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GOT AUTO-ENROLLMENT? A CASE STUDY IN IMPROVING PLAN PARTICIPATION

Low 401(k) participation rates are a chronic problem for plan sponsors. In many cases, this low participation can result in a failure of the plan's nondiscrimination tests. Often the test results end up creating refunds to highly compensated employees. For plans that struggle from year to year to improve participation, one feature that can help immensely is the automatic enrollment option.

Automatic enrollment is a plan feature in which an employee who meets the plan's eligibility criteria is automatically enrolled into the plan at a default salary deferral percentage and into a default investment option. Of course the employee can always change their deferral or investments, even if they opt out of the plan altogether. However, automatic enrollment helps participants overcome the two biggest obstacles to high participation rates – inertia and indecision. Since participants have to actively opt out of a plan in order to not participate, inertia and indecision actually help to improve participation rates!

Consider this example of a company whose plan participation had languished below 50%. The company was a regional financial organization that had multiple branch offices, making it difficult to meet effectively with employees to encourage plan participation. As a result, the plan decided to add automatic enrollment. The plan's salary deferral default was set at 2% and target date portfolios were chosen based on the participant's date of birth as the default investment option. The result of this change was an increase in participation to 85%! This change is expected to have a positive impact on the year-end discrimination test results, while becoming a helpful start toward building a retirement account for over 250 new plan participants.

If you haven't considered using the automatic enrollment option with your plan, discuss with your retirement advisor whether or not it would be an appropriate feature for you to add. Remember, increased participation rates benefit everyone!

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DEPENDENT ELIGIBILITY AUDIT

Chances are you would be surprised to know how many ineligible dependents you may be covering. In fact, 5% to 15% of the dependents covered by most employers' corporate health plans are ineligible. Beyond the obvious excess claims exposure and higher health care costs this creates, ineligible dependents can also present additional issues like Sarbanes-Oxley risk to public companies and exposure to the plan fiduciary under ERISA and the Exclusive Benefit Rule.

A dependent audit is a solution to help you identify ineligible dependents. The dependent audit is a comprehensive investigation confirming whether the employees and dependents currently listed as eligible on an employer's plan should indeed be covered. Audits review the plan's eligibility criteria and cross reference to participants that no longer meet those requirements. An ineligible person may be defined as an employee, spouse, ex-spouse, child, grandchild or significant other.

There are numerous avenues to pursue for this service. It can be as simple as a cost-neutral Amnesty Audit or as complex as a fee-for-service comprehensive Documentation Audit. It can also be done stand-alone or bundled and subsidized by a Voluntary Benefits communication.

Dependent eligibility audits typically include:

- » **Amnesty Period:** In conjunction with the employer, an amnesty period is specified during which employees can volunteer information regarding ineligible dependents without consequence.
- » **Audit Communications:** Employees are notified of important information before the audit, including documentation requirements and amnesty period details. Follow up communication is distributed in the wake of the audit as well.
- » **One-on-One Employee Enrollment/Audits:** Audits can be bundled with Voluntary Benefits and accomplished during one-on-one interviews with employees. In this case the cost is typically partially or fully subsidized. In this scenario, employees are often required to verify their dependent data (e.g. documentation, affidavit, etc.) with the understanding that they are responsible for its accuracy.
- » **Data Return/Reporting:** Following the audit, employers are provided detailed reports and revised dependent data files.

FAMILY MEDICAL LEAVE ACT EXPANDED

On January 28, 2008, President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008 (NDAA). Section 585 of the NDAA adds the following two new qualifying events to the Family and Medical Leave Act (FMLA):

- » Servicemember Caregiver Leave
- » Servicemember Family Leave

The new Servicemember Caregiver Leave is provided to allow qualified employees to care for a recovering servicemember, defined as a member of the Armed Forces who incurred a serious injury or illness in the line of duty that may render them unable to perform the duties of their office, grade, rank or rating. The servicemember must also be undergoing medical treatment, recuperating, in therapy, or otherwise in outpatient status or on the Department of Defense Temporary Disability Retired List.

Qualifying employees who are the spouse, son, daughter, parent, or next of kin of the injured servicemember are allowed up to 26 weeks of leave during a one time 12-month period. This leave may be continuous, intermittent, or on a reduced schedule. This first category of leave became effective January 28, 2008.

Servicemember Family Leave allows the spouse, son, daughter or parent of a servicemember up to 12 weeks of leave during any 12-month period for any "qualifying exigency" or urgent

need arising out of the servicemember's duty, or call to duty, in the Armed Forces. Next of kin are not considered eligible for this category of leave.

This second category of leave will not technically become effective until regulations are issued so specific details, including a definition of "qualified exigency," are not available yet. However, the Department of Labor (DOL) has encouraged employers to provide leave under the new provisions to qualifying employees requesting such leave prior to the issue of final regulations.

Both of these new categories of leave continue to be unpaid leave, and the employer may still require the substitution of paid leave consistent with the original FMLA regulations. Furthermore, any time taken under these new categories is counted toward the employee's total allotment of FMLA leave.

It is recommended that employers:

- » prepare an addendum to their current FMLA policy and distribute to employees
- » post DOL revised poster available at <http://www.dol.gov/esa/whd/fmla/NDAAmndmnts.pdf>

For more information, please visit the DOL's website at http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm

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