Employee Benefits Report

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Federal Government Allows 401(k) Distributions for Birth or Adoption

Your employees can use their 401(k) savings to help with the costs of a qualified birth or adoption.

The 2019 Setting Every Community Up for Retirement Enhancement (SECURE) Act gives employers the option of allowing employees to take money out of their 401(k) retirement account to help with the costs of the birth or adoption of a child.

The act's Qualified Birth Or Adoption Distribution (QBOAD) took effect Jan. 1, 2020, and the Internal Rev-

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Pandemic Fears Are Changing Employee Benefit Preferences

The COVID-19 pandemic has not only changed the way people socialize and do business, but it's also influenced what workers want in employee benefits during 2021.

A Global Benefits Attitudes Survey by advisory company Willis Towers Watson found that what 53 percent of the respondents wanted most from their employers was help saving for retirement. The four most popular retirement savings options were:

- **A guaranteed retirement benefit**
- **More generous retirement**

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enue Service issued guidance for employers in September 2020, which many employers were waiting on before determining whether to allow the benefit. The Q&A can be found at www.irs.gov/pub/irs-drop/n-20-68.pdf.

QBOAD gives employees the option to take up to $5,000 per parent per child from a 401(k) or other eligible retirement plan without paying the 10 percent early distribution penalty for withdrawing funds before age 59½. To qualify, the distribution must be taken during the 1-year following the date when the child is born or the date when the legal adoption is finalized.

The employees must report the amount of the distribution in their gross income for the year and pay income taxes on it. Depending on an individual's income tax bracket, that amount could mean significant federal and state taxes.

An employee who takes the distribution can pay it back. No time frame has yet been set by the Treasury Department for the repayment, but employees need to realize that they could be missing out on investment gains if they delay replacing the money. If they change jobs after they take a QBOAD, they may make their recontribution into a personal IRA.

Your Responsibilities as an Employer

It's optional for employers to allow the QBOAD in their 401(k) plans. But if it's decided to allow it, the plan must be amended by the last day of the 2022 plan year; if QBOADs are added after 2022, the plan must be amended by the last day of the plan year in which the QBOAD is implemented.

Employers who decide to allow a QBOAD, will need to have their retirement plan administrators update their systems and plan documents.

Other issues to consider, which are covered in the IRS Q&A, include how to handle participation by long-term and part-time employees in 401(k) plans; the expansion of qualified birth or adoption distributions; and the timing of related plan amendments.

Employee Options

For employers who decide not to offer this option, employees still have other ways to get a penalty-free distribution. An eligible employee can treat the distribution as a qualified birth or adoption distribution on their federal income tax return. The same rules, about including the distribution in their gross income and the waiver of the 10 percent early distribution fee, still apply.

An employee also can apply for a loan if their employer's 401(k) allows it. They generally can borrow up to 50 percent of their vested account balance to a maximum of $50,000. There is no credit check or qualification process. Interest rates are generally reasonable and both the principal and the interest must be paid within five years back into their own 401(k) account.

benefits in exchange for other benefits and less pay

- **Retiree medical benefits**
- **Access to multiple savings and investment products**

A 2020 survey conducted by MetLife found that 76 percent of employees were worried about how the pandemic is affecting their financial and psychological well-being.

Specifically, the survey found that even though employees rely on employers as a social safety net, as many as four in 10 felt their employers were not providing enough benefits. These employees wanted more, such as financial assistance, enhanced sick leave, flexible work schedules, and childcare assistance.

The challenge is keeping benefit costs low while offering more options. The Global Survey indicated that more than a third of respondents cited reducing benefit costs as their top benefits priority, followed by receiving greater benefits security from employers.

Individual vs. Group Long-Term Care Coverage for Employees

Considering whether to offer long-term care insurance to employees? How does group long-term compare to individual long-term insurance?

The answer is that in comparison to group long-term care insurance, individual coverage has advantages and disadvantages.

First, the benefit of long term care insurance is that it pays a daily stipend that covers the costs of long-term services and support, whether the beneficiary remains in their home or is in a facility. They are covered if they are suffering from a chronic medical condition, a disability or a disorder such as Alzheimer's disease. The kind of services an individual might need can range from skilled nursing or assistance with day-to-day tasks

There are two common forms of employer-offered long-term care insurance:

- **True group:** usually offered by employers with 500 or more employees.
- **Voluntary group:** usually offered by smaller employers who give employees the opportunity to purchase coverage at a reduced or subsidized cost.

For many people, the major concern is cost and you may find that group insurance or voluntary coverage is not necessarily cheaper than individual policies.

The biggest advantage of a ***group policy*** is that all employees will qualify for coverage, regardless of health issues. This is because the risk of claims is spread over a larger group of people. Thus, an employee who has a history of stroke or drug addiction can be covered for less than what it would cost for individual coverage. However, an employee in reasonably good health or married will likely pay more for employer-offered coverage than they would for identical protection purchased on an individual basis.

Voluntary insurance is a package of individual long-term care insurance policies offered at a discount to companies with at least 10 eligible employees. Most companies require the applicant to undergo full health underwriting before being accepted for coverage, while some companies may have simpler questions depending on the size of the group and whether the employer contributes to the program.

Individually purchased long-term care insurance is a good, economical purchase for non-smoking individuals in relatively good health, especially people married or living with a partner, since

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marital or spousal discounts are usually offered, which can reduce the cost as much as 40 percent. Discounts don't usually change even if the policyholder's health changes.

Unfortunately, when applying for individual policies, people with conditions insurers feel pose greater long-term care risk can be declined coverage. That's why waiting to apply for a policy until you're 50 or so can be risky and why employer-sponsored coverage can be a blessing to an older work population.

Group Plan Questions

If you are considering offering group long-term care insurance to your employees, here are a few questions to ask when comparing policies:

- What is the initial daily benefit?
- Does the policy pay 100 percent of the costs for home care, assisted living or nursing home care?
- How long are benefits paid?
- How long is the waiting period before benefits are paid?
- Does the policy only reimburse for actual expenses or does it provide cash?

Many group policies do not increase the coverage over time, which is a way to keep costs lower. It's worth asking what the benefit level be in 10, 15 or 20 years. Please call us to get more details.

HealthCare Options For Unemployed Workers

How President Biden's executive orders could affect health care coverage and the way we address the pandemic.

There are new incentives and opportunities to get health care insurance for workers who lost their jobs and employer-sponsored health care during the COVID-19 pandemic.

The Commonwealth Fund estimates nearly 15 million Americans are without health insurance and 7.7 million of them lost their coverage when they lost their jobs. Some of these workers have already obtained coverage through Medicaid and the Affordable Care Act (ACA) marketplace or by purchasing short-term health insurance.

If you have employees you've been unable to keep on the payroll, here are a few options for them to explore for obtaining health insurance.

Marketplace Reopened

Normally, the ACA Marketplace is only open for new health insurance coverage each year from Nov. 1 to Dec. 15 or if the applicant has recently experienced certain life events, such as getting married, having a baby or losing health coverage from previous employment.

However, one of President Joe Biden's ex-

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ecutive orders was to temporarily reopen the ACA Marketplace (Obamacare) from Feb. 15, 2021 to May 15, 2021 for people without health insurance who live in one of the 36 states where *HealthCare.gov* is available.

Individuals who live in states where *HealthCare.gov* does not operate can apply and enroll in coverage through the marketplace websites established and maintained by five states, including California, Massachusetts and New York, and the territory of Puerto Rico.

ShortTerm Plans

Short-term health plans usually have much cheaper monthly premiums than ACA-compliant plans because they can deny coverage to people with preexisting health conditions, impose higher cost-sharing and exclude entire categories of services. Some short-term plans cover COVID-19 treatment, while others do not.

Congress defines people who have short-term plans as uninsured. Short-term plans usually are a better fit for healthy people who only need catastrophic coverage for a few months until they can afford better coverage.

COBRA

COBRA, which stands for the Consolidated Omnibus Budget Reconciliation Act of 1985, is a federal law that guarantees employees who lose their employer-sponsored health coverage, mainly because they've lost their job, can keep it for up to 18 months.

However, employers are no longer subsidizing the cost, which makes the COBRA premium prohibitively expensive for many unemployed people. However, under a provision of the $1.9 trillion stimulus package, the government would pay for former employees to maintain health coverage from their old job through COBRA.

Trillion Dollar Stimulus Plan

President Biden's $1.9 trillion stimulus plan features a section that will affect health care in two ways. It will:

- Make upper-middle-income Americans eligible for premium subsidies on Obamacare marketplaces.
- Increase the financial help that already goes to lower-income enrollees.

The stimulus plan tackles one of the ACA's biggest weaknesses: affordability. A 2018 survey of uninsured Americans and those with *Healthcare.gov* plans showed that 42 percent of those who shopped for individual market coverage found it "very difficult or impossible to find an affordable plan."

Current law limits premium subsidies to those earning less than 400 percent of the federal poverty line which is $51,520 for an individual and $106,000 for a family of four in 2021. Anyone who is above that earning level will pay significantly more for coverage.

The Biden plan removes, for two years, the income cap currently in place, and creates a new cap — 8.5 percent of an individual or family's income on premium contributions — for midlevel health plans. While it's not expected to attract more Americans who need insurance, it might reduce premiums for those who are already spending 15 percent or more of their income on premiums. The Center on Budget and Policy Priorities estimates that a family of four earning $110,000 would see monthly premiums for a midlevel health plan fall from $1,529 to $779.

The Biden plan recommends increasing the tax credits to lower health premiums or even "eliminate" them. For example, someone earning 150 percent of the federal poverty line ($19,140 for an individual), would go from paying as much as 4 percent of income for a midlevel health plan to paying nothing.

Public Option

In the spirit of the Biden presidential campaign's promise to create a "Medicare-like public option" to expand coverage, Sens. Michael Bennet, D-Colo., and Tim Kaine, D-Va., are working to reintroduce their Medicare-X Choice Act. The plan would set up a Medicare public option for individuals and small businesses, initially in areas with limited access to coverage and then nationwide by 2025.

However, both Biden and House Speaker Nancy Pelosi, D-Calif., have said they oppose Medicare for All, and Republicans, who have resisted efforts to increase government involvement in health insurance, will likely block the proposal in the Senate.

Still, now that Democrats control the White House and have a slim majority in Congress, they expect to continue working to strengthen Obamacare through the Stimulus Act and in other ways.

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COVID-19: Do You Have Liability?

Lawmakers are looking into legislation to shield employers against unreasonable liability due to the COVID-19 pandemic.

While some states have enacted laws shielding business from some liability, guidance varies greatly between jurisdictions regarding which businesses qualify for immunity; which actions or omissions are protected; and how long immunity lasts.

A proposed federal law, the Safe to Work Act, S. 4317, would temporarily protect businesses, nonprofits, health providers and educational institutions that follow public health guidelines. However, the proposed legislation would still hold businesses accountable for willful misconduct and gross negligence.

The federal proposal would apply retroactively to pending coronavirus-related actions through at least Sept. 30, 2024.

Here are some types of COVID-19 liabilities businesses and employers could face in the private sector:

- **General Liability:** Lawsuits already have been filed by individuals and groups alleging that certain businesses did not follow recommended precautions and therefore failed to protect the public. These lawsuits are difficult to prove since the virus is widespread and the modes of exposure and transmission often are difficult to pinpoint.
- **Breach of Contract:** Businesses that require pre-payment for services could be sued for failure to pay refunds or reschedule events and services.
- **Products Liability:** These lawsuits allege that personal protective equipment and/or health and safety products were defective.
- **Workers' Compensation:** Employees who say they contracted the coronavirus at work face the same challenges as individuals who are filing general liability lawsuits. They must prove the exposure occurred at work or while the employee was acting on behalf of the employer.
- **Medical Care and Diagnostics:** Medical malpractice cases may be filed regarding the diagnosis and treatment of coronavirus-infected patients — by physicians, hospitals or labs. Lawsuits are expected against nursing homes for failing to properly diagnose, treat and/or quarantine patients or for failing to enact and enforce proper protocols.