

Employers in Florida Face State-Specific Employee Benefit Plan Issues

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Employers with Florida employees face certain state-specific employee benefits compliance challenges. While in general ERISA preemption will serve to minimize the number of state laws applicable to the ERISA-governed benefit plans of most employers, in some instances state-specific issues do arise. The purpose of this Practice Update is to highlight some of the common Florida laws affecting benefit plan sponsors.

QUALIFIED RETIREMENT PLANS

Qualified Domestic Relations Order. A Domestic Relations Order ("DRO") is a court order, issued pursuant to state domestic relations law, that recognizes the right of a spouse, child, or other dependent to receive part of an employee's benefit in a qualified retirement plan. For the Florida employee population, knowledge of the Florida laws in this area is important. A DRO will be considered "qualified" if it complies with state law, federal law, and the provisions of the plan document.

Documentary Stamp Taxes. If a retirement plan permits loans, then the state of Florida imposes a documentary stamp tax on each loan that must be remitted to the Florida Department of Revenue. Many other states do not impose such taxes on plan loans made to plan participants.

GROUP HEALTH AND OTHER WELFARE PLANS

Qualified Medical Child Support Order. A "QMCSO" is a medical child support order that creates a right for a child to receive coverage under a group health plan that is sponsored by an employer. To be approved by a group health plan, the support order

must comply with the requirements of state domestic relations law. Within Florida, therefore, knowledge of specific state law requirements is required.

Disclosures under Federal Health Care Reform. One of the obligations of employer-sponsored group health plans that is required under federal health care reform legislation is a new disclosure to plan participants called a "Summary of Benefits and Coverage." In certain counties in Florida, Spanish translation will be needed. Benefits attorneys must have an understanding of this and other state-specific implications of health care reform.

Subrogation. Given the relative strength of the plaintiff's bar in Florida, the subrogation provisions found within group health plans become extremely important. Florida law sometimes requires plaintiffs' attorney fees to be paid from a plan's recovery against a third party tortfeasor, and it is crucial that the plan's subrogation language and internal procedures be as strong as possible. With appropriate protective language, plans attempt to be made whole for medical expenses paid by the plan, out of the recovery from a third party tortfeasor who caused the injury giving rise to those medical expenses.

State Insurance Laws. To the extent that any of the group health plans sponsored by the employer are fully insured (as opposed to self-funded), a variety of Florida state insurance laws will apply, impacting a number of different plan design, eligibility, and administration topics.

Domestic Partner Benefits. If the employer chooses to offer health coverage to the domestic partners of employees, then there can be income tax and employment tax implications to the affected employees. Knowledge of Florida's state unemployment and disability insurance laws is required in order to advise on proper payroll processing in this area.

Vacation Pay Laws. Absent contractual arrangements to the contrary, Florida does not require employers to pay out unused vacation at termination. Often, complicated

questions arise related to paying accrued vacation upon terminations of individual employees, as well as with plant closings or other mass layoffs.

Withholding from Final Paychecks. From a variety of benefit plan perspectives, employers with Florida employees may wish to understand whether benefits contributions and correction payments may be withheld from a departing employee's final paycheck. For that reason, understanding state wage withholding laws is crucial.

EXECUTIVE COMPENSATION AND SEVERANCE ARRANGEMENTS

Release of Claims. In the context of severance pay plans (which may themselves be subject to ERISA), often terminating employees are asked to sign a release of claims in order to receive separation pay and other post-termination benefits. The types of claims being released often include both federal and Florida statutory discrimination and other employment-based claims.

Time Sensitive Compensation Provisions. To the extent that there are any current or future Florida state employment laws that would provide for deadlines or other time-sensitive restrictions on obtaining executive compensation, there could be a federal tax impact to executives and/or the company under Section 409A of the Internal Revenue Code.