the dana report

April 2020 Issue

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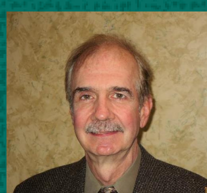
ABOUT THE FIRMS



Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

If you know someone who would like to receive *the dana report*, click the link below.

CARES ACT UPDATE

The pandemic is dominating the news. President Trump signed the CARES Act on March 27th that, among other things, made several important changes to the rules governing retirement plans. This issue of the dana report gives an update on how all of this is affecting qualified retirement plans, including plan sponsors and participants.

We have posted to our website (www.danaconsulting.com) under the Education Center tab two firm memoranda addressing Coronavirus issues affecting retirement plans. We recommend our readers check there periodically (including the Red Alert button on the top of the Home Page) for ongoing developments.

30-MINUTE WEBINAR FOR ADVISORS AND CPAs

We presume financial advisors, CPAs and others who advise clients on retirement plan matters have attended their share of webinars and read numerous articles about the CARES Act. We are offering a short 30-minute webinar focusing on various issues you may not have seen from other sources. There are a lot of questions that will likely need future guidance from the IRS and US Labor Dept. In the meantime, you need to advise your clients and they need to make decisions. Our webinar will assist you answer these questions. If you are interested in our webinar, please contact Lee T. Jennings at (630) 802-7644.

ENHANCED ACCESS TO 401(K) PLAN ACCOUNTS

The CARES Act has liberalized participants' access to their plan accounts. This new access is not mandatory; that is, plan sponsors do not have to give this liberalized access if they do not wish to. As indicated in our firm memoranda above, we caution plan sponsors about "opening the floodgates" that make in-service withdrawals more accessible.

Additionally, this enhanced access ends before the end of 2020. Once an applicable deadline passes, that enhancement can no longer be offered.

RMDs

Required minimum distributions IRMDs) are generally waived for 2020 but only for defined contribution plans (like profit sharing and 401(k) plans) and IRAs. They are not waived for cash balance and defined benefit plans. So what if an employer sponsors both (sometimes called "combo plans")? There are options.

SUSPENDING EMPLOYER CONTRIBUTIONS

PLANSPONSOR, a magazine tracking the retirement plan industry, particularly from the investment side, conducted a survey between April 7 and 10 with 387 plan sponsors responding. One third of plan sponsors offering a matching contribution have discussed reducing or suspending that contribution, with 21% already taking action. Plan sponsors with 500 or more employees are more likely than smaller employers to take action.

Decisions to suspend employer contributions are more problematic for plans with safe harbor contributions, which are predominantly used by smaller plans. Suspending employer contributions has important consequences that plan sponsors must weigh before suspending these contributions. Our firm memoranda discuss this in more detail.

DEFINED BENEFIT AND CASH BALANCE PLANS

The CARES Act delays the deadlines for making required contributions to these plans. For calendar year plans, the deadline for 2019 contributions is now December 31, 2020. However, delaying making these contributions until after filing the plan sponsor's 2019 income tax return also moves the deduction to 2020, which may result in deductions being doubled up. There are deduction issues here that need to be carefully considered. Several commentators think Congress will resolve the matter but as of now, that has not happened.

We believe all plan sponsors of DB/CB plans should consider "freezing" their plans for 2020. This does not affect contributions being made now for 2019 plan years but is an anticipatory response looking to 2021. There are deadlines for adopting a freeze that, for calendar year plans, is rapidly approaching. Call our office if you would like additional information.

PARTIAL TERMINATIONS

The business disruption resulting from this pandemic will require many employers to terminate (or layoff, furlough, put on leave, etc.) employees who are participating in their retirement plans. The rules governing retirement plans require terminated participants to be fully vested if a partial termination occurs.

Whether a participant is terminated is a question of fact. Many employers are using terms like furlough, leave of absence, and temporary layoffs to describe what they are doing. How does this terminology affect whether a partial termination has occurred?

Several issues arise:

- A partial termination can occur based on a series of terminations. So an employer cannot lay off participants over time to avoid full vesting.
- There is a 7th Circuit court of appeals case that provides a more employer-friendly rule. The 7th Circuit includes Illinois, Indiana and Wisconsin. If you want to discuss this court case, please give Lee T. Jennings in our office a call.
- If a fund company for a 401(k) plan pays out a non-vested participant and a partial termination is deemed to occur, that participant will need to receive a follow-up distribution of the non-vested amount.
- What if an employee is rehired after being fully vested due to a partial termination? Is fully vesting negated? And are future employer contributions also fully vested or subject to the plan's vesting schedule?

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America is a great country and we will get through all this. Common sense and a little planning will go a long way. If you have any questions, please call your DCG administrator or Lee T. Jennings directly at (630) 802-7644.

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