



## COVID-19 – Employee Benefit Plan Considerations

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**Presenter:**



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# Agenda

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- Disaster Relief Extensions
- Reporting and Disclosure Changes
- Permissible Loans and Distributions
- COBRA changes
- Permissible mid-year Changes
- Tax Credits
- Benefit Considerations for Return to Work

# Reporting and Disclosure Changes

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- EBSA issued Disaster Relief Notice 2020-01
- Timing requirements extended – 60 days following the end of the COVID-19 national emergency
  - Extension applies to special enrollment periods, claims for benefits, appeals of denied claims, external review of certain claims
- CARES Act amended Section 518 of ERISA to allow DOL to extend any action required or permitted to be completed by ERISA for up to one year
  - Plan and plan fiduciary will not be in violation of ERISA for failure to timely furnish a notice, disclosures, or document that must be furnished between March 1, 2020 and 60 days after the announced end of the COVID-19 National Emergency, if the plan and fiduciary act in good faith and furnish the notice, disclosure or document as soon as reasonably practicable under the circumstances
  - Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

# Reporting and Disclosure Changes

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- Form 5500 deadline extended for some non-calendar year plans
  - Form 5500 filings that would otherwise be due on or after April 1 and before July 15, 2020, are now due July 15, 2020
  - The extension automatically applies to Form 5500 filings for plan years that ended in September, October, or November 2019 because the regular due dates for these filings would be, respectively, April 30, June 1 (because May 31 is a Sunday), and June 30, 2020
  - An extension beyond July 15, 2020, is still available, using Form 5558, but the 2-1/2 month extension period will be measured from the regular due date rather than July 15.
  - For calendar year plans, 5500 form is still due July 31, 2020

# Changes to COBRA during COVID-19

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- Extension of COBRA Notice Deadline
  - IRS and DOL granted temporary relief to employers who fail to meet the deadlines (up to 44 days after loss of coverage) during the “Outbreak Period,” which began on March 1, 2020 and **will end 60 days after the announced end of the COVID-19 National Emergency** (unless another date is specified by the IRS/DOL).
  - However, notice should be sent by the original deadlines due to a fiduciary duty to act in the best interests of participants by letting them know their COBRA election rights.
- Extension of COBRA Payment Deadline
  - COBRA premium payments are not required during the Outbreak Period if payments are made up by the new deadline that occurs after the Outbreak Period
- New COBRA model notices
  - Revisions based on notification of Medicare-eligible individuals of their rights
  - Complete all sections of the model notice
  - Be aware of litigation risk associated with not complying with model notice and DOL regulations

## Loans and Distributions Changes

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- Distributions permitted by the CARES Act are optional
  - In-service and post-terminations distributions
  - Waiver of 10% early withdrawal penalty and 20% mandatory withholding
  - Can be up to 100% of vested account balance
- CARES Act authorized loan changes for loan amounts up to \$100,000 or 100% of vested balance
- Repayments can be suspended between March 27, 2020 and December 31, 2020
- Required Minimum Distributions may be suspended for 2020

## Verification Procedures for Loans and Distributions

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- If an employee pension benefit plan fails to follow procedural requirements for plan loans or distributions imposed by the terms of the plan, DOL will not treat it as a failure if:
  - that failure is solely attributable to the COVID-19 outbreak;
  - the plan administrator makes a good-faith diligent effort under the circumstances to comply with those requirements; and
  - the plan administrator makes a reasonable attempt to correct any procedural deficiencies, such as assembling any missing documentation, as soon as administratively practicable.



## Deadline for Plan Amendments for Loans and Distributions

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- Plan will be treated as operating in accordance with amendment prior to its adoption if:
  - (1) the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date prescribed by the Secretary of the Treasury (or the Secretary's delegate), and
  - (2) the amendment meets the conditions of section 2202(c)(2)(B) of the CARES Act.

## Participant Contributions and Loan Repayments

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- Generally, participant contributions and loan repayment amounts, which are considered plan assets, must be forwarded to the plan on the earliest date on which such amounts can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which the amounts were paid to or withheld by the employer.
- DOL recognizes that some employers and service providers may not be able to forward participant payments and withholdings to employee pension benefit plans within prescribed timeframes during the period beginning on March 1, 2020, and ending on the 60th day following the announced end of the National Emergency.
- DOL will not – solely on the basis of a failure attributable to the COVID-19 outbreak – take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan.
- However, employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as administratively practicable under the circumstances.

## General ERISA Fiduciary Guidance

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- DOL recognizes that affected plan participants and beneficiaries may encounter problems due to the COVID-19 outbreak.
- The guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing.
- Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits or undue delay in benefits payments in such cases and should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.
- DOL acknowledges that there may be instances when plans and service providers may be unable to achieve full and timely compliance with claims processing and other ERISA requirements.
- DOL's approach to enforcement will emphasize compliance assistance and include grace periods and other relief where appropriate.

## Health and Welfare Changes

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- COVID-19 diagnostic testing and treatment must be covered without cost sharing and can be provided on first dollar coverage without impacting the HSA-eligibility.
- Beginning in the 2021, the IRS increased the maximum health FSA year-end carryover amount from \$500 to \$550 relating to any unused health FSA balance remaining at the end of a plan year.
- Grace periods for plan years ending in 2020 may be ended to allow participant request until December 31, 2020.
- 2020 permissible mid-year election changes allowed on a prospective basis to change health coverage, health FSA, and dependent care FSA, if coverage is obtained or maintained
  - If health plan coverage is revoked, proof of other coverage must be provided.

## COVID-19 FAQs from DOL

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- Q1: If my place of employment temporarily closes because of the COVID-19 outbreak, am I still covered by my employer's group health plan? As long as the employer exists, continues to sponsor a health plan, and employs you, and you continue to meet your employer's eligibility requirements, you would generally remain covered under your existing health plan, even if the employer's physical location closes.
- <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>

## COVID-19 FAQs from DOL

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- Q3: I think I may be losing my health coverage as a result of the COVID-19 outbreak. What can I do to obtain other health coverage? You may have options.
  - Special Enrollment in Another Group Health Plan
  - COBRA Coverage
  - Special Enrollment in Individual Market Insurance Coverage
  - Health Coverage through a Government Program

# Tax Credit

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- **Employee Retention Credit**

- Eligible employers can claim the employee retention credit, a refundable tax credit equal to 50 percent of up to \$10,000 in qualified wages (including health plan expenses), paid after March 12, 2020 and before January 1, 2021. Eligible employers are those businesses with operations that have been partially or fully suspended due to governmental orders due to COVID-19, or businesses that have a significant decline in gross receipts compared to 2019.
- The refundable credit is capped at \$5,000 per employee and applies against certain employment taxes on wages paid to all employees. Eligible employers can reduce federal employment tax deposits in anticipation of the credit. They can also request an advance of the employee retention credit for any amounts not covered by the reduction in deposits. The advanced payments will be issued by paper check to employers.
- Advance payment of employer credits is claimed on Form 7200
- Guidance is provided for calculation of health plan expenses on next slides
- <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

## Tax Credit – Employee Retention Credit - FAQ

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- 33. For an Eligible Employer who sponsors a fully-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified sick or family leave wages on a pro rata basis?

An Eligible Employer who sponsors a fully-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including (1) the COBRA applicable premium for the employee typically available from the insurer, (2) one average premium rate for all employees, or (3) a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage.



## TAX CREDITS – Employee Retention Credit - FAQ

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- 34. For an Eligible Employer who sponsors a self-insured group health plan, how are the qualified health plan expenses of that plan allocated to the qualified leave wages on a pro rata basis?

An Eligible Employer who sponsors a self-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including (1) the COBRA applicable premium for the employee typically available from the administrator, or (2) any reasonable actuarial method to determine the estimated annual expenses of the plan.

If the Eligible Employer uses a reasonable actuarial method to determine the estimated annual expenses of the plan, then rules similar to the rules for insured plans are used to determine the amount of expenses allocated to an employee. That is, the estimated annual expense is divided by the number of employees covered by the plan, and that amount is divided by the average number of work days during the year by the employees (treating days of paid leave as work days and any day on which an employee performs any work as work days). The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

# Benefit Considerations for Return to Work

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- Review eligibility and vesting requirements for benefit plans
  - Review waiting periods and potential waiver of waiting periods
  - Review measurement periods and stability periods
- Review severance programs
  - Rehiring of employees who were terminated
- Consider new programs or temporary programs
  - Telemedicine
  - Employee assistance programs to address anxiety and stress counseling
  - On-site medical services
  - On-site day care

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