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Part-Timers and Locations and Turnover — Oh My!

An Overview of Employee Benefits Issues for Retail Organizations

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“Full-Time Employee” Definition for the Affordable Care Act

- Any employee who is employed for an average of 30+ hours per week or 130+ hours per calendar month
 - Different service crediting methods than for retirement plans
- Used to determine whether the employer may be subject to penalties
- Recent guidance provides safe harbors for identifying:
 - Variable-hour employees
 - Seasonal employees

Part-Time Employee Issues in 401(k) Plans

- Cannot exclude all part-time employees from 401(k) plan as a classification
- Employees who work at least 1,000 hours per year must be considered eligible
 - For example, a worker who is scheduled to work 20 hours per week would work 1,040 hours over year
 - To exclude part-time employees, employer must count hours of service
 - But, covering all part-time employees may lead to higher administrative costs and nondiscrimination issues

Increasing Plan Participation Rates

- Automatic enrollment
 - Automatic Contribution Arrangement (ACA)
 - Eligible Automatic Contribution Arrangement (EACA)
 - Qualified Automatic Contribution Arrangement (QACA)
- Notice requirements
 - Initial
 - Annual
- Automatic increase
- Other safe harbor plan designs

Nondiscrimination Testing for Dependent Care Spending Accounts

- Eligibility test
 - Are enough non–highly compensated employees (non-HCEs) eligible to benefit from the plan?
- Contributions and benefits test
 - The contributions or benefits provided must not discriminate in favor of HCEs
- Principal shareholders and owners test
 - Not more than 25% of the amounts paid by the plan may be provided for shareholders or owners who own more than 5% of the employer
- 55% utilization test
 - The average benefits provided to non-HCEs must be at least 55% of the average benefits provided to HCEs

State and Local Welfare Benefit Requirements

- Topics including medical coverage, sick leave, and paid time off
 - Example: San Francisco's Health Care Security Ordinance
- State laws are pre-empted by ERISA to the extent that they relate to employer-sponsored plans

Suspending 401(k) Loan Repayments

- Plans **may** permit suspension of loan repayments during a bona fide leave of absence (LOA)
 - Different rules for military LOAs and other LOAs
 - For a nonmilitary LOA, the employee must be
 - *without pay from the employer or*
 - *at a rate of pay from the employer (after applicable employment tax withholdings) that is less than the amount of the installment payments*
 - Duration of Suspension
 - *For a nonmilitary LOA, suspension may be up to one year*
 - *Suspension following a military LOA may be as long as the military LOA*

Paying Plan Expenses

- ERISA permits reasonable and necessary expenses to be charged against plan assets
- Expenses incurred by participants can be charged against individual plan accounts
 - On a pro rata basis or another reasonable basis
 - Can eat away at small account balances
- ERISA account
 - Funded by fees from investment fund managers
- Decision to pay expenses out of plan assets is a fiduciary function

Issues with Local Administration

- Incorrect data entry
 - Hire dates
 - LOA data (e.g., dates and pay)
 - Termination dates
- Delay in communication
- May lead to both retirement plan and welfare plan complications

Nonresident Alien Participation in 401(k) Plans

- Many plans will exclude “non-resident aliens with no US source income” from participation
- Taxation issues may arise when
 - Nonresident aliens employed in the United States participate in 401(k) plans
 - Resident aliens participate in 401(k) plans and later become nonresident aliens
- “Resident alien” defined
 - A foreign individual with a green card; or
 - An individual who meets the “substantial presence” test
- Resident alien taxation
 - Distributions to resident aliens from 401(k) plans are taxed the same as any U.S. citizen’s

Questions?

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