

insights

TYPES NOT MAPPED YET July 01, 2020 | TTR not mapped yet | Lori W. Jones

How employers are changing employee benefits to address the COVID-19 pandemic

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"You don't make the timeline, the virus makes the timeline."^[1]

These words from Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Disease and member of the White House Coronavirus Task Force, in a March 25, 2020 interview, highlight the unpredictability of the future course of the COVID-19 pandemic.

An April 30, 2020 report issued by the Center for Infectious Disease Research and Policy at the University of Minnesota outlines three possible scenarios as the pandemic unfolds.^[2] In the first scenario, the spring 2020 wave of the pandemic is followed by smaller waves over a one to two year period, diminishing in 2021. Under the second scenario, the first wave of the pandemic is followed by a larger wave in the fall or winter of 2020 and then smaller waves in 2021, in a sequence similar to the 1917-1918 influenza pandemic. The third scenario is referred to as the "slow burn" scenario, reflects the ongoing transmission and occurrence of COVID-19 for an indefinite period after the first wave without a clear wave pattern.

The uncertainty generated by the pandemic makes it very difficult for employers to develop employee benefit strategies to address the pandemic that take into account both the economic necessities of their business enterprises and the needs of employees. Employers may find it helpful to examine how their counterparts are approaching employee benefit issues related to the pandemic.

From April 23 to April 30, 2020, the International Foundation of Employee Benefit Plans (IFEBC) conducted a survey to assess how the COVID-19 pandemic has impacted employee benefits provided by U.S. employers. In May 2020, the IFEBC released a report, titled "Employee Benefits in a COVID-19 World," to report its findings.^[3] The report reflects responses from 793 U.S. organizations including corporations and nonprofits with single employer plans, multiemployer plans, and public employer plans. Participating employers were asked to indicate plan changes taken, or under consideration, due to the COVID-19 pandemic. The IFEBC states that the survey is intended to allow plan sponsors to "benchmark their actions against their peers, overall and within each sector."^[4]

Defined contribution plans

The survey includes questions regarding the adoption of relief provisions under the Coronavirus Aid, Relief and Economic Security (CARES) Act (signed into law on March 27, 2020) by employers sponsoring defined contribution plans, such as 401(k) plans.

Coronavirus distributions to qualified individuals

The CARES Act allows a plan to permit coronavirus distributions to be made to qualified individuals^[5] on and after January 1, 2020 and before December 31, 2020 in an amount up to \$100,000 without imposition of the 10% early distribution penalty. The provision applies to eligible retirement plans (including 401(k) plans, 403(b) plans, 457(b) plans maintained by governmental entities, and individual retirement accounts (IRAs)). The \$100,000 is an aggregate limit that applies to distributions from all plans for an employee. A recipient of a coronavirus distribution is permitted to make repayment contributions to an eligible retirement plan within three years after such distribution without regard to any annual limitation on contributions. A coronavirus distribution is included in income over a three-year period beginning in the year of the distribution unless the recipient elects earlier taxation, or to the extent the recipient makes a repayment contribution. A coronavirus distribution is not subject to the 20% withholding rate that otherwise applies to distributions that are eligible for rollovers.

Of the survey respondents maintaining defined contribution plans, sixty percent (60%) are permitting coronavirus distributions to qualified individuals. Fifty-seven percent (57%) of such employers are permitting employees to pay back the distributions over the three-year period as permitted under the CARES Act.

Plan loans to qualified individuals

Maximum loan amount increases

The CARES Act permits a plan to temporarily increase the limit on plan loans to qualified individuals to the lesser of (i) \$100,000, or (ii) 100% of the participant's vested account balance. This increase is permitted for loans granted during the 180-day period after the date of enactment, i.e., until September 23, 2020.

Extension of loan repayment date

With respect to plan loans to qualified individuals that are outstanding on or after March 27, 2020, any loan repayment dates scheduled from March 27, 2020 through December 31, 2020 may be delayed for one year. Interest will continue to accrue during the delay period and subsequent loan payments will be adjusted to reflect the increased interest due. The Act provides that the extension of payment dates under the CARES Act will be disregarded in determining compliance with the maximum 5-year loan term under the Internal Revenue Code.

Of the respondents with defined contribution plans, forty-five percent (45%) have temporarily increased the loan amount to the maximum permitted under the CARES Act. More than fifty-seven percent (57%) of the respondents are extending loan repayment dates as permitted under the CARES Act.

Changes in matching and deferral contributions

Of the respondents maintaining 401(k) plans, only nine percent (9%) indicated that they were making changes to matching contributions as a result of the pandemic. However nineteen percent (19%) are considering doing so. Of the respondents reporting changes in employee deferrals under 401(k) plans, eighty-six percent (86%) of respondents indicated that employees were decreasing deferrals with fifty-four percent (54%) indicating that employees were canceling deferrals altogether.

Defined benefit plans

Single employer defined benefit plan funding

The CARES Act permits a delay in the payment of minimum required contributions to a defined benefit plan that an employer would otherwise make in 2020 to January 1, 2021. The delayed payment must include interest from the original due date of the minimum required contribution.

Only thirty-eight percent (38%) of the survey respondents maintain defined benefit plans. Twenty-two percent (22%) have implemented the delayed payment of minimum required contributions and an additional twenty-four percent (24%) are considering doing so.

Other plan design changes

Although not addressed under the CARES Act, the survey indicates that twenty-nine percent (29%) of respondents maintaining defined benefit plans are considering a review of plan design and actuarial assumptions. Twenty-six percent (26%) of such respondents are considering a review of the plan investment policy.

Health care benefits

Furloughed employees

Twenty-nine percent (29%) of respondents have temporarily furloughed employees and an additional fourteen percent (14%) were considering such action in the future. Thirty-nine percent (39%) of respondents with furloughed employees are continuing health coverage for the entire furlough period with cost-sharing as usual between the employer and the employee. Twenty-three percent (23%) are continuing health coverage for the entire period of the furlough with the employer paying the full cost.

Some respondents continue health coverage for a limited period of the furlough. Only seven percent (7%) of respondents that provide health coverage for a limited period of the furlough paid the full cost of such coverage while almost 15% applied the same cost-sharing as active employees.

Employees with reduced hours

Other actions taken by respondents in response to the pandemic include reducing employees' work hours (28%) and layoffs (19%). In the case of employees with reduced hours, seventy percent (70%) of respondents provide health coverage for the entire period as if the employee were fully employed with the usual cost sharing between the employer and the employee. Only nine percent (9%) of respondents continued such coverage and paid the full cost.

Prescription drug benefits

Of the respondents providing prescription drug benefits, thirty-nine percent (39%) have extended the time allowed under prior authorization periods and thirty-one percent (31%) have increased quantity limits for plan participants (e.g., from a 30-day supply to a 90-day supply). About sixteen percent (16%) of respondents have waived prior authorization requirements for prescription drugs.

Telehealth services

Most of the survey respondents offered telehealth benefits prior to the pandemic (83%). An additional thirteen percent (13%) have implemented telehealth services as a result of the pandemic.

Mental health/behavioral health benefits

Few respondents have made changes to eligibility and cost-sharing requirements for mental health/behavioral health benefits. However, seventeen percent (17%) have added services and twenty-one percent (21%) are considering doing so.

Conclusion

As the IFEBP survey indicates, many employer have already taken action with respect to their employee benefit plans to address the impact of the COVID-19 pandemic on their businesses and employees. Many more are considering doing so.

As the pandemic continues, employers who have not yet done so may wish to review and implement some of the above strategies taken by their peers. The key will be to remain nimble with respect to plan design in the face of the changing course of the pandemic.

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[1] <https://www.marketwatch.com/story/you-dont-make-the-timeline-the-virus-makes-the-timeline-says-dr-anthony-fauci-2020-03-25>

[2] https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf

[3] <https://www.ifebp.org/store/Pages/covid-19-survey.aspx>

[4] Id at page 9.

[5] For purposes of plan loans and coronavirus distributions, a qualified person includes a person (i) who is diagnosed with COVID-19 by a CDC-approved test, (ii) whose spouse or dependent is diagnosed with COVID-19 by a CDC-approved test, (iii) who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19 or other factors determined by the Secretary of the Treasury.

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