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01.24.2019 [2017 Tax Cuts and Jobs Act Breathes New Life Into Old Trick For Dealing With Participant Loans in Corporate Transactions](#)

By Robert A. Browning

One of the more difficult issues in corporate transactions that are structured as asset purchases is how to deal with outstanding participant loans. In the typical asset purchase scenario – where the purchaser does not assume sponsorship of, or accept a transfer of assets from, the seller's retirement plan – employees of the seller who become employed by the asset purchaser generally incur a termination of employment with the seller, and therefore a distributable event under the seller's 401(k) plan. If a participant has an outstanding loan at the time of the asset sale, then unless the distribution is paid in a direct rollover to another employer plan that is willing to accept a rollover of a participant loan, the participant must either (i) pay off the loan before taking the distribution, or (ii) incur a potentially taxable "plan-loan offset" (where the participant's account balance is reduced, or offset, by the outstanding loan balance).

11.13.2018 [IRS \(Finally\) Answers Questions re: 2019 Hardship Distributions](#)

By Robert A. Browning

On November 9, 2018, the IRS issued proposed amendments to the regulations under Code Section 401(k) that describe the circumstances under which participants may take an in-service distribution of elective deferrals (and contributions subject to similar withdrawal restrictions, such as QMACs, QNECs and safe-harbor contributions) on account of financial hardship. The proposed amendments to the regulations reflect several statutory changes to 401(k) plans since the Pension Protection Act of 2006, including the recent changes (that are scheduled to apply to hardship distributions in plan years beginning after December 31, 2018) under the Bipartisan Budget Act ("BBA") of 2018. Most importantly, the amendments answer several questions that plan sponsors and plan administrators have had with respect to both the BBA and the Tax Cuts and Jobs Act ("TCJA") of 2017, and provide some much-needed transition relief for hardship distributions made in 2019.

06.26.2018 [Cyber Liability Insurance for Employee Benefit Plans: Hackers and Malware and Phishing – Oh My!](#)

By Laura L. Fischer

Cyberattacks have managed to invade all walks of life, and employee benefit plans are no exception. When a plan is attacked, the fallout can be overwhelmingly expensive and burdensome to correct. Many plan sponsors are purchasing cyber liability insurance coverage to supplement their data security measures. Understanding those policies – and their exclusions – is important for sponsors who are exploring such coverage.

03.21.2018 [Here We Go Again... Fifth Circuit Strikes Down DOL's Fiduciary Rule](#)

By Gregory L. Ash

In a significant blow to the Department of Labor's controversial regulation re-defining what constitutes an investment-advice fiduciary, a split three-judge panel of the Fifth Circuit Court of Appeals ruled on March 15 that the DOL exceeded its authority when creating the rule. The 2-1 decision of the appellate court strikes down the regulation and its associated prohibited transaction exemptions in their entirety. (*Chamber of Commerce v. U.S. Dept. of Labor* (5th Cir. March 15, 2018)). In its wake, the court's decision leaves even more of the confusion that has plagued the DOL's 2016 rulemaking.

02.19.2018 [Congress Eases Restrictions on Hardship Withdrawals](#)

By Kenneth A. (Ken) Mason

Buried in Sections 41113 and 41114 of the recent Bipartisan Budget Act of 2018 are provisions designed to facilitate hardship withdrawals from 401(k) and 403(b) plans. Because these provisions take effect for plan years beginning after December 31, 2018, sponsors of these plans will want to consider whether to broaden their hardship withdrawal provisions – or even *add* such provisions.

01.29.2018 [Tax Cuts and Jobs Act – New Rules for Retirement Plans and IRAs](#)

By Robert A. Browning

Although the main feature of the Tax Cuts and Jobs Act is a significant reduction in the corporate federal income tax rate, the Act also makes a number of significant changes to the rules governing employer-sponsored retirement plans and individual retirement accounts. From plan loans to hardship withdrawals and Roth recharacterizations, employers should make sure that they understand how these new rules might affect them.

05.22.2017 [Treatment of "Collateral" Employees Under Retirement Plans](#)

By Stephen Rickles

It is common for employers to contract with one or more third parties (sometimes referred to as "leasing companies") to provide individuals to perform services for the employer. Various issues may arise regarding the treatment of such individuals under a retirement plan maintained by the employer.

03.16.2017 [IRS Clarifies Permissible Substantiation Procedures for Hardship Withdrawals](#)

By Kenneth A. (Ken) Mason

In recent years, sponsors and administrators of 401(k) and 403(b) plans have received conflicting advice on the steps they should take to substantiate an employee's entitlement to an in-service withdrawal on account of financial hardship. For instance, an April 2015 IRS newsletter seemed to require that plan sponsors obtain and retain *documentary proof* of an employee's entitlement to a hardship withdrawal. However, two recent internal IRS memos outline a permissible approach to this substantiation requirement that need *not* involve conditioning a hardship withdrawal on an employee's provision of supporting documents. Plan sponsors should thus consider this new alternative.

04.06.2016 [DOL Releases Final Regulation Defining Investment Fiduciaries](#)

By Gregory L. Ash

After years of effort, the Department of Labor released final rules on April 6, 2016, that will substantially alter the way investment advice is provided to ERISA plans, their participants, and even non-ERISA IRAs.

06.29.2015 [Same-Sex Marriage Ruling Impacts Benefit Plans \(Again\)](#)

By Robert A. Browning

On Friday, June 26, 2015, the Supreme Court published its ruling in [Obergefell v. Hodges](#), holding (by a 5 to 4 margin) that the Fourteenth Amendment requires a state to license marriages between two people of the same sex, and to recognize any such marriage that is lawfully licensed and performed out-of-state. As a result, all (remaining) state laws or constitutional amendments banning same-sex marriage are now invalid.

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