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PEOPLE

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SERVICES AND INDUSTRIES

Employee Benefits and Executive Compensation

FINAL HARDSHIP WITHDRAWAL REGULATIONS – COMPLY NOW, DOCUMENT LATER

This year the Internal Revenue Service (IRS) issued Final Regulations enacting the hardship withdrawal changes proposed earlier by the IRS, including changes included in The Bipartisan Budget Act of 2018 and the Tax Cuts and Jobs Act.

Effective Jan. 1, 2020, 401(k) and 403(b) plans are required to implement the following changes:

- Eliminate the six-month suspension on elective deferrals following receipt of a hardship withdrawal. For participants in suspended status as of Jan. 1, 2020, due to receipt of a withdrawal prior to Jan. 1, 2020, the plan may allow the suspension to remain in effect for the full six months or reinstate eligibility to make deferrals on Jan. 1, 2020.
- Require that a participant certify that they have insufficient cash or other liquid assets to satisfy the hardship.

In addition, a plan may implement the following changes:

- Expand the amount available for a withdrawal including earnings on elective deferrals (for 401(k) plans only, not 403(b) plans), QNECs, QMACs, and both matching and non-elective safe harbor contributions.
- Eliminate the requirement that a participant take all available plan loans before receiving a hardship withdrawal.

For plans that follow the IRS safe harbor hardship standards, the requirement that a casualty loss be caused by a federally declared disaster is eliminated. The loss due to casualty may be due to any natural disaster, even one that is not a federally declared disaster. In addition, a new, separate safe harbor event may be added to address any expenses and losses (including loss of income) incurred due to a federally declared disaster. This new standard eliminates the need for the IRS to issue special disaster relief to permit hardship withdrawals for those affected by federally declared disasters.

Changes to administrative procedures should be adopted to implement the mandatory changes and the desired optional changes as of the Jan. 1, 2020, effective date. However, the amendment to document implementation of the new rules may be made as late as Dec. 31, 2021. As a best practice, plan sponsors should consider adopting required amendments by the end of 2020.

CALIFORNIA LAW MAY IMPOSE NOTICE REQUIREMENTS ON FLEXIBLE SPENDING ACCOUNTS

In 2019, California enacted AB No. 1554, which requires employers to notify employees of any deadline to withdraw funds before the end of the plan year. The law is effective Jan. 1, 2020, but many questions remain regarding the new notice requirements.

The law indicates that the notice must be made by two different forms. Only one form of notice may be electronic. However, both forms may be in paper form. Examples of permissible notices include the following:

- Email
- Telephone
- Text
- Regular postal mail
- In-person notification

A health flexible spending account is a group health plan under the Employee Retirement Income Security Act (ERISA). As applied to an ERISA health flexible spending account, the new California law should be pre-empted, meaning that employers do not have to comply.

However, the new law also applies to dependent care spending accounts (DCAPs) and adoption assistance flexible spending accounts, neither of which is subject to ERISA. In addition, for ease of administration and to avoid controversies over ERISA preemption, employers may choose to simply comply with the new law for all flexible spending accounts.

The law does not indicate when the notices must be provided. Until further guidance is issued clarifying this point, it seems employers may comply by including the notice with other disclosures, such as annual open enrollment materials or the plan’s summary plan description. Also, the flexible spending account administrator may send annual account balance reminders, which can be structured to fulfill one form of notice.

Where should employers start? Review current communications sent to participants in the flexible spending accounts. If these communications already satisfy the requirements, no further action may be required. Relatively small changes or the introduction of a new notice may be required in order to comply with the two forms of notice rule.

INCREASES COMING TO RETIREMENT AND WELFARE PLAN LIMITS IN 2020

In November, the Internal Revenue Service announced that some key retirement plan dollar limitations will increase in 2020, including the limit on elective salary deferral contributions on a combined pre-tax and Roth basis, moving from $19,000 to $19,500, and the combined limit on pre-tax and Roth catch-up contributions, moving from $6,000 to $6,500. In addition, key limitations for health savings accounts (HSAs) will increase in 2020. Lastly, for purposes of withholding and paying FICA and FUTA taxes, the Social Security Wage Base is increasing from $132,900 in 2019 to $137,700 in 2020.

Key retirement plan limits:

Limit	2019	2020
Social Security Wage Base	**$132,900**	**$137,700**
Elective Deferral/Roth contribution limit for 401(k), 403(b) and 457 plans	**$19,000**	**$19,500**
Catch-up contribution limit for employees aged 50 and over for 401(k), 403(b) and 457 plans	**$6,000**	**$6,500**
IRA contribution limit	**$6,000**	**$6,000**
IRA catch-up for individuals aged 50 and over	**$1,000**	**$1,000**
415 limit for defined contribution plans	**$56,000**	**$57,000**
Compensation limit for qualified plans	**$280,000**	**$285,000**

Welfare Plan Limits:

Limit	2019	2020
HSA annual contribution limit:		

Self-only coverage	**$3,500**	**$3,550**
Family coverage	**$7,000**	**$7,100**
HSA catch-up contribution (age 55 and over)	**$1,000**	**$1,000**
High deductible health plan (HDHP) minimum deductible requirements:		
Self-only coverage	**$1,350**	**$1,400**
Family coverage	**$2,700**	**$2,800**
HDHP annual out-of-pocket maximum:		
Self-only coverage	**$6,750**	**$6,900**
Family coverage	**$13,500**	**$13,800**
Health Flexible Spending Account Limit	**$2,700**	**$2,750**

These changes will be effective for plan years that begin on or after Jan. 1, 2020.