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Pending Legislation Could Affect Employee Benefit Plans

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Since the 112th Congress commenced at the beginning of this year, multiple bills have been introduced that, if enacted, would affect employee benefit plans and executive compensation. Some of this proposed legislation, which is currently in committee, is highlighted below.

401(k) Plans: Two pieces of legislation affecting 401(k) plan are pending. The first bill (found here) is intended to curb "leakage" of retirement savings from 401(k) plans prior to retirement. It would (1) extend the repayment term of a 401(k) loan if an employee loses his/her job; (2) prohibit the ability of employees to take loans from their 401(k) account via credit cards or similar arrangements; (3) limit an employee to having only three outstanding 401(k) loans at a time; and (4) permit an employee to make 401(k) contributions within the six-month period following a hardship distribution from his or her 401(k) account. The second bill (found here) would require employers sponsoring 401(k) plans to, at least annually, include an item on the employee's quarterly benefit statement that provides what the monthly annuity payment would be if the employee's current 401(k) balance was used to buy an annuity.

Executive and Equity Compensation: There are also two bills pending that would affect executive and equity compensation. One bill would repeal a provision of the Dodd-Frank legislation and another would alter employers' tax deduction for stock options. The first bill (found here) would eliminate the requirement that securities issuers disclose (1) the median annual total compensation of all employees other than the CEO; (2) the CEO's annual total compensation; and (3) the ratio between the two. This requirement is not yet in effect, so, if enacted, the repeal would maintain the status quo. The second bill (found here) would change the federal tax deduction rules so that an employer could only deduct stock option expenses to the extent such expenses are reflected on the employer's financial statements.

Flexible Spending Accounts (FSAs): Health FSAs allow employees to use pretax compensation to reimburse certain medical expenses. As one of the "revenue raisers" in the health care reform legislation, Health FSAs no longer can be used to reimburse costs for over-the-counter medications unless the employee has a prescription for the medication. This change was effective January 1, 2011. Legislation introduced in both chambers of Congress would repeal this provision. Thus, Health FSA funds would once again be permitted to reimburse an employee for the purchase of over-the-counter medications. The bills can be found here and here.

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