CARLTON FIELDS

2024 IRS Guidance on Employee Benefits

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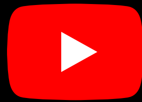

Transcript:

Employee benefits or employee benefit issues can arise anytime you are providing employees something of value other than direct cash compensation. Engagement is very important. I hear it talked about a lot at 401(k) committee meetings, and the idea is that engaged employees are more likely to use your employee benefit plans for their intended purposes. For example, they are more likely to use your retirement plan to save for their retirement. If you have a dependent care assistance program, they're more likely to utilize that to help make childcare more affordable. Your benefit plans are more likely to pass non-discrimination testing with engaged employees because they are more likely to use those benefits, particularly non-highly compensated employees, or individuals are more likely to use those benefits and your employees will appreciate your benefits more, making your employee benefit plans a better retention tool. **IRS Notice 2024-63** The first piece of IRS guidance is IRS Notice 2024-63, issued earlier this year about employers making

matching contributions, including the amounts employees pay toward loan repayments in those matching contributions. This can be used by employers that have employees making salary deferrals into 401(k) plans, 403(b) plans, governmental 457(b) plans, and even simple IRAs. This would not apply to employers who only allow employees to salary defer into a non-governmental 457(b) plan. On any of those arrangements, if you, as the organization or employer, makes a matching contribution based on employee salary referrals, employees with loans could be hit with a "double whammy" if they're not able to put as much into the retirement plan as they would want because a portion of their disposable income is going toward the repayment of loans. Not only are they missing out on making all the salary deferrals they would like, but they also might be missing out on some of the matching contributions. This can really help that group of employees, and if you're looking to attract employees who have recently completed their education or have student loans, this can be an additional retention tool for those kinds of employees. In essence, you'd look at how much they put into their retirement plan and how much they pay toward loans and you would base your matching contribution, up to your maximum threshold, on those two amounts. So potentially very attractive to students coming out of school with student loan debt. If you are an organization that is having trouble passing testing on your match, this might be a good option for you. The IRS guidance does provide information on how this will impact testing. I'm not going to detail that, but if you are barely passing testing, or you generally come close to or fail testing, this might be an option worth considering.

Another benefit from the IRS guidance is that you as the employer don't need to do a lot of work in finding out information about the loans. Most of what the IRS wants you to get, or wants you to know, you can get through an employee certification. One important factor that I noticed in this guidance that may be a key consideration for you is that when you look at your employees' loan repayments, they may not be loan repayments just for the employee's education. If those repayments are for the employee's education or the employee's spouse or the employee's dependents, i.e. children, they would also need to be considered for the matching contributions if you rolled out this option. This might make it even more attractive for some of your longer-term employees who have been with you for a while. Maybe now their children are going to school or maybe their spouse, or maybe their children have finished school and now the spouse is going back to school. So this can be even more of a retention tool for those employees. However, if you heard this and you're thinking is, "Wait a minute, you know, I'm all for education and we're comfortable providing money to help our employees educate themselves, because that makes our employees more valuable to us," but you don't like the idea of making a match based on loan repayments that the employees are making for their children, that is not a restriction this guidance would allow you to make. So if that was your thinking, you might want to consider using an education assistance program instead. An education assistance program is an arrangement where you will make money available to employees for the employee's education, and you can control the type of education, the schools they go to, the classes they take, etc. You can exercise a lot of control with an education assistance program. With this arrangement on matching contributions going into retirement plans, you cannot exercise as

much control over that. **Private Letter Ruling** The other piece of guidance that was issued earlier this year is a private letter ruling that allows employees to make an election during your cafeteria plan open enrollment to say, “If my employer makes an employer contribution, I don't want it all to go into the retirement plan. Instead, I want this portion to go into the retirement plan and I want the rest, or other portions, to go toward another employee benefit plan.” In this guidance, the IRS was permitting redirection into cafeteria plan benefits. This might sound similar to your general cafeteria plan. Right now, your general cafeteria plans, during open enrollment, the employee might say, "OK, I'm directing some money toward health insurance, some money toward dental." They may say, "I know I can direct money toward vision insurance, but I'm not going to. Instead, I'll direct some money toward a health FSA or DCAP FSA," and although it's not popular, you are permitted to let employees make salary deferrals into the 401(k) plan during open enrollment. So this kind of just takes that portion, you might say, and expands upon it to allow the employer money to head in there. If you've been working with cafeteria plans for a while, you may be familiar with the concept of flex credits or cafeteria plan credits. This was a situation where the employer, instead of saying, "We're allocating this much money toward your health insurance," would say, "Here's a mass of money that we're willing to put toward your welfare benefits in general. You allocate it where you want, among your welfare benefits." So, what's going on here is more similar to that, but with the retirement plan contribution. The employee can now say, "Some will go into the retirement plan and others will go into the cafeteria plan or different benefits." Keep in mind, what the guidance did say is that amounts going into the retirement plan will be valid retirement plan contributions, amounts going toward health insurance will be valid employer contributions toward health insurance, etc. So the key seems to be that these amounts are retaining their character as employer money. Other than that, though, it did not go into how it affects non-discrimination testing. That, of course, is a very important part of all this, and my expectation is that amounts that get directed into the retirement plan are valid retired plan contributions, amounts that go toward health insurance are considered employer contributions toward health insurance and they are not counted for retirement plan purposes and it would go down the line like that. If so, you could imagine that if you don't have a safe harbor plan and it's a lot of your non-highly compensated employees redirecting amounts toward health insurance benefits, it actually could hurt you when it comes to non-discrimination testing. So that is one thing to keep in mind.

Another item to keep in mind is that this is a private letter ruling. And when the IRS issues guidance, there are different tiers, like a regulation is a big deal. The IRS is going to stand by that. Maybe revenue procedures, IRS notice, and as you go down the line, private letter rulings are relatively low down on the list. If you were one of those taxpayers who paid for this ruling — asked the IRS questions and paid for the IRS to answer it — then you are able to rely on it. For the rest of us, this is indicative of how the IRS would look at this situation at this point in time. But if the IRS has a change in position, it does not need to issue new guidance. The IRS does not need to say, "Hey, we're changing our position on this private letter ruling, so we're going to give you a year to bring your arrangements into compliance." The IRSK doesn't have to do that for private letter rulings, keep that

in mind as well. So those are the two items I want to talk to you about today. Two things that optionally, they're not mandatory, you can incorporate into your retirement plans if you think it would improve your employee engagement, if you think it would be right for your organization.

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