

# Are your employee benefits ready for 2022?

There is no denying that time has moved particularly fast over the past year and a half. In the world of employee benefits, the law has changed, adapted and updated in a multitude of ways to move with the needs of plan participants and sponsors. Below we discuss some of these changes so that employers can prepare for the changes ahead.

## Health Plans COBRA

The specific measures affecting COBRA include extension of COBRA deadlines until 60 days after the end of COVID-19 National Emergency (the Outbreak Period) and a 100 percent COBRA Subsidy in the American Rescue Plan Act (ARPA).

The COBRA deadline extensions tolled major COBRA deadlines, including the election of COBRA. After their implementation in 2020, these extensions were extended again in February. This February extension revised the application of the previously extended deadlines to extend them for the lesser of one year from the original deadline or the end of the Outbreak Period. The Outbreak Period is still ongoing as of July 15, 2021, but each individual COBRA beneficiary is limited to one year of Outbreak Period relief.

The ARPA introduced the other major change related to COBRA in the past year: subsidized COBRA coverage. The subsidy took effect on April 1 and will last until Sept. 30. It is available to anyone, including dependents, who lost employer-provided group health coverage because they experienced a reduction in hours or an involuntary termination.

The subsidy has altered the way employers administer COBRA in several



## COMPLIANCE CORNER

Iris K. Tilley and Gabrielle A. Hansen

## COMMENTARY

ways. First, under ARPA rules, employers were required to provide notices to those individuals who experienced a qualifying event prior to the start of the subsidy, but who could enroll in subsidized coverage starting April 1. Second, it includes a second notice requirement regarding the end of subsidized coverage. Finally, and most relevant to employers' day-to-day operations, it calls for changes to the COBRA forms that employers use when an individual experiences a loss of coverage.

### Optional Provisions for Section 125 Plans and Dependent Care Plans

Among the notable optional changes, for plan years ending in 2020 or 2021, employers may lengthen the grace period or increase the carryover limit to allow employees to utilize otherwise unused 125 Plan funds. And for plan years beginning after December 31, 2020, and before January 1, 2022, employers may amend their 125 Plan to increase the limit of the amount that an employee can exclude from their income for dependent care assistance from \$5,000 to \$10,500 and from \$2,500 to \$5,250 for taxpayers who are married filing separately.

### Self-Insured Health Plan Mandates

While sponsors of self-insured health plans have often been able to stay out of

the regulatory fray, recent federal legislation has put the compliance spotlight on these plans. In particular, new mental health parity testing requirements rolled out this spring, and transparency and "no surprises" mandates will take effect in 2022.

### Payroll Considerations

Both Washington and Oregon introduced new payroll considerations for employer withholding in the last year.

### WA Cares

In Washington, the WA Cares long-term care benefit requires employers to start withholding the mandatory employee-side payroll tax January 1, 2022.

WA Cares is a long-term care benefit designed to provide payment for benefits necessary for daily living. The program is funded by an employee-side only payroll tax. Benefits are scheduled to be available starting in 2025 for employees who have met the contribution requirements and who are otherwise eligible.

There is a one-time opt-out available to individuals who do not wish to participate in the program. Individuals wishing to opt out must obtain alternative long-term care insurance and opt out between Oct. 1, 2021 and Dec. 31, 2022.

### Preschool For All

In Oregon, the Multnomah County

Preschool for All Tax took effect on Jan. 1, 2021. This tax is a personal income tax measure that affects individuals earning over \$125,000 individually or \$200,000 jointly who work or live in Multnomah County.

Employer withholding is required starting Jan. 1, 2022. This tax may come as a surprise to the employees to whom it applies, so employers should be prepared to explain the withholding.

### Conclusion

As the Biden administration continues, it is apparent that we will continue to see developments regarding employer sponsored health and welfare plans. Further, although deadlines for plan sponsor action related to some of the changes that have already occurred may have recently seemed far off, they are now approaching.

To learn more about the topics discussed herein and more, register for Barran Liebman's upcoming webinar presented by Iris Tilley: "Preparing for 2022: Your Benefits & Compensation Planning Guide," by emailing [jpeterson@barran.com](mailto:jpeterson@barran.com).

*Gabrielle Hansen and Iris Tilley are attorneys at Barran Liebman LLP, where they represent employers in benefits and ERISA law. Contact them at 503-228-0500, or at [ghansen@barran.com](mailto:ghansen@barran.com) or [itilley@barran.com](mailto:itilley@barran.com).*

*The opinions, beliefs and viewpoints expressed in the preceding commentary are those of the author and do not necessarily reflect the opinions, beliefs and viewpoints of the Daily Journal of Commerce or its editors. Neither the author nor the DJC guarantees the accuracy or completeness of any information published herein.*