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No Surprises Act

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Planning for 2022: Year-End Deadlines and Considerations for Employee Retirement, Health and Welfare Plans

With the end of the year fast approaching, employers should be aware of several important deadlines and considerations related to retirement and health and welfare plans. With the onslaught of recent COVID-19-related legislation, 2021's year-end employee benefit plan checklist is more complicated than usual. We have compiled the outline below to assist employers with specific year-end requirements and to remind employers of important items on the horizon.

Health & Welfare Plans

COVID-19-Related Plan Amendments. Federal COVID-19-relief legislation—including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Families First Coronavirus Response Act (FFCRA), and the Consolidated Appropriations Act, 2021 (CAA)—included provisions impacting group medical plans, cafeteria plans, health flexible spending accounts (FSAs) and dependent care assistance programs (DCAPs). To implement this relief, there are a handful of important **December 31, 2021** amendment deadlines:

The COVID-19 relief legislation allowed cafeteria plans to loosen financial impediments and allow for administrative delays with respect to COVID-19 testing and treatment. In tandem with this legislation, the Internal Revenue Service (IRS) released several temporary measures that employers could incorporate into their health plans and cafeteria plans—e.g., mid-year election changes, carryover balances and extended grace periods for FSAs and DCAPs,

etc. Employers that took advantage of these COVID-19-related relief measures must generally amend their plans by the end of the year.

The CARES Act amended the definition of “qualified medical expenses” to include certain over-the-counter medication and menstrual products. Employers should ensure that their FSA’s definition of qualified medical expenses is amended to incorporate this law change by the end of the year.

The CARES Act required group health plans to cover COVID-19 testing and related preventive services. Employers should confer with providers to ensure any necessary plan amendments are incorporated by the end of the year.

IRS guidance expanding on the CARES Act relaxed certain high deductible health plan (HDHP) rules by allowing free or reduced-cost access to telehealth services prior to satisfying the HDHP deductible. Employers should confer with providers to make any necessary plan amendments. Although these relaxed rules will end at the end of the 2021 plan year—i.e., December 31, 2021 for calendar year plans—a new bill before Congress aims to extend these provisions through 2023.

Mental Health Parity Reporting. The Mental Health Parity and Addiction Equity Act (MHPAEA) prohibits group health plans that provide mental health/substance use disorder benefits from applying financial requirements or treatment limits to those benefits that are more restrictive than the predominant financial requirement or treatment limit that applies to medical/surgical benefits. The MHPAEA regulations include a requirement that plans measure parity with respect to nonquantitative treatment limitations (NQTLs). Under the CAA, regulatory agencies may ask plans to provide comparative analyses with respect to NQTLs beginning **February 10, 2021**. Although guidance is still forthcoming, health plans should consult with vendors and advisors to prepare the comparative analyses and gather the other information outlined under the CAA.

No Surprises Act. The CAA’s “No Surprises Act” generally provides individuals certain protections against surprise medical bills and also requires health plans to participate in independent dispute resolution (IDR) procedures with out-of-network healthcare facilities and providers to determine applicable payment rates. (For more information on the No Surprises Act, please see our alert.) In July 2021, federal regulators issued the first phase of regulations implementing the No Surprises Act, which greatly expands coverage requirements for emergency services. These regulations are generally effective **January 1, 2022**, meaning health plans should consult with vendors and advisors to update plan documents to incorporate the new surprise billing rules and implement an IDR process.

Retirement Plans

Hardship Withdrawals. Retirement plans that allow hardship withdrawals must be amended by **December 31, 2021** to remove the six-month suspension of contributions following a hardship distribution and any provisions limiting “casualty loss” to a federally declared disaster. In addition, the “relevant facts and circumstances” test for determining whether a distribution is necessary to satisfy a financial need must be replaced by a more objective test. Plans can choose to further amend hardship withdrawal provisions to eliminate the requirement that participants obtain all available plan loans prior to receiving a hardship distribution, to expand the types of contribution sources available for hardship distributions to include safe harbor contributions and earnings on elective deferrals, and to add a new type of safe harbor hardship expense for losses relating to a federally declared disaster.

The following items do not require immediate action, but employers should keep them in mind as we move into 2022:

SECURE Act and CARES Act Amendments. The Setting Every Community Up for Retirement Enhancement Act (SECURE Act) and the CARES Act include mandatory and optional changes for retirement plans. Although many of these changes are already in effect, retirement plans must be formally amended to reflect these changes by the end of the last day of the plan year beginning on or after January 1, 2022 – i.e., **December 31, 2022** for calendar year-end plans. Changes include: New Part-Time Eligibility Rules. Plans must permit participation by long-term employees working more than 500 but less than 1,000 hours per year in three consecutive years. Hours of service by part-time employees must be tracked for plan years beginning after December 31, 2020. For more information on this change, please see our alert.

Required Beginning Date. Plans may raise the required beginning date for required minimum distributions (RMDs) to 72 (from 70 ½). In addition, defined contribution plans must eliminate the ability of a non-spouse beneficiary to stretch RMDs over more than ten years. For more information on these changes, please see our alert.

Qualified Birth or Adoption Distributions. Plans that implemented penalty-free distributions for the birth or adoption of a child must be amended to reflect this type of distribution.

COVID-19-related distributions and loans. Retirement plans that implemented certain optional relief granted under the CARES Act—i.e., coronavirus-related distributions, increased plan loan limits, etc.—must amend their plan to formally adopt such relief. For more information on these changes, please see our alert.

Pre-Approved Plan Restatement. The IRS requires plan sponsors using pre-approved defined contribution plan documents to formally restate their plan documents every six years. The IRS deadline to adopt a restated document is **July 31, 2022**.

Lifetime Income Illustrations. The SECURE Act requires administrators of defined contribution plans to annually disclose to participants lifetime income illustrations, providing a realistic illustration of how much monthly retirement income a participant could expect to purchase with his or her account balance. The participant-disclosure requirement took effect on September 18, 2021 and applies to retirement plan statements sent to participants after that date. Plans that furnish participants with quarterly benefit statements must include the participant's lifetime income illustration on one retirement plan benefit statement annually, meaning the lifetime income illustration must be provided by **the second calendar quarter of 2022**.

Additional Considerations

Employee Retention Credit. Eligible employers may still claim the employee retention credit for qualified wages paid in 2020 (up to \$5,000 per employee during 2020) and 2021 (up to \$7,000 per employee per quarter in 2021) by filing Forms 941-X.

New Correction Procedures. For retirement plans, the IRS issued an updated version of the Employee Plans Compliance Resolution System (EPCRS) on July 15, 2021. The new edition of EPCRS brings several changes including, expanded guidance on the recoupment of overpayments, elimination of the anonymous submission procedure under the Voluntary Correction Program (VCP), and extended correction period for significant failures under the Self-Correction Program (SCP).

SECURE Act 2.0. There are several Congressional proposals commonly lumped together and referred to as “SECURE Act 2.0.” These proposals include periodic increases to the RMD age, higher catch-up contribution limits, and eliminating in-plan Roth conversions. Retirement reforms have bipartisan support and major changes may be coming down the pike.

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.

Your Comprehensive COVID-19 Legal Resource

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.