Employee Benefits Report

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Anti-discrimination Laws and The Effect on Employee Benefit Packages

A balanced benefits package can attract and keep valued employees, but the cost of offering benefits can skyrocket if not monitored.

In 2017, the Bureau of Labor estimated that the average cost of providing benefits for each employee is $11.38 per hour. However, costs for these packages ultimately depend on factors such as geography, industry, workforce size, health plans offered, and the overall health of the workforce.

Employers looking for savings might wonder whether they can save money by providing certain benefits only to certain employees. And, while there are situations when employers are able to offer specified benefits to certain employees, employers should have a good understanding of federal and state anti-discrim-

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IRS Makes it Easier to Correct Retirement Plan "Failures"

The Internal Revenue Service (IRS) supplemented and streamlined the procedures for its Employee Plans Compliance Resolution System (EPCRS). The system allows plan sponsors to correct a retirement plan's operational and plan document failures — usually without involving the IRS. Failure to correct mistakes could result in losing a retirement plan's tax-favored status.

There are three correction programs:

Self-Correction Program (SCP) – Used to correct a retirement

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ination laws or seek professional guidance. It is illegal for employers to discriminate against employees on the basis of race, color, religion, sex (including gender identity, sexual orientation and pregnancy), national origin, age (40 or older), disability or genetic information.

What's Legal

There are no federal laws requiring that plans provide the same benefit coverage to all employees as long as benefit eligibility is based on tenure, work location, full- or part-time status, exempt/nonexempt status, job group or department.

Here are a few exceptions:

Health Plans

- In certain welfare plans, including self-insured medical and group term life insurance plans, taxable income is created for employees if they receive a disproportionate amount of tax-advantaged benefits. These situations could cause a company plan to fail the nondiscrimination test.
- The Patient Protection and Affordable Care Act (PPACA) requires employers with 50 or more employees to either offer employees health care coverage or pay a fee. The law does not apply to part-time workers, except in determining if the employer has 50 or more "full-time equivalent" employees.
- A plan also may be able to offer different benefits to employees, their spouses and their dependents. A plan also can make distinctions between the beneficiaries themselves if the distinction is not based on a health factor. However, under the PPACA, adult dependents must be covered to age 26. To avoid fees, employers must offer adult dependents the same level of coverage at the same price as currently offered to other similarly situated dependents.

Vacations

- It is legal to offer three weeks of vacation to exempt employees and only two weeks to nonexempt employees because the benefit is offered based on Fair Labor Standards Act (FLSA) categories and is not based on any protected category or other applicable law.

Paid Sick Leave

- While federal laws might not require all coverage to be the same, some states have laws covering certain benefits, including paid sick leave, that apply to all of an employer's employees.

It's the Law

There are a variety of federal and state laws that govern the establishment and operation of employee benefits. Consult with your broker for each of your plans or with an attorney if you have questions as to whether you are administering benefits fairly under state and federal laws.

The Employee Retirement Income Security Act (ERISA) was passed in 1974 to protect employees whose employers offer retirement and health plans. ERISA requires plan sponsors to provide detailed benefit information to covered employees and beneficiaries; follow a strict fiduciary code of conduct; and provide detailed reporting through Form 5500, if required.

ERISA ensures that employers cannot:

- Deny an employee benefits because they are about to incur significant medical expenses.

plan's operational failures and certain plan document failures. Failures deemed "insignificant" can be corrected any time; while "significant" failures must be corrected within a certain period.

Voluntary Correction Program (VCP) – Use for failures not covered by SCP. Requires an electronic application and fee to seek IRS approval to make the correction.

Audit CAP – Used to resolve failures discovered during an IRS audit that can't be self-corrected. Must pay a penalty.

Revenue Procedure 2019-19, effective April 19, 2019, focuses on the expansion of SCP to make changes easier while reducing costs. Changes pertain to correcting certain:

- **plan document failures**
- **plan loan failures**
- **operational failures by plan amendment**

Look for more changes. Currently, the IRS is developing guidance on permitting the correction of overpayments under SCP.

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- Offer different coverage benefits for pregnancy.
- Improperly manage investment accounts.
- Fail to provide notice of employees' rights by not providing them with plan documents.
- Retaliate against an employee for raising issues about their benefits.

A law governing health care benefits, the Consolidated Omnibus Budget Reconciliation Act (COBRA), requires that employers with 20 or more employees offer employees who lose their jobs the option of continuing to have group health care plan coverage for a certain time period.

Title VII of the Civil Rights Act of 1964, also known as Equal Employment Opportunity (EEO) mandates, prohibits employers with 15 or more employees from discriminating against applicants and employees in all aspects of employment — including recruiting, hiring, pay, promotion, training and termination — on the basis of race, color, national origin, religion or gender. Parental leave benefits that do not relate to a pregnancy-related disability must be applied equally to men and women under Title VII and the FMLA. If an employer does not limit the availability of maternity leave to the period of disability, male employees must be granted paternity leave under the same terms and conditions as females.

The Health Insurance Portability and Accountability Act (HIPAA) makes it illegal to charge some employees more than other employees based on their medical conditions, claims experience, health services received, genetic information or disability.

All states have enacted at least one law pertaining to employment discrimination, but the law may only apply to companies of certain size. In addition, state laws may be broader in scope than the federal laws, with the result that protection is provided to groups in addition to individuals with a particular sexual orientation.

Please contact us if you have questions about how anti-discrimination laws might affect your health plan administration.

Tackling Obesity in the Workplace

Employers can help control their health care coverage costs and improve employees' care by addressing a key lifestyle risk — obesity.

Obesity is a sensitive topic, but is one that must be addressed. "The State of Obesity 2018 Report," collaboration by Trust for America's Health and the Robert Wood Johnson Foundation, found that almost 40 percent of adults nationally meet the criteria for obesity — a body mass index of 30 or greater.

The effects of obesity can be devastating. Obesity is a key factor in rising health care costs, disease, disability and reduced length and quality of life. Obesity also costs employers money through absenteeism, lost productivity, safety and health care costs. A report by professors at Cor-

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nell University and Lehigh University found that U.S. national medical expenditures devoted to treating adult obesity-related illness rose from 6.13 percent in 2001 to 7.91 percent in 2015.

Employers — who have access to 151 million employees between the ages of 18 and 65 (U.S. Bureau of Labor Statistics, 2016) — have the opportunity to control medical claim costs. These costs are driven by the demand for care by diabetes, heart disease, sleep apnea, depression, back and knee problems. Employer-sponsored programs and practices aimed at helping employees lose weight and make healthier choices can slow the obesity epidemic. According to a report by Thaler and Sunstein in 2008, workplace changes, such as offering fresh snacks, can be a very effective method to reduce obesity.

Population Health Management

Workplace influences can contribute to obesity. The American College of Occupational and Environmental Medicine (ACOEM) says that work may be a contributing factor to obesity. Risk factors include social stressors, psychosocial work factors, working hours, sleep and night shift work and sedentary behavior. Employers can help reduce risks by offering benefits and programs aimed at helping employees choose healthful lifestyles.

The Centers for Disease Control and Prevention and ACOEM found that the effectiveness of these obesity prevention and control programs depends on the intensity of program effort and the use of a variety of interventions. In short, the most successful programs are implemented as a campaign. Campaigns can include:

- *Offering health benefit coverage that includes* lower premiums for employees who complete a health risk assessment and a recommended health-coaching activity, reimbursement for consultations with a registered dietician and cash or point rewards for regular physical activity.
- *Onsite support for healthy activities, such as healthy dining and vending options;* open stairwells, walking paths and signage marking distances and recommending physical activities; break rooms with stretching equipment; and free filtered water.
- *Fostering a culture that supports positive changes* by providing health and wellness programs or competitions.
- *Implementing programs that also support employees' families health by* making healthy dinners-to-go available in the employee café; and expanding access to company fitness facilities to employees' family members.
- *Offering insurance coverage and access to bariatric surgery.* ACOEM experts say that research shows obesity medications and bariatric surgery effectively cut medical costs in the long term.

The bottom line is to determine what you can do based on your resources. Take advantage of what you already have, like access to a health professional or space for fitness classes. Talk to your broker about the benefits and wellness programs offered by various carriers to find one that best fits your needs. ■

529 Savings Plans: An Easy Way to Help Bring College Within Reach

Many parents start saving for college as soon as their children are born. It's little wonder. Tuition plus room and board costs put college out of reach for many high school graduates.

The College Board's Trends in College Pricing survey reports that 2018-2019 tuition fees and room and board for a four-year public college are $90,000. Costs for private non-profit colleges are about $200,000. Add in some of the costs NerdWallet says many students forget — like paying for laptops, social activities, study abroad, transportation and extra classes and the importance of starting to save early becomes more imperative. Unfortunately, according to Sallie Mae's study How America Saves for College, most parents only saved an average of $18,135.

As an employer, you can make your employees' saving efforts for their children's educational futures more successful by providing easy access to 529 college savings plans with payroll deduction and

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matching contributions.

A 529 plan is a tax-advantaged savings plan sponsored by states, state agencies or education and authorized by Section 529 of the Internal Revenue Code. Funds invested in the account grow on a tax-deferred basis and distributions are tax-free when used to pay for qualified expenses at any eligible public, private, two- or four-year college.

There are two types of 529 plans: prepaid tuition plans and education savings plans — although some states only offer one of them.

With a prepaid tuition plan, the account holder purchases units or credits at a participating public/in-state college or university to put toward future tuition and fees.

Prepaid plans are not guaranteed by the federal government, although some state governments guarantee the money paid into the prepaid tuition plans.

An education savings plan is an investment account that can be used to pay for future qualified higher education expenses, such as tuition, mandatory fees and room and board. The funds generally can be used at any U.S. college or university — and some non-U.S. college and universities also qualify. Education savings plans also can be used to pay tuition costs up to $10,000 each year at any public, private or religious elementary or secondary school.

A 529 Plan as an Employee Benefit

An employer-sponsored 529 plan is funded with after-tax money. When choosing a plan, it's important to review the fees and investment options offered by the employer-sponsored 529 plan before enrolling.

Remember, a 529 account is not just for parents whose children might go to college. Grandparents, aunts and uncles or anyone who wants to help a family save for an education can set up and contribute to a fund. An employee also can set up a personal 529 so they can return to school. Another perk is your employees will have access to their plans even if they leave their job.

Employees should know that if they receive matching contributions to their 529 plan, they will owe federal and state income taxes on the amount contributed. However, there is federal legislation pending that would allow employer 529 plan contributions to be excluded from the employee's gross income.

Tax Breaks for Matching Contributions

You can offer to tie payroll deductions to an employee-sponsored 529 plan and choose to match a portion of what your employees put into the account to help them reach their goal more quickly.

A new bill introduced in Congress, the 529 Expansion and Modernization Act of 2019 [S. 220], would allow an exclusion from income on federal income tax returns for employer contributions to 529 plans.

Six states already allow companies to earn a state income tax credit or deduction if they offer 529 plans and matching employee plan contributions. These states include Arkansas, Colorado, Illinois, Nevada, Utah and Wisconsin. Nevada, for example, offers companies a 25 percent tax credit for 529 plan contributions with an $800-per-employee tax credit per year.

For help setting up an employer-sponsored 529 plan, please contact us. ■

A Retirement Plan for Hard-to-Replace Employees

It's often difficult for highly compensated executives to save enough money in a traditional 401(k) plan to maintain their current living standards. Fortunately, companies can offer highly sought-after executives a retirement plan that not only offers a more comfortable retirement, but also is a powerful enticement to stay with the company.

A Supplemental Executive Retirement Plan (SERP) is a non-qualified retirement plan for key employees who fall outside Employee Retirement Income Security Act (ERISA) guidelines. The company signs an agreement promising the executive a certain supplemental retirement income based on vesting and other eligibility conditions. In a typical plan arrangement, the company funds the SERP with cash flow, investment funds or cash-value life insurance. The executives have the opportunity to earn benefits equal to 70 percent of the high, three-year average compensation.

The most common way a company funds a SERP is by purchasing a cash-value life insurance policy. The company pays the premiums and is the policy beneficiary, and the policy's cash value grows tax deferred. When executives retire, they receive an income paid by the company using the policy's cash value. If the executive dies before retirement, the company is the beneficiary and can use the benefit as it sees fit.

SERPs are fairly easy to set up. A SERP and insurance policy can be tailored to an executive's needs, and the benefits accrue to the executive without any tax consequences until an income is paid.

With a cash-value life insurance policy, the value accumulates tax deferred. When benefits are paid, the executive pays the taxes on the income and the company deducts them as an expense. If the employee quits, the company still has access to the policy's cash value. The plan usually is structured in a manner that lets the company recover its cost.

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