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Electronic Alert

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Retirement Plan Fiduciary Action During Events Like COVID-19

By Jeff Robertson

As many people shift to work-at-home arrangements and businesses lay off workers due to the uncertainty of the business world in the next few months, it is imperative that retirement plan fiduciaries do not allow these conditions to postpone their oversight of retirement plans.
Several issues bear watching:

1. **Mass Layoffs**: In the event a business lays off a substantial percentage of its workforce – even for an intended short period of time – the layoff may trigger a partial plan termination requiring certain immediate vesting. It is important not to forget about these types of plan provisions.

2. **Fiduciary Committees**: As the first quarter of 2020 comes to a close at the end of March, many businesses may wish to postpone fiduciary committee meetings. However, especially in highly volatile times, it is important to maintain oversight of the retirement plan and investment options. Communication to employees regarding oversight, historical market returns, and investment choices within the retirement plan are important considerations. Consider holding your fiduciary committee meetings via telephone or conference meeting. It may be wise to utilize your ERISA legal counsel in such meetings in order to have tough conversations about investment options or contributions.

3. **Retirement Plan Employer Contributions**: We may see a short-term revenue drop for many businesses. It is important for both safe harbor plans and retirement plans in general, whether it is a matching contribution or employer contribution, to properly suspend contributions if such an action is deemed necessary.

4. **Testing and 5500 Reports**: Many retirement plan testing results are delivered in early and mid-March for calendar year plans. Do not ignore these testing results where something may have failed due to employees working from home.
5. **SECURE ACT Provisions**: There are provisions that plans must consider today, for example the shift from age 70 required minimum distribution to age 72. These provisions will require plan updates in most cases. Do not allow tele-commuting and confusion in these times to result in a failure to amend your plan and a need for self or voluntary correction later.

We also anticipate a dramatic uptick in employees seeking dollars from their retirement plans.
Two plan provisions bear watching during plan administration:

1. **Plan Loans**: Most plan documents will allow for retirement plan loans with employees potentially located at home or in another area. It is important to ensure that retirement plan administration is operating in a work-at-home environment. Access to plan materials and loan validation according to plan documents is critical.

2. **Hardship Distributions**: Employers must continue to administer their retirement plan according to the plan documents. As of the date of this Alert, there is no FEMA declared disaster despite President Trump's declared national emergency to allow for a Hardship Distribution related to COVID-19 conditions. A hardship distribution related to COVID-19 impact may be allowed for Section 213(d) medical care but must be limited to such expenses. Many local areas are preventing evictions for a certain period of time. Employers must continue to administer their retirement plan according to the plan documents.

In these uncertain times, it is important to continue to treat retirement plans with the care and attention the laws require. Please do not hesitate to contact Barran Liebman attorney Jeff Robertson at 503-228-0500, or at jrobertson@barran.com. We are happy to come to you in any medium that would be helpful to your business. We all learned lessons in the last market crisis of 2008 on how to properly enact, communicate, and consider actions related to retirement plans in a financial crisis, and we are ready to apply those lessons now.