Holland & Hart

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COVID-19: Retirement Plan Considerations

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We're interrupting our regular programming to let you know that Holland & Hart has launched a new Coronavirus Resource Site.

The Resource Site offers practical guidelines and proactive solutions to help companies protect their business interests and their greatest asset – their workforce. With timely content authored by a multidisciplinary team of experienced practitioners across the firm, the Resource Site consolidates information and resources in one place to help businesses identify questions and address challenges to manage the legal, human, and safety threats of COVID-19.

We're regularly updating the Resource Site with fresh content as the COVID-19 outbreak itself and the legal and regulatory responses continue to evolve. We encourage you to visit the Resource Site and welcome you to subscribe to receive alerts from Holland & Hart's Coronavirus Task Force.

Hardship Distributions. It is becoming clearer that COVID-19 may present serious financial difficulties for individuals and employees. Employers and plan administrators should expect to receive inquiries from participants regarding access to retirement savings. COVID-19 could form the basis for a hardship distribution depending upon the terms of the employer-sponsored retirement plan. Most plans limit hardship distributions to the IRS "safe harbor" reasons. The safe harbor definition of permissible hardship expenses includes expenses for medical care (for the employee, employee's spouse, employee's dependents or employee's primary beneficiary) to the extent the care would be deductible under Code Section 213(d). The safe harbor definition also includes expenses and losses incurred by the employee as a result of a FEMA declared disaster.

FEMA has not yet declared COVID-19 a disaster and historically has not declared a disaster for other virus outbreaks (such as Zika, H1N1, and SARS). Given the early impact of COVID-19, however, employers should monitor FEMA's declarations for hardship distribution purposes. Note that President Trump's recently declared national emergency does not constitute a FEMA disaster and thus, doesn't qualify as a hardship under the safe harbor definition.

In the event that the situation leads to unpaid leaves of absence, there could be other issues such as problems making loan repayments, or needs for hardships under provisions for other permitted types of hardship expenses such as tuition or payments to prevent eviction from the participant's principal residence. Employers may also see a corresponding uptick in participants taking plan loans.

Partial Plan Terminations. Companies in industries that will be particularly hard hit by the financial impact of COVID-19 should be mindful of the partial plan termination rules when considering layoffs. These rules require retirement plans to 100% vest all participants who are affected by a partial plan termination. The occurrence of a partial plan termination might occur as a result of one or a chain of group layoffs.

Plan Investments. The financial turmoil is also causing investment performance in retirement plans to sag. While experts may advise plan fiduciaries to “stay the course,” those fiduciaries should continue to monitor investment performance, ask experts questions as to prudent actions, and properly document the steps taken by the fiduciaries to monitor the situation. Fiduciaries should check their plan investment policies to determine whether any actions are required at this time, and consult with their plan financial advisors about proper actions, if any.

This is a quickly evolving area. Stay tuned for more information.

If you have questions on these directives and/or other employee benefit implications, please contact a member of the Benefits Law Group.

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