Would your employees and plan participants be able to access their employee benefits in the event of a natural disaster like Hurricane Harvey? This article suggests areas that organizations should plan for to help ensure benefits will be available for workers if disaster strikes.

Disaster Planning for Employee Benefits

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benefits
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When many organizations think of disaster planning, they simply think about what they need to do to protect and recover electronic data. While that is a very important consideration, it is not the only concern from an employee benefits perspective when a large-scale disaster strikes. Natural disasters such as hurricanes, forest fires, ice storms and volcanic eruptions can result in widespread evacuations, work cessation and other disruptions that can significantly impact employees. For that reason, employers and benefit plans also should spend time considering and planning for disasters in a way that focuses on employees and plan participants.

This article offers a look at several key planning areas.

Have a Communication Plan for Before, During and After a Disaster Strikes

Before a Disaster Strikes

Not every disaster comes with warning, but impacted individuals often have several days' notice, such as when hurricanes are forming. In such cases, employers can remind employees about a few key predisaster issues including how the organization will communicate with employees, where to find medical coverage information and how to obtain sufficient doses of medication in case of an extended disruption to daily life.

During a Disaster

Even in normal circumstances, it is important for employees and their families to be able to find contact information for medical plan carriers or third-party administrators (TPAs). Often, employers store such information on their intranet sites, but spouses and children would not have access to an intranet site and, during a widespread disaster, electricity to power up a computer may not be available to anyone. An external site that can be accessed via a smartphone may be a better option. One savvy employer in Louisiana had a smartphone app developed for its employees that contains plan and other contact information. Other employers may wish to have prerecorded messages on well-known organizational phone lines containing plan or benefit advocate contact information.

Many employers have found that group texts are a useful tool to communicate with employees in real time about closures or emergencies. In addition, many employers use social media as a way to keep workers informed and provide a potential method for employees to communicate with one another either through comments or by simply "marking themselves as safe."

In the event of a disaster, the organization as a whole is likely initiating its emergency mode operations. But employer-sponsored health plans, as covered entities under the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules, should have their own disaster plans in place, which should include emergency mode operation plans and teams. However, since health plans are unique in that much of their day-to-day operations are conducted by third parties such as insurance carriers and TPAs, they need to incorporate those outside entities into their emergency mode operations to ensure that employees can maintain communication and receive their benefits.

For this reason, it's important when selecting third-party vendors to understand their emergency mode operations plans and capabilities. If an employer and a crucial vendor are in the same disaster zone area, the employer will want assurances that the vendor can continue operations from a different location. For example, one Houston-based benefit advocate center switched all of its call lines over to operations in a sister office in Seattle, Washington during Hurricane Harvey with no apparent downtime to its customers' employees and families.

After the Disaster

In the wake of a disaster, many employees may be forced to evacuate not only from their homes but also from their health care areas. In such times, state departments of insurance often encourage insurance carriers to waive penalties and restrictions for individuals obtaining necessary emergency and nonemergency health and dental services out of network. Carriers may waive prior authorization requirements for acute medical care and behavioral health services and may authorize nonemergency out-of-network services at an in-network level when in-network services are not available because of a disruption caused by a natural disaster.

Carriers also may lift prescription refill restrictions (e.g., "too soon to refill") and restrictions requiring prescriptions to be filled by mail order. Employers with self-insured plans also may wish to instruct their TPAs to follow similar courses of action. Employers, regardless of the funding for their health benefits, should have a mechanism, such as social media, text messaging or a web page, to communicate waivers on restrictions and also to communicate with employees on how to find operational locations (e.g., a hospital with emergency power running) to obtain health care.

After the disaster has receded, it also is important to make sure that employees know that their employer-sponsored benefits are there to support them. For example, if an organization has an employee assistance program (EAP) that provides mental health counseling sessions, the immediate end of a disaster is an excellent time to remind employees about the benefits and how to use them. For instance, everyone in the path of Hurricane Harvey was impacted by the storm, regardless of whether an individual was forced to evacuate by floodwaters. It was clear that everyone involved had some type of emotional distress, and employer-sponsored EAPs were useful to help employees handle that stress.

Make It a Team Effort

When setting up a disaster team for handling employee issues, employers should make sure that each team member has a backup and that the backup person has a backup. No one can predict exactly who the disaster will impact, and anyone who has to evacuate her house at 3 a.m. will likely not be thinking about grabbing her work laptop so that she can e-mail her manager. In addition, employers should make sure that team members understand their roles and that they have the tools and resources needed to carry them out, including employee cell phone and home phone numbers, a copy of the business continuity plan (yes, a physical copy) and sufficient information to let others know what's happening with work, such as when normal operations may resume, whether wages will continue to be paid and how to help.

Plan for Tax Impacts

It seems strange to suggest that employers should think about taxes while planning for a disaster, but after several recent natural disasters, the U.S. government provided tax relief to organizations ranging from providing hiring credits similar to the Work Opportunity Tax Credit, extending deadlines for federal filings, providing tax credits for continuing employment and wages while businesses were inoperable, affording access to retirement plan savings, and granting tax relief for leave-sharing and leave-donation programs. Employers cannot assume that relief will be granted, but when it is granted, both employers and employees can benefit.

Wage Continuation Credits During Periods of Inoperability

Many organizations are physically impacted by a widespread natural disaster and forced to close business operations for an extended period of time. Others are forced to close because they can't obtain electricity or raw materials. When business interruptions occur, it is important to determine whether the business will continue to pay its workers when not obligated to do so. Several organizations continued to pay their employees after Hurricane Harvey left them inoperable for a period of time, and they were rewarded with not only very positive PR in the community but also increased loyalty from their employees and customers. The good news is that such a decision does not necessarily have to be purely altruistic.

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For example, the U.S. Disaster Tax Relief and Airport and Airway Extension Act of 2017 (the Relief Act) signed into law on September 29, 2017 provides a broad array of relief measures aimed at assisting in the recovery efforts for both individuals and businesses affected by Hurricanes Harvey, Irma and Maria. The relief was expanded on February 9, 2018 to include those impacted by the California wildfires. One key aspect of the relief from the act was a tax credit for 40% of qualified wages (up to $6,000). That's a potential tax credit of $2,400 per employee for wages paid while a business was inoperable due to a natural disaster, which can add up to a substantial tax credit. Note that a business need not have sustained physical damage in order to be eligible for the credit, but it must have been physically inaccessible to employees, raw materials, utilities or customers.

Section 139 Disaster Relief Payments

U.S. employers also should be aware that Section 139 of the Internal Revenue Code (IRC) allows them to make qualified disaster relief payments to affected employees without having to include those payments in employee

takeaways

- Employers and benefit plans should have a plan for communicating with employees and plan participants before, during and after a disaster. Examples of key issues to remind workers about are how they can find health care coverage information and how to contact the employee assistance program (EAP).
- All members of disaster teams set up to handle employee issues should have backups as well as tools and resources including employee cell phone and home phone numbers and a copy of the business continuity plan.
- The federal government has provided tax relief for organizations following several recent natural disasters, including tax credits for continuing employment and wages while employers were shut down.
- Some employers may want to consider leave-sharing or leave-donation programs to assist employees who need extra time off from work in the aftermath of a disaster.

gross income. Section 139(b) defines a *qualified disaster relief payment* as any amount paid to, or for the benefit of, an individual (1) to reimburse or pay personal, family, funeral or living expenses; (2) to reimburse or pay expenses incurred for the repair of a personal residence or replacement of its contents; (3) by a common carrier because of the death of the individual or physical injuries sustained by the individual; or (4) by a federal, state or local government to promote the general welfare. In each case, the payment must be connected with a "qualified disaster," which includes any "federally declared disaster."

Leave-Sharing Programs

In the wake of a natural disaster, not all employees will be able to return to work when operations restart. For that reason, U.S. employers may establish leave-sharing programs to allow employees to donate accrued hours of paid vacation or personal leave and potentially paid sick leave to benefit other employees who need to take more leave than they have available. This type of program can arise in one of two ways—as a leave-sharing program for medical emergencies or as a leave-sharing program during major disasters.

A program created for major disasters must meet specific standards in order to avoid creating taxable income for the donor employee, including having a written plan, allowing a donor employee to contribute unpaid accrued leave to a "bank" sponsored by the employer, prohibiting a donor employee from specifying a recipient employee, maintaining reasonable time limitations for use of the banked leave and meeting other specified limitations. For additional information on program requirements, see *IRS Notice 2006-59.* An employee facing extensive physical repairs to personal property or who needs to meet with Federal Emergency Management Agency (FEMA) officials and mold experts, for example, may be in dire need of some additional time off and would benefit from such a program.

Leave-Donation Programs

U.S. employers also may establish programs that allow an employee to exchange accrued paid leave for a donation made by the employer on the employee's behalf to a charitable organization. However, in order for a leave-donation program to avoid generating taxable income for the donor employee, the Internal Revenue Service (IRS) must grant special relief. For example, in *IRS Notice 2017-48*, IRS provided relief for leave-based donation programs to provide aid to victims of Hurricane Harvey. Like employer-sponsored leave programs, leave-donation programs also must meet specific requirements, so it is important for employers to understand those requirements before establishing such programs.

Hardship Distributions From Retirement Plans

Frequently, Congress will grant special relief for 401(k) hardship withdrawal requirements in disaster situations. For example, the Relief Act makes it easier for retirement plan participants to access their retirement funds to help them recover. The Relief Act:

- Waives the 10% additional tax on certain early distributions
- Allows recipients to include qualified hurricane distributions in their income over a three-year period
- Allows participants to repay their distributions to the plan
- Expands availability of plan loans
- Extends the normal loan repayment period under the plan
- Extends the period for plans to make amendments.

Monetary Donations and Gifts of Goods

Organizations may be faced with an outpouring of charitable contributions after a disaster. Individuals may wish to set up crowdfunding sites to receive monetary donations to help employees impacted by a disaster. Other individuals may wish to donate furniture, clothing and other household items. Employers must have a plan for how to distribute these items.

For example, crowdfunding sites are often established in an effort to help individuals in the wake of a disaster. But one of the key differences between donating to a fund set up through crowdfunding, like a GoFundMe® campaign, and a charity established under IRC Section 501(c)(3) is that amounts donated through crowdfunding are not tax-deductible to the donor and may create taxable income to the recipient. Typically, contributions made through a crowdfunding site are considered to be "personal gifts" and do not result in taxable income to a recipient, but it is important for employers to understand that a crowdfunding site must issue a Form 1099 if a campaign receives more than $20,000 in donations or has more than 200 transactions. That can lead to much confusion over whether a recipient from the fund must pay taxes; at least one taxpayer received a tax bill for donations she received through a crowdfunding campaign. As such, an employer wishing to establish a crowdfunding page to collect donations for an employee or a group of employees impacted by a natural disaster should seek guidance from a tax advisor if it appears that the site would cross either threshold.

Many organizations also accept physical donations of clothing, furniture and household items from co-workers or the community. If the organization has multiple employees impacted by the disaster, there must be a way to allocate any donations. An organization may wish to set up a committee to determine how physical donations should be distributed. The committee may consider having impacted employees submit applications or requests for assistance and establish a process to determine how to fairly distribute donations while respecting the privacy of impacted employees and their families.

Plan Deadlines

Plan fiduciaries may be faced with deciding how to respond to missed deadlines for benefit claims and Consolidated Omnibus Budget Reconciliation Act (COBRA) elections. Typically, the Department of Labor (DOL) will encourage plan sponsors "to act reasonably, prudently and in the interest of the workers and their families who rely on their health plans for their physical and economic well-being." Previously, DOL has encouraged plan fiduciaries to "make reasonable accommodations to prevent the loss of benefits in such cases and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes." Thus, plan sponsors should work with their carriers and TPAs to ease the burden of potential denials of benefits simply because of timing issues manifest due to a natural disaster.

Final Thoughts

By the time this article is printed, it will be more than a year after Hurricane Harvey left his destructive mark. In the aftermath, it wasn't the destruction that held everyone's attention. It was the sight of neighbor helping neighbor, stranger helping stranger and employers helping employees that told the true story of a natural disaster. The hope is that organizations will not have to face a challenge as great as Harvey, but those that do should be prepared to show their employees how their benefits are there for them—even in times of disaster.

The author would like to thank Ron Krupa, CEBS, of EY for sharing his knowledge of potential tax implications of disaster relief on employer-sponsored benefits.

bio

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