The Impact of The CARES Act on Employee Benefit Plans: Part Four, Analyzing COBRA Coverage Rules and ACA Information Reporting

April 28, 2020

What is the Impact of the CARES Act and COVID-19 Pandemic on Employee Benefit Plans and What Should You Do Now?

Part Four: Health Plans - Analyzing COBRA Continuation Coverage Rules and ACA Information Reporting

So far we've gone through some tips to help you know what to do if you decide to make changes to your retirement plan loan and distributions provisions or eliminate or modify the contributions to your retirement plans, the effect of layoffs and furloughs on the administration of retirement plans, and how to examine health and welfare plan eligibility.

Now, let's dive deeper into your health plans and analyze COBRA continuation coverage rules and Affordable Care Act information reporting.

Analyzing COBRA Continuation Coverage Rules
Employers reducing their workforce through the use of layoffs or furloughs should be mindful of potential COBRA obligations under federal law (and possibly state law if the plan is subject to a state's COBRA extension rules for insured plans). Federal COBRA rules apply if an employer with 20 or more employees sponsors a group health plan. Under COBRA, employers must offer continuation of coverage to employees, former employees and their dependents when group health plan coverage is lost due to certain qualifying events, such as termination of employment or reduction of hours.

In the case of a layoff or furlough, if under the terms of the plan, the layoff or furlough results in a reduction in hours that results in a loss of healthcare coverage, then a COBRA qualifying event has occurred and the employer should comply with COBRA election rules. An employer may be able to subsidize COBRA premiums on a nondiscriminatory basis. If the group health plan permits laid-off or furloughed employees to continue participation in the group health plan, then a COBRA qualifying event has not occurred because there is no loss of coverage. However, if after a period of time, active coverage is no longer extended to the laid-off or furloughed worker, the COBRA qualifying event should occur at that future point in time if the loss of coverage still results from the
reduction of hours.

What Should you Do Now?

- In determining whether or not conduct layoffs or implement a furlough, you should keep in mind whether such actions constitute COBRA qualifying events.
- You may need to offer COBRA to an employee who loses eligibility due to the layoff or furlough or a subsequent permanent termination of employment and you will need to decide whether to subsidize the premiums the affected employee would have to pay to maintain the COBRA coverage.

ACA Information Reporting

An issue that may not be at the forefront of employers’ minds, is how any layoffs and furlough of employees may affect their Affordable Care Act (ACA) reporting obligations. Under the ACA, an employer with 50 or more full-time (and full-time equivalent) employees that sponsors a group health plan should offer minimum essential coverage to at least 95 percent of your full-time employees (and their dependents), and such coverage must meet affordability and minimum value requirements under the Code. Failure to do so may result in the employer being subject to employer shared responsibility penalties.
under Section 4980H of the Code.

Failure to understand and properly track these issues may result in violations under the ACA. For example, layoffs and furloughs may lead to inaccurate reporting by employers to the IRS as a result of improper accounting of full-time status (i.e., working 30 hours or more per week) or failure to account for the actual number of full-time employees over the plan year. This could ultimately result in significant penalties by the IRS through failure to offer group health plan coverage as required or failure to properly report accurate information related to the number of full-time employees on annual forms.

**What Should you Do Now?**

- If you use a measurement method to track full-time status, you may want to determine whether, because of any layoffs and furloughs, a monthly measurement method or the look-back measurement method is beneficial to the employer for determining full-time status at this time.
- You should analyze how breaks-in-service following a rehire of previously furloughed and laid-off employees will affect eligibility provisions and waiting periods under your group health plan.

**Part 1:** Part One, Retirement Plan Loan and
Distribution Rules

**Part 2:** Effect of Layoffs and Furloughs

**Part 3:** Health and Welfare Plan Eligibility