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Employer Options After Supreme Court's Dobbs Ruling

On June 24, 2022, the U.S. Supreme Court reversed long-standing precedent and ruled that states can ban or impose significant restrictions on abortion. *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022). With as many as 26 states expected to act, some employers are adding or enhancing medical travel benefits to help employees obtain legal abortions outside their states of residence.

Employer Options

Employers that want to provide employees with assistance to travel to different jurisdictions to have access to abortion services are considering a variety of options, including:

- Amending their group health plans – including HRAs and health FSAs – to allow reimbursement for travel expenses incurred for the purposes of having access to abortion services or other medical procedures in a different jurisdiction.
- Amending or establishing Employee Assistance Plans (EAPs) to cover these expenses.
- Providing relocation stipends to employees who choose to move to different jurisdictions with less-restrictive abortion laws.
- Establishing a taxable travel reimbursement program.
- Establishing a relief fund to help employees with travel and other expenses related to abortion services.

Each of these options have different tax and other compliance considerations that should be considered.

Furthermore, whatever an employer might choose to do in this regard, a key question is what – if any – steps certain states might take to prevent employers and others from helping their residents obtain a legal abortion in other jurisdictions.

Two states already have laws that create a private cause of action against anyone who "aids or abets" anyone in getting an abortion. However, at this point it isn't clear how or whether these laws are meant to apply to abortions performed outside of their jurisdictions. Other states likely will consider similar rules.

Outlook

State laws regarding abortion are expected to evolve quickly. Employers that implement plans to help affected employees will need to carefully monitor the laws in each state to determine whether, and how, their programs might be affected. Look for updates and a more in-depth look at key issues for employers in future editions of Rewards Policy Insider.

IRS Proposes Updated Mortality Assumptions for Calculating Minimum Funding Obligations and Lump Sum Distributions

Proposed regulations issued by the IRS would update the mortality assumptions that defined benefit pension plans must use to determine present values for purposes of the minimum funding rules and calculating lump-sum and other accelerated forms of distributions.

The proposed effective date is for plan years beginning on or after January 1, 2023. However, the IRS has also released Notice 2022-22 to provide mortality tables under current regulations relating to minimum funding and lump sum distribution requirements.

Even if the proposed regulations end up being finalized with a 2023 effective date, the Notice 2022-22 mortality tables will apply for purposes of calculating minimum required contributions for a plan year that begins in 2022 and that has a valuation date in 2023.

For lump sum calculations, Notice 2022-22 will apply to distributions with annuity starting dates that occur during stability periods that begin in 2023 even if the new regulations are effective in 2023.

Overview of Proposed Regulations

The mortality tables in the proposed regulations are derived from the tables set forth in the Pri-2012 Private Retirement Plans Mortality Tables Report issued by the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries. The mortality rates are developed by adjusting the mortality experience from that study for improvements in mortality experience since 2012 and expected future improvements.

The proposed projection scale does not take into account actual mortality experience in 2020 and 2021, the first years of the COVID-19 pandemic. The long-term mortality improvement rates also don't reflect any adjustment for the effect of COVID-19 on expected mortality rates in the long term. If COVID-19 does have a long-term impact on mortality rates, the IRS expects that will be reflected in future mortality improvement scales that could be incorporated in future guidance.

DOL Releases Fact Sheet and FAQs on FMLA Leave for Mental Health Conditions

On May 25, 2022, the Department of Labor ("DOL") published updated guidance—a Fact Sheet and a set of Frequently Asked Questions ("FAQs")—on when employees of covered employers may use Family and Medical Leave Act ("FMLA") leave for a mental health condition.

Background

Under the FMLA, an eligible employee can take up to 12 weeks of leave for a serious health condition or to care for a spouse, child, or parent suffering from a serious health condition. A mental health condition can qualify as a serious health condition if it requires inpatient care or ongoing treatment by a healthcare provider, such as an overnight stay in a treatment center or continuing treatment by a clinical psychologist.

Guidance Overview

In recognition of Mental Health Awareness Month in May, the DOL published Fact Sheet #280 and a set of FAQs. The Fact Sheet and FAQs do not provide novel guidance on mental health leave in the context of the FMLA, but they do address common situations involving FMLA leave for mental health conditions.

Serious Mental Health Condition. Fact Sheet #280 provides a reminder that mental and physical health conditions are considered serious health conditions under the FMLA if they require: (1) inpatient care, which can include an overnight stay in a hospital or other medical care facility, such as a treatment center for addiction or eating disorders; *or* (2) continuing treatment by a health care provider, which can include conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment, and chronic conditions such as anxiety or depression that cause occasional periods when an individual is incapacitated and that require treatment by a health care provider at least twice a year.

Reasons for Leave. Fact Sheet #280 also provides a list of reasons and examples that an eligible employee can take leave under the FMLA, including: for his or her own serious health condition; to provide care for a spouse, child, or parent who is unable to work or perform other regular daily activities because of a serious health condition; to provide care for an adult child who has a serious health condition, if the child is incapable of self-care because of a mental or physical disability; and to provide care for a covered servicemember and certain veterans with a serious injury or illness.

FAQs. The FAQs address a wide range of topics within the scope of FMLA leave by reason of a serious mental health condition. For example, one question asks whether leave for psychotherapy treatment for anorexia nervosa is protected under the FMLA. Leave for treatment visits and therapy sessions to address the condition is protected under the FMLA, assuming the patient is an eligible employee who works for a covered employer. Other questions and answers cover topics relating to, among other things, the care of an adult child who has recently been released from inpatient treatment for a mental health condition, attending family counseling sessions for a spouse who is in an inpatient

treatment program for substance abuse, and employer requirements to keep an employee's mental health condition confidential.

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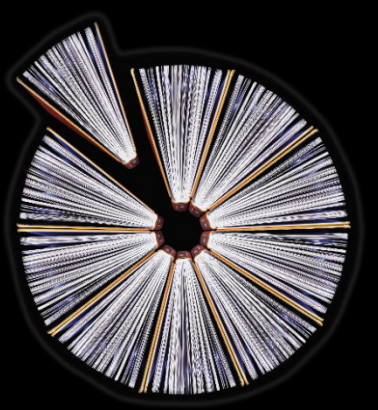

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