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Top Ten Considerations for Employee Benefit Plans During the COVID-19 Pandemic

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1. Amend Retirement Plan to Provide for Distribution Related to COVID-19
Participants affected by COVID-19 can withdraw up to $100,000 from their vested account balance without the usual 10% penalty for withdrawals prior to age 59 ½. The amount can be repaid over the next three years or received as a taxable distribution.
2. Amend 401(k) Plan to Allow Increased Plan Loan Amounts and Delayed Payment
Participants affected by COVID-19 may delay repayment of certain outstanding plan loans and take loans in the increased amount of the lesser of $100,000 or 100% of their vested account balance. This is an increase from the limits of $50,000 and 50% of the vested account balance.
3. Take Note of Delayed Required Minimum Distribution Date
The distribution that participants would otherwise be required to receive from their plan starting at either age 70 ½ or 72 (if they turned 70 on or after July 1, 2019) is suspended in 2020.
4. Evaluate Suspension of Retirement Plan Contributions
Review plan provisions for consideration in suspending matching or profit sharing contributions. Safe Harbor Plans require specific notice for reducing or suspending contributions. Consider furlough and layoff as possible categories that accrue rights to contributions.
5. Do Not Neglect Fiduciary Duties
Plan fiduciaries must continue to meet and consider the potential impact of business conditions on plan investments, testing, plan eligibility, and partial plan termination issues. Plan fiduciaries must continue to maintain records applicable for filing Form 5500 and plan audits, which typically begin in May.
6. Allow for Expanded Access to Telemedicine in Group Health Plan
Group health plans have expanded flexibility to provide telemedicine. For example, high deductible health plans may waive participant cost-sharing requirements for "telehealth and other remote care."
7. Make Sure Group Health Plan Provides for COVID-19 Preventative Services
Group health plans must provide coverage for COVID-19 testing, vaccines, and qualifying related preventive services at no cost to participants.
8. Do Not Forget About Short-Term and Long-Term Disability Plans
Review disability plans to understand the impact of leave related to COVID-19. Pay particular attention to waiting periods and physician certification of eligibility for coverage.

9. Understand the Impact of Furlough and Layoff on Health Care Coverage Eligibility

Regardless of how much an employer wants to maintain coverage, before agreeing to maintain health care coverage for employees who are furloughed or laid off, employers must consider whether employees will continue to be eligible under their plan's terms. Many plans have "active at work" clauses and require that employees work a set number of hours for eligibility. Self-funded plans must pay particular attention to stop-loss considerations.

10. Think Ahead Regarding Health Plan Continuation Coverage, the Individual Health Care Exchange, and the ACA

Even if well intentioned, continuing health care coverage for employees on furlough or layoff may have adverse consequences. The manner in which an individual retains health care coverage after a separation from employment may impact their eligibility as to the Health Care Exchange, subsidy eligibility, COBRA eligibility, and may have implications regarding ACA affordability. It may also affect how a plan's stability and measurement periods operate.

Conclusion

The above are some of the many notable changes that have occurred regarding employee benefit plans in response to COVID-19. Employers who have questions about the above, or on other topics related to the plans that they sponsor in light of COVID-19, should contact their employee benefits professionals.

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