

April 9, 2020

*COVID-19 Daily Briefing Recap*

## Impacts of Leaves, Furloughs and Terminations on Employee Benefits

Please note that the following is a recap of our COVID-19 Daily Briefing from 4/9/2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

### Leaves or Furloughs

- **Read and follow plan terms**, particularly with respect to:
  - Active service requirements
  - Continued coverage during leaves
  - Permissible election change events
- Employers subject to the employer mandate should consider ACA implications:
  - Potential penalties for not offering coverage to 95 percent of full-time workforce, which includes employees whose full-time hours are reduced or who are placed on leave
  - Potential penalties if continued coverage is not affordable, including during unpaid leaves of absence or furloughs
  - Employer premium subsidies help with ACA and evidence of insurability
- Insurers are waiving policy requirements and permitting special enrollments
- **CAUTION**: Consider ERISA and Section 125 plan requirements
  - We have determined that a pandemic is not a permissible election change event under Section 125 (see our related [Benefits Law Advisor blog post](#))
  - This means that employers wanting to permit special enrollments would need to do so outside their Section 125 plans on an after-tax basis
- May trigger a retirement plan “partial termination” (100% vesting) if the leave or furlough is determined to be a constructive discharge
- Impact on retirement plan contributions

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## Terminations

- **Read and follow plan terms**
- Usually triggers COBRA or state law continuation coverage requirements
- Applies to all “group health plans”
- Confirm COBRA notices are compliant with the law, cognizant of the flurry of class action litigation over COBRA notices. We highly recommend legal review of the same.
- May trigger portability and conversion options for life insurance with notice requirements
- May trigger a retirement plan “partial termination” (100% vesting)

## Employer Cost Reduction Strategies

- Reducing pay or hours or switching all workers to hourly
  - **CAUTION:** Compensation and hours matter for benefit plans
- Reclassifying workers as part-time and terminating coverage
  - **CAUTION:** Potential ACA implications; insurance policy requirements are changing
- Postponing funding of employer retirement plan contributions
- Suspending or reducing employer retirement plan contributions
  - **CAUTION:** Special rules apply to the suspension of safe harbor plan contributions. There are pre-conditions, advance notice, and amendment requirements to accomplish this.
- Amending retirement plans to change fixed employer contributions or exclude special pay from “compensation”

## CARES Act

- Makes continued employment and benefits costs more affordable with forgivable loans and Social Security tax credits
- COVID-19 related distributions of up to \$100,000 from IRAs and retirement plans
- Increase in plan loan limits to greater of \$100,000 or 100% of vested benefits
- Loan repayments suspended during 2020
- Requirement minimum distributions waived for 2020
- Relaxed minimum funding rules for defined benefit plans
- **CAUTION: These changes are all subject to subsequent implementing guidance**
- **REMEMBER: These are all optional, not mandatory changes. Amendments will be required to implement the plan design changes.**
- For more information visit our blog post on [The Cares Act Effect on Retirement Plans](#)

## What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#). If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.