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How Attorneys Are Crafting Benefits For Millennials

By **Christopher Crosby**

Law360 (April 6, 2018, 7:10 PM EDT) -- The importance of millennials in the workforce is reshaping the benefits landscape and has companies scrambling to come up with novel ways to accommodate a mobile generation that craves a healthy work-life balance.

But attorneys caution that companies getting creative with their benefits package need to know that not every idea pans out, and must beware of legal pitfalls and the shifting sands of the tax code.

To get a sense of what this young generation wants, Law360 talked to some of the leading benefits attorneys to understand what creative benefits are being put on the table, and what challenges these ideas face.

College

Millennials, those Americans who came of age after 9/11 and are now in their early 20s to mid-30s, have debt. A lot of it. Graduates in the college class of 2016 owe on average $37,172 in student loans, which translates into something like a monthly payment of $350, according to the Federal Reserve. With studies indicating the average entry-level job for a college grad pays around $50,000, your typical millennial won't pay off their loans until age 34.

So millennials are turning to their employers for help, clamoring for tuition as they finish school and even debt help.

"Student loan relief is super important to millennials," said Morgan Lewis & Bockius LLP partner Jon Zimmerman.

But employers' hands, and wallets, are tied on what they can offer. Employers who help pay for classes their employees are taking can write off $5,250 apiece under Section 127 of the tax code, Zimmerman said.

That $5,250 also isn't taxed as income for employees. The money can fund expenses like tuition, fees, books, supplies and equipment.

Existing student loans — the bane of many employees' existence — aren't eligible for deduction, Zimmerman said. But still, some law firms are offering their young associates refinanced loans at a lower interest rate as a bonus, said Jeanne E. Floyd, a shareholder in Ogletree Deakin Nash Smoak & Stewart PC's Richmond, Virginia, office.

But for many clients the line isn't clear between rolling out enough benefits that respond to employees' needs and overdoing it. "A lot of clients don't want to be the one to push the envelope," Floyd said. "There's always a cost-benefit analysis."

That involves a robust discussion between a company's human resources department, its employees and the brokers actually offering the benefit plans, she said.

Pet Insurance

People love their pets, but millennials are picking pooches over partners at greater rates than their predecessors. They're more likely to spend money for their beloveds, and some employers understand that, at least for the next few years, this is their child. Dogs being dogs, accidents happen, whether chasing skunks or biting down on the wrong chew toy.

Enter pet insurance.

"Big dogs tend to swallow dumb things, and you can spend a fortune fixing that," Zimmerman said.

"Companies are doing a lot of things to be desirable to younger workers," he said. "I've visited clients that let their employees bring their pets to work. I think companies are responding to the marketplace, which values pets."

But come tax time, all those medical bills for your pet aren't deductible because the IRS says your cat, dog and guinea fowl aren't dependents, said Mary B. "Handy" Hevener of Morgan Lewis.

While pet owners can take a few low-value deductions, they require hard evidence showing why the costs shouldn't be considered income, Hevener said.

And pet insurance programs — plans covering everything from routine vet trips to disgorging squeaky toys — that are crowd favorites may still present hurdles for employers, Floyd said. Whenever offering cutting edge or fringe benefits, employers have to pick between rolling out the plan under the Employee Retirement Income Security Act — which creates more administrative and compliance work for HR — and squeezing the plan in under ERISA's safe harbor rules. Programs designed under safe harbor rules are voluntary and can't be endorsed by an employer, creating the chance employees might not hear about it.

On the other hand, an employee with a dispute under an ERISA program has to exhaust their internal, administrative options before filing a federal claim.

"I think it's pretty generally accepted that a federal court hearing an ERISA claim is a welcome environment to the employer," Floyd said.

Working From Home

A custom, flexible work schedule has become ubiquitous at many companies and a mobile, tech-friendly generation more and more expects employers to understand that they want to work from home.

While that's more a question of culture than benefits, employers are pushing the IRS for ways to deduct some expenses those employees accrue on the job even if they're not at the office, Hevener said.

"Fundamentally, if any employer wants to provide benefits, they have to look at whether it's fringe or not," Hevener says.

Working from home? Your employer can't pay for your meals, rent or other things you'd normally buy and then deduct it. While wiggle room exists for truckers — where an employer paid for the truck and pays an hourly rate for driving — those are just normal expenses people would incur if they were in the office, and not on the couch, Hevener says.

Health and Wellness

Want to keep millennials? Start with tried-and-true health care plans.

"Health care is king," said Anne LaWer, a shareholder in Littler Mendelson PC's San Jose, California, office.

"For employers in the [Silicon] Valley that's standard. A no-brainer. Get the best health care plan," LaWer says.

But health care in 2018 also means wellness, which for the California companies LaWer represents means club memberships, yoga and weight-loss coaches. In California it also means giving new mothers basic needs like a place to pump breast milk or bond with their new babies.

Millennials are having fewer children and having them later in life, and one incentive LaWer has seen big California companies — think tech giants —include are fertility programs like egg-freezing.

More than a legal challenge, LaWer says her job is to help companies figure out not only if they're too expensive but also whether employees really want the benefits.

"Knowing the employee population, and then finding the right programs so you're balancing financial concerns with whether something is the right fit, is something employers struggle with across the board," she says. "Everyone signs up for health insurance, but if you've got other programs, the question is, do they even know about it?"

Knowing what can be written off as tax is another crucial step. Health care, retirement, commuter and parking expenses? Check. Bike plans? Yes — but individuals can no longer write them off.

"I think it's always good for an employer to see what their employees needs and desires are," says Ogletree attorney Floyd. "Employees change, and Generation X will be different than millennials."

--Editing by Brian Baresch and Kelly Duncan.
