United States | Human Capital | 10 February 2023

Rewards Policy Insider
2023-03

In this Issue:

Department of Labor Proposes Updates to its Voluntary Fiduciary Correction Program

The Department of Labor ("DOL") recently proposed amendments to its Voluntary Fiduciary Correction Program ("VFCP"), as well as corresponding amendments to Prohibited Transaction Exemption ("PTE") 2002-51, which provides excise tax relief associated with the program. The most notable amendment is the proposed addition of a new self-correction component to allow employers to self-correct delinquent participant contributions and loan repayments without submitting a full application to the VFCP.

Overview of the VFCP

The VFCP allows employers to voluntarily comply with ERISA by self-correcting certain plan errors and submitting an application explaining the correction to DOL, thereby avoiding potential DOL civil enforcement actions and penalties. The VFCP allows a total of 19 categories of transactions to be corrected via the program. PTE 2002-51 provides VFCP applicants excise tax relief for certain transactions that are corrected through the VFCP, as long as the applicant satisfies the conditions of the PTE.

Proposed Amendments

Late last year, DOL proposed amendments to the VFCP, which are generally designed to promote increased usage of the program and streamline existing corrections procedures. For instance, DOL proposes amendments to some of the program's eligibility requirements. As an example, currently, a plan is not eligible for the VFCP if there is "evidence of potential criminal violations" by the applicant. DOL proposes to create a narrow exception to this rule under which an "innocent" plan sponsor – e.g., where a bookkeeper has embezzled money from the plan sponsor, and the plan sponsor has repaid the funds to the plan and referred the issue to law enforcement – could submit a VFCP application in certain circumstances. The proposed amendments would also modify the criteria for several specific transactions that may be corrected through the VFCP; those amendments would generally add new options to correct a transaction or remove administrative requirements.

Most significantly, DOL proposes to add a new self-correction component ("SCC"), which would be available to correct failures to timely transmit participant contributions and participant loan repayments to plans. Thus, using the new SCC, employers could avoid having to complete the full VFCP application requirements, which include an application form, a checklist, and supporting documentation. A number of conditions apply to the SCC, including that any lost earnings associated with the delinquent participant contributions or loan repayments must be $1,000 or less. In addition, after the self-corrector corrects the error, it must submit an online notice to DOL containing information about the self-correction (such as the self-corrector's contact information and the number of plan participants that were affected by the correction).

DOL has also proposed amendments to the corresponding PTE 2002-51. The amendments would generally incorporate the VFCP's proposed amendments into the PTE, such as adding excise tax relief for transactions corrected using the SCC. Importantly, DOL proposes to add a condition for the relief offered through the PTE for the SCC, under which self-correctors would be required to pay the amount of the excise tax that would otherwise apply to the individual accounts of any affected participants. The proposed amendments would also eliminate the existing rule under which an applicant cannot rely on PTE 2002-51 if it has used the relief for a similar type of transaction within the last three years.

More information about the VFCP and the DOL's proposed amendments is available [here](#).

HHS Extends COVID-19 Public Health Emergency Again, But the End May be Near

The Biden Administration on January 30, 2023 formally announced plans to end the COVID-19 National and Public Health Emergencies on May 11, 2023. For group health plans, this means certain COVID-related coverage mandates and the Outbreak Period relief for participants to exercise certain plan rights will be coming to an end as well.

Health and Human Services Secretary Xavier Becerra recently extended the Public Health Emergency for another 90-days, through April 11, 2023. The National Emergency is currently set to expire on March 1. Under the plan announced by the White House, both will be extended one more time, but only through May 11, 2023.

Coverage Mandates

The Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act established certain mandates for group health plans regarding coverage of COVID-19 testing and vaccinations that will remain in effect until the COVID-19 PHE ends.

In general, plans must cover COVID-19 tests and testing-related services without any cost-sharing, prior authorization, or other medical management requirements. Since mid-January of this year, this requirement has extended to over-the-counter, at-home tests.

Additionally, plans must cover COVID-19 vaccines provided by out-of-network providers without cost-sharing. In general, plans must use the Medicare reimbursement rate for purposes of reimbursing out-of-network providers for the cost of administering the vaccine. The costs of the vaccine itself are still being paid by the federal government, but the Administration has indicated it plans to end that practice later this year as well.

As noted, these mandates will remain in effect until the COVID-19 PHE ends.

Outbreak Period Relief

The Outbreak Period relief, which has been in effect since March 2020, gives ERISA plan participants additional time to exercise certain plan-related rights like appealing adverse claims determinations, electing COBRA, or paying COBRA premiums. The Outbreak Period is defined as ending on the earlier of (a) one year from the date an individual is first eligible for relief from certain ERISA deadlines, or (b) 60 days after the announced end of the COVID-19 National Emergency.

If the National Emergency does end on May 11, 2023, no one could become eligible for that relief after that date. Furthermore, any ongoing Outbreak Periods presumably would end on July 10, 2023 – i.e., 60-days after the National Emergency ends.

State Paid Leave Update: Vermont – and Likely Illinois – Joins Growing List of States Enacting Paid Leave

In Illinois, the Paid Leave for All Workers Act – which would apply to most employers in the state and would allow paid leave "for any purpose" – inches closer to enactment, with the legislature passing the bill in early January 2023, and the governor signaling his intent to sign the bill. In Vermont, the governor announced the creation of a voluntary paid family and medical leave program for all employees in the state.

Eleven states plus the District of Columbia currently have mandatory paid family and medical leave programs. Illinois would become the third state, after Maine and Nevada, to have laws that require paid leave for any reason.

Illinois

The Paid Leave for All Workers Act (S.B. 208) would require almost all Illinois employers to provide employees who work in the state up to 40 hours of annual paid leave. The employee could use the paid leave "for any purpose," as long as the leave is taken in accordance with the law's requirements as summarized below. The definition of "employer" under the bill is fairly expansive, applying to "employers" as defined under the Illinois Wage Payment and Collection Act and generally including the state and local government. Generally, all Illinois employees would be covered by the bill. However, there would be limited exceptions, including for temporary college or university student-employees, short-term employees at an institution of higher learning, and certain employees covered by collective bargaining agreements.

Employers would be allowed to require employees to provide notice of up to seven days before the date the leave begins, if the leave is foreseeable. Contrary to many state paid leave laws, an employee would not be required to provide their employer a reason for the leave and may not be required to provide documentation or certification. Employers that already provide a paid leave policy that satisfies the minimum amount of leave required by the bill would not be required to modify their existing policy, as long as it offers an employee the option, at the employee's discretion, to take paid leave for any reason.

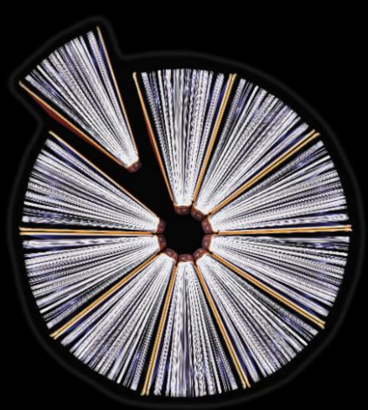
Both houses of the legislature passed the bill on January 10, 2023, and Governor J.B. Pritzker (D) has indicated that he will sign it. The bill would be effective beginning January 1, 2024.

Vermont

On December 6, 2022, Vermont Governor Phil Scott ® announced that the State of Vermont hired an insurance provider to create the Vermont Family and Medical Leave Insurance Plan ("the Plan"), a *voluntary* paid family and medical leave program. Vermont is the second state – following New Hampshire – to implement this type of voluntary paid leave program. The Plan will provide employees at least a combined six weeks of paid leave benefits in a 12-month period for certain life events, including the birth of a child and to care for a newborn child; caring for certain family members; and a serious health condition that makes the employee unable to perform the essential functions of their job. The Plan will include "a number of plan design options" for employers that choose to participate in the program.

The program will be implemented in phases. Starting on July 1, 2023, the Plan will be offered to state employees. The second phase, beginning July 1, 2024, will open the Plan to private and non-state public employers with two or more employees in Vermont. The third phase, starting on July 1, 2025, will allow employees who work for employers that do not offer the Plan, self-employed employers, and employers with one employee to purchase coverage through the Plan.

Visit the Archive



All previous issues of the Rewards Policy Insider are archived on Deloitte.com and can be accessed here.

Don't forget to bookmark the page for quick and easy reference!

Upcoming editions will continue to be sent via email and will be added to the site on a regular basis.

Get in touch

Subscribe/Unsubscribe