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Planning for 2020: Year-End Deadlines and Considerations for Employee Retirement, Health and Welfare Plans

Changes to 2020 Plan Limits

The IRS recently published cost of living adjustments for 2020. Employers should make any necessary changes to the payroll system to apply the new IRS limits for 2020, and should update participant communications as necessary.

The employee salary deferral limit for 401(k), 403(b), and 457(b) plans increased from \$19,000 to \$19,500. The age 50 catch-up contribution limit increased from \$6,000 to \$6,500. A detailed list of the 2020 retirement plan limits can be found on the IRS website.

The contribution limits for HSAs increased from \$3,500 to \$3,550 (single) and from \$7,000 to \$7,100 (family). The age 55 catch-up contribution limit remains the same for 2020 at \$1,000.

The contribution limits for health care FSAs increased from \$2,700 to \$2,750.

Qualified Retirement Plan Considerations

Safe Harbor Notices for 401(k) and 403(b). If a 401(k) or 403(b) plan provides for a safe harbor match or non-elective contributions, the plan must provide an annual safe harbor notice to participants at least 30 days (but no more than 90 days) before the beginning of each plan year. For calendar year plans, the deadline is **December 2, 2019**.

Automatic Enrollment Notice. If a plan has an automatic enrollment or re-enrollment feature, the plan must provide an automatic enrollment notice at least 30 days (but no more than 90 days) before the beginning of each plan year (i.e., **December 2, 2019** for calendar year plans).

Qualified Default Investment Alternatives (QDIA) Notice. If a participant-directed plan intends to rely on the QDIA safe harbor relief from fiduciary liability, the plan must provide an annual notice at least 30 days (but no more than 90 days) before the beginning of each plan year (i.e., **December 2, 2019** for calendar year plans). *Most of our clients rely on this relief and therefore must send this notice.*

Eligible (and Qualified) Automatic Contribution Arrangements. An EACA or QACA generally cannot be added to a plan mid-year. Therefore, if an employer intends to add an EACA or QACA to its plan for the 2020 plan year, a plan amendment must be adopted before the beginning of the 2020 plan year. Participant notices must also be provided at least 30 days (but no more than 90 days) prior to the start of the year (i.e., **December 2, 2019** for calendar year plans).

Required Minimum Distributions. Employers should confirm with the plan's record keeper that post-age 70½ minimum required distributions for former employees will be distributed no later than **December 31, 2019**. Employers are also encouraged to inquire with the recordkeeper whether there are any "lost" participants (e.g., no current mailing address on file). This is an important fiduciary issue for the DOL, mostly in the context of defined benefit pension plans, but the rules generally apply to 401(k) and other defined contribution plans as well.

Uncashed Distribution Checks. If a participant or beneficiary received, but did not cash, a distribution check in 2019, the plan should treat the distribution as having been made in 2019. Based on recent IRS guidance, the distributee should be taxed on the distribution in 2019, withholding on the distribution should be reported and paid to the IRS in 2019, and the distributee should be provided a Form 1099-R for 2019.

ESOP Loan Repayment. Some ESOP companies have had the practice of making ESOP loan repayments by book entries without actual transfers of cash. Recent IRS guidance stated the IRS position that book entries alone, without a corresponding transfer of assets to the plan, will not support the employer's deduction for the contribution. When making the 2019 loan repayment, an

ESOP company should cause an actual transfer of cash from the company to the ESOP as a contribution, followed by an actual transfer of cash from the ESOP back to the company as a loan repayment.

Adoption of Discretionary Plan Amendments. If an employer implemented discretionary changes during the plan year, the plan generally must be amended to reflect those changes no later than the last day of the plan year (i.e., **December 31, 2019** for calendar year plans).

Remedial Amendment Period Amendments for 403(b) Plans. Plan sponsors of 403(b) plans have until **March 31, 2020** to self-correct plan provisions that violate the Internal Revenue Code 403(b) written plan rules by adopting plan amendments for legal compliance and operational changes.

Hardship Distributions. For plan years beginning on or after January 1, 2020, plans must eliminate the six-month suspension on contributions following a hardship distribution. While amendments are not required until December 31, 2021, operational changes are needed to comply with the rule by **January 1, 2020**.

Hurricane and Wildfire Relief. Plan sponsors that have taken advantage of IRS relief from certain requirements applicable to loans and hardship withdrawals for victims of Hurricanes Harvey, Irma, and Maria and participants impacted by California wildfires must amend their plan documents to conform to plan operations no later than **December 31, 2019**, for calendar year plans.

Revenue Share Account and Forfeiture Accounts. Revenue sharing payments received by a plan and forfeitures incurred during the 2019 calendar year must generally be used or allocated to plan participants no later the close of the current plan year (i.e., **December 31, 2019**), and should not be carried over to the following plan year.

Provide Annual Funding Notice to Defined Benefit Plan Participants. An annual funding notice (AFTAP) of the plan's funding status must be provided to participants within 120 days after the end of the plan year for large plans and by the due date of the Form 5500 annual report for small plans (100 or fewer participants).

Bifurcated Benefit Distribution Options. For plans with bifurcated distribution options that do not require anti-cutback relief (for which an amendment was required by December 31, 2017), an amendment must be adopted by **December 31, 2019**.

Interest Crediting for Cash Balance and Other Hybrid Plans. Plan sponsors of cash balance plans and hybrid plans may need to amend their plans no later the close of the current plan year (i.e., **December 31, 2019**) to reflect the updated mortality tables for 2017.

Nonqualified Retirement Plan and Executive Compensation Considerations

Elections for Deferrals. Except in the case of certain performance compensation and certain new plan entrants, participants in a nonqualified deferred compensation plan that is subject to Section 409A of the Code generally must make deferral elections (including payment elections) prior to December 31, 2019, for any amounts that otherwise would be earned during the 2020 calendar year. Plan sponsors are encouraged to provide eligible employees a reminder of any restrictions and advance filing requirements the plan may impose.

Section 6039 Returns and Information Statements. Employers must comply with certain deadlines for any transfers of stock during the 2019 calendar year (a) to employees or former employees in connection with the exercise of incentive stock options, or (b) from employees or former employees purchased in an employee stock purchase plan. Specifically, information statements for 2019 are due to employees and former employees by **January 31, 2020**, and returns must be electronically filed with the IRS by **March 31, 2020**.

Specified Employees Under Section 409A. If a public company employer uses the default specified employee identification date under Section 409A (i.e., December 31), the employer must determine which individuals are specified employees at any time during the 2019 calendar year.

Health and Welfare Considerations

New HRA Options. Effective January 1, 2020, employers may offer two new HRAs to employees: (a) an Individual Coverage HRA (“ICHRA”), and (b) an Excepted Benefit HRA (“EBHRA”). Under an ICHRA, HRA funds may be used to purchase individual health insurance coverage or Medicare. Under an EBHRA, HRA funds may be used to purchase excepted benefits such as dental and vision benefits. The ICHRA and EBHRA options provide employers with additional flexibility in offering

employee health coverage without requiring the HRA be integrated with an employer-sponsored group health plan.

Cross-Plan Offsetting. Cross-plan offsetting occurs when a TPA mistakenly overpays an out-of-network provider under one plan, and then to recover such amounts, underpays that same provider under another plan. The Eighth Circuit recently ruled that it was not reasonable for a TPA to rely on generic grants of administrative authority to interpret a plan as authorizing cross-plan offsetting. The Court noted that cross-plan offsetting creates “tension with ERISA,” and the DOL takes the position that it violates ERISA Sections 404 (duty of loyalty) and 406 (prohibited transactions). Self-insured plan sponsors may want to determine whether their TPAs engage in this practice and if so, further evaluate the risk and update their plan language as necessary.

Contact Us

Please contact one of our attorneys in the Employee Benefits and Executive Compensation practice group if you have any questions or if you need assistance in preparing plan amendments or employee communication.