRS) Notice 2020-29 relaxes these rules until December 31, 2020. Employees participating in plans that are amended in accordance with Notice 2020-29 have additional options to make mid-year election changes and additional time to use funds held in a health flexible spending account (FSA) or dependent care assistance plan (DCAP) at the end of a plan year or grace period ending in 2020.

Retroactive Relief for High Deductible Health Plans

High Deductible Health Plans (HDHP) can now provide medical care and supplies related to COVID-19 testing and treatment and telehealth services prior to the satisfaction of the applicable minimum deductible without jeopardizing their HDHP status retroactively to January 1, 2020.

Extension for Deadlines Related to Health, Retirement, & Other Employee Benefit Plans

As COVID-19 causes delay and disruption in almost every area, the new Final Rule issued by the Department of Labor (DOL), the IRS, and the Treasury Department extends certain deadlines for the period beginning March 1, 2020, and ending on the 60th day following the announced end of the National Emergency—the "Outbreak Period."

Deadlines that receive relief during the Outbreak Period include:

- Offers of COBRA continuation coverage;
- Deadlines related to group health plan special enrollment periods; and
- Deadlines for making a claim for benefits, or appealing a denied claim.

For example, assuming that the National Emergency ended April 30, 2020, and the Outbreak Period ends on June 29, 2020, an individual whose employer gives them a COBRA election notice on April 1, 2020 will have until August 28, 2020, 60 days after the end of the Outbreak Period, to elect COBRA

Continuation Coverage. This is because under the Final Rule, the individual does not count days during the Outbreak Period for calculating the 60-day COBRA election period.

Relief Regarding Remittance of Employee Contributions to I.R.C. § 401(k) Plans

The DOL will not take enforcement action against an employer who has a temporary delay in remittance of employee contributions if the basis for the delay is “solely on the basis of a failure attributable to the COVID-19 outbreak.” However, the DOL reminds employer plan sponsors to continue to act “reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.”

Use of Paycheck Protection Program (PPP) Funds for Retirement Plan Contributions

PPP loan “payroll costs” include employer contributions to defined benefit or defined contribution retirement plans. Further, as non-cash benefits are not included in the \$100,000 salary cap, employer contributions to defined benefit or defined contribution retirement plans are not included in this amount. Thus, employers who would like to use PPP funds without jeopardizing loan forgiveness may want to consider how they can use PPP funds to make profit sharing or matching contributions to their retirement plan during the 8-week term of the loan.

Conclusion

Employers who sponsor one of the employee health or retirement plans affected by recent changes in the law related to COVID-19, whether included in this E-Alert or otherwise, should consult legal counsel in order to best determine which changes are necessary or desired.

For questions related to employee benefits or for any circumstances created by COVID-19, contact Gabrielle Hansen or Jeff Robertson at 503-228-0500, or at ghansen@barran.com or jrobertson@barran.com.