



US employee benefits and the coronavirus

Employee Benefits Alert

17 March 2020

By: Anne Pachciarek

In the face of the ongoing coronavirus disease (COVID-19) outbreak, the US House of Representatives passed a bill on March 14, 2020, aimed at providing assistance to persons affected by COVID-19. The Senate is expected to consider this legislation, titled the Families First Coronavirus Response Act (the Act), this week and changes are possible before it goes to the President for his consideration. This Alert discusses employee benefits issues relating to the Act and other potential employee benefit plan issues that may arise for employers in the wake of the COVID-19 pandemic.

Families First Coronavirus Response Act

Central to the House bill is a provision that mandates group health plans and health issuers to provide coverage without cost sharing for federally-approved tests to detect SARS-CoV-2 or diagnose the virus that causes COVID-19, as well as the administration of those tests. In its current form, the House bill also requires group health plans to cover — without deductibles, copays or coinsurance — those items furnished to an individual during health care provider office visits, urgent care center visits and emergency room visits that result in an order for a test. In addition, the bill provides guaranteed sick pay and family leave for certain groups of workers and other emergency measures, including various employer payroll tax credits. Please also see our alerts [Coronavirus: Congress expected to pass expanded paid leave](#) and [Coronavirus: federal and state tax relief](#).

High deductible health plans and HSAs

One issue that concerned employers confronting the outbreak was whether an employee covered by a high deductible

health plan (HDHP) that waived cost-sharing for COVID-19 testing would remain eligible to contribute to a health savings account (HSA). This concern was alleviated when the Internal Revenue Service (IRS) issued Notice 2020-15, which announced that “[d]ue to the unprecedented public health emergency posed by COVID-19, and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19,” a health plan will not fail to be an HDHP merely because it provides medical care services related to COVID-19 testing before an employee satisfies the minimum deductible. As a result, employees covered under the plan will remain eligible to contribute to their HSAs.

As with the proposed legislation requiring coverage of COVID-19 testing without cost-sharing, third-party administrators and insurers will need to determine which treatments and testing costs are included.

Telemedicine

In light of recommendations from public health experts for individuals to maximize social distance to slow community spread of the COVID-19 virus, telemedicine services can be helpful to employees seeking care or wondering whether they are ill. Telemedicine services enable employees to obtain care while remaining protected at home. The President in his declaration of a national emergency on March 13 stated that the administration will waive certain federal rules to make it easier for doctors and health care professionals to provide remote care using video chats and similar services. Telemedicine services may also prove useful to employees seeking to obtain mental health care in connection with anxiety arising from the pandemic.

Stop-loss insurance

Employers with self-funded health plans are encouraged to review their stop-loss policies to determine whether any exclusions might apply in light of the COVID-19 outbreak.

401(k) plans

Employees who are experiencing financial difficulties could potentially request in-service withdrawals of funds from their 401(k) plan accounts. Employers whose 401(k) plans have adopted the IRS safe harbor reasons for hardship may allow employees to pay for expenses for medical care associated with COVID-19. Hardship withdrawals are taxable, and in-service withdrawals made by employees before they reach age 59-1/2 will be subject to an additional 10 percent penalty. Another option for employees experiencing financial strain on account of the COVID-19 outbreak may be to take an available plan loan.

In the recent past, Congress has enacted disaster relief allowing certain penalty-free withdrawals from 401(k) plans and increased plan loan limits. The prior legislation allowed individuals to spread income tax on the qualified disaster distributions over a three-year period and allowed repayment of the distributions back into the retirement plan. We are monitoring current legislative developments closely and will provide updates as appropriate as to whether any such penalty-free withdrawals may become permissible as a result of the COVID-19 pandemic.

We encourage employers to review the disaster recovery plans of service providers to their employee benefit plans, such as 401(k) record keepers, trustees and payroll providers, to determine those vendors' ability to perform critical plan functions.

See our alert [Coronavirus COVID-19 and force majeure: How are your contracts being affected?](#) for information on how to protect your employee benefit plans and your business.

Group life and disability plans

We also encourage employers to review their group life and disability plans to determine the scope of coverage for pandemics like the COVID-19 outbreak. Employees may have questions about elimination periods and whether short term disability benefits may be accessed during a quarantine or illness related to COVID-19.

Dependent care assistance programs

Since some schools and day care centers may be temporarily closing, employees will likely also have questions about dependent care assistance programs and the rules on mid-year election changes. Employers may want to consider reminding employees which events allow them to make a mid-year change in a current election or allow them to make an initial election to participate in the dependent care program. In addition, it may be helpful to remind employees that any change in election must be consistent with the qualifying mid-year change, and which expenses qualify for reimbursement (examples include babysitting and day care expenses, before-school and after-school programs, and back-up child and

elder care). It may also be useful to employees to provide information on whether a payment to a particular caregiver may be reimbursed (e.g., babysitters must be at least 19 years of age and may not be a sibling).

For advice on these and other employee benefit questions or implications in light of the COVID-19 outbreak, please contact a member of the DLA Piper Employee Benefits and Compensation group or your DLA Piper relationship attorney.

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

AUTHORS



Anne Pachciarek

Retired Partner

Chicago | T: +1 312 368 4000

anne.pachciarek@dlapiper.com
