

Recent Changes in Employee Benefits to Consider in 2021

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We recently highlighted the employee benefits provisions that accompanied the latest COVID-19 relief law as part of our summary of that Act. This article addresses some of the other recent employee benefits-related changes that employers need to be mindful of in 2021.

We previously reported on IRS guidance providing relief from the physical presence requirement in the case of spousal consent in qualified retirement plans. That relief was scheduled to expire as of December 31, 2020, but has now been extended by subsequent IRS guidance through June 30, 2021.

We also reported on a number of employee benefits-related deadlines and election periods that had been extended or disregarded while the COVID-19 National Emergency persists. Keep in mind that such moratorium remains in place in 2021 until 60 days after the announced end of the COVID-19 National Emergency, or such other date announced by the DOL and IRS in future guidance.

The CARES Act (summarized here) allowed defined contribution retirement plans to eliminate required minimum distributions for 2020. If adopted, that elimination can continue to apply in the case of participants whose required beginning date would be April 1, 2021. The CARES Act also permitted suspension of loan repayments due in 2020. Repayments of those loans must recommence in 2021, as adjusted to reflect the 2020 suspension. The IRS issued guidance allowing such loans to be re-amortized and repaid in

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substantially level installments over the remaining period of the original loan.

Additionally, you may recall that under the Secure Act (summarized here), 401(k) retirement plans were required to extend eligibility to long-term, part-time employees. The SECURE Act prohibited exclusions from participation with respect to part-time employees who complete 500 hours of service for an employer for three consecutive years. This rule takes effect January 1, 2021, which means that plan sponsors and/or their plan recordkeepers will need to start tracking such employees for eligibility starting in 2024.

Finally, the Equal Employment Opportunity Commission (EEOC) recently released proposed regulations addressing the level of incentives employers may lawfully offer to encourage employee participation in wellness programs that require disclosure of medical information, without violating the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). Although the Health Insurance Portability and Accountability Act (HIPAA), allows employers to offer incentives up to 30% of the total cost of health insurance to encourage participation in certain types of wellness programs, the ADA requires that employee participation in a wellness program that includes medical questions and exams be “voluntary.” Because the ADA and GINA do not define “voluntary,” the proposed regulations provide that, in order to comply with the ADA and GINA, employers may offer no more than a *de minimis* incentive to encourage participation in wellness programs, with the exception of certain wellness programs that would be permitted to offer the maximum allowed incentive under HIPAA. The guidance is still in proposed form and the public will have 60 days following publication in the Federal Register to provide comments to the EEOC.