Un-retired: Solutions to Healthcare Worker Shortage

Mar 18, 2020

Categories:

Coronavirus Response Team

Tax Law Defined™ Blog

Authors:

Jeffries Mock Hamilton

While many employers are closing their doors to stem the spread of the COVID-19 virus, other employers, such as hospitals, are facing a sudden increase in workload. Retired employees are a ready pool of experienced workers that could be used to fill this unexpected need. Ordinarily, rehiring retired employees, especially those who haven't been gone long, is not a good idea because that could jeopardize the qualified status of the employer's tax-qualified retirement plan.

A tax-qualified retirement plan may only pay benefits under applicable law and the terms of the plan, such as when an employee retires. The long-held position of the IRS is that a plan participant must retire before the plan can pay benefits that are permitted to be paid due to termination of employment. If there was an agreement, understanding, or policy under which a participant knew that he or she could retire, begin receiving retirement benefits, and later be rehired after a few weeks or months or as an independent contractor, the IRS could determine that the participant had not actually retired and therefore any retirement benefits paid to that participant were not paid according to applicable law and the terms of the plan. In that case, the participant might have to repay the benefits they had already received. If the situation was particularly egregious, the IRS could disqualify the plan altogether, resulting in immediate taxation for the participants and the plan's trust, as well as the loss of prior-year deductions for the employer.

Under the present circumstances, however, an employer should be able to safely rehire its retired employees. For instance, if a hospital faced with a sudden large influx of COVID-19 patients asked its retired employees to consider returning to work, the facts and circumstances would show that the retired employees had retired, but unplanned events at the time of their retirement caused them to resume working for their former employer.

FBT Gibbons

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.