Employee benefits: Some relief has expired, but new options exist

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COMMENTARY

States and the federal government continue to pass laws that provide relief in light of the challenges that the coronavirus pandemic has created in various areas of life. Specific to the area of employment, a variety of new laws and guidance provide both options for relief and obligations for employers that sponsor health and retirement plans for their employees.

Before we discuss what's new, here is a brief reminder of the relief that has expired and is no longer available:

- Coronavirus-related distributions from a qualified retirement plan; and
- Coronavirus-related loans from a qualified retirement plan.

Coronavirus-related distributions were available until Dec. 31, 2020, and coronavirus-related loans were available until Sept. 22, 2020. Employers that offered either or both of these options through the qualified retirement plan that they sponsor must draft plan amendments. Plan sponsors have until the end of the first plan year beginning on or after Jan. 1, 2022 to make these amendments (governmental sponsors have until 2024). Similarly, plan sponsors that suspended required minimum distributions for 2020, and that suspended repayment for outstanding loans from qualified plans in 2020, have until the end of the first plan year beginning on or after Jan. 1, 2022 to make necessary amendments (governmental sponsors have until 2024).

Now on to what's new:

Flexibility for section 125 plans

In recent weeks, new laws and guidance provide options for employers that sponsor a section 125 plan to increase flexibility of the plan's provisions.

Employers that sponsor section 125 plans have the option to increase the grace period to use funds in a health flexible spending arrangement (FSA) or dependent care assistance program (DCAP) for up to 12 months after the end of the plan year or to increase the carryover limit to include all or part of the unused funds in an employee's FSA or DCAP account. An employer can also raise the amount that an employee can exclude from income through DCAP from $5,000 to $10,500, and for taxpayers who are married filing separately, from $2,500 to $5,250.

New guidance also gives employers the option to permit employees to make prospective elections or revocations to pay for group health plan premiums on a pre-tax basis in 2021, even if the employee would not otherwise be entitled to make such an election under the law.

Employers that want to implement these increased limits, flexibility for elections, grace periods, or carryovers will need to amend their section 125 plans. It is also important for employers to work with their third-party administrators and their insurers, if employers choose to allow additional elections for insured health benefits, to ensure that they are on board to carry out requested changes.

Premium assistance for COBRA coverage

During the period from April 1 until Sept. 30, 2021, assistance-eligible individuals will receive a 100 percent subsidy for group health plan coverage continued through the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

The term "assistance-eligible individual" means, with respect to COBRA coverage during the aforementioned period, an individual who is eligible to elect COBRA coverage for any reason other than voluntary termination of employment and who elects to continue group health plan coverage through COBRA.

Employers can also choose to allow assistance-eligible individuals to enroll in different employer-sponsored coverage at the time that the individual elects to continue group health plan coverage under COBRA as long as certain requirements are met.

COBRA generally applies to employers that employed 20 or more employees in the prior year. Employers that sponsor group health plans that are covered by COBRA should take time to understand this new subsidy's mechanics to ensure that their group health plans are in compliance. This includes adhering to specified and detailed requirements to provide notice to assistance-eligible individuals and ensuring that compliance with the relief is administered in light of rules and guidance regarding the outbreak period extensions for COBRA coverage.

Relief for pension plans

There is new relief for both single and multiemployer pension plans. For single employer plans, the relief includes spreading the amortization period for funding shortfalls from seven years to 15 years. For multiemployer plans, this includes establishing a funding assistance program for plans in critical and declining status.

As we head into the second quarter of 2021, there is a lot to think about for employers that sponsor or participate in qualified retirement plans and group health plans. Although some of the new laws merely provide options, others implement new obligations, making it as important as ever to stay on top of plan management.

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