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PROTECTING  
AND  
PROVIDING  
TRUST FUND  
BENEFITS IN A  
TIME OF  
CRISIS



# PRESENTERS



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# HEALTH & WELFARE FUNDS

MAINTAINING PARTICIPANT ELIGIBILITY FOR BENEFITS  
AND/OR  
MODIFYING BENEFITS



# MAINTAINING BENEFIT ELIGIBILITY FOR EMPLOYEES W/ NO HOURS OR DRASTICALLY REDUCED HOURS

- ORDINARILY, EMPLOYER CONTRIBUTES ON HOURS WORKED AND/OR PAID
- NOW, WHAT ABOUT EMPLOYEES W NO HOURS WORKED OR PAID
- NOW, NEED FOR HEALTH CARE MOST DESPERATE OF ALL
  
- ISSUE: HOW DO WE KEEP THEM ELIGIBLE AND COVERED?

# MAINTAINING BENEFITS: MINIMAL GOVERNMENTAL HELP

- CALIFORNIA INSURANCE COMMISSIONER RICARDO LARA'S ORDER FOR SMALL INSURED PLANS
  - CANNOT DROP ANY COVERED EMPLOYEE, WORKING OR NOT, UNTIL 90 DAYS AFTER CRISIS DECLARED "OVER"
  - BUT ONLY COVERS SMALL GROUP OF SMALL INSURED PLANS (ONE MILLION LIVES IN TOTAL FOR ALL HIS JURISDICTION)
- NO SUCH ORDER FROM DEPARTMENT OF MANAGED HEALTH CARE (DMHC) FOR LARGE INSURED PLANS
  - DMHC JURISDICTION COVERS 26 MILLION LIVES – NO DECLARATION
- SELF-INSURED PLANS
  - NO STATE JURISDICTION – PREEMPTED BY ERISA
  - FEDERAL GOVERNMENT HAS DONE NOTHING NEW – AS ON SO MANY OTHER FRONTS
- FUTURE 'BAIL OUT' BILLS ?: COBRA SUBSIDIES? OR \$\$ TO EXCHANGES?



# MAINTAINING BENEFITS: POSSIBLE EMPLOYER ACTIONS

- CONTINUE TO CONTRIBUTE FOR EXTENDED COVERAGE
  - AMEND PLAN TO TAKE CONTRIBUTIONS FOR LAID OFF EMPLOYEES DURING CRISIS, NOT JUST HOURS WORKED/PAID
- CONTINUE TO CONTRIBUTE FOR COBRA COVERAGE
- NEGOTIATE GREATER PREMIUM COST-SHARING BY EMPLOYER
- EMPLOYER REQUIRED TO MAINTAIN BENEFITS FOR EMPLOYEES ON 'FAMILY FIRST' LEAVE
  
- BOTTOM LINE: KEEP CONTRIBUTING FOR LAID OFF EMPLOYEES
  - TAX CREDIT, DOLLAR FOR DOLLAR, IF PPP LOAN SECURED AND USED TO PAY WAGES & BENEFITS



# MAINTAINING BENEFITS: POSSIBLE UNION ACTIONS

- BARGAIN FOR CONTINUING CONTRIBUTIONS
- BARGAIN FOR ONE-TIME 'COVID COOPERATION AGREEMENTS' AS SIDE LETTERS TO CBAs
- USE SOME UNION TREASURY DOLLARS (ASSUMING THERE ARE ANY!) TO HELP COVER BENEFIT COSTS
- SOLICIT CONTRIBUTIONS TO A SEPARATE (501C3) HARDSHIP FUND TO PAY FOR CONTINUING BENEFITS
- HELP GUIDE LAID OFF MEMBERS THROUGH APPLICATION PROCESS AT “COVEREDCA.COM”
- KEEP PEOPLE WORKING BY ENSURING THEIR CLASSIFICATION AS “ESSENTIAL WORKERS”
  - (E.G., PUBLIC SECTOR WORKERS CAN BE DECLARED ‘DISASTER RELIEF WORKERS’)



## POSSIBLE TRUST FUND ACTIONS

- MUST BE CONSISTENT WITH FIDUCIARY DUTY TO ACT SOLELY ON BEHALF OF PARTICIPANTS & BENEFICIARIES
  - (WHICH IS THE ESSENCE OF TRYING TO KEEP PARTICIPANTS COVERED!)
- PUT PRESSURE ON INSURERS TO KEEP PARTICIPANTS COVERED AT NO COST
- WORK WITH CONSULTANTS TO KEEP COST PER MEMBER PER MONTH (PMPM) LOW
  - NEGOTIATE LOWER RATES & NO RATE INCREASES DUE TO LOW UTILIZATION
  - DELAY NEW BENEFIT IMPLEMENTATION
  - NEGOTIATE NEW LOWER RATES FOR DENTAL & VISION COVERAGE DUE TO LOW USAGE





## MORE TRUST FUND ACTIONS: USING RESERVES

- FULL EVALUATION OF RESERVES TO DETERMINE HOW MUCH IS REALLY AVAILABLE
- IF RESERVES AVAILABLE, MANY OPTIONS
  - FUND 'X' ADDITIONAL MONTHS OF COVERAGE
  - EXPAND DISABILITY BENEFITS TO COVER COVID-RELATED LAYOFFS
  - DELAY COVERAGE TERMINATION IF CONTRIBUTIONS ARE LATE
  - FUND ALTERNATE MONTHS OF COVERAGE, SPLITTING MONTHS WITH EMPLOYERS
  - TEMPORARILY REDUCE EMPLOYER PREMIUMS
  - BE CREATIVE WITH USE OF ANY RESERVES AVAILABLE



# MAINTAINING BENEFITS: MORE TRUST FUND ACTIONS

- REDUCE HOUR BANK REQUIREMENTS
- EXPAND OPPORTUNITIES TO BANK HOURS
- CREATE "SKINNY PLAN" ALTERNATIVES FOR LAID OFF WORKERS
  - RX + TELEHEALTH + HIGH DEDUCTIBLE FOR EMERGENCIES W/CAP (E.G., \$2500)
  - RE-NEGOTIATE DENTAL AND VISION : EMERGENCY COVERAGE ONLY
- ALLOW ADDITIONAL "OPEN ENROLLMENT" PERIOD TO ALLOW SWITCH TO LOWER-COST PLAN
  - TEMPORARILY WAIVE TIMELINESS REQUIREMENTS FOR ADDING DEPENDENTS, ELECTING COBRA, ETC.
- AGAIN, LIKE UNION, DIRECT WORKER TO COVEREDCA.COM AND PROVIDE GUIDANCE

## MODIFY BENEFITS: COVID-19 TESTING

- FAMILIES FIRST ACT SAYS COVID TESTING MUST BE FULLY COVERED – NO COST/CO-PAY/DEDUCTIBLE
  - COST OF VISIT, COST OF LAB, AND NO CO-PAY/COINSURANCE/DEDUCTIBLE
  - INCLUDES DIAGNOSTIC TESTS, SEROLOGICAL TESTS, IN VITRO TESTS
- FULLY INSURED PLANS SIMPLY PROVIDE IT AT NO COST
- SELF-INSURED HAVE SAME OBLIGATION – NO COST TO PARTICIPANT
  - MUST PAY PROVIDER AT NEGOTIATED RATE WITH IN-NETWORK PROVIDERS
  - MUST PAY NON-NETWORK PROVIDERS AT PUBLISHED RATES (TO AVOID PRICE GOUGING)
- EFFECTIVE IMMEDIATELY (WITH SUMMARY OF MATERIAL MODIFICATION NOTICE OUT BY MAY 17, 2020)



## MODIFY BENEFITS: COVID-19 TREATMENT

- GENERAL RULE: TO BE COVERED JUST LIKE ANY OTHER MAJOR ILLNESS OR INJURY
- BUT IN CALIFORNIA, FOR ESSENTIAL WORKERS, PRESUMPTION IT IS “WORK RELATED” BY STATE FUND – WORKER COMP. (!)
- AND FOR NON-ESSENTIAL WORKERS
  - MAY EASE RESTRICTIONS ON EXPERIMENTAL TREATMENTS
  - MAY EASE PRIOR AUTHORIZATION & UTILIZATION MANAGEMENT REQUIREMENTS
  - MAY EXPEDITE COMPLAINT/APPEALS PROCEDURES
  - MAY MAINTAIN CLOSE COMMUNICATIONS WITH P.B.M. CONCERNING NEW MEDICATIONS/VACCINES & OFF-USES
  - MAY WAIVE COST-SHARING FOR TREATMENT, BUT NO COST-SHARING FOR TELEHEALTH RE COVID-19 & VACCINES



## MODIFY BENEFITS: AIDING SHELTERING IN PLACE

- ALLOW 90-DAY REFILLS OF RX
- ALLOW EARLY REFILLS OF RX
- ENCOURAGE MAIL ORDER REFILLS OF RX
- WAIVE CO-PAYS FOR RX
- WAIVE CO-PAYS FOR TELEMEDICINE APPOINTMENTS

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## MODIFY BENEFITS: FOR FUNDS W/ SUBSTANTIAL RESERVES (29 USC 186(C)(9))

- DISASTER-RELATED LOANS FOR LIVING EXPENSES (CHILD CARE, HOUSING, ETC.)
- JOB READJUSTMENT ALLOWANCES TO BRIDGE PERIOD BETWEEN JOBS
- SUPPLEMENT UNEMPLOYMENT INSURANCE BENEFITS, SEVERANCE BENEFITS, ETC.

# DEFINED CONTRIBUTION RETIREMENT FUNDS

NEW RULES FOR CORONAVIRUS-RELATED  
DISTRIBUTIONS/HARDSHIP WITHDRAWALS  
AND HARDSHIP LOANS

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# HARDSHIP WITHDRAWALS/LOANS: NEW ELIGIBILITY RULES

- WHO IS ELIGIBLE: “QUALIFIED INDIVIDUALS”
  - DIAGNOSED WITH CORONAVIRUS AND/OR COVID-19
  - SPOUSE OR DEPENDENT DIAGNOSED W CORONAVIRUS AND/OR COVID-19
  - SUFFERED FINANCIAL HARDSHIP DUE TO QUARANTINE, FURLOUGH, LAYOFF, REDUCTION IN HOURS, LACK OF CHILD CARE
  - SELF-CERTIFICATION



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## HARDSHIP WITHDRAWALS (CORONAVIRUS-RELATED DISTRIBUTIONS) FOR “QUALIFIED INDIVIDUALS”

- WITHDRAWALS MAY BE FOR UP TO \$100,000
- DISTRIBUTIONS: JANUARY 1, 2020 THROUGH DECEMBER 30, 2020
- MAY BE REPAID
- FAVORABLE TAX TREATMENT
  - 10% EARLY WITHDRAWAL (IF UNDER 59 ½ YRS OLD) WAIVED
  - FUND CAN WITHHOLD 20% FOR TAXES; OR PARTICIPANT MAY PAY TAX OVER 3 YEARS, OR TAX WAIVED IF RE-PAID W/I 3 YEARS



## HARDSHIP LOANS FOR “QUALIFIED INDIVIDUALS”

- PARTICIPANT MAY TAKE A LOAN OF THEIR OWN MONEY FOR UP TO \$100,000
- LOANS DURING MARCH 27, 2020 TO SEPTEMBER 22, 2020 ONLY
- Must RE-PAY OVER FIVE YEAR PERIOD, BEGINNING JANUARY 1, 2021, W/ 4.75% INTEREST
- IF ALREADY HAVE A LOAN, REPAYMENTS DUE MARCH 27, 2020 – DECEMBER 31, 2020 MAY BE SUSPENDED ONE YEAR



# REQUIRED MINIMUM DISTRIBUTION (RMD) WAIVERS

- ORDINARILY, A DEFINED CONTRIBUTION PENSION PLAN MUST MAKE A REQUIRED MINIMUM DISTRIBUTION TO PARTICIPANT IN YEAR AGE 70.5 OR 72 IS REACHED
- RMD IS APPROXIMATELY 5% OF ACCOUNT
- FOR 2020, RMD IS OPTIONAL: FUND CAN MAKE IT AN OPT-OUT PROGRAM, OR AN OPT-IN PROGRAM
- (NOTE: SECURE ACT CHANGED RMD INITIATION DATE FROM YEAR PARTICIPANT TURNS 70.5 TO YEAR TURNS 72)



## SUMMARY: HARDSHIP LOANS & WITHDRAWALS

- QUALIFIED INDIVIDUAL REQUIRED FOR ALL
- HARDSHIP WITHDRAWAL: UP TO \$100,000 – DISTRIBUTIONS JANUARY 1, 2020 – DECEMBER 30, 2020 ; MAY BE REPAID IN SUBSEQUENT THREE YEAR PERIOD
- HARDSHIP LOAN: UP TO \$100,000 – LOANS DURING MARCH 27, 2020 – SEPTEMBER 22, 2020; REPAID OVER FIVE YEAR PERIOD BEGINNING JANUARY 1, 2021
- ALREADY HAVE OUTSTANDING LOAN: PAYMENTS WITH DUE DATES BETWEEN MARCH 27, 2020 – DECEMBER 31, 2020, SUSPENDED FOR ONE YEAR; PAYMENT SCHEDULE ADJUSTED



# DEFINED BENEFIT FUNDS



# CHANGES FOR DEFINED BENEFIT PLANS

- PBGC & IRS FILINGS HAVE BEEN POSTPONED TO LATER DATES
- BENEFIT CHANGES TO CONSIDER:
  - DISABILITY BENEFITS TO COVER COVID-19
  - DEATH BENEFIT
  - TEMPORARY EXCEPTION TO “BREAK-IN-SERVICE” RULES
  - TEMPORARY SUSPENSION OF “PROHIBITED EMPLOYMENT” RULES
- CONTINUED LOBBYING OF CONGRESS FOR LEGISLATIVE SUPPORT FOR DEFINED BENEFIT PLANS

# APPRENTICESHIP FUNDS



## RELATED & SUPPLEMENTAL INSTRUCTION

- MAY WISH TO SUSPEND IN-PERSON CLASSES
- MAY OFFER ONLINE CLASSES WHERE POSSIBLE & PRACTICAL
- CAN CONTINUE TO TRAIN AND RE-TRAIN WHERE NECESSARY FOR ESSENTIAL CRITICAL INFRASTRUCTURE
- IF IN-PERSON TRAINING, CONSIDER SOCIAL DISTANCING, PPE, TEMPERATURE SCANS, ETC.
- FOR ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS, MAY OFFER HAZARD AWARENESS/INFECTIOUS DISEASE TRAINING
- MAY POSTPONE TESTING
- MUST COMMUNICATE FULLY WITH APPRENTICES





## ON-THE-JOB TRAINING

- “ON-THE-JOB TRAINING” LIMITED TO ESSENTIAL CRITICAL INFRASTRUCTURE
- MAY NEGOTIATE CHANGES IN TERMS/CONDITIONS OF EMPLOYMENT – PPE, HANDWASHING STATIONS, BREAKS
- MAY ADDRESS HIRING HALL ISSUES
  - TEMPERATURE SCANNING
  - REFUSAL TO DISPATCH ILL APPRENTICES
- MAY MODIFY STEP INCREASES IN WAGES



## APPRENTICESHIP FUND ADMINISTRATION

- SUB-JOINT APPRENTICESHIP COMMITTEE MEETINGS MAY BE POSTPONED
- SUB-JOINT APPRENTICESHIP COMMITTEE MEETINGS MAY BE HELD ELECTRONICALLY
- DEPENDING ON TAX STATUS, FUND MAY APPLY FOR PPP OR EIDL LOANS FROM FEDERAL GOVERNMENT UNDER THE NEW CARES ACT

# OTHER FUNDS



## ADDITIONAL POSSIBLE CHANGES IN CRISIS TIMES

- VACATION FUNDS
  - HARDSHIP WITHDRAWALS
  - SICK LEAVE BENEFITS
- LABOR MANAGEMENT COOPERATION COMMITTEES – MAY WANT TO MAKE DONATIONS TO NON-PROFIT CHARITABLES
- CHARITABLE NON-PROFITS MAY WANT TO HELP OUT OF WORK UNION MEMBERS
  - WAGE SUPPLEMENTS, FOOD, CHILD CARE, HOUSING EXPENSES, LOAN RE-PAYMENTS

# FUND ADMINISTRATION



## ADMINISTRATION ISSUES

- SELF-ADMINISTERED FUND ISSUES
- COMMUNICATION WITH PARTICIPANTS & BENEFICIARIES
- COMPLIANCE
- HIPAA ISSUES
- AUDIT & COLLECTION ISSUES



## SELF-ADMINISTERED FUND ISSUES

- ADMINISTRATIVE OFFICES MEET THE CRITERIA FOR ESSENTIAL BUSINESSES
- REMOTE WORKPLACE ISSUES
- EMPLOYEE ON-SITE SAFETY ISSUES
- MAIL-HANDLING (CHECKS, CONTRIBUTION FORMS, ETC.)
- EMPLOYER REPORTING AND PAYMENT ISSUES

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## COMMUNICATION ISSUES

- NOTICES TO PARTICIPANTS: FUND HAS OBLIGATION TO CLEARLY COMMUNICATE WITH PARTICIPANTS ABOUT ANY AND ALL SUBSTANTIAL CHANGES AS THEY HAPPEN
- NOTARIZED SIGNATURES/SPOUSAL CONSENT SITUATIONS
  - CALIFORNIA DOES NOT ALLOW VIDEO CONFERENCE NOTARIZATION
  - MAY HAVE TO RELY ON WITNESSED SIGNATURE IN LIEU OF NOTARIZED SIGNATURE
  - IF RECORDING, CONSENT MUST BE REQUESTED AND PROVIDED
  - MAY USE SECURE ELECTRONIC SIGNATURE SERVICE LIKE “DocuSign”
- ADMINISTRATOR MUST BE ABLE TO RESPOND TO PARTICIPANTS IN TIMELY MANNER



# COMPLIANCE ISSUES

- PLAN AMENDMENTS TO REFLECT CHANGES IN ELIGIBILITY, BENEFITS, ETC.
  - MAY FRAME AS TEMPORARY EMERGENCY PROVISIONS W/ 'SUNSET' PROVISION (E.G., DECEMBER 31, 2020)
  - MAY FRAME AS TEMPORARY EMERGENCY PROVISIONS W/ "UNTIL SUCH TIME AS TRUSTEES MAY DETERMINE TO TERMINATE"
  - MAY HAVE TIME EXTENSION FOR ADOPTION OF AMENDMENTS IF FUND IN COMPLIANCE WITH CHANGES
- BENEFIT APPEALS
  - MAY EXTEND DEADLINES FOR APPEALS
  - MAY PROVIDE FOR WRITTEN APPEALS IN LIEU OF IN-PERSON APPEALS
- TRUST MEETINGS BY ELECTRONIC MEANS (VIDEO PREFERRED TO AUDIO WHEN POSSIBLE)
  - NECESSARY TO ADOPT AMENDMENTS
  - NECESSARY TO ESTABLISH RECORD OF CAREFUL CONSIDERATION OF ANY/ALL CHANGES DURING THE CRISIS



# HIPAA ISSUES

- THE HIPAA PRIVACY RULE REMAINS IN EFFECT DURING THE PANDEMIC, BUT PROTECTED HEALTH INFORMATION (PHI) RELATED TO COVID-19 MAY BE SHARED UNDER CERTAIN CIRCUMSTANCES
- HHS ISSUED GUIDANCE THAT THEY WILL NOT PENALIZE PROVIDERS THAT USE TELEHEALTH NOT FULLY COMPLIANT WITH HIPAA TO ALLOW INDIVIDUALS TO SEEK VIRTUAL CARE FROM EXISTING PROVIDERS
- FOR SELF-ADMINISTERED PLANS, ENSURE THAT YOU HAVE PUT INTO PLACE PRIVACY POLICIES THAT PROTECT PHI FOR REMOTE WORKING EMPLOYEES
- PLANS CANNOT SHARE EMPLOYEE PHI WITH EMPLOYERS OR UNIONS UNLESS VOLUNTARY AUTHORIZATION PROVIDED BY EMPLOYEE
- ENSURE BUSINESS ASSOCIATE AGREEMENTS ARE IN PLACE FOR BUSINESS ASSOCIATES



# AUDIT AND COLLECTION ISSUES

- STATUTES OF LIMITATIONS ARE STAYED IN MANY COURTS, BUT NOT SO LONG AS TO IGNORE AUDITS & COLLECTIONS
- AUDITS MAY BE DONE REMOTELY
- ENCOURAGE EMPLOYERS TO GO TO ONLINE REPORTING AND ELECTRONIC PAYMENT
- GRACE PERIODS & LIQUIDATED DAMAGES PROVISIONS MAY BOTH BE MODIFIED
- SETTLEMENTS OF DELINQUENCIES DUE SHOULD PROBABLY BE SECURED BY LIEN OR BOND OR PERSONAL WRITTEN GUARANTEE TO INSURE SOME KIND OF RECOVERY
- WITHDRAWAL LIABILITY AND INCREASING FREQUENT BANKRUPTCIES MAKE CLOSE MONITORING NECESSARY
- FRINGE BENEFIT CONTRIBUTIONS DUE ON EMERGENCY PAID SICK LEAVE AND PAID FAMILY LEAVE AND PPP WAGES – UNLESS BARGAINED OTHERWISE



# PRESERVE AND PROTECT !

- PRESERVE AND PROTECT PARTICIPANTS AND BENEFICIARIES
  - PRESERVE AND PROTECT OUR BENEFIT FUNDS