



Benefits & Compensation 2020 Mid-Year Review

July 2020

Many of our clients have shared how difficult it has been to keep up with relevant Benefits & Compensation legal developments so far in 2020. Indeed, there is much news (rightfully) competing for our attention and the first half of 2020 has seemed to many of us like it has lasted a lifetime. Attempting to take stock of it all, we have identified key Benefits & Compensation news and guidance from the first half of 2020 – and challenged ourselves to summarize each development in about 25 words or less.

We expect a busy second half of 2020 also – with guidance projects in the works at Treasury and DOL in light of the continuing COVID-19 emergency and in advance of the Presidential election.

JANUARY

01 Various provisions of SECURE Act (passed 12/20/2019) ([IPB EB Alert](#); [IPB Estate Planning Alert](#)) take effect, including:

- Required beginning date for minimum distributions delayed to age 72
- Benefits inherited by non-spouse beneficiaries generally must be distributed within 10 years after death
- Defined contribution plans permitted to offer \$5,000 birth/adoption withdrawals
- New safe harbor for selection of annuity provider (to encourage lifetime income in 401(k) plans)

FEBRUARY

18 IPB submits comments on IRS proposed 162(m) regulations to discourage their application to deferred compensation and non-employee pay. ([Proposed Regulation](#); [IPB Alert](#); [IPB Comment on Deferred Compensation](#); [IPB Comment on Independent Contractor Pay](#)).

27 Senators Sanders and Van Hollen introduce the "CEO and Worker Pension Fairness Act," mirroring an earlier Republican proposal that would raise tax

revenue by ending section 409A and instead taxing deferred compensation and equity compensation when amounts are vested rather than when they are paid. ([Senate Bill](#))

MARCH -BEGINNING OF COVID-19 RELATED GUIDANCE-

- 18 Families First Coronavirus Relief Act (FFCRA) provides the first in a series of national legislative coronavirus relief ([Legislation](#); [IPB Alert](#)):
- Mandates free coverage of coronavirus diagnostic testing by group health plans
 - For smaller employers (fewer than 500 employees), temporarily expands FMLA leave to cover employees caring for children because of school and childcare closures
 - For smaller employers (fewer than 500 employees), creates two weeks of paid sick leave for childcare (and other coronavirus-related leave) and creates an offsetting tax credit
- 20 National Emergency Declaration/Major Disaster Declarations begin and ultimately extend to all 50 states. This means:
- If a 401(k)/403(b) plan includes a disaster hardship trigger, participants can take a

- distribution based on a COVID-19 based need ([IPB Alert](#))
 - Companies can provide employees, contractors, and others with non-taxable disaster relief payments under IRC 139 ([IPB Alert](#))
- 27 CARES Act offers relief to participants and plans ([Legislation](#); [IPB Alert](#)):
- Retirement Plans – waives 2020 required minimum distributions for 401(k) plans and IRAs; allows employers to offer coronavirus distributions and 401(k)/403(b) loan relief; and delays deadlines for required pension contributions
 - Health Plans – mandates or expands coverage of coronavirus preventive and diagnostic services ([IPB Alert](#)); expands telehealth and other remote care under high-deductible health plans; and allows consumer-driven health plans (HSAs, health FSAs, HRAs, and Archer MSAs) to reimburse over-the-counter medication and menstrual products

APRIL

- 29 DOL and IRS indefinitely extend participant deadlines for COBRA, health plan special enrollment, and ERISA claims. ([Final Regulation](#); [IPB Alert](#))
- 29 DOL extends ERISA plans' deadlines for providing certain (but not all) notices to participants, indicates flexibility for fiduciary compliance in light of ongoing disruption. ([EBSA Disaster Relief Notice 2020-01](#))

MAY

- 01 DOL issues new model COBRA notices and FAQs, which include additional detail on COBRA's interaction with Medicare (but do not include information regarding COVID-19 related extensions to COBRA deadlines). ([DOL COBRA Guidance](#))
- 12 IRS allows plans to ease normal limitations on mid-year health plan and FSA election changes in 2020. ([Notice 2020-29](#); [IPB Alert](#))
- 12 IRS increases the health FSA amount that a plan can allow to carry over to the next plan year. ([Notice 2020-33](#))
- 21 DOL liberalizes electronic disclosure rules for retirement plans. ([Final Regulation](#); [IPB Alert](#))

JUNE

- 01 Supreme Court affirms that defined benefit pension participants generally do not have standing to sue for breach of fiduciary duty. ([Thole v. U.S. Bank](#))
- 03 IRS waives in-person spousal consent requirements for pension plan distributions and waivers. ([Notice 2020-42](#))
- 03 DOL offers fiduciary roadmap for retirement plan funds to include private equity investments. ([DOL Info Letter 06-03-2020](#))
- 05 IRS proposes section 4960 rules for 21% tax on "excess" pay to non-profit employees, but provide exceptions that should help most corporate foundations avoid taxation merely by reason of company officers serving as volunteers or foundation officers. ([Proposed Regulation](#); [IPB News Release](#))
- 15 Supreme Court holds that Title VII-prohibited sex discrimination includes discrimination on the basis of sexual orientation and gender identity. ([Bostock v. Clayton County](#))
- 19 IRS releases guidance on CARES Act coronavirus distributions and loan relief, while also providing a way for non-qualified plan participants to stop their deferrals. ([Notice 2020-50](#); [IPB Alert](#))
- 23 DOL proposes to further roll back Obama-era guidance on ESG investing, discouraging plans from taking into account environmental, social and governance criteria. ([Proposed Regulation](#))
- 23 IRS releases section 274 commuting and qualified transportation fringe deduction disallowance regulation. ([Proposed Regulation](#))
- 23 IRS releases guidance on CARES Act waiver of 401(k) and IRA RMDs for 2020. ([Notice 2020-51](#); [IPB Alert](#))
- 29 DOL proposes a fiduciary standard to replace the Obama-era rule that had been vacated; the proposed rule generally conforms with similar guidance issued by the SEC and reinstates a 1975 five-part test for fiduciary status. ([Proposed Class Exemption](#))
- 29 IRS eliminates barriers to mid-year changes to safe harbor 401(k) plans due to COVID-19. ([Notice 2020-52](#))