WPBC
WESTERN PENSION BENEFITS COUNCIL
San Francisco

Pension & Benefits Quarterly

September 2020

Inside this edition

Qualified Retirement Plans Updates

By Ami Givon | GCA Law Partners LLP

Coronavirus Aid, Relief, and Economic Security Act (CARES) Act Relief and Guidance: The Internal Revenue Service (IRS) has provided additional relief in response to the COVID-19 pandemic and has issued guidance on certain plan-related provisions of the CARES Act.

> Notice 2020-42 provides temporary relief for the period from January 1, 2020, through December 31, 2020, from the requirement that certain participant elections be witnessed in the physical presence of a notary public or plan representative. Witnessing will be deemed satisfied if made remotely via live audio-video technology that otherwise satisfies specified requirements.

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"In anticipation of continued virtual sessions, we revamped our value proposition for members and sponsors so that our chapter comes through this time of challenge stronger and more vibrant than ever."

Karen Mack,
Gallagher

President's Letter - Pg 2

President's Letter

Welcome to the first newsletter for our 2020-2021 program year!

I hope everyone had a safe and healthy summer. Despite the continuing personal and professional challenges with the global pandemic and societal turmoil we've been dealing with, I sincerely hope you have taken time to recharge and spend time with family and friends.

This is the start of my second term as President of the San Francisco Chapter (effective July 1, 2020) and I'm excited to work with our talented Board and committees to deliver value to our membership.

Overall our focus remains the same – to continue our efforts of providing quality programming and networking opportunities to our members. In addition, we are committed to ensuring that our chapter continues to be successful in future years by encouraging attendance, leadership and networking for the next generation of our colleagues.

This chapter has a dedicated Board who have been insightful leaders during the past year and I am excited to partner with them on the upcoming initiatives. The leadership team for 2020-2021 includes **Victoria Fung**, Vice President, **Brad Wall**, Treasurer and **Michon Caton**, Secretary. Our board members include **Bill Berry, Karen Casillas, Ami Givon, Matt Gouaux, Robert Gower, Lori McKenzie, Sandy Purdy** and **Alison Wright**. Our program committee is co-chaired by **Karen Casillas** and **Yana Johnson**, the Brown Bag coordinator is **Sandy Purdy** and **Robert Gower** is our Membership Board Liaison working with the committee leadership and the Newsletter Editor is **Sarah Kanter**.

Looking back over the past year, I am most pleased with our ability to react quickly to our changing world. We provided free online lunch webinars all through the spring and summer and enabled our membership to connect, share ideas on the economy, the CARES and SECURE acts and how employers are dealing with change. In anticipation of continued virtual sessions, we revamped our value proposition for members and sponsors so that our chapter comes through this time of challenge stronger and more vibrant than ever. With the societal turmoil surrounding the death of George Floyd and the BLM movement, the Board spoke out with a strong statement in support of diversity in our industry and there will be more discussion on these important social issues in the coming year. Finally, this was our third year for the Governing Board's partnership with the National Institute of Pension Administrators (NIPA). Their annual in-person program typically held in the spring was cancelled due to COVID-19, and they hosted a virtual event in August called the NIPA Annual Forum & Expo "Amplified" (NAFE Amplified) conference. The conference went well and featured speakers from WP&BC, including the San Francisco Chapter's own **Craig Hoffman**. **Kevin Nolt**, the President of the Governing Board, led the effort on our relationship with the NAFE Amplified conference – thanks Kevin! Next year's conference is scheduled to be held in New Orleans on May 16-19, 2021, so please mark your calendars and consider attending. Finally, pre-COVID-19 we sponsored several interesting "field trips" available only to members such as a guided tour of the US Court of Appeals for the Ninth Circuit.

Looking forward, we want to assure you that during the summer break, the Board has been working to set the stage for a successful year. We are dedicated to continuing our regular program sessions – virtual until in-person is available, focus on membership initiatives and brown bag series. We will also provide an update on the Board's perspective on how we can contribute as a community to help foster more diversity.

Most importantly, we are working to ensure that the organization continues to meet the current and future needs of our marketplace. To that end, the involvement and feedback of members is critical. So please - Get involved! Raise your hand! Give feedback! And Encourage younger members of your organizations to come to sessions, too.

Thank you and here's to a successful 2020-2021 program year!

Karen Mack, FSA, EA, MAAA
Gallagher


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Gallagher - Thought Leadership

Retirement Plan Cybersecurity

Cybersecurity is a major concern in the context of retirement plans as plan participants' financial and personally identifiable information (PII) is maintained and shared across multiple parties.

The United States has no comprehensive national law governing cybersecurity and no uniform framework for measuring the effectiveness of protections. Subsequently, there are no comprehensive federal regulations governing cybersecurity for retirement plans and their service providers. Whether cybersecurity is an ERISA fiduciary responsibility and whether ERISA preempts state cybersecurity laws remain important unanswered questions.

There is significant room to improve the measurement of security within the retirement vendor community. The Society of Professional Asset-Managers and Record Keepers (SPARK) and the ERISA Advisory Council, among others, have made efforts in that direction.

The cybersecurity environment for retirement plans is undergoing significant evolution and this evolution will accelerate. While the precise fiduciary obligations of plan sponsors with respect to plan and participant information are not yet clearly defined, it is clear that multiple efforts are underway to define those obligations and to respond to the increasing need to strengthen protections. Presently, the SEC, the DOL, multiple states and key industry organizations like SPARK and the ERISA Advisory Council are working to regulate cybersecurity and develop increased protections.

Following is an informational article exploring additional details of this issue:
https://www.ajg.com/us/news-and-insights/2019/11/retirement-plan-cybersecurity/


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Qualified Retirement Updates, continued

> In Notice 2020-51, the IRS issued guidance relating to the waiver of 2020 required minimum distributions (RMDs) described in Internal Revenue Code (Code) section 401(a)(9) from defined contribution plans and individual retirement accounts (IRAs). In particular, Notice 2020-51: permits rollovers of waived RMDs and certain related payments, including an extension of the 60-day rollover period for certain distributions to August 31, 2020; answers questions relating to the waiver of 2020 RMDs; and provides a sample plan amendment that would give participants a choice whether to receive waived RMDs and certain related payments. Notice 2020-51 also provides that a distribution made during 2020 to an employee who will attain age 70½ in 2020 that would have been an RMD but for the change in the required beginning date under section 114 of the Setting Every Community Up for Retirement Enhancement (SECURE) Act is not required to be treated as an eligible rollover distribution for purposes of Code sections 401(a)(31), 402(f) and 3405(c). The payor and plan administrator will not be considered as having failed to satisfy the requirements of those sections merely because of that treatment.

> Notice 2020-52 provides that safe harbor 401(k) plans (and 403(b) plans that rely on safe harbor matching contributions to satisfy the actual contribution percentage test) will not lose their status as such merely because an amendment is adopted between March 13, 2020, and August 31, 2020, that reduces or suspends their safe harbor contributions. The supplemental notice for the amendment reducing or suspending safe harbor nonelective contributions (but not the supplemental notice for reducing or suspending safe harbor matching contributions) will not be subject to the usual 30-day notice requirement, so long as it is provided by August 31, 2020, and the amendment is not retroactive. Notice 2020-52 also clarifies that contributions made on behalf of highly compensated employees are not considered safe harbor contributions and thus may be reduced or suspended without regard to the restrictions on amendments to safe harbor contributions.

> In Notice 2020-61, the IRS issued guidance on the special rules relating to the funding of single employer defined benefit plans and related benefit limitations under section 3608 of the CARES Act. Specifically, Notice 2020-61 provided the following forms of relief for single employer defined benefit plans:

- a contribution that would otherwise be required to be made to such a plan during 2020 must be made by January 1, 2021;
- special interest adjustment rules apply to a contribution that is made after the otherwise applicable deadline; and
- an employer may elect to apply the benefit restrictions for underfunded plans under Code section 436 for the 2020 plan year (or a fiscal plan year that contains any part of 2020) using the plan's funded status for the last plan year ending in 2019.

IRS Operational Compliance List (OC List): The OC List identifies changes in qualification requirements that are effective during a calendar year. The IRS has updated the OC List to identify the following as changes that are effective in 2020:

- Final regulations relating to hardship distributions;
- Extension of temporary relief for closed defined benefit pension plans;
- The following changes made by the SECURE Act:
    - o Increase in 10 percent cap for automatic enrollment safe harbor after the first plan year;
    - o Removal of the requirement to provide an annual safe harbor notice for nonelective safe harbor 401(k) plans;

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Qualified Retirement Updates, continued

- o Permitting plan sponsors to adopt a safe harbor 401(k) plan with nonelective contributions any time before the 30th day before the close of the plan year, subject to certain conditions;
- o Rules permitting 401(k) and 403(b) plans to provide certain transfers and distributions of lifetime income investment options in cases in which those options are no longer authorized to be held as investment options under the plan;
- o Rules clarifying that employees of church-controlled organizations may participate in 403(b) retirement income accounts;
- o Rules permitting penalty-free withdrawals from plans upon the birth or adoption of a child;
- o Increase to age 72 for determining the required beginning date for RMDs;
- o Treatment of difficulty of care payments as compensation for contribution limitations;
- o Changes to the nondiscrimination testing requirements for a grandfathered group of employees with respect to a closed defined benefit plan;
- o Modification of RMD rules for designated beneficiaries;

- Reduction of the minimum age for allowable in-service distributions from pension plans, as permitted by the Bipartisan American Miners Act of 2019; and
- Relief for certain major disasters, as permitted by the Taxpayer Certainty and Disaster Tax Relief Act of 2019.

Proposed Rollover Rules for Qualified Plan Loan Offset Amounts: On August 18, 2020, the IRS issued proposed regulations relating to amendments made to Code section 402(c) by section 13613 of the Tax Cuts and Jobs Act (TCJA), which provides an extended rollover period for a qualified plan loan offset (QPLO) amount. A QPLO amount is defined in Code section 402(c)(3)(C)(ii) as a plan loan offset amount that is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of (1) the termination of the plan, or (2) the failure to meet the plan's loan repayment terms because of the employee's severance from employment. The IRS's proposal provides the following:

- Adds new Treasury regulations section 1.402(c)-3 to take into account changes to the rollover rules made by section 13613 of TCJA with respect to QPLO amounts;
- Provides that a distribution of a plan loan offset amount that is an eligible rollover distribution and not a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period set forth in Code section 402(c)(3)(A). There are special rules for the waiver of the 60-day rollover deadline; and
- Provides that a distribution of a plan loan offset amount that is an eligible rollover distribution and a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan through the period ending on the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from the plan. If a taxpayer to whom a QPLO amount is distributed satisfies the conditions in Treasury regulations section 301.9100-2(b), the taxpayer will have an extended period past his or her tax filing due date in which to complete a rollover of the QPLO amount, even if the taxpayer does not request an extension to file his or her income tax return but instead files it by the unextended tax filing due date.

Modified Safe Harbor Explanations for Eligible Rollover Distributions: Notice 2020-62 provides for modified safe harbor explanations that may be used to provide recipients of eligible retirement distributions with

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Qualified Retirement Updates, continued

the information required by Code section 402(f). The modified explanations take into account changes made by the SECURE Act, specifically, the new exception to the 10% additional tax under Code section 72(t)(1) for qualified birth or adoption distributions and the increase to age 72 for RMDs for employees born after June 30, 1949. The notice also (1) clarifies that an explanation is not required to be provided for coronavirus-related distributions permitted by the CARES Act, even though those distributions may be recontributed to an applicable eligible retirement plan, and (2) contains an appendix to assist the implementation of the modified explanations.

Increase in User Fees: In Announcement 2020-14, the IRS described the following changes to user fees for letter rulings and determinations that will take effect on January 4, 2021, and will be reflected in Revenue Procedure 2021-4: For Form 5300 (Application for Determination for Employee Benefit Plan), the fee will increase from $2,500 to $2,700; for Form 5310 (Application for Determination for Terminating Plan), the fee will decrease from $3,500, to $3,000; for Form 5307 (Application for Determination for Adopters of Modified Volume Submitter Plans), the fee will increase from $800 to $1,000; and for a letter ruling request for a five-year automatic extension of the amortization period, the fee will increase from $1,000 to $6,500.

Third Six-Year Cycle Pre-Approved Defined Contribution Plans: In Announcement 2020-7, the IRS stated its expectation that it will issue opinion letters for third six-year remedial amendment cycle for pre-approved defined contribution plans by June 30, 2020 (or as soon as possible thereafter). An employer adopting a newly approved plan will be required to adopt the plan document by July 31, 2022. Starting August 1, 2020, and ending July 31, 2022, the IRS will accept from any employer eligible to submit a determination letter request, an application for an individual determination letter under the third six-year remedial amendment cycle.

Defined Benefit Listing of Required Modifications: On August 7, 2020, for pre-approved defined benefit plan providers, the IRS issued an information package containing samples of plan provisions that have been found to satisfy certain Code requirements, taking into account changes in the plan qualification requirements, regulations, revenue rulings and other guidance in the 2020 Cumulative List of Changes in Plan Qualification Requirements.

Election of Alternative Minimum Funding Standards for Community Newspaper Plans: In Notice 2020-60, the IRS issued guidance regarding the election of alternative minimum funding standards for community newspaper defined benefit pension plans under Code section 430(m), which was added by section 115 of the SECURE Act.

Department of Labor (DOL) Regulatory Actions and Guidance:

Final Safe Harbor Electronic Delivery Rules. On May 27, 2020, the DOL issued final rules on the new, additional safe harbor for the use of electronic media to furnish information to participants and beneficiaries of employee benefit pension plans subject to the Employee Retirement Income Security Act of 1974 (ERISA). The final rules, which took effect on July 27, 2020, are largely the same as the proposed rules issued by the DOL on October 22, 2019.

Information Letter Regarding Investment in Private Equity. In a June 3, 2020 information letter, the DOL expressed its views that the inclusion of private equity investments as a component of a professionally managed asset allocation fund offered as an investment option for participants in a defined contribution plan would not violate ERISA's standards governing fiduciary conduct.

Proposed Regulation Regarding Investment Duties. On June 30, 2020, the DOL issued a proposed amendment to DOL regulations section 2550.404a-1 to confirm that ERISA requires plan fiduciaries to select investments

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Qualified Retirement Updates, continued

and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action. In particular, the proposal addresses the duties of plan fiduciaries when considering the inclusion in a plan's portfolio of investments that incorporate environmental, social and governance factors. The rule would be effective sixty days after the publication of its final version.

Fiduciary Rule Developments. On July 7, 2020, the DOL implemented the 2018 vacatur by the United States Court of Appeals for the Fifth Circuit of the 2016 final regulation defining who is an ERISA investment advice fiduciary and reinstated the regulatory definition of fiduciary that was in place before the 2016 final regulation. Also on that date, the DOL issued a proposed prohibited transaction class exemption that would allow registered investment advisers, broker-dealers, banks, insurance companies, and their employees, agents, and representatives that are investment advice fiduciaries under ERISA or the Code to receive compensation, including as a result of advice to roll over assets from a plan to an IRA, and to engage in principal transactions that would otherwise be ERISA or Code prohibited transactions.

Lifetime Income Illustrations. The DOL on August 18, 2020, published an interim final regulation regarding the information that must be provided on pension benefit statements required by ERISA section 105, as amended by the SECURE Act. The interim final regulation requires, when applicable, plan administrators of ERISA defined contribution plans to express a participant's current account balance both as a single life annuity and as a qualified joint and survivor annuity income stream. The interim final regulation will become effective in August 2021.

Proposed Registration Requirements for Pooled Plan Providers (PPPs). On August 20, 2020, the DOL issued proposed regulations regarding the registration of PPPs who can offer "pooled employer plans" under ERISA sections 3(43) and 3(44) beginning on January 1, 2021. The proposal would also establish a new form – EBSA Form PR (Pooled Plan Provider Registration) – as the required filing format for registrations.

Pension Benefit Guaranty Corporation (PBGC) Final Rule on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets: The PBGC issued a final rule, effective July 1, 2020, amending the regulations on benefits payable in terminated single-employer plans and allocation of assets in single-employer plans to prescribe certain interest assumptions under the benefit payments regulation for plans with valuation dates in July 2020 and interest assumptions under the asset allocation regulation for plans with valuation dates in the third quarter of 2020.

Health and Welfare Regulatory Update

By Brian Patton and Elizabeth Harris
Orrick, Herrington & Sutcliffe LLP

The IRS Issues Notice 2020-46 to Provide Guidance on Employer Leave-Based Donation Programs That Help Victims of the COVID-19 Pandemic

On June 11, 2020, the IRS released guidance for employers and employees who participate in employer leave-based donation programs.

What are Employer Leave-Based Donation Programs?

To provide much needed relief to victims of the COVID-19 pandemic, employers are able to adopt leave-based donation programs, that allow employees to elect to forgo vacation, sick, or personal leave in exchange for cash payments (Employer Leave-Based Donation Payments) that the employer makes to charitable organizations described in Section 170(c) of the Internal Revenue Code of 1986, as amended (Section 170(c) Organizations).

What is the Tax Treatment of Employer Leave-Based Donation Payments?

Employer Leave-Based Donation Payments will not be treated as taxable wages (or compensation, as applicable) to employees if the following two conditions are satisfied:

- the Employer Leave-Based Donation Payments are made to Section 170(c) Organizations for the relief of victims of the COVID-19 pandemic in the affected geographic areas; and
- are paid to Section 170(c) Organizations before January 1, 2021.

The amount of cash payments to which this guidance applies to should not be included in Box 1, 3 (if applicable), or 5 of the Form W-2. Employees that elect to receive Employer Leave-Based Donation Payments may not claim a charitable deduction under Section 170 of the Internal Revenue Code of 1986, as amended (the Code) for the value of their forgone leave. However, an employer may deduct Employer Leave-Based Donation Payments under Section 162 or Section 170 of the Code, provided the employer otherwise satisfies the respective requirements of either Code section.

The IRS and Treasury Department Have Issued Proposed Regulations That Would Expand the Availability of the Section 213 Deduction for Medical Care Expenses

Section 213(a) of the Internal Revenue Code of 1986, as amended (the Code) provides a deduction for expenses paid during the taxable year that are not covered by insurance or otherwise, for the "medical care" (as defined in Section 213(d)(1)(A) of the Code) of the taxpayer (Medical Care), the taxpayer's spouse or the taxpayer's dependent, to the extent such expenses exceed 7.5% of adjusted gross income (AGI) (10% for any taxable year beginning after January 2021). On June 8, 2020, the US Treasury Department and the Internal Revenue Service released proposed regulations that would make expenses for direct primary care (DPC) arrangements amounts paid for Medical Care and thus amounts paid for those arrangements could be deductible medical expenses under Section 213(a) of the Code.

These proposed regulations would also clarify that amounts expended for health care sharing ministry (HCSM) memberships and certain programs and arrangements, like health maintenance organizations and certain government-sponsored health care programs, are amounts paid for medical insurance under Section 213(d)(1)(D) of the Code. Amounts paid for medical insurance under Section 213(d)(1)(D) of the Code may be considered amounts paid for Medical Care, which could thus be deducted under the proposed regulations. (See below for more detail on what expenditures for medical insurance can be considered amounts paid for Medical Care).

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Health and Welfare Updates, continued

What is Considered "Medical Care" under Section 213(d)?

Deductions for amounts paid for Medical Care are strictly limited to expenses paid primarily to heal or prevent a physical or mental defect or illness and for operations or treatment impacting any portion of the body. Therefore, payments for the following health care expenses are considered payments for medical care under Section 213(d)(1)(A) of the Code: hospital services; nursing services; medical, laboratory, surgical, dental and other diagnostic and healing services; obstetrical expenses, expenses of therapy, and X-rays; prescribed drugs or insulin; and artificial teeth or limbs. However, an expense which is merely beneficial for someone's general health, such as an expense for a vacation, is not considered an amount paid for Medical Care.

Expenditures for medical insurance may also be considered amounts paid for Medical Care to the extent these amounts are paid for insurance covering: (1) the diagnosis, cure, mitigation, treatment, or prevention of disease; (2) for the purpose of affecting any structure or function of the body; or (3) for transportation primarily for and essential to medical care.

What is a DPC Arrangement?

Under the proposed regulations a DPC arrangement would be considered a contract among an individual and one or more primary care physicians under which the physician(s) agree to provide Medical Care for a fixed fee within a specified time period without charging a third party. Pursuant to these proposed regulations a "primary care physician" would generally include any physician who primarily specializes in family medicine, internal medicine, geriatric medicine, or pediatric medicine. For the finalized regulations, the IRS and Treasury are considering expanding the definition of a DPC arrangement to include contracts for primary care services between an individual and a nurse practitioner, clinical nurse specialist, or physician assistant and medical arrangements that are similar to but do not fit within the definition of direct primary care (e.g., a dental care contract between a dentist and a patient or a contract for specialty health care services between a physician and a patient).

The Impact of the Proposed Regulations for DPC Arrangements

Pursuant to the proposed regulations, a health care arrangement that satisfies the definition of a DPC arrangement (as set forth in the proposed regulations), would automatically be considered an expense for Medical Care. This would be the case even under circumstances where based purely on the facts of the DPC arrangement, such arrangement would be considered an expense for medical insurance under Section 213(d)(1)(D), which might not otherwise be eligible for a deduction under Section 213(a).

What is a HCSM?

Generally, a membership in a HCSM allows members to share their medical expenses through a ministry and potentially receive payments for their medical expenses from other members. Under these proposed regulations, an organization would be considered a HCSM under Section 213 of the Code if it satisfies the following five conditions:

1) The organization is described in Section 501(c)(3) of the Code and is exempt from paying taxes under Section 501(a) of the Code.
2) The organization's members share a common set of religious or ethical beliefs and share their medical expenses among fellow members in obedience to those beliefs irrespective of the state that the member works or lives in.

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Health and Welfare Updates, continued

3) The organization's members do not lose their membership after they develop an illness or symptom.
4) Since December 31, 1999, the organization (or a predecessor of which) has been in existence at all times and medical expenses of its members have been continuously shared without any intermissions.
5) The organization conducts an annual audit performed by an independent certified public accounting firm in compliance with generally accepted account principles and which the general public can access upon request.

The Impact of the Proposed Regulations for HCSMs

Membership payments required to belong in an HCSM would not otherwise be considered a payment for Medical Care because HCSMs do not themselves provide any medical treatment or services that are considered Medical Care. However, the proposed regulations would now classify membership payments to an HCSM that shares medical expenses (as defined under the Code), as payments for medical insurance under the Code and thus such payments could be considered amounts paid for Medical Care and be deductible.

The Department of Labor Provides FFCRA Compliance Guidance for Employers that have Service Contracts with the Federal Government Covered by the Service Contracts Act or the Davis-Bacon Act.

On August 3, 2020, the U.S. Department of Labor (DOL) released the Families First Coronavirus Response Act (FFCRA) compliance guidance in a question and answer format for employers that have service contracts with the federal government covered by the McNamara-O'Hara Service Contract Act (SCA) or federal construction contracts covered by the Davis-Bacon Act (collectively, Federal Contractors). Generally, it was understood that Federal Contractors that have service contracts covered by either the SCA (in excess of $2,500) or the Davis-Bacon Act (in excess of $2,000) must compensate their employees working under such contracts at wage and fringe benefit rates determined by the DOL to be the local prevailing rates in that locality for the type of work being performed. The DOL guidance now clarifies that Federal Contractors will generally not have to pay their employees the fringe benefit rates under the SCA or Davis-Bacon Act, when their employees take paid sick leave or expanded family medical leave under the FFCRA.

In short if an employer covered by the FFCRA (generally those employers with fewer than 500 employees) has an employee taking paid sick leave under the FFCRA for reasons related to COVID-19, then such employer will be required to pay the employee at a rate which is the greater of the employee's regular rate of pay, the federal minimum wage or the applicable state or local minimum wage. Similarly, employees taking expanded family and medical leave under the FFCRA must be paid at a rate no less than two-thirds of the employee's regular rate of pay.

Neither the SCA nor the Davis Act fringe benefit rate is included in an employee's regular rate of pay. Therefore, to the extent Federal Contractors have been paying their employees' cash in lieu of fringe benefits, they will not be required pay the fringe benefit rate to any employee while they take leave under the FFCRA. However, to the extent a Federal Contractor has been providing health insurance to an employee, they are required to maintain the employee's health insurance while the employee takes leave under the FFCRA as though the employee was working.

Moreover, a Federal Contractor is generally required to provide employees with health and welfare payments for all hours paid for services performed under a contract covered by the SCA, including paid vacation, sick leave and holiday hours, for up to a maximum of 40 hours per week and 2,080 hours per year.

With respect to contracts covered by either the SCA or the Davis Act, if a Federal Contractor's employee is taking expanded family and medical leave under the FFCRA at the same time they take paid sick leave under

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Health and Welfare Updates, continued

Executive Order 13706, then the Federal Contractor must pay any fringe benefits, or monetary equivalent, mandated by the Executive Order, for hours paid pursuant to the Executive Order.

IRS Notice 2020-29 Provides Increased Flexibility for Employees Participating in Section 125 Cafeteria Plans During 2020

On May 12, 2020, the Internal Revenue Service released Notice 2020-29, which provides for increased flexibility for mid-year elections under a Section 125 cafeteria plan during 2020 related to employer sponsored health coverage, health Flexible Spending Arrangements (health FSAs), and dependent care assistance programs. The notice also provides added flexibility for grace periods to apply unused amounts in health FSAs to medical care expenses or unused amounts in dependent care assistance programs, to dependent care expenses incurred through December 31, 2020.

Increased Flexibility for Mid-Year Elections under a Section 125 Cafeteria Plan

The notice provides that for mid-year elections made during 2020, a Section 125 cafeteria plan may allow employees who are eligible to make salary reduction contributions under the plan to make the following changes with respect to employer-sponsored health coverage, health FSAs or dependent care assistance programs:

- **Employer-Sponsored Health Coverage:** Make a new election to obtain employer-sponsored health coverage, if the employee initially declined to elect employer-sponsored health coverage; revoke an existing election for employer-sponsored health coverage and elect to enroll in different health care coverage sponsored by the same employer on a prospective basis; or revoke an existing election for employer-sponsored health coverage on a prospective basis, on the condition that the employee must attest in writing that the employee is enrolled, or immediately will enroll, in other health coverage that is not sponsored by such employer.
- **Health FSAs:** An employee is allowed on a prospective basis to either revoke an election, make a new election, or decrease or increase an existing election for a health FSA.
- **Dependent Care Assistance Programs:** An employee is permitted on a prospective basis to either revoke an election, make a new election, or decrease or increase an existing election for a dependent care assistance program.

Extended Periods to Apply Unused Amounts Remaining in a Health FSA or Dependent Care Assistance Program

This notice provides employers with the ability to amend any of their Section 125 cafeteria plans to allow employees to apply unused amounts remaining in a health FSA or a dependent care assistance program at the end of a grace period ending in 2020 or a plan year ending in 2020 to pay or reimburse expenses incurred for the same qualified benefit until the end of 2020. For instance, if an employer sponsors a Section 125 cafeteria plan with a health FSA that has a calendar year plan year and offers a grace period ending on March 15th immediately following the end of each plan year, an employer is permitted to change their plan to allow employees to apply unused amounts that remain in their health FSAs as of March 15, 2020, to reimburse medical care expenses incurred through the end of 2020. The Notice clarifies that unused health FSA amounts may only be used for medical care expenses, and unused dependent care assistance program amounts may only be used for dependent care expenses.

MEMBER PROFILE

Member Profile: Wale Kajopaiye

Company: Savant Investment Group

Title: Director of Retirement Plan Services

Education: University of California, Riverside

Years in the industry: 10

Please tell us about your first "real" job: After graduating in 2009, I worked for Waddell & Reed, a mutual fund company based out of Kansas. I worked in their financial advisory division from one of their satellite offices in Concord, California. Not sure what I was thinking taking a financial advisory job in the middle of a recession, but I attribute my time there for helping shape my skillset today. I learned being a good advisor isn't just about knowing the capital markets but also about understanding people and how they make decisions.

BUSINESS BACKGROUND

Nature of your work: Retirement Plan Consultant/Advisor

How you got into the field: I worked on a team that serviced the retirement plan for the entire city and county of San Francisco back in 2011. I loved the work there and I knew that I wanted to be in this space on a more permanent basis.

What you like about the field: The amount of people who are not prepared for retirement based on current data is mind boggling. The decisions we help plan sponsors make are for the direct benefit of their employees. I enjoy that we can hopefully be a part of the solution that will change the narrative. It feels good that you can have a positive long-term impact on someone's financial future by helping their employer make better decisions about their plan. You can have a bigger impact on retirement outcomes working at the employer level.

PERSONAL

Ways you spend free time: Watching sports, traveling, playing basketball, lifting, reading.

Guiding philosophy: Never over promise and under deliver.

Favorite charities: March of Dimes

Last books read: "The Way of The Superior Man" by David Deida

Restaurant recommendations: Monty's Good Burger

What will you do when you retire: Visit every football, basketball and baseball stadium in the US, test drive exotic cars, live a few weeks in different foreign countries.

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CHAPTER INFO AND BOARD OF DIRECTORS

EMPLOYMENT OPPORTUNITIES

If you wish to post an employment opportunity on our website, please read the following note: Listings must comply with applicable regulations for employment advertising. Online job postings are free to WP&BC San Francisco Chapter members. Call Terri Fulton at the Chapter office for more information, (415) 730-5479. Email all listings to info@wpbcsf.com

The Newsletter welcomes contributions from its members. If you would like to submit a topical benefits-related article for an upcoming issue, please contact the chapter at info@wpbcsf.org.

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