

Employee Benefit Plan Hot Topics

What Employers Want to Know



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October 25, 2022

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Agenda

- Retirement Plans
 - Pre-approved Plan Restatement Cycles
 - SECURE Act and CARES Act amendment extensions
 - IRS Correction Procedure Changes
- Health and Welfare Plans
 - No Surprises Act Guidance
 - Affordability Standards for Family Coverage
 - Post-*Dobbs* Employee Benefits Issues

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Retirement Plans

Pre-Approved Plan Restatement Cycles



Restatement Cycles

- Pre-approved company-sponsored retirement plan documents must be updated every 6 years for changes in plan qualification requirements

Restatement Cycles (cont'd)

- Defined Contribution Plan Cycle 3: ended July 31, 2022
- Defined Benefit Plan Cycle 2: ended July 31, 2020
- 403(b) Plan Cycle 1: ended June 30, 2020

IRS Guidance on Untimely Restatements

- No longer a pre-approved plan and loses uninterrupted reliance on the opinion letter; however, not a qualification issue
- Code Section 401(a) Defined Benefit Plans
 - Any prior interim and discretionary amendments made while the plan was a pre-approved plan will need to be reviewed and corrected if not compliant
 - The rules for individually designed plans would govern the remedial amendment period applicable for those, and all other required changes, to determine how far back the form error goes, if one exists
- Code Section 403(b) Plans
 - Never became a pre-approved plan and would be an individually designed plan for the period between the restatement deadline and the date the restatement is adopted

Applicable Correction Procedure

- Employee Plans Compliance Resolution System of Revenue Procedure 2021-30 (“EPCRS”)
- Self-correction is available so long as the plan satisfies all requirements for the self-correction program, including timing requirements and the requirement for a favorable prior letter
 - Qualified plans meet the requirement of a “prior letter” through the plan’s reliance on an opinion or advisory letter from the prior adoption of a pre-approved plan, as such letter is equivalent to a determination letter
 - 403(b) plans meet the prior letter requirement if the employer had a written plan document in place in 2009 (or in the year the plan was first adopted, if later)
- Voluntary Correction Program (“VCP”) application would only be necessary to correct the failure if the defect has been ongoing for more than three years

Retirement Plans

SECURE Act and CARES Act Amendments

SECURE Act

- Required Distributions
 - Permanently increased beginning date
 - Eliminated many beneficiaries' ability to stretch out their distributions
- Multiple Employer Plans
- Nondiscrimination Safe Harbors
- Long-term Part-time Employees
 - Required elective deferral eligibility for long-term part-time employees starting in 2024
- Childbirth or Adoption
 - Eases withdrawals from retirement plans by new parents for birth or adoption expenses

CARES Act

- CARES Act-Related Distributions (CRDs)
- CARES Act-Related Loans (CRLs)
- Loan Suspension
- Suspension of RMDs

IRS Notices 2022-33 and 2022-45

- Extended deadline for amendments to adopt provisions enacted under the SECURE Act and CARES Act
- New deadline for non-governmental plans is December 31, 2025

Retirement Plans

IRS Correction and Audit Procedure Changes

Anonymous VCP Conference

- Began January 1, 2022
- IRS no longer permits VCP submissions to be made anonymously
- Anonymous written request for pre-submission conference can be made if an authorized representative wishes to discuss a potential VCP submission with the IRS

IRS 90-Day Pre-Examination Compliance Pilot

- Notification from IRS
 - IRS sends letter notifying plan sponsors by letter that their retirement plan was selected for an upcoming examination
 - 90-day window to review plan document and operations to determine if they meet current tax-law requirements
 - If a plan sponsor does not respond within 90 days, the IRS will contact them to schedule an exam
- Conduct Internal Review and Correction
 - Review plan's documents and operations
 - Use Employee Plans Compliance Resolution System (EPCRS) to correct mistakes
 - Self-correction, if eligible
 - If not eligible for self-correction, request a closing agreement



Health and Welfare Plans

No Surprises Act Guidance



Final Regulations & FAQ Part 55

- Final regulation focused on independent dispute resolutions (IDR) process
 - Factors for making a payment determination
 - Requirements for an IDR written decision
 - QPA disclosures by plans and insurers
- FAQ clarifies prior guidance regarding QPA calculations, disclosures, including initial denials and the IDR process, and air ambulances



Health and Welfare Plans

Affordability Standards for Family Coverage



Fixing the “Family Glitch”

- Treasury and the IRS have proposed regulations to “fix” the affordability calculation to assist low-income families in qualifying for the subsidy
 - Offer of employer-sponsored plan is affordable for family members if the cost of family coverage does not exceed 9.5% of household income
 - Minimum value (60%) determination also based on the level of coverage provided to the family under the employer plan, rather than the employee-only coverage
- Final regulations apply for tax years beginning after Dec. 31, 2022
- Open enrollment period for the 2023 plan year is Nov. 1, 2022, through Jan. 15, 2023, according to Healthcare.gov

Impact on Employer Mandate

- Leaves the affordability calculation for employees “as is”
- No impact on employer mandate

Health and Welfare Plans

Post-*Dobbs* Employee Benefits Issues

Contraceptive Coverage

- FAQs Part 54 issued July 28, 2022
- Confirm and clarify existing guidance regarding requirement to provide certain contraceptive coverage for non-grandfathered plans under the Affordable Care Act
- Reaffirmed requirement to provide certain contraceptive coverage as preventative care and reiterated Federal law preemption and intent to enforce federal law as related to preventative service requirements

Group Health Plans and Abortion Coverage

- No federal laws or regulations that require an employer-sponsored group health plan to provide coverage for elective abortions
- Some employers are adding express provisions to group health plans stating that the plan does not cover any services or drugs which are illegal under the law of the applicable jurisdiction in which incurred or procured

Abortion-Related Travel Benefits

- Group health plan can only reimburse, on a non-taxable basis, “medical care” as that term is defined under Internal Revenue Code Section 213(d)
 - 1973 IRS Revenue Ruling, IRS stated that services for an abortion, in a State where it is legal, are considered medical care under Code Section 213(d)
 - Code Section 213(d)(1)(B) provides that medical care includes amounts paid “for transportation primarily for and essential to medical care”
- Generally subject to ERISA, the Affordable Care Act, HIPAA, and COBRA

Abortion-Related Travel Benefits (cont'd)

- Fully-insured group health plans: governed by the law of the state in which the policy is issued
 - If issued in a state in which abortion is legal then may be able to add this benefit to major medical policy but would have to ask the carrier and the carrier may have to wait for state approval before adding travel benefits to its policies
 - If issued in a state where abortion is outlawed then no longer able to cover abortion, including travel benefits for obtaining an abortion
- May be possible to offer the travel benefit outside of the policy, but that should be done through a Health Reimbursement Arrangement (HRA)
 - Integrate with the group health plan, meaning that only employees who participate in the health plan would be eligible for HRA benefits
 - Third-party administration issues
 - Ultimately employer is responsible for compliance
 - Coordinate with HDHP

Abortion-Related Travel Benefits (cont'd)

- Self-insured group health plans:
 - ERISA generally preempts state civil laws that relate to the ERISA plan
 - ERISA does not preempt criminal laws of general applicability

Abortion-Related Travel Benefits (cont'd)

- Potential issues if offered through general travel reimbursement policy
 - Taxable benefit
 - No ERISA preemption
 - Careful not to ask for any protected health information in connection with the program



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