
End of Year Benefits “To Do” List

Presentation for:
Employee Benefits Academy
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Presentation by:
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- Questions during this presentation
 - We encourage questions (even though your audio lines are muted)
 - To submit a question, simply type the question in the blank field on the right-hand side of the menu bar and press return
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Kelly practices in the tax group with a concentration in the area of executive compensation and employee benefits.

She has worked with both public and private companies on an array of employee benefit matters, focusing on qualified retirement plans, health and welfare plans and executive compensation arrangements. Her experience includes helping clients navigate and comply with the complex and numerous legal requirements associated with the administration of equity compensation and employee benefit plans and advising companies on fiduciary duties with respect to qualified retirement plans.

She works with entities on all stages of benefit plan matters, including advising companies on the design and implementation of new plans, drafting documents, counseling companies on the maintenance and correction of plans and finally, assisting in merging or termination of plans. She is experienced in design and implementation of employee stock ownership plans (ESOPs) as well as ESOP transactions.



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Jessica helps clients navigate the complex and evolving area of employee benefits law, including health care reform, tax-qualified retirement plans and executive compensation.

Jessica works with clients on a broad array of employee benefits matters, advising on compliance with ERISA, the Internal Revenue Code, the Affordable Care Act, HIPAA and COBRA. She regularly assists clients with correcting plan errors under the IRS' Employee Plans Compliance Resolution System (EPCRS). She also frequently works with clients on negotiating employee benefit vendor contracts and HIPAA business associate agreements for employee benefit plans.

In corporate transactions, Jessica negotiates employee benefits representations and covenants, conducts due diligence review of employee benefit plan documentation, and advises clients on executive compensation issues arising under Section 409A and Section 280G.

Upcoming 2020 Webinars

- **Upcoming 2020 webinars:**
 - **December 17:** Benefits Year in Review and a Look Ahead to the Upcoming Year
- **2021 webinars:**
 - **January 28:** Cafeteria Plan Mid-Year Election Change Rules
 - **February 25:** Deferred Compensation Arrangements - Key 409A Issues
 - **March 25:** Legal Updates on DOL Guidance for 401k Investments and Fiduciary Rule
 - **April 22:** ERISA Fiduciary Litigation Update
 - **May 20:** Public Company ESOP Issues
 - **June 24:** Key Issues for HSAs, HRAs and FSAs
 - **July 22:** Employment and Benefits Issues in M&A Transactions
 - **August 26:** Basics and Update on IRS and DOL Correction Programs
 - **September 23:** Self-Directed IRAs and investments relating to the same
 - **October 28:** Navigating controlled group and affiliated service group rules
 - **November 18:** Year-End Benefit Plan Requirements/End of Year Benefits "To Do" List
 - **December 16:** Benefits Year in Review and a Look Ahead to the Upcoming Year
- Sign up here: [Employee Benefits Academy Webinar Series - Subscribe](#)

End of Year Benefits Overview

- Qualified Retirement Plan Discussion
- Health and Welfare Plans Discussion

Qualified Retirement Plans - Overview

- Year-End Amendments
- Operational Changes in 2020
- Year-End Notices and Annual Notices

Discretionary Amendments

- Any optional design changes implemented in 2020
- If changes the Plan document, must adopt an amendment by December 31, 2020 to be effect in 2020
- If there is any future reduction and amendment must be adopted prospectively, must adopt by December 31, 2020 to be effective in 2021
 - Don't forget any required advanced notices for any discretionary amendments (such as 204(h) notice)

Legally required Amendments

- No Amendments required to be adopted by end of 2020

Subsequent Year Amendment Deadlines:

- Hardship Distribution Legal Changes – December 31, 2021
- SECURE Act Legal Changes – December 31, 2022*
- CARES Act Legal Changes – December 31, 2022*

*Deadline for Calendar Year Plans (Technical deadline is last day of the first Plan Year beginning on or after January 1, 2022). Delayed deadline for governmental plans.

Hardship Distribution Changes Effective 2020:

- Mandatory: No Six Month Suspension for Employee contributions following Hardship Distribution.
- Mandatory: Employee must represent (in writing/electronically) that he or she has insufficient cash/liquid assets reasonable available to satisfy financial need.
- Optional: No longer requires employee to take out loans in the plan before being eligible for a hardship distribution.
- Optional: Added disaster declarations as an eligible hardship distribution.
- Optional: Earnings on pre-tax contributions as an eligible source for hardship distributions.

SECURE Act Top Changes Effective 2020*:

- Changes to Required Minimum Distributions under 401(a)(9):
 - Limits the timing for post-death participant distributions to certain beneficiaries to maximum ten (10) years
 - Delays Required Minimum Distributions for certain participants from Age 70½ to Age 72
 - Plan Sponsors must allow certain long-time part-time employees to participate in defined contribution plan
 - 401(k) Safe Harbor Non-Elective Plan Changes:
 - Eliminated notification requirement
 - 401(k) plans can be amended to become Non-Elective Safe Harbor Plans:
 - At any time before 30th day before the close of the plan year (i.e., December 1 for calendar year) or
 - After the 30th day deadline but before the deadline to distribute excess contributions (i.e., December 2nd – April 15th), if the Non-Elective Contribution is at least 4% of compensation

* The SECURE Act made significant number of changes that cannot be addressed completely in this presentation.

SECURE Act Top Changes Effective 2020*:

- Provides for “qualified birth or adoption distributions” of up to \$5,000 without 10% penalty
- Pension Plans (including money-purchase pension plans) can permit in-service distributions beginning at age 59½
- Lifetime Income changes for defined contribution plans:
 - Annual benefit statements must include a lifetime income disclosure describing the monthly payments the participant would receive if the participant’s total account balance was paid as a single life annuity and qualified joint and survivor annuity.
 - Fiduciaries can be protected from liability for selection of insurance provider for a Guaranteed Retirement Income Contract (“GRIC”)
 - Greater portability of “lifetime income investments”
- Expands eligibility for small employers to participate in multiple employer plans

Qualified Plans – Operational Changes for 2020 (cont'd)

CARES Act – Optional:

- Waiver of 2020 Required Minimum Distributions
- Maximum loan amount increased to \$100k/100% of balance
 - Loans must have been taken by September 22, 2020
- Loan repayment deferred for one year
 - Any loan repayment due on or after March 27, 2020 to December 31, 2020 can be deferred up to one year
- Coronavirus distribution up to \$100k for qualified participants
 - Distribution must be taken by December 31, 2020
 - Must meet the criteria to take distribution, which is generally anyone who (or whose family member who lives with individual) was diagnosed with COVID or experiences adverse financial consequences due to COVID
 - Plan Sponsor can rely on individual's self certification that they are eligible for a coronavirus distribution

Qualified Plans – Operational Changes for 2020 (cont'd)

DOL updated regulations for Electronic Delivery:

- Added one more safe harbor to current electronic disclosure rules.
- Plan Sponsor can send certain disclosures electronically (or post electronically) to participants and beneficiaries for whom they have an email address.
 - Expands group of eligible electronic disclosure by eliminating the requirement that email must be an integral part of the job.
 - Lots of administrative requirements to use the additional safe harbor rule, including paper notification.
- Not available for welfare plan disclosures.

Updated IRS 402(f) (Rollover) Notice in August 2020:

- Updated from 2018 version to add SECURE Act changes and other modifications

If an amendment is not necessary for this year, why is it important to know operational changes?

- These changes impact significant administrative processes:
 - Must make decisions regarding operational changes now
 - Distribution Forms and administration forms updated
 - Notification regarding operational changes
 - Payroll changes due to loan repayment deferment and elimination of six month moratorium on an employee's contributions after a hardship distribution

Safe Harbor Notice

- Safe Harbor Matching Notice must be provided 90-30 days before beginning of each plan year. SECURE Act eliminated Safe Harbor Non-Elective Notice.
 - For calendar years, deadline is December 2nd.

Automatic Enrollment Notice

- Automatic Enrollment Notices must be provided 90-30 days before beginning of each plan year.
 - For calendar years, deadline is December 2nd.

Qualified Default Investment Alternatives Notice

- For fiduciary liability protection for qualified default investments, notice must be provided 90-30 days before beginning of each plan year.

Summary Annual Report

- Summary of the Plan's financial status and information on the Form 5500.
- SAR must be provided the later of: Nine months after end of plan year or two months after the Form 5500 is due (would apply if filed for an extension).

Annual Funding Notice for Pension Plans

- Summary of the Plan's funding (including value of assets/liabilities).
- AFN must be provided no later than 120 days after the close of the plan year.
- Plans with 100 or less participants must give notice by earlier of the due date for the Form 5500 (including extensions) or the date the Form 5500 is filed.

Individual Benefit Statements

- Individual Benefit Statements show the benefits earned and vested amounts
- Defined contribution plans that allow participant directed-accounts must furnish benefit statements on a quarterly basis
- Defined contribution plans that do not have participant directed accounts must provide on an annual basis
- Defined benefit plans must provide every three years (or administrator can provide annual statement of availability of notice and additional information)

Statement of Accrued and Nonforfeitable Benefits

- Must provide statement to participants who terminate

- Open enrollment communications and related disclosures
- Health care reporting obligations
- CARES Act/COVID-19 guidance and related issues
- Year end considerations

Welfare Benefits – Annual Notice/Disclosure Requirements

- Summary of Benefits and Coverage
 - Provide with open enrollment materials
 - Must follow prescribed format
 - Significant potential penalties for failure to provide to participants
 - Notice of modification to SBC content is required 60 days before the effective date of the change
- Summary annual report
 - Must be provided the later of: Nine months after end of plan year or two months after the Form 5500 is due (i.e., if filed for an extension)
- Medicare Part D creditable coverage notice
 - States whether the plan’s prescription drug coverage is “creditable” or “non-creditable” for purposes of Medicare Part D
 - Required annually, due October 15th

Welfare Benefits – Annual Notice/Disclosure Requirements (cont'd)

- CHIP notice
 - Description of possible premium assistance opportunities
 - Must be provided to all employees in relevant states (not just plan participants) annually
- Women's Health and Cancer Rights Act (WHCRA) Notice
 - Description of mastectomy-related benefits
 - Required upon enrollment and annually thereafter
- Newborns' and Mothers' Health Protection Act
 - Required to be included in SPD
- HIPAA Notice of special enrollment rights
 - Description of special enrollment rules
 - Must be provided to all employees eligible to enroll in a group health plan, at or before the time a participant enrolls
 - Often included in annual enrollment materials

Welfare Benefits – Annual Notice/Disclosure Requirements (cont'd)

- **HIPAA Notice of Privacy Practices**
 - Describes how protected health information (PHI) may be used and disclosed by a group health plan and individual's rights and plan's duties with respect to PHI
 - Required at time of enrollment, and within 60 days after material revision
 - Must remind participants of the availability of the notice every 3 years
- **Notice of Patient Protections**
 - Informs participants of plan terms regarding designation of primary care physician
 - Must be provided at same time as SPD; often included in SPD
- **Notice of Grandfathered Status**
 - If applicable, states that the plan believes it is a grandfathered plan
 - Include in any plan materials describing benefits

- Forms 1094-C and 1095-C must be reported to the IRS as in prior years
 - IRS Notice 2020-76 extended the deadline to furnish to individuals until March 2, 2021
 - Deadline to file with IRS remains February 28, 2021 (paper) or March 31, 2021 (electronic)
- Several states now have reporting obligations relating to state-level individual mandates:
 - Massachusetts
 - New Jersey
 - Washington, DC
 - California (new for 2021)
 - Rhode Island (new for 2021)

***Note that due to the IRS deadline extension, some states (e.g., California) may end up having deadlines that are earlier than the IRS deadline.**

COVID-19 and CARES Act – Implications for Welfare Benefits Plans

- CARES Act
 - Expanded health FSAs to allow reimbursement for non-prescription drugs and feminine care products
 - Review cafeteria/flexible benefit plan terms to confirm whether an amendment is needed
 - Due to prior IRS guidance, some plans may have a specific exclusion for non-prescription drugs
 - Other changes – consider whether to extend into 2021
 - Waived deductibles for telemedicine permitted for HSA-eligible participants into the 2021 plan year (IRS Notice 2020-29)
 - Coverage for COVID-19 related treatment (IRS Notice 2020-15)

COVID-19 and CARES Act – Implications for Welfare Benefits Plans (cont.)

- IRS Notice 2020-29
 - Allowed mid-year changes to health benefits, health FSAs and/or dependent care FSAs without a change in status event
 - Optional for plan sponsors; could choose to offer for some or all covered benefits (e.g., offer for FSA but not health plan enrollment)
 - For plan year or grace period ending in 2020, allowed continued use of FSA funds through December 31, 2020
- IRS Notice 2020-33
 - Increased health FSA carryover from \$500 to \$550, and indexed to inflation going forward
- Plan amendments required by December 31, 2021
 - Can be retroactive to January 1, 2020 so long as eligible employees are informed of the changes

COVID-19 and CARES Act – Implications for Welfare Benefits Plans (cont'd)

- EBSA Disaster Relief Notice 2020-01
 - Extends deadlines to furnish certain required notices (including SPDs, SMMs) so long as there is a good faith effort to furnish as soon as administratively practicable
- DOL, EBSA, IRS and Treasury Joint Guidance
 - Tolls time limits on certain participant actions until the end of the “outbreak period”
 - Special enrollment
 - COBRA notification of a qualifying event, election, and payment
 - Claims submissions, appeals, and external review request deadlines
- The “outbreak period” is defined as beginning March 1, 2020 and ending 60 days after the end of the declared COVID-19 national emergency (or other date identified by EBSA)
 - Will extend into 2021

Welfare Benefits –Year-End Considerations

- Were any discretionary changes made that should be documented in any amendment?
- Are SPDs and/or SMMs up to date?
 - Consider changes to benefits offerings in light of CARES Act and related guidance
- Are COBRA notices up to date and accurate?
 - DOL issued new model notices in May 2020
 - Consider COVID-19 related deadline extensions
- Status of service provider contracts
 - Are any in need of renewal/amendment?