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CORONAVIRUS TAX & BENEFITS UPDATES

March 17, 2020

By Stephanie Vogel

1. Cost-Sharing and High Deductible Health Plan ("HDHP")

On March 3, 2020, New York's Department of Financial Services issued a directive requiring New York health insurers to waive cost-sharing associated with Covid-19 testing and immunization (once available). Following suit, on March 11, 2020, the IRS released Notice 2020-15, "High Deductible Health Plans and Expenses Related to COVID-19." The IRS has stated that until further guidance is issued, a health plan that otherwise satisfies the HDHP requirements would not fail to be an HDHP merely because the health plan provides benefits associated with testing for and treatment of the coronavirus without a deductible, or with a deductible below the minimum deductible for an HDHP. Therefore, for the time being, health insurers can comply with any state law requirements relating to Covid-19 testing and self-insured group health plans can provide coronavirus related testing and services at no cost to employees without concerns of jeopardizing a plans' HDHP status. Also, many health insurance providers have also announced they will waive co-pays and cost-sharing associated with Covid-19 testing.

2. Group Health Plan Coverage Under Group Health Plans

If an employer's group health plan conditions eligibility on an employee's hours of service (which is common), it could cause harmful consequences if an employee is required to take an extended leave of absence due to Covid-19, including even a preemptive quarantine or a worksite closure. The Affordable Care Act's ("ACA's") rules require an employee's usual work hours to be credited for paid leave and Family and Medical Leave Act leave but they do not require the same for unpaid non-FMLA leave situations, such as a worksite closure or preventive quarantine. Therefore, employers should review their group health plan's eligibility requirements and determine whether revisions are necessary to ensure that employees on extended leaves of absence for reasons related to the Covid-19 outbreak will continue to maintain coverage.

3. COBRA

If employers subject to COBRA requirements find themselves in the unfortunate situation that they must terminate employees, such employers may opt to pay for their employees' COBRA premiums on a tax-free basis.

4. Retirement Plan Benefits

Many businesses will experience closures due to the COVID-19 outbreak. For those employees that are still being paid, an employer should continue to withhold elective deferrals under its 401(k) plan and must timely remit those contributions If contributions are paid late, this may require corrections with the DOL in order to ensure the plan remains qualified. For employees WHO are not paid during a business closure, 401(k) plan deferrals would cease as well as any related employer contributions for such employees. Note that if employer contributions are entirely discretionary, then employers generally have the ability to suspend employer contributions at any time depending on the plan's provisions.

Employers sponsoring 401(k) safe harbor plan and employers with fixed employer contributions face more restrictions. Employers cannot stop employer contributions for participants who have already satisfied the age and service requirements to receive an employer contribution. Employers who sponsor safe harbor plans are only allowed to suspend or reduce nonelective or matching safe harbor contributions if (I) the employer is operating at an "economic loss" or (II) the employer provides a supplemental notices to employees explaining (a) the consequences of any plan amendment that would reduce or suspend the safe-harbor employer contributions mid-year, (b) the procedures for changing employee salary deferral elections, and (c) the effective date of the reduction or suspension. Note that the plan administrator (I) must have communicated its right to potentially suspend employer contributions in either the Plan's initial safe harbor notice or its most recent annual safe harbor notice and (II) must give employees a reasonable opportunity of at least 30 days after the supplemental notice is provided before the reduction or suspension occurs to change their salary deferral elections.

5. Income Tax

On March 17, 2020, Treasury Secretary Steven Mnuchin announced that the April 15th tax payment and filing deadline is being pushed back by 90 days in order to give individuals and many businesses additional time to file AND pay the taxes they owe.

Individuals can defer up to $1 million of tax liability and corporations get an extension on up to $10 million. This extension is automatic and no penalties or interest will be charged. Taxpayers just need to file their taxes and pay them within 90 days of April 15.

It is anticipated that the Department of Treasury may also delay the estimated quarterly tax payments that self-employed workers and businesses pay the IRS throughout the year. The first payment is generally due April 15.

For Further Information

For more information on appropriate steps to take and policies to implement, or to address issues arising for you on this or any related topic, please contact Stephanie Vogel, or any member of Dilworth's tax team.