

PREPARED FOR WHATEVER COMES NEXT

Employee Benefits and Human Resources Law

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Hindsight is No Longer 2020

2020 is one for the record books. The year started with the quick, worldwide spread of COVID-19. Employers had to vacate employees from the workplace, learn to manage remote work, and handle leaves of absence due to illness and school closures. Not to mention a controversial presidential election to end the year with a bang.

Even though the year 2020 has come to a close, uncertainty continues as we begin 2021. The lasting implications of legislation passed in 2020 in response to COVID-19 remain to be seen. In addition, the new administration has strongly indicated, through statements and executive orders, that vast changes are on the way. Here are the highlights:

COVID-19 Mandates: What You Must Do

Under IRS Notice 2020-15, vaccinations will continue to be considered as preventive care. In addition, a HDHP is permitted to cover all medical services received and items purchased in association with the testing and treatment of COVID-19.

Plan sponsors of group health plans subject to ERISA must remember to continue to meet the applicable disclosure requirements for plan participants and beneficiaries including notifying plan participants of the added no-cost COVID-19 testing and related services.

Group health plans must disregard the period from March 1, 2020, until sixty (60) days after the announced end of the National Emergency, or such other date announced by the Agencies in a future notice. This period is referred to as the "Outbreak Period" and the end has not yet been announced.

Disaster Relief Notice 2020-01 provides that failure to timely furnish certain ERISA required notices, disclosures, or documents during the COVID-19 pandemic will not be considered a violation so long as the plan and plan fiduciary act in good faith to furnish such notice, disclosure, or document as soon as is reasonably practicable considering the circumstances.

The Department of Labor ("DOL") updated the FMLA notices and forms on its website. In a nod to safety concerns regarding the COVID-19 pandemic, the forms now include electronic signature features to allow for contactless completion and transmission of completed forms.

Effective January 11, 2021, the transparency rule requires group health plans and health insurance issuers in the individual and group markets to disclose cost-sharing information to participants, beneficiaries, and enrollees upon request.

Permissible: What You Can Do

Open Enrollment Ideas –Social distancing, going completely digital, passive enrollment and implementing a benefit administration system.

Managing Cybersecurity – Be prepared for breaches and have countermeasures in place to secure data, especially having business associate agreements (“BAA”) in place with every contracted vendor/service provider.

Litigation and Regulatory Updates

The Supreme Court heard oral arguments in *California v. Texas* (ACA Case). The comments and questions on severability posed by the Justice’s suggest that the rest of the ACA will be upheld even if the mandate is unconstitutional. The decision is expected later this year.

The Supreme Court heard oral arguments in *State of New York v. United States Department of Labor* (AHP Case). After oral arguments, it seems that the Court will avoid deciding the core aggregation issue and leave the question up to HHS, who may choose to leave it undecided.

The FAMILY Act has already been reintroduced by the 117th Congress as Senate Bill 248 and House Bill 804.

While there hasn’t been a Healthy Families Act reintroduced by the 117th Congress we could see a bill for this Act introduced later this year.

The year 2020 and the presidential election therefrom will never be forgotten. Employee benefits was and continues to be an ever-changing landscape with various regulations, some temporary and some permanent. With the Democrats now in control of the House and the Senate we expect to see changes implemented moving forward, especially in the healthcare realm.

Our message this year is to stay tuned to see what steps the new Administration will take to either switch gears back towards the ACA model or implementing new changes in the healthcare system.

The content herein is provided for educational and informational purposes only and does not contain legal or tax advice. Please contact our office if you would like more information on any topic or have any questions regarding how 2020 guidance may impact your employee benefit plans.

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