

Cuts To Benefits Come With Risks For Employers, Attys Say

By **Kellie Mejdrich**

Law360 (May 29, 2026, 11:36 AM EDT) -- Some employers have been reducing employee benefits, attorneys say, a move that brings both legal and reputational risks.

While benefits have been expanded in past years to include things like pet insurance, employers have been tightening the belt on major aspects, such as paid leave and matching 401(k) contributions. Employers have also taken more incremental steps, like boosting healthcare savings account contributions instead of offering straight coverage.

The International Foundation of Employee Benefit Plans released a biennial survey of approximately 500 employers' employee benefits on Thursday. It reported decreases in some offerings in 2026 compared with two years ago, including a slight downturn in employers' overall levels of fertility benefits. The IFEBP survey also reported a slightly higher proportion of employers that didn't offer a 401(k) match.

"I think there are a lot of different reasons for it, and one of them is that medical costs are increasing, and people are struggling to deal with that," Carol Buckmann, founding partner at Cohen & Buckmann PC and an employer-side benefits attorney, said when asked why some employers are reducing benefits.

"The economy is uncertain, and the job situation is different too," she said. "I mean, it's really more of a buyer's market now."

Here are three areas where cutbacks are raising concern for benefits attorneys and experts.

401(k) Offerings

One of the benefits cutbacks raising the most red flags for employer-side attorneys is a pause or reduction in the 401(k) match.

The IFEBP, which surveys employers on their benefits every two years, reported a slight downtick in the rate of employers that didn't offer matching contributions, among employers that offered that level of detail. In 2026, 26% of the 281 employers reporting said they didn't offer matching contributions, whereas in 2024, approximately 22% of the 377 reporting employers didn't offer a match, according to the IFEBP's surveys from both years.

Buckmann said: "I see it happening in a few places, [including] people cutting back on discretionary additional contributions. That's not, I think, as problematic as cutting back on the match."

Buckmann said cutting matches and other contributions triggers the need to send notices to employees and could affect participation in a plan.

"I think that's probably not the first place you should look if you're looking to cut back," Buckmann said.

Andrew Oringer, a longtime benefits attorney and partner and general counsel at The Wagner Law Group, said reducing 401(k) contributions is a "dangerous" move, "because employees and prospective employees are highly focused on the 401(k) plan."

"For plans that are not structured as safe-harbor plans, the failure to match will reduce the incentive of people to contribute, which then brings about the possibility that the 401(k) nondiscrimination test won't be met," Oringer added.

Many small and medium-sized businesses are structured as safe harbor plans, but many larger ones are not. Oringer said that for non-safe-harbor plans, contribution changes could have considerable tax consequences.

"I can tell you in my experience that high-paid executives are not overly enamored of having to give back tax benefits as a result of the fact that the plan is not appealing enough to the rank and file," Oringer said.

Voluntary Benefits

Buckmann said she's also seeing employers rolling back some of their voluntary benefits in response to a recent wave of Employee Retirement Income Security Act litigation targeting the offerings.

Voluntary benefits suits have been on the rise, with a slew of new proposed class action complaints targeting major healthcare employers in particular. Most of the suits allege that workers wasted money on policies for things like accident and hospital indemnity insurance, in part driven by what the workers say were disloyal commission arrangements tied to their premiums.

For example, Arizona hospital giant Banner Health — that state's largest private employer — was hit with a proposed class action in late April alleging the company allowed insurance brokers to siphon off roughly one-third of employee-paid premiums, totaling about \$20.8 million, by embedding excessive commissions in voluntary benefits plans.

"All of a sudden, people are getting sued because of the way they're running these arrangements," Buckmann said, adding that she's noticing employers more closely scrutinizing the offerings.

Plaintiff-side attorney Carl Engstrom, who is co-founder and partner at Engstrom Lee LLC, said he thought employer cutbacks "could have to do with litigation risk."

"Likely it's because there's been cases alleging that the employers aren't screening the quality of those voluntary insurance programs that are being offered," Engstrom said.

Healthcare Spending

Healthcare cutbacks are also in the mix, practitioners said, with Buckmann noting she's seen employers terminate retiree medical plans in favor of contributions to individual health reimbursement arrangements.

"They're doing that in particular for retirees ... moving out of insured retiree medical coverage, particularly for the people who aren't old enough for Medicare, because they're really expensive to cover," Buckmann said.

Disputes over cutoffs sometimes also end up in federal court. For example, the Teamsters are **fighting to arbitrate** a retiree healthcare benefits grievance challenging coverage denials that Kraft Heinz sued over in Delaware federal court. The Fourth Circuit also **recently put to rest** a long-running dispute over retired coal miners' health benefits, keeping in place a lower court judgment that largely favored employers.

Buckmann cautioned that employers need to heed notification requirements under the Affordable Care Act, along with other state laws that might put requirements on coverage when instituting cutbacks in healthcare. She also said she stresses to employers that communications should clearly and often state that employers reserve the right to eliminate coverage in the future.

"I have told people to put that on every communication they send out, put it on the bottom," not just in the plan booklet or annual benefit summary, Buckmann said.

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