DANA CONSULTING GROUP

Innovative Design and
Administration of Retirement Plans

memorandum

THE CORONAVIRUS AND QUALIFIED RETIREMENT PLANS

We have prepared this firm memorandum to address various issues affecting qualified retirement plans as a result of the coronavirus outbreak. We will update this memorandum as new developments occur. If you have any questions about your own plan, or your clients' plans, do not hesitate to contact our office – either the DCG administrator assigned to your plan(s) or Lee T. Jennings directly (630) 802-7644.

401(k) and Profit Sharing Plans

Employees Changing or Suspending Their 401(k) Contributions & Loan Deductions. Virtually every state wage payment and collection law permit an employee to suspend voluntary deductions at any time. Thus, your employees may suspend their own 401(k) contributions at any time. Loan payments being collected by payroll deduction are more problematic. The employee has incurred a debt that needs to be repaid and has agreed to the payroll deduction to repay that debt. As of now, the normal rules apply, including for terminated employees.

Employer contributions. Things are a little more complicated there. Our discussion below assumes the plan sponsor and retirement plan are calendar year filers.

1. 2019 safe harbor contributions still must be paid but can be delayed to December 31, 2020. However, if the contribution is paid after the filing deadline for the plan sponsor's 2019 federal income tax return, the deduction will be delayed to the 2020 return. You should discuss this delayed deduction with your accountant.

2. Profit sharing contributions are generally discretionary, which means the plan sponsor does not have to make them. There are, of course, exceptions. So in many cases the plan sponsor can elect to forego any 2019 contribution. If the 401(k) plan has a safe harbor contribution (which does have to be made, as explained above), the plan sponsor should not have to make any profit sharing contribution for 2019 UNLESS the sponsor also maintains a cash balance or defined benefit plan (see below for more on this).

3. For 2020, safe harbor contributions can be suspended. However, there are consequences to doing this. For example, discrimination testing (called the ADP test) for the entire year must be made. Failing this test is the main reason sponsors choose to make safe harbor contributions. So, subjecting a 401(k) plan to ADP testing will likely result in refunds of 401(k) contributions to your "highly compensated employees" (HCEs). Also, if the plan is "top-heavy", a required employer contribution will likely be required for 2020. Call us if your company (or your clients) thinks its safe harbor contribution should be suspended.

   If you decide a safe harbor contribution needs to be suspended, the safe harbor contribution will still be required for the period up to the suspension date. Procedurally, at least 30 days advance written notice to plan participants must be given and the plan has to be amended before the suspension date. The plan sponsor does not have to require employees to suspend their own 401(k) contributions.

Please call us before making a decision so you understand the implications of suspending your safe harbor contribution.

Cash Balance & Defined Benefit Plans

1. For calendar year plans, the funding rules governing these plans may require a 2019 contribution to be made. This minimum contribution must be made by September 15, 2020 (for calendar year plans). This deadline cannot be extended unless Congress takes specific action before then.

2. The economy was booming in 2019 and the investment market performed well. Plan sponsors should consider making additional contributions to their CB/DB plans for 2019 (called “overfunding”) to provide a cushion for 2020 funding requirements. CB/DB plans can be overfunded and the additional contributions deducted in 2019. There are limits, of course.

3. Many CB/DB plans are coupled with 401(k) plans (or other profit sharing plans) to pass coverage and discrimination testing. In this case, an employer contribution to the 401(k) plan will be required for 2019 so the two plans pass testing. The CB/DB plan cannot be amended now to retroactively eliminate any 2019 contribution.

4. Sponsors of CB/DB plans should consider amending the plans NOW to eliminate any benefit accrual for 2020. This will not automatically eliminate any 2020 contribution but will help reduce it. Many businesses (at least in Illinois) have been closed and that means a significant reduction in 2020 business revenue is likely. That, coupled with a significant drop in the investment market, could significantly impact 2020 funding requirements. 2020 benefit accruals can be suspended (called “freezing”) before participants earn at least 1,000 hours of service (generally in June for calendar year plans). So now is the time to consider freezing your plan (or your clients’ plans).

Layoffs and Employment Terminations

Many businesses have been forced to suspend operations (at least in Illinois). This may result in employees being put on leave of absence, layoff or being terminated outright. What does that mean for them under your retirement plan?

1. An employee who is terminated will be entitled to a payout from the plan. The timing of that payout will be governed by the plan document. So your document needs to be reviewed. Also terminated employees may be entitled to a 2020 employer contribution. For example, if your plan has a safe harbor contribution, terminated employees will be entitled to that safe harbor contribution, even if the plan sponsor suspends the 2020 safe harbor contribution. Safe harbor contributions cannot be retroactively eliminated.

2. Things are more problematic for employees who are on leave of absence or temporarily laid off. Generally speaking, if an employee stops working under conditions that qualifies for unemployment compensation, that employee is deemed terminated for purposes of the retirement plan.

If an employee is terminated but then resumes working, he/she no longer qualifies for a distribution from the plan based on employment termination. However, if an employee is terminated and receives a distribution before he/she is rehired, he/she will not be required to repay the earlier distribution. Under certain circumstances, he/she can likely repay the earlier distribution within certain time limits.

3. An employee who stops working for the plan sponsor but then resumes working will, in most cases, resume participation in the plan immediately on his/her return to work. These workers cannot be required to satisfy the plan's regular waiting period (such as 12-months of service and 1,000 hours).

What To Do Now

1. Your plan participants are likely extremely agitated and have a lot of questions. Let them know they can suspend their 401(k) contributions with the understanding they can resume them later on. [Your plan document controls when 401(k) contributions can be changed other than for suspensions – but don't let that create a problem now. Call us and we can discuss that.]

2. Consider requesting the financial advisor for your 401(k) plan to provide some kind of communication with your plan participants. This is a time when your advisor demonstrates his/her real value. You don't want your participants making rash decisions.

3. For sponsors of CB/DB plans, you need to consider NOW whether to freeze your plan for 2020. This must be done before participants earn 1,000 hours during the current plan year. You also need to consider whether overfunding the plan for 2019 makes sense.

4. Do not make any rash decisions that cannot be undone later. Call your DCG administrator to discuss your own situation (or your clients' situations). We are here to walk you through your options and explain the consequences. Congress is considering a variety of relief measures but as of right now (March 24th), nothing has passed.

5. We will update this firm memorandum as things change. You should visit our website periodically (www.danaconsulting.com) and check the Red Alert button. We will notify our clients and partners of updates there.

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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.

Please visit our website at www.danaconsulting.com.