Sheakley
THE HUMAN RESOURCES PEOPLE

COVID-19
CLIENT UPDATE

January 5, 2021

In an effort to keep you updated during the COVID-19 pandemic, we are providing you with updates on the latest developments. Please do not hesitate to reach out to your Sheakley HR team member should you have additional questions or concerns.

2021 Consolidated Appropriations Act (CAA)

The 2021 Consolidated Appropriations Act (CAA) was passed on Monday, December 21 and provides guidance on the Families First Coronavirus Response Act (FFCRA) as well as many provisions that will affect employer group health plans and other benefits.

Families First Coronavirus Response Act (FFCRA) Updates

While the FFCRA has not been renewed for the 2021 calendar year, the CAA is giving employers the option as to whether they will continue to allow the FFCRA leave through the first quarter of 2021. If an employee has already exhausted their FFCRA (COVID) leave, they do not qualify for additional leave. Employers may allow their employees to utilize any leave that may be available until March 31, 2021. Employers will continue to receive COVID credits for wages paid to employees during this time frame.

The Department of Labor has issued an FAQ on the updated leave provisions. These information can be found by visiting: **https://www.dol.gov/newsroom/releases/whd/whd20201231-1**

Group Health Plans/Other Benefits:

Employers should very soon consider the package's temporary special relief for health and dependent care flexible spending arrangements (FSAs). Many employees haven't been able to use up their FSA accounts during the pandemic, and with many FSA plan years ending this month, some employees have been pressuring their employers to refund unused amounts. Employers have needed Congress or the IRS to provide a compliant way they could mitigate the loss to employees. The new legislation provides that relief. While an employer still can't refund unused amounts, it now has several options to let employees access their unused balances and change their elections in 2021 as needed:

- **For health and dependent care FSAs**, employees can carry over (apparently uncapped) unused 2020 amounts to 2021, or employers can extend an existing FSA's grace period from 2-1/2 months to 12 months. Employers can apply this additional flexibility to 2022 plan years for 2021 unused amounts. The law appears to let an employer adopt either the carryover or grace period approach for any plan year, ***but not both***.
- **For dependent care FSAs**, the law also temporarily increases the age of children whose expenses qualify for reimbursement from 12 years old to 13.
- **For health FSAs**, additional flexibility allows reimbursing medical expenses incurred after participation ends (e.g., post-termination of employment), similar to how the dependent care spend-down provision currently works.

While the law offers this increased flexibility for 2020 and 2021 FSAs, employers don't have to adopt any or all of these new options. Employers that want to implement the changes will need to amend their plans generally by the end of the 2021 plan year.

In addition to allowing the use of 2020 FSA funds in 2021, the law enables employers to give employees greater flexibility to change or make new FSA elections during the 2021 plan year. For example, if an employee made a dependent care FSA election for 2021 but wants to now use 2020 dependent care funds in 2021, the employer can allow that employee to reduce his or her 2021 dependent care election, even absent an IRS-recognized election change in status event. Any such election must be prospective.

Of course, the law leaves a number of unanswered questions. Guidance from IRS would be helpful on these new FSA provisions.

Employers should watch for the president to sign the new law in the coming days. For now, the FSA options are probably the most urgent to address, so employers should:

- Decide which, if any, FSA options to allow, while working closely with FSA vendors and keeping eligibility issues for health savings accounts in mind
- Anticipate employee questions about the new FSA options, and clearly communicate decision points and any FSA changes implemented

Employer input will be key to developing workable rules in 2021 – not just on the FSA changes, but also on a broad array of changes in the bill, which include:

- End surprise medical bills, including those for air ambulances
- Increase transparency for group health plans, including added language on insurance cards, advance explanations of benefits, removal of gag clauses, price comparison tools, up-to-date provider directories and more
- Ensure continuity of care when a provider or a facility leaves a network
- Strengthen mental health and substance use disorder parity requirements
- Require reporting for pharmacy benefits and drug costs
- Extend the employer tax credit for paid sick and family leave to March 31, 2021
- Extend the employer tax credit for paid family and medical leave through 2025
- Extend the exclusion for certain employer payments of student loans through 2025
- Temporarily allow a full deduction for business meals through 2022