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Benefits Alert: New California State Law Imposes Notification Requirements That May Affect Your FSAs

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Starting January 1, 2020, a new California state law will require employers to notify employees in California of any deadline to withdraw funds from a flexible spending account (FSA) prior to the end of the plan year. FSAs are a type of expense reimbursement account offered under an employer's cafeteria plan. FSAs allow employees to contribute a portion of their regular earnings to the account during the plan year and later be reimbursed by the employer on a tax free basis when they incur qualified medical, dependent care and/or adoption assistance expenses (qualified expenses). Most FSAs allow employees to submit claims for qualified expenses incurred during the plan year for a period of time after the plan year ends, often 60 to 90 days. However, some FSAs require claims to be submitted prior to the end of the plan year in certain circumstances. The new California law would apply only in these limited situations. The most common example occurs when an employee's employment or participation in the plan is terminated prior to the end of the plan year and qualified expenses incurred during the plan year must be submitted within a certain amount of time (e.g., within 90 days of termination).

New Requirements

Under the new law, California employers who offer FSAs that require claims for reimbursement to be made prior to the end of the plan year will be required to provide two different forms of notice to employees, only one of which may be electronic. Permitted methods of notice include e-mail, telephone, text message, postal mail, or in-person notification. However, the law does not indicate when notification should be provided or the content of such notifications. Until further guidance is issued, we recommend providing information about shortened deadlines when an employee terminates employment or otherwise becomes ineligible to participate and in employee communications, such as summary plan descriptions and annual open enrollment.

Scope of New Law and ERISA

Health Care FSAs

Health care FSAs (including limited health care FSAs that provide reimbursement only for dental, vision or post-deductible medical expenses) are self-funded group health plans subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). Therefore, the new California state law should be preempted by ERISA as it relates to health care FSAs (although the Ninth Circuit has been known to take an unusually narrow view of ERISA preemption). ERISA will not preempt the new California state law with respect to health care FSAs that are not subject to ERISA, such as governmental and certain church plans.

The California Labor & Workforce Development Agency is responsible for enforcing the new law. However, because California agencies are often reluctant to recognize ERISA preemption and given the limited application of the new law to health care FSAs, it may be easiest for employers to simply comply, especially if they are required to provide such notices for non-ERISA governed FSAs.

Dependent Care FSAs and Adoption Assistance FSAs

FSAs that reimburse eligible expenses for qualified dependent care and adoption assistance are not governed by ERISA. Therefore, ERISA preemption will not apply and these types of FSAs will be subject to this new California state law.

Implications for Employers with FSAs

Employers with FSAs should determine whether the plan contains any deadlines that would require participants to submit claims for reimbursement prior to the end of the plan year. If so, employers should prepare to comply with the new notice requirements by the start of the new year or amend their plans to extend the deadline to submit claims until after the end of the plan year. Contact your Vorys attorney if you would like assistance evaluating whether this new law affects the administration of your FSA benefits.