



UBA
Benefits & Employment Briefing

A quarterly newsletter
about benefits and
employment trends



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HIPAA Application to Coronavirus Concerns

As employers worry about the impact of COVID-19 on their workforce, it is important to be aware of the limitations on actions based on current laws protecting privacy of healthcare information of employees. While the Americans with Disabilities Act, Family and Medical Leave Act and a host of state laws have privacy requirements that must be satisfied to protect privacy and security of employee health information, the most significant law dealing with the privacy of individually identifiable health information is the Health Insurance Portability and Accountability Act (HIPAA).

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Applicable Large Employers (ALEs) Beware: IRS Says There is No Statute of Limitations for

IRS's Emphasizes Need for Executed Plan Documents

The IRS recently issued Chief Counsel Memorandum 2019-002 ("CCM") reaffirming its position that an employer-sponsored retirement plan is only considered adopted if the plan sponsor can provide a validly executed plan document. The IRS went on to state that the failure to produce an executed plan document can lead to the disqualification of the plan tax purposes. For many reasons, including natural disasters, personnel issues, fire or, as in this case, a flood, many employers cannot find an executed document. Although the CCM deals with retirement plans, the same principles apply for cafeteria plans qualifying under Internal Revenue Code (Code) Section 125 and nonqualified plan benefits relying on Code Section 409A, for example, to confer favorable tax treatment of such benefits to employees and the employer.

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Assessing Employer Mandate Penalties

On February 21, 2020, the IRS Office of Chief Counsel released a concerning memorandum addressing the statute of limitations for employer mandate penalties (See, IRS Chief Counsel Memorandum 20200801F (Dec. 26, 2019)). In the Chief Counsel Memorandum (CCM), the Internal Revenue Service (IRS) concludes that there is no statute of limitations for assessing employer mandate penalties under Internal Revenue Code (Code) Section 4980H.

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Benefits Considerations for Employers: COVID-19

As we grapple with an increasing number of reported Coronavirus – COVID19 cases here in the U.S., plan sponsors should anticipate, and be prepared to discuss, related benefit plan impacts and opportunities. While there are numerous impacts and considerations of having an employee test positive for COVID-1, this Q&A specifically targets opportunities and challenges for employers relating to their group health plans.*

** This information in this Q&A is current as of March 14, 2020.*

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This information is general and is provided for educational purposes only. It reflects UBA's understanding of the available guidance as of the date shown and is subject to change. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.



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