

2021 US Labor & Employment Webinar Week  
**Insights and Compliance Strategies for a New World**

February 1 – 4, 2021

# Presenter

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# Employee Benefits Legislation Overview

February 4, 2021

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# Employee Benefits Legislation Overview

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- Setting Every Community Up for Retirement Enhancement (SECURE) Act
  - Signed into law December 20, 2019
- Coronavirus Aid, Relief, and Economic Security (CARES) Act
  - Signed into law March 27, 2020
- Consolidated Appropriations Act, 2021 (CAA, 2021)
  - Signed into law December 27, 2020
- Various other DOL and IRS guidance

A blurred office environment with several people working at desks with computers. A teal rectangular box is overlaid on the right side of the image, containing white text. The background shows rows of desks, computer monitors, and overhead fluorescent lights, all out of focus.

## Tax-Qualified Retirement Plan Updates

# Tax-Qualified Retirement Plan Updates – Outline of Topics

Required Minimum Distribution Changes

Partial Plan Termination Relief

401(k) Plans - Part-Time Employees

DOL Lost Participants Guidance



A blurred office environment with several people working at desks with computers. A teal rectangular box is overlaid on the right side of the image, containing white text.

## Required Minimum Distribution Changes

# Required Minimum Distribution Changes

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- The Internal Revenue Code requires a participant to commence receiving retirement benefits on his or her “required beginning date”.
- In general, required beginning date means April 1 of the calendar year following the later of:
  - The calendar year in which the employee retires; or
  - The calendar year in which the employee reaches:
    - Age 70 ½ (if 70<sup>th</sup> birthday is prior to July 1, 2019)
    - Age 72 (if 70<sup>th</sup> birthday is on or after July 1, 2019)
  - SECURE Act increased age limit to 72 as described above



# Required Minimum Distribution Changes, cont.

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- 2020 RMD Waiver – Section 2203 of CARES Act
  - 2020 waiver includes:
    - 2019 RMD for an individual who has a required beginning date of April 1, 2020, that was not paid in 2019; and
    - 2020 RMD for an individual who has a required beginning date of April 1, 2021
  - Waiver applies to 401(k) plans, annuity plans and contracts under 403(a) and 403(b), government 457(b) plans and IRAs
  - IRS Notice 2020-51 provides transitional relief to allow such amount to be eligible rollover distributions even if part of a series of of substantially equal periodic payments

# Partial Plan Termination Relief

SUMMARY BY CATEGORY			
	Target	Actual	Difference
Medical	\$200.00	\$180.00	\$20.00
Life	\$500.00	\$500.00	\$0.00
Disability	\$300.00	\$300.00	\$0.00
Other	\$100.00	\$100.00	\$0.00
<b>Total</b>	<b>\$1,100.00</b>	<b>\$1,080.00</b>	<b>\$20.00</b>

# Partial Plan Termination Relief

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- Tax qualified retirement plans, such as 401(k) plans, may have a vesting schedule that must be met for employer contributions, such as an employer match.
- Such plans must be mindful of the partial plan termination rules.
- In general, Internal Revenue Code (“Code”) Section 411(d)(3) requires that the accrued benefits of affected participants must be fully vested on the date of a partial termination.
- A partial termination is presumed to occur if the turnover rate is at least 20%.
  - The turnover rate is determined by dividing the number of participating employees who had an employer-initiated severance from employment during the applicable period by the sum of all of the participating employees at the start of the applicable period and the employees who became participants during the applicable period. The applicable period is generally the Plan Year.

# Partial Plan Termination (continued)

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- Many employer sponsored retirement plans were facing partial plan termination concerns due to COVID layoffs.
- Consolidated Appropriations Act, 2021 Relief
  - A plan shall not be treated as having a partial termination during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021 is at least 80 percent of the number of active participants covered by the plan on March 13, 2020.

A blurred office environment with several people working at desks with computers. The scene is brightly lit with overhead fluorescent lights. A teal rectangular box is overlaid on the right side of the image, containing white text.

## 401(k) Plans - Part-Time Employees

# 401(k) Plans - Part-Time Employees

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- Section 112 of the SECURE Act provides new eligibility and vesting rules for part-time employees.
- Effective for plan years starting on or after January 1, 2021.
- Applies to 401(k) plans (not 403(b) plans)
- Prior to the SECURE Act a 401(k) plan could provide an eligibility rule that required an employee to attain age 21 and/or complete a 12-month period during which the employee has at least 1,000 hours of service.

## 401(k) Plans - Part-Time Employees, cont.

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- The SECURE Act amended the 1,000 hours of service provision so that an employee that completes three consecutive 12-month periods during each of which the employee has completed at least 500 hours of service may participate.
- In addition each 12 month period must be counted for vesting purposes.
- IRS Notice 2020-68 provides that periods of service prior to January 1, 2021 do not have to be counted for eligibility, but the periods of service must be counted for vesting purposes.



United States  
Department  
of Labor

## DOL Lost Participants Guidance



# DOL Lost Participants Guidance

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- On January 12, 2021, DOL issued three pieces of guidance:
  - Missing Participants – Best Practices for Pension Plans
  - Compliance Assistance Release No. 2021-01 - Terminated Vested Participants Project Defined Benefit Pension Plans
  - Field Assistance Bulletin No. 2021-01 - Temporary Enforcement Policy Regarding the Participation of Terminating Defined Contribution Plans in the PBGC Missing Participants Program



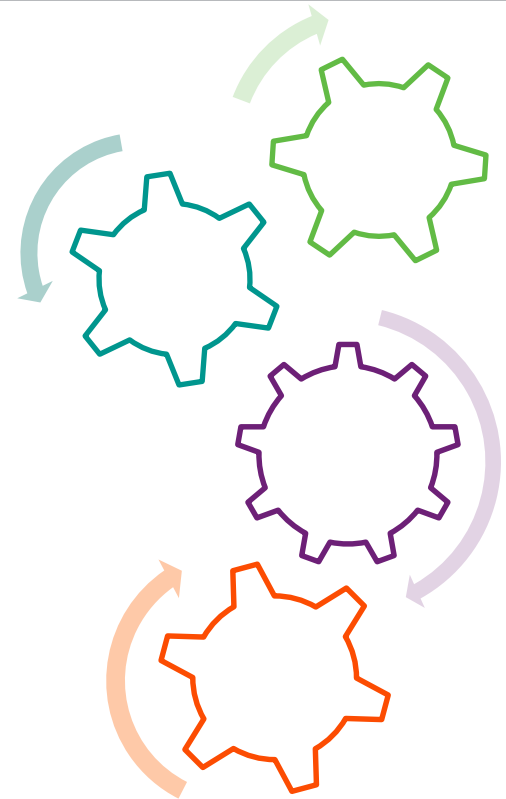
# Missing Participants – Best Practices for Pension Plans

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## Outlines best practices and red flags

### Best practices

- Contacting participants, both current and retired, and beneficiaries on a periodic basis to confirm or update their contact information.
- Including contact information change requests in plan communications along with a reminder to advise the plan of any changes in contact information.
- Regularly requesting updates to contact information for beneficiaries, if any.
- Regularly auditing census information and correcting data errors



# Missing Participants – Best Practices for Pension Plans, cont.

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## Red flags

- More than a small number of missing or nonresponsive participants.
- More than a small number of terminated vested participants who have reached normal retirement age but have not started receiving their pension benefits.
- Missing, inaccurate, or incomplete contact information, census data, or both (e.g., incorrect or out-of-date mail, email, and other contact information, partial social security numbers, missing birthdates, missing spousal information, or placeholder entries).

# Missing Participants – Best Practices for Pension Plans, cont.

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## Red flags

- Absence of sound policies and procedures for handling mail returned marked “return to sender,” “wrong address,” “addressee unknown,” or otherwise, and undeliverable email.
- Absence of sound policies and procedures for handling uncashed checks (as reflected for example, by the absence of an accounting journal or similar record of uncashed checks, a substantial number of stale uncashed distribution checks, or failure to reclaim stale uncashed check funds in distribution accounts).

# Compliance Assistance Release No. 2021-01

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- Provides an overview of examination process.
- Errors DOL is looking for:
  - Systemic errors in plan recordkeeping and administration that create a risk of loss associated with the failure of a terminated vested participant or their beneficiary to enter pay status before death or the imposition of excise taxes on RMD amounts.
  - Inadequate procedures for identifying and locating missing participants and beneficiaries.
  - Inadequate procedures for contacting terminated vested participants (“TVPs”) nearing normal retirement age to inform them of their right to commence payment of their benefits.

# Compliance Assistance Release No. 2021-01

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Errors DOL is looking for:

- Inadequate procedures for contacting TVPs and the beneficiaries of deceased TVPs who are not in pay status at or near the date that they must commence RMDs to inform them of actions the plan will take and what they must do to enter pay status and avoid RMD excise taxes.
- Inadequate procedures for addressing uncashed distribution checks.

# Field Assistance Bulletin No. 2021-01

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- DOL will not pursue violations against responsible plan fiduciaries of terminating defined contribution plans when accounts of missing or non-responsive participants or beneficiaries are transferred to the PBGC Defined Contribution Missing Participants Program.
- Does not preclude the DOL from pursuing violations related to the failure to (1) diligently search for participants and beneficiaries prior to the transfer or (2) maintain plan and employer records.
- PBGC fee may be paid with participant account balance.



# Health and Welfare Plan Updates



# Health and Welfare Plan Updates – Outline of Topics

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Flexible Spending Account  
Changes

Educational assistance for  
student loan repayments

Coverage for Preventive  
Service and Vaccines

Expansion of High-  
Deductible Plan Rules

IRS and DOL Joint  
Extensions

4980H Penalty Letters

EEOC Wellness Regulations

A photograph of medical professionals in a clinical setting. In the foreground, a person in a white lab coat is writing on a clipboard with a black pen. To their left, another person in a light blue lab coat is visible. In the background, a person in a white lab coat is holding a tablet. A purple semi-transparent box is overlaid on the right side of the image, containing the title text. The background is slightly blurred, showing a clean, clinical environment.

## Health and Dependent Care FSA Changes

# Health and Dependent Care FSA Changes

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- With day cares being closed, many employees may want to change their dependent care FSA elections. Normally, employees would need a life event (such as divorce, marriage, etc.) to make a change, but new guidance now makes those changes possible without a life event.
- IRS Notice 2020-29 (Issued May 12, 2020)
  - Allowed employers to amend their FSA plans to allow employees to make prospective health and dependent care FSA contribution amount changes without a qualifying life event.
  - Required a plan amendment and applicable for 2020 only.
- Consolidated Appropriations Act, 2021 (CAA, 2021) (Signed into Law December 27, 2020)
  - Significantly expanded IRS Notice 2020-29

# Consolidated Appropriations Act

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- Allows employees to carryover unused health and dependent care FSA amounts from 2020 to the plan year ending in 2021 and further carryover of any remaining 2021 amount to the plan year ending in 2022
- Allows up to a 12-month grace period for 2020 and 2021 – normally 2 ½ months
- Allows midyear election changes in 2021 without a life event



# Consolidated Appropriations Act (continued)

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- For 2020 and 2021, allows terminated health FSA participants to continue to receive reimbursements through the end of the year during which they stop participating (including grace periods)
- Allows for an age increase from age 13 to 14 for an “eligible dependent” if the dependent otherwise would have exceeded the age 13 limit in 2020 and the employee participated in the dependent care FSA for 2020



# Educational Assistance for Student Loan Repayments

# Educational assistance for student loan repayments

- CARES Act Section 2206. Exclusion for Certain Employer Payments of Student Loans
  - Employees may exclude up to \$5,250 from their gross income, under Code Section 127(c), amounts received from an employer for the payment of qualified education loans relating to educational assistance (e.g., tuition, fees, books)
  - Was limited to 2020 loan repayments
- CAA, 2021 extended through December 31, 2025






# Coverage for Preventive Service and Vaccines



# Coverage for Preventive Service and Vaccines

- CARES Act Section 3203. Coverage for Preventive Service and Vaccines – no cost sharing requirement
  - Group health plans must cover “qualifying coronavirus preventive service” without cost sharing
  - Effective 15 business days after the date the item, service, or immunization is recommended by either (1) United States Preventive Services Task Force, or (2) Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention





## Expansion of High-Deductible Plan Rules

# Expansion of High-Deductible Plan Rules

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- IRS Notice 2020-15
  - Testing and treatment for COVID-19 may be provided by a high deductible health plan (“HDHP”) prior to the minimum deductible being satisfied.
- CARES Act Section 3701
  - Telehealth and other remote care can be provided without a deductible without violating high deductible plan rules
  - Effective for Plan Years beginning on or before December 31, 2021

# Expansion of High-Deductible Plan Rules, cont.

- CARES Act Section 3702. Inclusion of Certain Over-the-Counter Medical Products as Qualified Medical Expenses
  - Over-the-counter drugs and menstrual care products now permitted to be paid with Health Savings Accounts, Flexible Spending Accounts, Health Reimbursement Accounts and Archer Medical Savings Accounts **without** a prescription
  - Effective for expenses after December 31, 2019



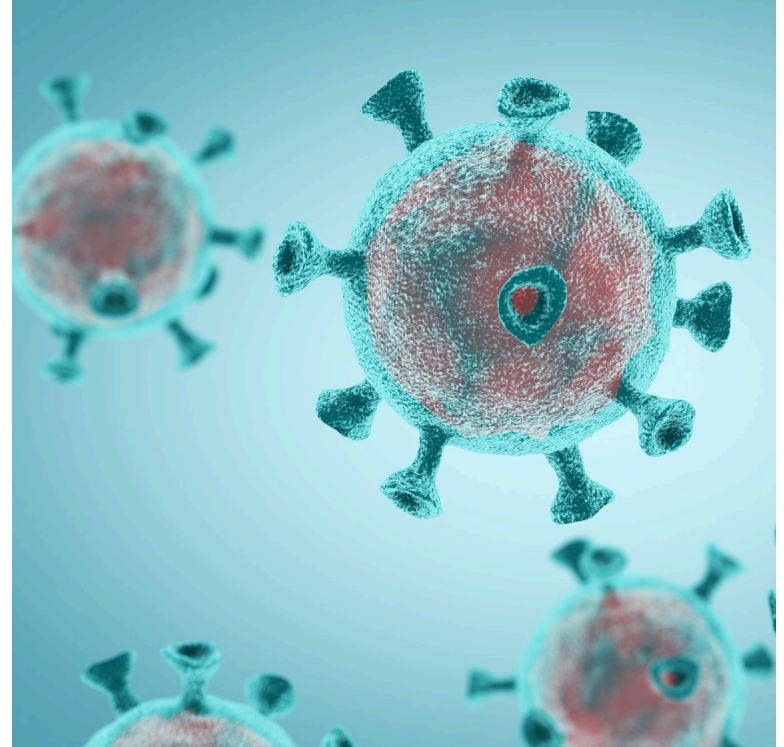


## IRS and DOL Joint Extensions

# IRS and DOL Joint Extensions

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- Disaster Relief Notice 2020-21 - issued April 28, 2020
- Final regulation - issued jointly by DOL and IRS
- Extend a variety of timelines during the period of March 1, 2020 and 60 days after the announced end of the coronavirus disease 2019 (COVID-19) National Emergency (“Outbreak Period”).



# IRS and DOL Joint Extensions, cont.

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- COBRA
  - COBRA premium payments will be treated as timely if paid within 30 days following the end of the Outbreak Period.
  - COBRA 60-day election period is also disregarded during Outbreak Period.
- Special Enrollment Periods
  - Deadlines extended until after the Outbreak Period
- Benefit Claims
  - Deadlines extended until after the Outbreak Period

A hand holding a blue pen is writing on a document. The background is a blurred office scene with a laptop and various data charts overlaid. The charts include bar graphs, line graphs, and a world map with percentage callouts. A purple semi-transparent box is on the right side of the image.

# 4980H Penalty Letters



# 4980H Penalty Letters

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- No Statute of Limitations on ESRP Penalties - IRS Chief Counsel Memo 20200801F
- Letter 226-J - Penalty for failing to comply with Internal Revenue Code Section 4980H

- **Tier 1 – 4980H(a)**

Employer does **not** offer a plan that has “minimum essential coverage” to all Full-Time Employees and their dependents.

- Annual tax of **\$2,700** for each Full-Time Employee in excess of 30 Full-Time Employees.

- **Tier 2 – 4980H(b)**

Employer **does** offer a medical plan that has “minimum essential coverage” to all Full-Time Employees and their dependents.

- Potential annual tax of **\$4,060**, but only for certain Full-Time Employees who elect to buy coverage under an Exchange.

# 4980H Penalty Letters, Letter 226-J

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- Form 14764 – ESRP Response
  - Taxpayers response to penalty assessment
- Form 14765
  - Taxpayer correction to 1095-C codes

# 4980H Penalty Letters, Letter 226-J

Form <b>14765</b> (April 2017)	Department of the Treasury - Internal Revenue Service <b>Employee Premium Tax Credit (PTC) Listing</b>
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Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month.

Employee Name (last, first)	SSN (last 4 digits)	All 12 months Indicator Codes (Form 1095-C, lines 14 and 16 combined)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
			11-1/2A	1H/2A	1H/2B	1H/	1EJ2C	NOPTC	NOPTC	NOPTC	NOPTC	NOPTC	NOPTC	NOPTC	NOPTC
			Second row - for corrections												

# 4980H Penalty Letters, Letter 5698 and Notice 972CG

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- Letter 5698 and Notice 972CG
  - Failure to timely file correct IRS Forms 1094-C and 1095-C
- IRC 6721 and 6722 Penalties
- Defenses
  - *De minimis* failures
  - Reasonable cause and not willful neglect



## EEOC Proposed Wellness Rules

# EEOC Proposed Wellness Rules

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- On January 7, 2021 EEOC issued proposed rules on wellness plans under the Americans with Disabilities Act (“ADA”) and the Genetic Information Nondiscrimination Act (“GINA”).
- On January 20, 2021 EEOC rules became subject to Biden administration regulatory freeze.
- Proposed rules provide limits on the level of incentives that may be offered in wellness plans that require disclosure of medical information.
- Rules provide that wellness plan cannot have a financial incentive tied to it, other than de minimis incentives, such as a water bottle or gift card of modest value.
- Exception for plans that are health-contingent wellness programs (activity-only or outcome-based, as applicable) that (1) meet the DOL requirements (including the 30%/50% maximum incentive rule) and (2) are otherwise voluntary.

# Questions? Please let me know.

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