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Guidance on Premium Refunds from Carriers

Recently, we have seen insurance carriers across the country notifying employers that they will be (or have already) receiving premium credits. This is because of reduced utilization of benefits due to COVID-19 stay at home or quarantine orders issued by a local, state, or federal agency.

These premium credits are not to be confused with Medical Loss Ratio (MLR) rebates, but employers are asking how to use or distribute these credits. Like the MLR rebates, a determination must be made as to whether these credits are “plan assets” under ERISA.

The plan document will usually determine whether these types of rebates or credits are plan assets. If the plan documents are unclear, the Department of Labor (DOL) looks at how premiums are funded. Simply said, they look at the proportional ratio of contributions made by both the employer and the employees. Employee contributions to an ERISA plan are considered plan assets. So, in a situation where employees pay all or part of the premiums, the employer cannot profit from those payments.

The premium credits are a bit easier to deal with because no cash is being sent to the employer. The credit is being applied towards future premiums due. So, in order to make sure that the employees benefit from that credit the employer can suspend employee payroll deductions and apply the credit until exhausted. If the credit is not enough to completely suspend the contributions, then payroll deductions can continue making sure all credit amounts are applied to premiums. Employer contributions can also be suspended until their portion of the credit is used.

If the carrier issues a refund to the employer and it is determined that employee contributions are a plan asset, a distribution method back to those employees needs to be put in place. That can take the form of:

- A benefit enhancement to the plan
- A premium reduction (as discussed above)
- A refund back to the plan participants

Keep in mind, unintentional mishandling of plan assets is prohibited under ERISA and could possibly lead to civil or criminal liability.

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