Employee Benefits Report

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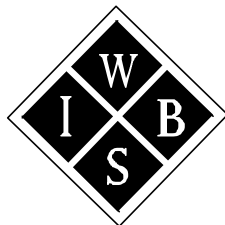

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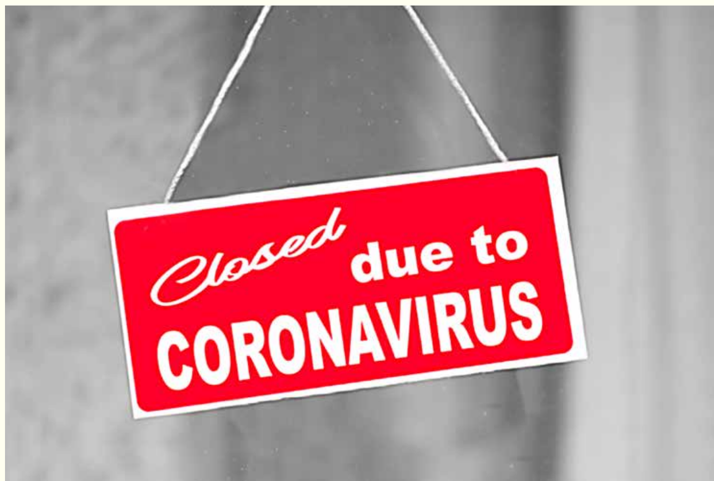
Administration/Furloughs August 2020 Volume 18 • Number 8

Short on Funds? When Furloughs Make Sense

Furloughs — mandatory, temporary suspensions from work without pay — have allowed many employers to hold on to their businesses during the coronavirus pandemic.

If you were lucky enough to avoid having to furlough your employees, congratulations! But should you find yourself needing to furlough employees in the future, it's important to understand when furloughs are the optimum choice over other options and how to implement a furlough that's in compliance with the law.



When Furloughs Make Sense

If you lack the resources to pay your employees because of

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2021 HSA and High Deductible Limits and Maximums

The Internal Revenue Service (IRS) released the 2021 contribution limits for Health Savings Accounts (HSAs) and set the minimum deductible and out-of-pocket maximums allowed for a plan to qualify as a high deductible health plan.

The 2021 HSA contribution limits, adjusted for inflation, are:

- **$3,600 for individual coverage**
- **$7,200 for family coverage**

This is $50 higher for individual coverage and $100 higher for family coverage than the HSA limits for this year. There is also a catch-up contribution limit (for

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a business slowdown or an economic downturn, you may want to furlough them; that is, place them on leave without pay.

Furloughs are ordinarily for a certain number of unpaid days or hours. For example, nonexempt employees might be paid to work only 32 hours instead of their normal 40 hours each week. Or employees might be furloughed until a certain event has passed, such as a pandemic. Other options would be to rotate workers or furlough only those workers in non-essential functions

How a Furlough Differs from a Layoff

The biggest difference between a furlough and a layoff is that a furlough is intended to be temporary, but a layoff is permanent. A layoff allows a company to cut expenditures quickly and save salary and benefit costs. However, a layoff can be a more costly option if an employer intends or later discovers the need to hire staff again since recruiting and training costs must be incurred.

Compliance Rules

If you decide that furloughing your employees is the best option for your business, there are certain rules you must follow:

- **Employees must perform no work:** It is not legal for you to require a furloughed employee to do any work at all. That includes making phone calls or answering mail. If a salaried employee does any work at all you must pay them the equivalent of their salary for the entire day.
- **You must allow employees to seek employment:** Although furloughed employees stay on the organization's books during the furlough, they may look for a new job during that time. One of the downsides to a furlough is that you could lose some of your top talent.
- **Furloughed employees can take unemployment benefits for the time they aren't paid:** However, if you pay them back pay for their time away from work, they will probably have to pay back any unemployment benefits they collected. Whether they can collect unemployment at all depends on each state's rules for unemployment payments. Some states require unemployment applicants to show that they are actively searching for a job. This type of requirement disqualifies a furloughed employee.
- **Companies of a certain size must give advanced notice:** The Worker Adjustment and Retraining Notification (WARN) Act requires companies that employ more than 100 full-time workers (or part-time workers who work more than 4,000 hours a week in aggregate) to provide 60 days written notice before a layoff, plant closure or furlough that would affect 50 or more employees and one-third of the worksite's total workforce at a single site or 500 or more employees at a single site. This would apply when there is a layoff or discharge of more than 6 months, or a 50 percent reduction in hours in each of the 6 precediing months. The Act makes exceptions for faltering companies, unforeseen business circumstances and natural disasters. In those cases, the Act requires as much notice to the employees as possible.
- **Exempt employees might become nonexempt:** If you decide to reduce your salaried workers' pay, keep in mind doing so might trigger the loss of exempt status, which could make those employees eligible for overtime pay.

HSA-eligible individuals age 55 or older) and it remains at $1,000 for 2021.

An HSA is an account that helps employees who have high deductible health plans pay for qualified medical expenses, such as doctor visits, prescriptions, chiropractic care and premiums for long-term-care insurance. Contributions to the accounts are made by employees on a pre-tax basis. The money can accumulate year after year tax free and is available for withdrawal tax free to pay for a variety of medical expenses. Employees can take the account with them if they change jobs or leave the workforce.

The 2021 minimum deductible for individual coverage will remain the same at $1,400. The 2021 minimum deductible for family coverage will remain the same at $2,800.

The 2021 maximum out-of-pocket limit for individual coverage will be $7,000. The 2021 maximum out-of-pocket limit for family coverage will be $14,000.

The Good News About Retirement Savings in Light of the Stock Market Downtown

Your employees have worked hard to save for retirement, but did the coronavirus pandemic wipe out their life savings?

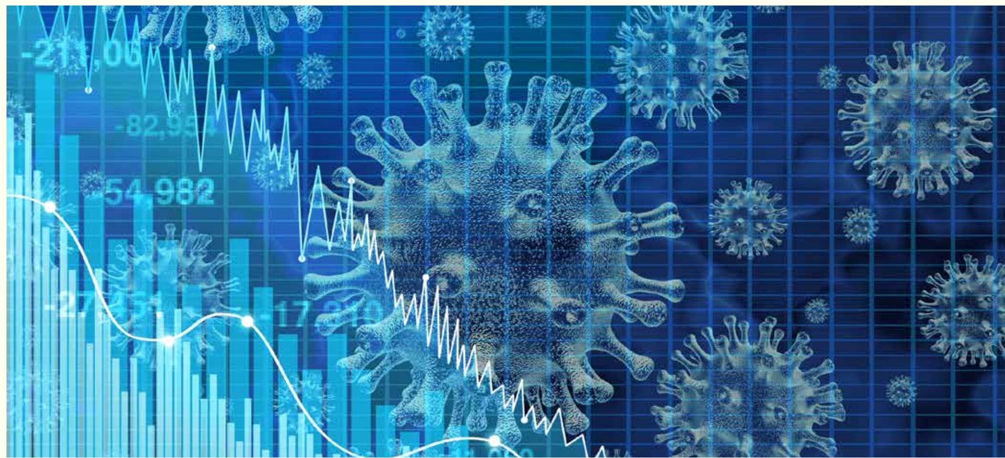
The answer is no — if you're talking about long-term investments, such as retirement savings.

The trouble with investments began when the S&P 500 index fell by 30 percent during the early days of the coronavirus pandemic as the mandatory business shutdowns occurred. The market is starting to rebound but is not completely recovered.

Here are a few of the reasons retirement account experts are optimistic about the future of retirement savings:

Diversified Portfolio

The Investment Company Institute, a global association of regulated funds, reports that savings in employer-sponsored retirement plans historically don't dip as much as the general market. One of the reasons is that retirement plans are usually comprised of a well-diversified, balanced mix featuring stocks, bonds, real estate and other investment classes where risk is spread among a variety of different investments. For instance, if the portfolio has real estate and stocks, the real estate investments might be performing well even though stocks might go down.



Another reason for optimism is that employees who have their contributions automatically taken from their paychecks usually don't disable that feature. That means they are continuing to invest when stock prices are lower. A Bankrate survey indicates that about 49 percent of Americans, both working and unemployed, are still contributing the same amount to their 401(k) plans now as they did before the pandemic hit.

Still Ahead of the Curve

Even with the downturn in the stock market, historically when the market has experienced difficulties it's later rallied back. The S&P fell by 31 percent from the end of 1999 to the low point in October 2002. In comparison, 401(k) plan balances dipped by 8 percent before recovering completely and even making some gains.

In contrast, the S&P 500 gained 31.5 percent in 2019. That means that anyone who significantly invested in stocks since the beginning of 2019 is probably ahead on their investments. For instance, if you invested

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$10,000 in the Vanguard Balanced Index Fund on April 30, 2010 (60 percent stocks and 40 percent bonds), your savings would have doubled in 10 years, even with the 2020 downturn.

Social Security

Most middle-income workers and retirees who have less than $1 million in savings are depending on Social Security to provide anywhere from two-thirds to as much as 90 percent of their retirement income.

Fortunately, Social Security benefits don't go down in value when the stock market does. Social Security payments are backed by the U.S. government, and Social Security payments are included in what federal budget policymakers consider to be mandatory government spending. So Social Security income — which represents a large part of many employees' total retirement income — is protected.

There is, however, concern about the long-term solvency of Social Security. With about $2.9 trillion in its trust funds, Social Security is expected to be able to make full benefit payments until 2034. After that, the trust fund will be mostly depleted and, unless changes are made, payouts will depend entirely on revenue the program collects from payroll taxes and other sources, which will only be enough to pay 75 to 80 percent of benefits.

Next Steps

Regardless of what happens, it makes sense for employees to continue saving and investing for retirement. Experts warn individuals against making hardship withdrawals from retirement savings unless they absolutely need to avoid bankruptcy or eviction. ■

IRS Health Plan Changes for 2020

Those changes include making it easier to get health care and allowing employees to make mid-year changes to their FSAs if their employers allow it.

The threat of COVID-19 has made people even more aware of how important it is to have good health care coverage. As a result, the Internal Revenue Service (IRS) issued several rules making it easier for individuals to get health care this year. However, implementation of the majority of the rules depends on getting buy-in from employers.

The rules affect 2020 employer-provided health insurance, Flexible Spending Arrangements (FSA) and High-Deductible Health Plans (HDHP).

Employer-sponsored Health Insurance

Some employees realize the health coverage they signed up for no longer meets their medical needs, while others who declined coverage wish they hadn't. Usually, the only time employees can sign up for employer-sponsored health insurance is during the plan's renewal period or when they have a qualifying "life event" such as marriage or the birth of a child.

For this year only, IRS Notice 2020-29 allows employers to modify their health benefit plans so employees can make certain mid-year changes to their 2020 health insurance.

If employers choose, they can amend their health plan to allow employees to do one or more of the following:

- Sign-up for health insurance for 2020 even if they initially declined coverage.
- Sign-up for a different health plan.
- Allow an employee to revoke their existing coverage if they promise in writing to enroll in other coverage not sponsored by the employer.

Employers also can limit health insurance changes to only those changes that would improve an employee's coverage, such as switching from a low-option plan to a high-option plan.

FSA

An employer can set up an FSA to allow employees to contribute pre-tax money to pay for qualified medical expenses. A dependent care FSA can be used to pay for childcare or adult-care expenses.

This year the IRS is also allowing employees to make mid-year changes to their health and dependent FSAs — if their em-

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ployer modifies the company's FSA plan.

If their employer approves the modification, employees can:

- Sign up to contribute to a health or dependent care FSA for 2020
- Decide not to contribute to an FSA
- Increase or decrease their 2020 contribution amount.

Employees generally have to use all of the savings in the year they put it in their account or they will lose it. An employer can choose to allow workers to carry-over to the next year up to $500 of unused contributions.

Effective for plan years starting on and after Jan. 1, 2020, Notice 2020-33 increases the $500 carryover limit for health FSAs to 20 percent of the annual salary reduction contribution limit. This means that the limit is increasing to $550 for 2020. The carryover amount will be adjusted for inflation going forward.

This change doesn't apply to amounts carried over from 2019 to 2020.

HDHP

An HDHP insurance plan has a lower monthly premium than traditional health insurance, but requires members to pay more of their health care bill before the insurance company starts to pay its share. An HDHP usually is combined with a health savings account (HSA), which allows an HDHP member to save money tax free in order to pay qualified medical, pharmacy, dental and vision expenses

In Notice 2020-15 the IRS said that health plans that otherwise qualify as HDHPs will not lose that status merely because they cover the cost of testing for or treatment of COVID-19 before plan deductibles have been met. The IRS also noted that, as in the past, any vaccination costs continue to count as preventive care and can be paid for by an HDHP.

The IRS also expanded the types of testing and treatments permitted without applying usual required HDHP deductibles. The services added include:

- Diagnostic testing for influenza A & B; norovirus and other coronaviruses; respiratory syncytial virus (RSV) and any items or services required to be covered with zero cost sharing
- Telehealth and other remote care services.

If you decide to make any of these changes for 2020, you should communicate the changes to employees in time to be useful and you must adopt conforming plan amendments no later than Dec. 31, 2021.

Non-Calendar Year Plans and Plans with Grace Periods

For 2020 only, Notice 2020-29 also includes special relief for plans under which the deadline to incur expenses ends before Dec. 31, 2020. Under this relief, a plan may extend the deadline to incur expenses up to Dec. 31, 2020. ■

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Company Policies Must Now Address LGBTQ Rights in the Workplace

Employers who do not have policies and practices that are inclusive of lesbian, gay, bisexual, transgender and queer (LGBTQ) workers, should craft guidelines addressing the issue.

The U.S. Supreme Court ruled in June that LGBTQ workers are protected by federal employment anti-discrimination law and that an employer who fires a worker for being gay or transgender violates Title VII of the Civil Rights Act of 1964.

Title VII is part of a federal law that protects employees against discrimination based on race, color, national origin, sex, and religion. Employers who have 15 or more employees must treat employees fairly in the areas of recruiting, hiring, promoting, transferring, training, disciplining, discharging, assigning work, measuring performance or providing benefits.

Despite the federal law, and the fact that many state and local governments already have laws prohibiting discrimination based on sexual orientation and gender identity, there was still the question of whether the act prevents discrimination against LGBTQ employees on the basis of sex.

In October 2019, the U.S. Supreme Court heard three cases on the issue — two brought by men who allegedly lost their jobs because they were gay and one on transgender discrimination in the workplace. The three cases were consolidated into Bostock v. Clayton County, Georgia.

Moving Forward

Employers who already have policies prohibiting discrimination in the workplace should keep those policies in place.

Employers who have not yet addressed the situation are encouraged to do so as soon as possible. Company policy should include protections for sexual orientation and gender identity.

Experts also advise employers to perform a comprehensive review of their job application process, hiring practices and ongoing work procedures to ensure the operations are fair and decisions are not being made in ways that would adversely affect LGBTQ employees.

It is not yet known how this decision will impact religious liberty laws.

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