LEGAL UPDATE

Recent Laws Reduce Employer Reporting and Disclosure Requirements

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[*Editor's Note: Recent law changes signal a trend toward simplified reporting and disclosure requirements for all employee benefit plans, including changes under SECURE 2.0 and recently issued proposed regulations for certain 401(k) plans. The changes described below under other laws related to group health plans may be relevant to our readers to the extent that 401(k) and HR professionals also have administrative or compliance responsibilities for their employer's group health plans.*]

SECURE 2.0 Act. Under the SECURE 2.0 Act of 2022, Congress made several changes intended to simplify and reduce the reporting responsibilities of defined contribution plan sponsors. First, Section 320(b) of SECURE 2.0 provides that with respect to any defined contribution plan, no disclosure, notice, or other plan document is required to be furnished to an unenrolled participant if the unenrolled participant is furnished with: (i) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines under the plan; and (ii) any document requested by the participant that the participant would be eligible to receive without regard to this new statutory provision.

SECURE 2.0 provided for the establishment of a new type of plan account - pension-linked emergency savings account or PLESAs – along with a simplified disclosure method. In particular, if a plan sponsor adopts PLESAs for the plan, SECURE 2.0 permits the initial and annual notices required for a PLESA to be combined with other required IRS and DOL notices.

Further, Section 341 of SECURE 2.0 permits a plan to consolidate into one single notice a variety of other required notices such as the notice for qualified default investment options, the notices required for safe harbor 401(k) plans, and the notice for eligible account plans.

In support of a move to more simplified disclosure rules, the recently issued proposed regulations for mandatory automatic enrollment plans applied these SECURE 2.0 notice requirements, thus simplifying the notice requirements under these automatic enrollment, automatic escalation plans.

The recently enacted Paperwork Burden Reduction Act (PBRA) and the Employer Reporting Improvement Act (ERIA) have reduced certain reporting and disclosure requirements for employers and insurers in connection with group health plans.

Paperwork Burden Reduction Act. Applicable Large Employers are required to file Forms 1094 and 1095 with the IRS to report their compliance with the ACA's employer-shared responsibility provisions (*aka* - the employer mandate). Forms 1094 and 1095 provide certain information to the IRS and individuals who are covered by Minimum Essential Coverage (MEC).

For fully insured group health plans, the insurance carrier is responsible for filing Form 1095-B, and the employer is responsible for filing Form 1095-C, with the IRS. For self-funded group health plans, the employer/sponsor is generally responsible for filing and disclosing both Forms 1095-B and 1095-C.

Previously, employers and health insurance providers of MEC had to disclose this information to employees and covered individuals (through the 1095-B and 1095-C tax forms) by January 31 of each year.

The PBRA has amended this requirement so that employers and health insurance providers are no longer required to send these tax forms to covered individuals, unless the information is requested. To take advantage of this new rule, however, the employer or insurer must notify certain employees and covered individuals (in a manner to be determined by the IRS) of their right to receive this information.

The PBRA applies to returns for calendar years after 2023.

Employer Reporting Improvement Act. Employers and health insurers that provide MEC must report information for each covered individual to the IRS, including the covered individual's Tax Identification Number (TIN). The ERIA permits an individual's date of birth to be substituted for the individual's TIN if the TIN is not available. It also allows employers and insurers to offer 1095-B and 1095-C tax forms to individuals electronically, when the forms are requested.

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