



COVID-19 Impact: New Considerations for Employers

Thursday,
June 11, 2020

Objectives

DISCUSS:

- Managing employment law risks for reopening businesses
- Navigating litigation exposure
- New guidance from the DOL and IRS regarding ERISA
- Handling the disruption to administrative processes created by extensions of group health plan enrollment deadlines, time to pay COBRA premiums, and other important timing requirements for all types of health, welfare and retirement plans



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Meet the Speakers

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Reopening Issues for Employers

- Safety Issues
- Employee Refusal to Return to Work
- Litigation Exposure

Safety

- OSHA Requirements
- Ohio and Other States' Orders Re Re-Opening
 - Practical Considerations re Compliance
 - Face Covering
 - Health Assessments
 - Hygiene/hand washing
 - Cleaning
 - Capacity/social distancing

Safety

- Litigation
 - Walmart
 - Smithfield Foods
 - McDonalds
 - Tyson Foods
- Publicity

Employee Refusal to Return to Work

- Typical Reasons:
 - Fear of Exposure
 - Childcare Issues
 - >\$\$\$ from Unemployment Benefits
- Unemployment Benefits
 - ODJFS asking OH employers to report

Employee Refusal to Return to Work

- Additional Considerations
 - PPP Loans
 - ADA
 - FFCRA/FMLA/Retaliation/Whistleblower
- Best Practices
 - Written return notices delivered by verifiable means;
 - Discuss with employees refusal to return and document discussion, including reason for refusal;
 - Consider statutory protections.

Litigation Exposure

- Employer Actions During and After Re-Opening
 - Terminations and RIFs
 - Compensation Changes
 - Reassignment of Duties
 - Reorganization and restructuring
 - Leaves of Absence
 - Accommodation Requests
 - Separation of Employees Refusing to Return to Work

Litigation Exposure

- Retaliation

- FFCRA
- FMLA
- OSHA
- ADA
- Whistleblower Laws

- Discrimination

- Title VII (race, color, religion, sex or national origin)
- ADEA (age)
- ADA (disability)

Litigation Exposure

- Best Practices
 - Train Managers
 - Document Decisions
 - Anticipate Issues

Employee Benefits & Executive Compensation



Health Plan Elections/FSA/DCAP

- IRS Notices 2020-29 and 2020-33
- Relaxes rules for prospective mid-year changes
- Special rules for grace periods
- Increases carryover amount to \$550

EBSA Disaster Relief Notice 2020-01

- Outbreak Period – March 1, 2020 to 60 days after the announcement of the end of the National Emergency
- Timing of participant contributions – must be COVID-19 reason
- Loan and distribution verification – must be COVID-19 reason
- Notices and disclosures – specific COVID-19 reason not required

General Guidance

- Amendment due date December 31, 2022 for calendar year plans
- Act reasonably, prudently and in the interest of participants
- Enforcement will emphasize compliance assistance and physical disruption to business

Final Rule

- Extension of certain timeframes for plans as well as deadlines for participants
- Outbreak Period - March 1 until 60 days after end of National Emergency
- HIPAA special enrollment, COBRA deadlines and date to file claim, appeal or request for external review

Special Enrollment Rights

- Employee A declined participation in group health plan, has a baby on March 31, 2020, and wants to enroll herself and the child, but open enrollment does not begin until November 15 – what is the enrollment deadline?
- Employee A may exercise her special enrollment rights until 30 days after the end of the Outbreak Period. If National Emergency ends on June 30, Outbreak Period ends 60 days thereafter and Employee has 30 more days to enroll.
- Premiums for the entire period must be paid

Electing COBRA

- Employee B has a COBRA event and is given a COBRA election notice on April 1, 2020 – what is the deadline?
- The deadline for the COBRA election period is 60 days after the end of the Outbreak Period – if National Emergency ends on June 30, the Outbreak Period ends 60 days thereafter, and Employee B has *60 more days* to make election

COBRA Premium Payments

- Employee C had COBRA coverage on March 1, 2020, and paid the COBRA premium for February, but as of July 1, has not paid for March, April, May or June – when are the premiums due?
- If Outbreak Period ends on June 29, then premiums paid by 30 days after June 29, 2020 (which is July 29, 2020) for March, April, May and June are timely
- Employee C is eligible to receive coverage during this period even though premiums have not been paid

Claims Procedure

- On March 1, 2020, Employee D received medical treatment, and the claim was submitted on April 1, 2021, but the plan requires claims to be submitted within 365 days of the treatment – is the claim on time? Assume the Outbreak Period ends on June 29, 2020
- The claim is timely – the Outbreak Period is disregarded so the last day to submit the claim is 365 days after June 29, 2020, which is June 29, 2021

Internal Appeal – Disability Plan

- Employee E received an adverse benefit determination from his disability plan on January 28, 2020 and the notice provided 180 days to file an appeal- what is the appeal deadline? Assume the Outbreak Period ends on June 29, 2020.
- The Outbreak Period is disregarded – the last day to submit an appeal is 148 days (180 minus 32 days which are the number of days from the January 28 notice date until March 1), after June 29, 2020 which is November 24, 2020

CARES Act – Health Plans

- Cover COVID-19 diagnostic tests and preventive services without cost sharing
- Telehealth services permitted for HDHP without losing eligibility for HSA
- HSAs, FSAs and HRAs permitted to pay over-the-counter drugs

CARES Act – Retirement Plans

- Coronavirus related distributions up to \$100,000 with right to repay over 3 years
- Coronavirus related loans up to \$100,000
- Existing loans may be suspended
- 2020 RMDs waived
- 2020 defined benefit contributions may be delayed until 2021



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