# ERISA Roundup

A quarterly recap of recent publications from BDO's ERISA Center of Excellence

Q1 2025

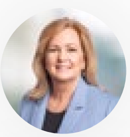
# A Note from BDO's ERISA Practice Leaders

Spring is here and BDO's ERISA Center of Excellence is celebrating a fantastic first quarter along with National Employee Benefits Day on April 2nd.

In the past quarter, we've stuck to our resolutions to bring new insights and resources we hope you'll find helpful — we updated our annual requirements calendar to help you stay on top of deadlines, best practices around remittance schedules and corrections programs, and more.

If you missed our annual Accounting, Audit, and Regulatory Updates Impacting Retirement Plans Webinar last month you can watch the recording here.

Staying current on ERISA topics is simplified with BDO: Follow along with our regular insights at our BDO ERISA Center of Excellence and our podcast series BDOTalksERISA. We welcome your feedback on our content at BDOTalksERISA@BDO.com.



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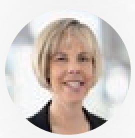

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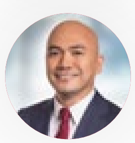

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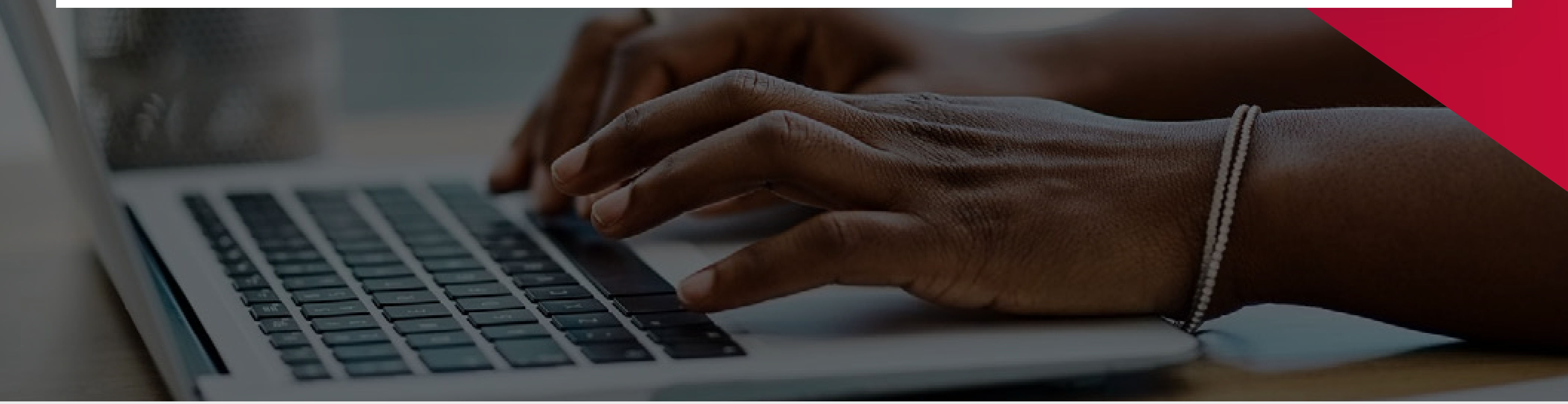
BDO's ERISA Center of Excellence is your source for insights on emerging regulations, industry trends, current topics, and more. Visit us at www.bdo.com/erisa or follow along on Twitter: @BDO_USA and #BDOERISA.

# In this Issue





# 2025 Deadlines and Important Dates

Sponsors of defined benefit and defined contribution retirement plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2025. Dates assume a calendar year plan. Some deadlines may not apply, or dates may shift based on the plan sponsor's fiscal year. For additional support, please contact your BDO representative.

DOWNLOAD THE FULL CALENDAR YEAR ▶

## APRIL

- **1** / **Action:** 401(k) plans with publicly traded employer stock that follow Article 6A of the Regulation S-X (SEC format) must file Form 11-K with the Securities and Exchange Commission by April 1.
- **1** / **Action:** Recordkeeper (or other responsible party) completes and files Form 1099-R electronically with the IRS by April 1 for 2024 retirement plan distributions.
- **1** / **Action:** April 1 deadline for 5% business owners and terminated participants who turned 73 in 2024 to receive their required minimum distribution (RMD).

  **Note:** The IRS "weekend rule" does not roll the April 1 deadline to the next business day if April 1 falls on the weekend or holiday.
- **15** / **Distribute:** Possible first quarter 2025 contribution due for defined benefit pension plans.
- **15** / **Fund:** April 15 possible first quarter 2025 contribution due for defined benefit pension plans (i.e., contribute by April 15 before the weekend, as contribution deadlines are not extended to the next business day).
- **15** / **Distribute:** Participants who contributed over 402(g) or 415 limits in the previous year must be refunded the excess amount by April 15.
- **15** / **Action:** File PBGC Form 4010, Notice of Underfunding for single-employer defined benefit plans with more than $15 million aggregate underfunding by Monday, April 15.
- **15** / **Fund:** C-Corporations and Sole Proprietors that are not getting an extension must fund employer contributions by April 15 to receive tax deduction for the prior year.
- **15** / **Fund:** IRA contributions for the prior tax year must be funded by April 15.
- **30** / **Action:** Send annual funding notice to participants of single and multi-employer defined benefit plans over 100 participants by April 30.

## MAY

- **15** / **Action:** Start your mid-year compliance audit to ensure all records and documentation are up to date.

## JUNE

- **29** / **Action:** 401(k) plans with publicly traded employer stock must file SEC Form 11-K with the Securities and Exchange Commission by June 29 or file an extension on SEC Form 12b-25.
- **30** / **Action:** Highly compensated employees who fail ADP/ACP test for prior plan year must have refunds processed by June 30, if an eligible automatic contribution arrangement (EACA).

## JULY

- **14** / **Action:** 401(k) plans with publicly traded employer stock that requested a 15 calendar day extension (SEC Form 12b-25) for the SEC Form 11-K must file the SEC Form 11-K with the Securities and Exchange Commission by July 15.
- **15** / **Fund:** Possible second quarter 2025 contribution due for defined benefit pension plans by July 15.
- **31** / **Action:** File IRS Form 5500, Annual Return/Report of Employee Benefit Plan, and IRS Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, for the 2024 plan year by July 31.
- **31** / **Action:** To request an extension of time to file IRS Form 5500, file IRS Form 5558 by July 31.

RECENT WEBCAST

# Accounting, Audit, and Regulatory Updates Impacting Retirement Plans

**Presented by:**

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Join BDO and our thought leaders who will provide an update on key developments in Accounting, Audit, and Regulatory Guidance pertaining to retirement plans.

At the end of this session, participants will be able to:

- Identify impact of recent accounting developments on retirement plans.
- Discuss newly effective auditing standards on retirement plans.
- Demonstrate knowledge of legislative and regulatory changes impacting retirement plans.

**WATCH THE RECORDING ▶**

# Hidden Figures: Why It's Important for Plan Sponsors to Identify Controlled Groups

The identification and treatment of controlled groups often proves to be an enormous challenge for owners of multiple business entities. The rules are complex, requiring employers and plan administrators to ask the right questions, carefully analyze the responses, and adapt employee benefit plans as needed when a controlled group exists. These rules apply regardless of type of entity — so they apply to C-corporations, S-corporations, LLCs, partnerships, sole proprietorships, and tax-exempt entities that are under common control. This article focuses on stock corporations.

An inaccurate controlled group determination can create unnecessary expense for the employer. Additionally, because controlled group status impacts all facets plan compliance and administration, and must be disclosed annually on Form 5500, assessment should be performed when there are any changes in ownership structure.

- We offer the following insights to help demystify controlled groups based on the business relationships among a group of fictional, interrelated companies.
- An organization's status can significantly affect its employee benefit plans.
- In a non-controlled group, businesses are separate legal entities that lack significant common control or ownership. Each entity operates as a separate employer for tax and benefit purposes.
- A controlled group occurs when companies meet certain criteria related to control and ownership. Several types of controlled groups exist, but all are treated as a single employer for benefit plan purposes.
- Affiliated service groups are similar to controlled groups in that they are treated as single employers for benefit plan purposes. However, the connections here are among service organizations.

## A CAUTIONARY TALE FOR PLAN ADMINISTRATORS AND EMPLOYERS

To illustrate the complexities and nuances of a controlled group, we will take a look at the following fictional scenario.

For more than 25 years, a family has owned and operated several businesses, starting with a children's clothing company (Company Alpha). Following their initial success, the family launched additional enterprises, including a clothing manufacturing facility, a luxury hotel and spa, and two restaurants (collectively referred to as Companies Beta, Kappa, Delta, and Epsilon). Various family members shared ownership of each venture and also worked at the businesses.

Each of the organizations sponsored a separate employee benefit plan that was offered to qualified employees of that particular business. Plan provisions varied widely in several key areas, including the amount of the employer match for retirement plans and the types and levels of health insurance offered. Company Alpha's employee benefit plan was the most generous. The business owners and their plan administrator attempted to comply with all ERISA and tax rules but overlooked one critical component: controlled group status.

An Internal Revenue Service (IRS) audit of the parent company (Company Alpha) revealed the interconnecting business relationships. The IRS determined that a controlled group existed. In addition to assessing fines, the IRS required that all employees of the businesses that made up the controlled group be retroactively included in the plan that had offered the most benefits and highest employer retirement fund matches covering the previous years.

What could the business owners and plan administrators have done differently?

## REVIEW BUSINESS RELATIONSHIPS WITH A KNOWLEDGEABLE ADVISOR

As ownership and working arrangements shift, business relationships can quickly become complicated for tax and employee benefit plan purposes. Determining controlled group status becomes more challenging, especially with the complexity of business relationships. The following tests can help determine whether a controlled group has formed or not:

- **Parent-Subsidiary Controlled Group Test:** A controlled group would exist when one company (the parent) owns at least 80% of a subsidiary. For example, Company Alpha in our story owns 85% of Company Epsilon, which means that Companies Alpha and Epsilon are a controlled group for purposes of their employee benefit plans.
- **Brother-Sister Controlled Group Test:** This test consists of two questions:
  1. Does ownership consist of five or fewer owners with at least an 80% ownership stake, and
  2. Do the same people own at least 50% of all companies within the potential controlled group?

  In our cautionary tale, four individuals own 89% of Companies Alpha, Beta, and Epsilon, and they also own 60% of Companies Kappa and Delta.
- **Combined Group Test:** This test, in effect, builds on the prior two situations. A controlled group generally consists of two or more businesses that meet the following conditions:
  - The companies all have either a parent-subsidiary or brother-sister controlled group arrangement; and
  - At least one company is a common member in two of the companies.

  In our controlled group simulation, Companies Alpha and Epsilon have a parent-subsidiary relationship, and Companies Beta and Epsilon have a brother-sister controlled group arrangement. Companies Alpha, Beta, and Epsilon could be considered a combined group.

If the entities are not part of a controlled group, then employers and plan administrators must also consider affiliated service group status.

As noted above, an affiliated service group relates more to services than ownership structure, although some level of ownership or control may exist. None of our test companies are service organizations and none provide management services to the others, so it is unlikely that an affiliated service group exists. But if they shared management services or had other relationships, they might be an affiliated service group. It is advisable to do a baseline analysis of the affiliated service groups whenever in doubt.

Determining controlled and affiliated service group status is not a "quick question." Therefore, when asked to check a few boxes on a form, it is important to correctly connect the dots among business entities. Complicated rules apply to employee benefit plans, and careful analysis should be an ongoing process undertaken by companies, their plan administrators, and third-party advisors who possess thorough knowledge of the subject.

## ASK THE RIGHT QUESTIONS — THEN ASK AGAIN

Employers and plan administrators should watch for controlled group status during annual reviews. It is also crucial to review employee benefit plans when family and business circumstances change, something that can occur from year to year or even from month to month. Third-party administrators, accountants, and other providers may ask some crucial questions every year, including:

- **Have any business relationships changed?** In our example, Companies Alpha, Beta, and Epsilon formed a brother-sister controlled group. However, Company Epsilon was sold off midway through the fiscal year, which may mean that Company Epsilon is no longer part of the controlled group, even though the controlled group continues to exist for the other entities.
- **Have there been changes to the ownership structure?** Ownership percentages may also be affected by marriage, divorce, or inheritance. For example, when two married owners of Company B file for divorce, plan administrators should review any potential effects on the balance of ownership and voting power, especially in light of family attribution rules.
- **Have the stock ownership attribution rules been considered?** Family attribution and other stock ownership attribution rules apply and are often missed by those who are not familiar with these complex rules. For example, the entity organizational chart might show who owns what percentage of each entity but might miss the "constructive ownership" rules that deem certain individuals to own stock that is actually owned by others.
- **Is the management structure the same as last year?** This type of change may or may not affect affiliated service group status but should still trigger a review of that status.
- **Have ownership percentages been adjusted or altered?** In our example, Companies Alpha and Beta originally were owned 50-50 by a husband and wife. But the owners gifted small percentages of ownership in Company Beta to their three children as each of them reached age 18.

Keeping business information up to date is crucial for employee benefit plan administrators; they are tasked with plan document design and implementation, as well as compliance testing but can only work with the data they are given. Employers must be aware that failing to recognize a controlled group can be costly in the form of fines, penalties, and the retroactive retirement plan contributions to formerly ineligible employees.

## ACCURATE CONTROLLED GROUP DETERMINATION IS CRITICAL

Determining whether a controlled or affiliated service group situation exists is a task that some employers might ignore, since it is confusing and complex, in the hopes that it never becomes an issue. However, government regulators expect plan sponsors to understand these rules and ensure their plans comply with regulations, so pleading ignorance is not an acceptable excuse to the Department of Labor or the IRS.

For plan sponsors, deciding whether their companies are part of a controlled group is not a do-it-yourself project. Navigating complex rules while also factoring in the unique nuances of a group of related businesses is not easy; the decision can have serious implications to both the employee benefit plan and the business. Providers and third-party consultants with expertise in this area can offer a holistic, comprehensive analysis. Keep in mind that these rules apply to both retirement plans and health and welfare benefit plans.

Learn more about how to avoid the consequences of having the wrong controlled or affiliated service group status. Our **Global Employer Services** and **Employee Benefit Plan Audits** teams help guide clients as they administer their employee benefit plans. We analyze the client's current plan documents, offer recommendations for consideration, and then help them achieve their objectives.

## WHAT FORM 11-K FILERS NEED TO KNOW ABOUT THE UPCOMING TAXONOMY IMPLEMENTATION

Following a three-year extension that allowed Form 11-K filers time to prepare for implementation, the amended SEC rule finalized in 2022 becomes effective on July 11, 2025. The amendment supports the SEC's broader efforts to modernize required filings and improves accessibility to publicly filed submissions by providing filings in an easily searchable format.

## HOW DOES TAXONOMY IMPLEMENTATION AFFECT FORM 11-K FILERS?

For all Forms 11-K filed on July 11, 2025, and later, the SEC will require filers to tag certain data and footnotes using Inline eXtensible Business Reporting Language (XBRL). Filers will embed XBRL tags directly into their Form 11-K before filing, providing both human-readable and machine-readable data. XBRL tags will improve the efficiency of SEC database searches because users — including filers, investors, analysts, and regulators — will be able to search for detail-specific tags.

XBRL tagging was unavailable to Form 11-K filers until 2024, although other filers have been required to use similar tagging systems for some time. Implementing the new taxonomy rule should be relatively straightforward for users as the SEC has integrated the tagging system into its platform. However, it is crucial for entities required to file Form 11-K to be aware of the mandate and ensure compliance by July 11, 2025.

## IS ASSISTANCE AVAILABLE?

To assist filers in navigating this transition, the Financial Accounting Standards Board (FASB) has released the **Proposed GAAP Taxonomy Implementation Guide**. This comprehensive resource includes examples and insights into various scenarios that filers may encounter, serving as an invaluable tool for learning how to implement the new tagging requirements.

As the 2025 deadline approaches, it is essential for Form 11-K filers to familiarize themselves with the new Inline XBRL requirements and take the necessary steps to ensure compliance with regulatory obligations.

For other questions related to retirement plans, please reach out to BDO's **Employee Benefits Plan Audits team**.

# IRS Issues First Guidance on Federal Income and Employment Tax for State Paid Family and Medical Leave Programs

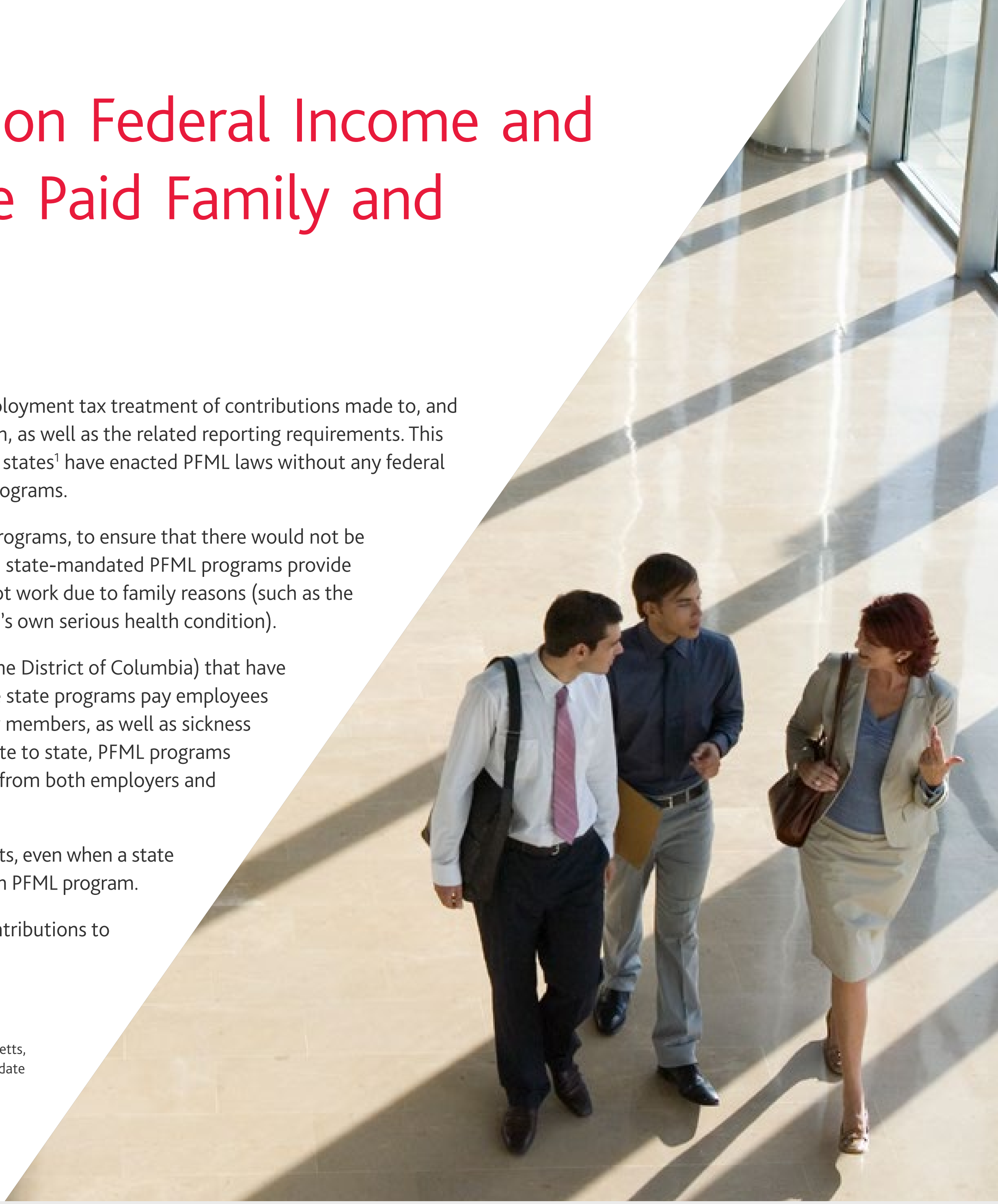
The IRS recently issued its first-ever guidance on the federal income and employment tax treatment of contributions made to, and benefits paid from, a state-run paid family and medical leave (PFML) program, as well as the related reporting requirements. This has become an area of concern for many employers since more than a dozen states[1] have enacted PFML laws without any federal guidance on how to tax the premiums paid to and benefits paid from such programs.

In 2024, the governors of nine states **asked the IRS** to issue rules on PFML programs, to ensure that there would not be double taxation on both the premiums paid and benefits received. Generally, state-mandated PFML programs provide income replacement for a certain number of weeks for employees who cannot work due to family reasons (such as the birth or adoption of their child) or for medical reasons (such as the employee's own serious health condition).

**Rev. Rul. 2025-4** provides rules for employers operating in the states (and the District of Columbia) that have mandatory PFML programs and for employees working in those states. These state programs pay employees who can't work because of non-occupational injuries to themselves or family members, as well as sickness and disabilities. While the details of the programs vary substantially from state to state, PFML programs generally operate as social insurance programs, with premium contributions from both employers and employees and benefits paid at a fixed rate, based on the employee's wages.

The ruling does not address privately insured or self-insured PFML arrangements, even when a state permits employers to use a private plan instead of participating in the state-run PFML program.

The IRS provided two helpful charts summarizing the federal tax rules for contributions to and benefits paid from such PFML programs (see below).



1 As of January 30, 2025, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Puerto Rico, Rhode Island, Washington, and Washington, DC mandate paid leave for an employee's own serious health condition or disability. Except for Hawaii and Puerto Rico, these states also require paid family leave for the birth or adoption of a child, to care for a seriously ill or injured family member, and for certain other matters. New Hampshire and Vermont have voluntary PFML programs. Alabama, Arkansas, Florida, Kentucky, South Carolina, Tennessee, Texas, and Virginia permit private insurers to provide group family leave insurance policies for employers.

## 2025 TRANSITIONAL RELIEF

The ruling is effective for PFML benefits paid by a state on or after January 1, 2025. However, it provides transition relief for states and employers for calendar year 2025 from withholding, payment, and information reporting requirements for state PFML benefits. For 2025 only, employers who voluntarily "pick up" the required employee contribution into a state PFML fund are not required to treat those amounts as wages for federal employment tax purposes.

**BDO Insight:** It is unusual for IRS revenue rulings to be effective prospectively and to request comments (which are due by April 15, 2025), which indicates that further changes may be forthcoming. Nevertheless, employers should begin to update their payroll systems to come into compliance with the new rules starting with the 2026 calendar year. Such changes often take significant time to implement.

Failure to accurately reflect amounts on an employee's Form W-2 can subject the employer to IRS penalties. The guidance places new administrative burdens on employers (and their payroll systems) to understand the income and employment tax consequences of such state PFML programs, and to coordinate with the states to obtain information that may be required to correctly report taxable benefits (in a manner similar to that which exists for employers that utilize a third-party insurer to administer short-term or long-term disability). Thus, employers will be expected to correctly determine the taxable and nontaxable contributions and benefits for payroll processing and W-2 reporting purposes. Employers should proactively review their payroll practices to ensure compliance. BDO's Global Employer Services (GES) Employment Tax Services team can help.

### Key Points

The guidance draws important distinctions on how contributions and benefits are treated for federal income and employment tax purposes. Employers will need to pay careful attention to these new rules. The guidance clarifies the following key points:

- Employers can deduct their contributions to state mandatory PFML programs as a payment of an excise tax.
- Employees can deduct their contributions to such programs as a payment of state income tax, if the employee itemizes deductions, to the extent the employee's deduction for state income taxes does not exceed the state income tax deduction limit. However, required employee contributions to the state PFML program are not excludible from income under IRC Section 106 (i.e., the contributions are after-tax, not pre-tax).
- Employees who receive state-paid family leave payments must include those amounts in the employee's gross income. Generally, the IRS considers benefits that replace wages during an employee's leave as wages for income and employment tax purposes, unless the benefits qualify for an exclusion. Paid family leave is generally not eligible for any exclusion. Employees also do not have a "tax basis" in employee or employer pick-up contributions previously treated as taxable wages.
- Employees who receive state paid medical leave payments must include the amount attributable to the employer's portion of the contributions in the employee's gross income and such amount is subject to both the employer and employee share of Social Security and Medicare taxes. The amount attributable to the employee's portion of the contributions is excluded from the employee's gross income and is not subject to Social Security or Medicare taxes.

Thus, except for leave for the employee's own injury or illness, PFML is not accident or health insurance, so most PFML benefits will be taxable to the employee.

## TAX TREATMENT OF CONTRIBUTIONS TO STATE PAID FAMILY AND MEDICAL LEAVE PROGRAMS

| TYPE OF CONTRIBUTIONS | CONSEQUENCE TO EMPLOYER | CONSEQUENCE TO EMPLOYEE |
|---|---|---|
| **Employer Contribution** | Employer may deduct the employer contribution as an excise tax under IRC Section 164. | Employee does not include the employer contribution in the employee's federal gross income. |
| **Employee Contribution** | Employer must include the employee contribution as wages on employee's Form W-2. | The employee contribution is included in the employee's federal gross income as wages.<br><br>Employee may deduct the employee contribution as state income tax under IRC Section 164, if the employee itemizes deductions on the employee's federal income tax return, but only to the extent the deduction for state tax paid does not exceed the SALT deduction limitation provided under IRC Section 164(b)(6). |
| **Employer Pick-up of Employee Contributions** | Employer may deduct the employer pick-up payment that the employer pays from an employer's funds as an ordinary and necessary business expense under IRC Section 162.<br><br>Employer must include the employer voluntary payment as wages on the employee's Form W-2. | The employer pick-up is additional compensation to the employee and is included in the employee's federal gross income as wages.<br><br>Employee may deduct the employer pick-up of the employee contribution as state income tax under IRC Section 164, if the employee itemizes deductions on the employee's federal income tax return, but only to the extent the deduction for state tax paid does not exceed the SALT deduction limitation provided under IRC Section 164(b)(6). |

## TAX TREATMENT OF BENEFITS PAID FROM STATE PAID FAMILY AND MEDICAL LEAVE PROGRAMS

| TYPE OF BENEFITS | AMOUNT ATTRIBUTABLE TO EMPLOYER CONTRIBUTION | AMOUNT ATTRIBUTABLE TO EMPLOYEE CONTRIBUTION |
|---|---|---|
| **Family Leave Benefits** | Employee must include the amount attributable to the employer contribution in the employee's federal gross income (employer contribution not previously included in the employee's federal gross income). This amount is not wages.<br><br>State must file with the IRS and furnish to the employee a Form 1099 to report these payments. | Employee must include the amount attributable to the employee contribution, as well as to any employer pick-up of the employee contribution, in the employee's federal gross income. This amount is not wages.<br><br>State must file with the IRS and furnish to the employee a Form 1099 to report these payments. |
| **Medical Leave Benefits** | Employee must include the amount attributable to the employer contribution in an employee's federal gross income (employer contribution not previously included in employee's federal gross income) except as otherwise provided in IRC Section 105. This amount is wages.<br><br>The sick pay reporting rules apply to the medical leave benefits attributable to employer contributions. These payments are third-party payments (by a party that is not an agent of the employer) of sick pay. | The amount attributable to the employee contribution, as well as to any employer pick-up of the employee contribution, are excluded from the employee's federal gross income. |

Please visit **BDO's Global Employer Services page** for more information on how BDO can help.

# What Plan Sponsors Need to Know About the DOL's Updates to the Voluntary Fiduciary Correction Program

Maintaining compliance with fiduciary responsibilities is a primary task for plan sponsors. Yet mistakes occur, especially given the complexity of the Employee Retirement Income Security Act (ERISA) of 1974. When certain fiduciary breaches or prohibited transactions are identified related to ERISA benefits, plan sponsors may look for remedies that can right the wrong. The **Voluntary Fiduciary Correction Program** (VFCP) provided by the Department of Labor (DOL) since 2006 is an option, but only for 19 specified prohibited transactions. A recent update to the VFCP, effective March 17, 2025, added a new self-correction component to the program. This article describes the VFCP and the update in its current form.

## WHAT IS THE VOLUNTARY FIDUCIARY CORRECTION PROGRAM?

The DOL offers this program to encourage fiduciaries to voluntarily fix losses suffered by employee benefit plans due to breaches of ERISA fiduciary duties. According to a **DOL Fact Sheet**, employers and plan sponsors that apply to the VFCP may benefit in several ways, including:

- Avoiding potential DOL civil enforcement.
- Gaining a better understanding of legal responsibilities.
- Strengthening the security of employee benefits.

Any fiduciary under ERISA can apply to the VFCP, as long as they are not currently **"under investigation" as defined by program guidelines**. To participate in the original program, plan sponsors compile information and submit a completed application to the DOL. If the DOL agrees with the application, the DOL issues a "no action" letter confirming that the remediation is complete.

## HOW DOES THE VFCP UPDATE AFFECT A FIDUCIARY'S VOLUNTARY CORRECTION?

Among other improvements, the updated VFCP provides an additional opportunity for plan sponsors and other fiduciaries of ERISA-related benefit plans known as the "Self-Correction Component" (SCC). Under the SCC, rather than complete the longer process, plan sponsors and other fiduciaries can self-correct errors made in two types of transaction:

- **Delinquent Participant Contributions and Loan Repayments to Pension Plans (if lost earnings total $1,000 or less).** This error occurs when an employer does not remit contributions or loan payments to the plan within the time allowed.
- **Eligible Inadvertent Participant Loan Failures.** Under ERISA, retirements plans may allow participants to take loans from their retirement accounts. However, plan sponsors and employers must follow very specific rules while administering these loans. For example, plan sponsors are required to follow the retirement plan's loan policy, repayment schedule, and permissible loan amount.

Instead of submitting a VFCP application, the self-corrector submits an SCC Notice to the DOL through its web tool. The DOL simply acknowledges receipt of the notice without commenting on it.

Several things to note:

- The notification provided by the DOL during self-correction does not carry the same weight as the DOL's "no action" letter. However, it does document the plan sponsor's good faith effort to resolve the issue.
- In order to use the SCC, plan sponsors must self-correct within 180 days from when the amounts were withheld. Thus, instead of reviewing remittances only after the end of the plan year (for example, during the annual Form 5500 plan audit), employers should implement a procedure to identify late deposits on a more regular basis — by payroll date, monthly, or quarterly. Otherwise, delinquent loan repayments and contributions may not be identified in time to qualify for the new self-correction program.
- In order to obtain relief under the SCC, the plan sponsor must complete a **SCC Record Retention Checklist** and provide the completed checklist and the related documentation to the plan administrator (typically the employer sponsoring the plan), including the following:
  - A brief statement explaining why the error occurred.
  - Proof of payment for the correction, including lost earnings.
  - Printable results page from the Online Calculator.
  - A statement describing policies and procedures to prevent future issues.
  - SCC Notice Acknowledgement and Summary page received after submission.
  - Signed Penalty of Perjury Statement.

Regardless of the method used, prohibited transactions involving ERISA benefit plans must be corrected. It is also important to learn from the error and consider changing processes to help avoid the problem in the future.

## IS SELF-CORRECTION THROUGH VFCP A PLAN SPONSOR'S ONLY OPTION?

Plan sponsors and employers who identify a mistake can correct it without applying for the VFCP or using the self-correction component. Generally, to correct a prohibited transaction, the employer would put everyone back in the position they would have been in had the error not occurred. This typically involves restoring amounts to the plan, plus lost earnings and paying an excise tax to the IRS using Form 5330. Taking those two steps will fully correct the prohibited transaction in the eyes of the IRS. However, even after taking those steps, the DOL could assert that the prohibited transaction was also a breach of ERISA fiduciary duty. To alleviate such exposure, employers may wish to participate in the VFCP.

It's crucial that all fiduciaries managing employee benefit plans monitor the plan closely to ensure compliance and swiftly rectify errors that occur.

## THE PATH AHEAD

Clarification may be forthcoming, specifically regarding whether the SCC component applies to transactions that occurred before March 17, 2025, or only to transactions that occur after that date. On March 18, 2025, the DOL published a **model Notice to Interested Parties** that can be used for the SCC. Plan sponsors should determine which method of correction is most beneficial for their plan to ensure any errors are fully corrected in a timely manner.

For other questions related to retirement plans, please reach out to BDO's **Employee Benefits Plan Audits** team.

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