Podcast

The Year Ahead: COVID-19's Impact on the Employee Benefits Value Proposition

By Joy M. Napier-Joyce & Suzanne G. Odom

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Details

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Like no other event in history, the COVID-19 pandemic shined a light on the value employee benefits bring to employment. What once may have been viewed as a “fringe” benefit is now central to attracting and retaining employees. Employers need to reevaluate their employee benefit programs and policies in light of the COVID-19 pandemic, tailoring their offerings to meet employee needs and considering the relief made available with the passage of the CARES and SECURE Acts.

Jackson Lewis P.C. · The Year Ahead: COVID-19's Impact on the Employee Benefits Value Proposition

Takeaways

Like no other event in history, the COVID-19 pandemic shined a light on the value employee benefits bring to the employment relationship. What once may have been viewed as a “fringe” benefit is now central to attracting and retaining employees. Employers need to reevaluate their employee benefit programs and policies in light of the COVID-19 pandemic, tailoring their offerings to meet evolving employee needs and considering the legislation and regulatory guidance following the passage of the SECURE, CARES and Consolidated Appropriations Acts.

What Employers Need to Know:

- The pandemic made clear that security, benefit coverage and continuity are vital to employees. Health care and retirement were top of mind for employees in 2020; that will continue into 2021 and beyond.
- Employers have to be flexible and ready to pivot, putting resources where they are needed and making employees feel valued. Employers should take stock of what their workforce looks like and be ready to answer questions including:
    - What do my employees need and value the most?

    - Where will my benefit dollars go the farthest?
    - What should/can I be doing to attract and retain the best talent?
- Employers need to be aware of the generational shift in employee priorities: for example, gen X, gen Y and millennial employees may be less focused on 401(k) matches and more focused on student loan repayments.
- The vast majority of employees get their health coverage through an employer-provided plan, including those who were laid off or furloughed and are covered by COBRA. Employers need to keep finding ways to make cost effective options available for their employees to get the most comprehensive coverage, while the state of health care generally is changing.
- The 2021 open enrollment period is a good opportunity for employers to reevaluate how they communicate with employees about the benefits offered. Consider whether you can start the open enrollment process earlier and distribute a benefit survey beforehand.
- Insurance marketplaces like the ACA are going to be bolstered, publicized and funded, meaning they will likely play a greater role than in recent years.
- As we look back on 2020 and ahead to a new administration, anticipate new approaches to cost transparency, surprise billing, out of network costs and new/different pharmacy benefit arrangements.
- There will be new proposed alternatives in the benefits space, likely resulting in a mesh between government and employer provided programs.
- Employers can anticipate a lot of moving parts. Buckle up, stay tuned and approach the benefits space by asking "what can I do?" versus "what do I have to do?"
- Employers also should remember that many of the changes implemented in response to the pandemic will require plan amendments this year. Employers should contact plan providers and docket calendars to avoid missing these important deadlines.

Transcript

Alitia (00:06):

Welcome to Jackson Lewis' podcast, We get work™, focused solely on workplace issues everywhere and under any circumstances, it is our job to help employers develop proactive strategies, strong policies and business oriented solutions to cultivate a workforce that is engaged, stable and diverse. Our podcast identifies the issues dominating the workplace and its continuing evolution and helps answer the question on every employer's mind, how will my business be impacted? The COVID-19 pandemic shined a bright light on the value of employee benefits. What once may have been viewed as fringe benefits are now central to attracting and retaining employees. Employers should reevaluate their employee benefit programs and policies in light of the COVID-19 pandemic and directions of a new Biden administration, tailor their offerings to meet employee needs and consider the relief made available with the passage of the CARES and SECURE Acts, as well as expected legislative and regulatory changes on the horizon.

This episode of We get work™ discusses the evolving world of employee benefits and what employers need to do to ensure compliance with the new and updated laws and regulations. Our hosts today are Joy Napier-Joyce and Sue Odom, principals respectively in the Baltimore and Greenville, South Carolina offices of Jackson Lewis. Joy translates technical and complex laws into practical, plain English solutions that help her clients ensure compliance and achieve business goals. And in this regimented and regulated world of employee benefits, Sue prides herself on her ability to think outside the benefits box and work with clients to deliver the best business solutions possible. Joy and Sue, the question on everyone's mind today is how will new and updated benefits laws impact my business?

Sue Odom (02:05):

Well, thanks Alitia. Hi Joy. How are you doing today?

Joy Napier-Joyce (02:08):

I'm good. How about you Sue?

Sue Odom (02:10):

I'm great. I'll go ahead and kick things off, start this conversation for us. It's fun to be thought leaders in this space in evaluating what's next in terms of employee benefits as a result of this COVID-19 pandemic. It gave us a really unique opportunity to do a self-assessment, not only as individuals, but also as employers. As individuals, we're evaluating what we really need out of employment opportunities. And it's obviously not just a paycheck. We need to have security in terms of group medical insurance, savings built up for retirement. I think the pandemic really brought that to the forefront. In terms of employers, we've realized that we've got a lot of needs as well. We need to ability to pivot. We need to have flexibility. We need to be able to put our resources where they're needed. We need to be able to attract and retain a workforce and our workforce needs to feel appreciated and feel like we've got their back.

With the pandemic, we saw the demand that employees had or the need that employees had, I should say, for benefit coverage and continuity. Whether they put on a leave of absence or a furlough, leaving them like that without any group medical insurance in the middle of a COVID-19 pandemic, was something that very, very few employers were willing to do. Most employers in those circumstances wanted to give their workforce a bridge for benefits. Benefit continuity was important. Of course, making sure that your plans provide for that benefit continuity, your insurance coverage is available in those circumstances, is something that maybe was sometimes an afterthought and something employers should do, but it was always a thought.

Having financial resources available to help sustain through the times. We saw some of that through federal mandates, paid leave, but also gaining access to retirement funds, having ability to take distributions from retirement plans and circumstances that did not fit the normal loan or hardship distribution mold. Having the flexibility for employees to make changes to their flexible spending accounts, their group medical coverage elections. They might've made a decision that was dependent or assuming certain circumstances were going to continue to exist. May have made a decision to forgo insurance thinking, heck I won't get sick. And all of a sudden we've got a pandemic on our hands. Having that flexibility was really important. Normally that flexibility doesn't exist in section 125 plans, quite like it did as a result of the relief that the government issued in response to the pandemic.

We also saw some great demand for staffing in certain industries, healthcare as a good example. Where all of a sudden, the need for bringing people on, on a temporary basis is at an all-time high and what benefits are provided to temporary workforce. Employers had this really unique opportunity to look at their workforce and design their benefit programs in a way to meet those needs. And I think that's going to be something that's ongoing. I think if we learned anything from 2020, it's what we really value most in our employees. It's what we really value most as individuals. And it's what is going to shape what we offer on an ongoing basis.

Joy, do you agree with that? Do you believe that the 2020 response and the pandemic that we had in 2020 is going to shape the perspective for employee benefits going forward?

Joy Napier-Joyce (06:03):

Well, I think you're right on all those things, Sue. I think one of the things that we joke as much as benefits lawyers joke, that people don't like dealing with benefits issues. They're kind of the have to. The, have to eat your vegetables, you have to provide certain benefits and how do I comply with the ACA? And it's very, I don't want to say begrudgingly because benefits have always had a very important part in recruitment and retention, but this year 2020 in particular, caused employers to have to react in a way and frankly, the government to react in a way, where we saw lots of things on the fly. And so what I'm taking away from that and we'll get into a little bit of a Biden administration because you can't really separate the two right now in terms of the landscape that are facing employers and the change that's coming down the pike. If 20 was the year to kind of react and plug your finger in the hole of whatever crisis was spouting that day, 21 is the opportunity to be proactive and plan.

I really do, maybe I'm kind of a silver lining person, but this is a great opportunity for employers not just to be on autopilot and renew all the coverages they had before. It is time to take stock of what is my workforce look like? What do they need? Where do my benefit dollars go the farthest? What can I do not only to stay ahead of a lot of these compliance pieces that we're going to talk, about mandates and changes and amendments to plans, but what can I be do? What should I be doing to be the most attractive employer for my long-term employees, to recruit people, to retain them? And that might look a lot different today than it did 10, 20 years ago. We had already sort of seen a shift in terms of what employees value based on the workforce. Gen X, gen Y, millennials, not so focused perhaps on 401(k) match and more focused on student loan repayments.

We're starting to see all kinds of, I don't want to say outside the box, because these ideas have been kicking around for a while, but we're starting to see some formulations of things that employers are like, ah, maybe I should be in this game. Maybe I should be thinking about how I can help my employees and what I can do. And you know what? They may not be the highest priced ticket items as the old defined benefit pension plan. I think there's an opportunity here. I think this is kind of their take restock and we're still in the middle of this, we're not out of the woods by any means, but in terms of heading into open enrollment, that'll be here sooner than we think and there's going to be a lot of shifting going on. I think it's a good opportunity for employers to rewrite the narrative, if you will.

Sue Odom (08:47):

I completely agree with that, Joy. I think group health insurance, that was kind of a no-brainer. I think everybody, all of a sudden was centrally focused on the need for people to have that group medical insurance or plan available to them. We now have the exchange, the healthcare marketplace is a fallback for those who didn't have employer sponsored coverage available to them or who exhausted that coverage, which I know was probably a little bit of comfort to employees who were let go, longer period of time basis. But I think it's also retirement side of things. What I was struck by perhaps more so during this pandemic than customary is the value that employees were placing on retirement benefits and the value that employers were placing on retirement benefits. And for this purpose, I'm not talking really more about pensions. I'm talking about the 401(k) plans because we had, as you know, Joy, plenty of our clients calling us in a panic about how do we suspend the employer match? How do we do that when we have a safe harbor plan?

But just almost as quickly as they suspended, most employers brought that right back because the demand is there for employees. We're also seeing movement obviously, in legislation that's being proposed about automatic enrollment and pushing companies to automatically enroll, even with the prospect of a mandate for automatic enrollment down the road. I think the companies that have that kind of formula or feature, I should say, in their plans, see the benefit that that brings to participation rates. I have a client, for example, that had participation below 3%. They put in an automatic enrollment, an auto increase feature and now they've got even rank and file employees, far in excess of 7%, which is really amazing when you think about employee savings rates for the entire workforce.

I also know that the Biden administration has talked about doing more by way of savings plans to give people that financial security in the event they don't have a severance to lean on or they don't have unemployment benefits to lean on. Something to sustain, to help them pay their mortgage in the event they find themselves in these challenging circumstances. I think you're right in terms of generations. The millennial generation in particular, it used to be we were talking about paid time off and student loan repayments as being their paramount focus. Well, I think we've added some to that list. I think that there's more and more enrollments among the younger workforce in group medical coverage these days. Do you agree?

Joy Napier-Joyce (11:43):

Yeah, I do. And just to stick with the retirement plan for a moment, I think there are a couple things at play here. Even before the pandemic, we had the SECURE Act, which got largely bipartisan support. It took a while to get enacted, but once it did, it followed up on a lot of the themes we were hearing out of the Trump administration about pushing back MRD ages, letting people continue to save and not force out distributions. Covering long term, part time workers, these different vehicles to expand retirement savings at all size of employers we saw. Then when the pandemic hit, we got the CARES Act and one thing that I'm struck by in hindsight is, it was all a blur, but we did get relief fairly quickly in a way. Retirement legislation and retirement regulations are not things that happen overnight. They're years and years in coming. And the government reacted with quite speed in terms of letting distributions go out the door for qualified CRBs, coronavirus distributions, as well as giving relief on plan loans.

And so there was this pivoting and this recognition that, yes, this is there for retirement savings, but this is a time like no other so we're going to be flexible and let that out. And employers responded accordingly. Again, depending on how their workforce was impacted, how many people had needs. And so I think we saw this, Rome's not built in a day, but when the rubber hits the road, you see everybody kind of willing to react in a way that that makes sense for participants. And you talked about suspending the match and that may have come to employers who've never done that in their past. And so they met it with great fear. Can I do this? How do I do this? How can I put it back in? And as you said, most who suspended it, realized it was a important part of their package. Employees wanted it back and it was put back before year end.

I do think there's that. And I mentioned before some of the newer avant garde benefits, but we've seen guidance about student loan relief and there's been talk over the years of coming up with a provision that allows an employer to match in the 401(k) based not on employee deferrals, but on employee repayments of loans. I pay back $500 a month in a student loan, I'll get a match in my 401(k) plan. There's lots of details that we won't bore you with in terms of non-discrimination testing and things like that that need to be worked out, but we're starting to see this recognition of life. And this one piece, you can take adoption assistance benefits now from 401(k) plans, we might match based on loans.

And so I think you're right, we're addressing this kind of millennial population and what they need. And really if folks were under the ACA somewhat irate at the individual mandate because they thought they were healthy and they didn't need to pay money and they didn't want to enroll in coverage. 2020 really put into sharp contrast the value of health insurance. From covering telemedicine to now vaccines, before that testing. We've seen a reaction and the employer health plan space, even though we have marketplaces and even though we have Medicaid and Medicare, the vast majority of folks are getting their coverage through an employer provided plan. Even those who've been laid off, they're getting it through COBRA. And so, I think the importance of that, the centrality of that, the need for employers to keep finding ways to make it cost effective for their employees to get that fulsome coverage, is going to be huge in 21 and even more so beyond 21, because we're still in this weird time, where people really didn't go out and get health coverage last year.

They did tele-health. But if you look at self-funded claims, the amount they were down last year, because people weren't getting elective surgeries and they weren't going and doing things they would otherwise do, there was a fear that that was going to be all pent up and 21 was going to be really costly for plans. We're still not there yet because we're still in the middle of this pandemic. And so is it all built up demand for next year? I think open enrollment's going to be really interesting this year.

Sue Odom ([15:51](#)):

I agree, Joy. And I think that 2021 open enrollment also will be a good opportunity for employers to reevaluate how they communicate with employees about the employee benefits that they offer. We saw changes with the Consolidated Appropriations Act 2021, further liberalizing the rules about flex spending accounts, because employees were reminded that if they don't use their flex spending account dollars, they will forfeit those dollars. And fortunately, relief payment enabling employers to allow carry overs, additional grace periods. But it's an opportunity to remind employees that that doesn't happen in health savings accounts, for example. I think not only that, but also encouraging enrollments, reminding employees that if they don't enroll in their plan following the section 125 guidance, which often benefits are offered on a pre-tax basis through a section 125 plan, if they don't enroll, they've got to have a change in their family circumstances or coverage to be able to enroll mid-year. It's really going to be a good opportunity for employers to engage in those communications.

Joy Napier-Joyce ([16:59](#)):

Yeah. And this sounds really basic, but even the process of open enrollment is changing. You've got everybody scattered remotely and that's a whole nother topic I'm sure we'll do a podcast on. The issues with people working in maybe different states and the taxes and all that good stuff, but the idea of not having, and every workplace is different. Most of them were electronic, but you had your friendly HR professional down the hall to answer your questions and remind you and send out the email. And so kind of all bets were off this year in the process. And so you had people largely all individually out there going through open enrollment. And if you were one of the last bastions of paper enrollment folks, you weren't doing that this year.

And so it was a real crash course in communicating. And there was even a piece of guidance from the DOL, a lot of pieces of guidance from the DOL, but in there about communications and delays and being able to send out SPDs late and understanding that this was an interesting time and a reference that in some circumstances it would be okay to text your employees. And so, all of that was kind of a very forced quick pivot in terms of how we normally look at the process and the enrollment process. And so exactly what you're saying about the flexibility and the FSAs and what employers have to do to pull those optionalities for people. It is a great opportunity to kind of be in front of them again about here are the changes, here's what's not going to be here next year, maybe. And, and here are things maybe you didn't think about before.

Things like EAPs, which most employers have, but they're very underutilized and I've never heard so much more about EAPs than I have in the past and rightfully so. Six to eight months, 10 months, it's becoming more important. That things like voluntary benefits, these are the benefits that the employer doesn't necessarily pay towards, but if you want supplemental disability coverage or if you want dependent disability coverage or dependent life. All the panoply of benefits that you don't pay as much attention to, are becoming more important these days too, depending on who your population is. Again, the ability to take a fresh look, to look at it where we are here. And I think to take off that autopilot mentality. Somebody said very early in the pandemic that, "You don't write anything in pen anymore, everything's in pencil." It's going to change.

And for planners like us, I think you're one too, Sue. That took me some time to adjust to. I like knowing what's happening in March and then April. And then this stuff is out of your control. You make the decisions based on the options in front of you, your employees do the same. And so I think it's to be mindful that we've already seen in this administration, all the executive orders, all of the policies that have been laid out in the first two months, are just a harbinger of what's going to come in the next four years. And so, we've had to be nimble before and I think having that mindset that anything is fair game, is going to behoove of our clients well, to be thinking about, we all got a little complacent on the ACI. We weren't sure what was going to happen with it.

We're still waiting for the Supreme Court decision, but from all appearances, the oral arguments suggest it's here to stay. And not only is it here to stay, but it's probably going to be enhanced in a lot of ways so those marketplaces are going to be bolstered. They're going to be publicized. They're going to be funded. And we're going to see differences in billing, surprise billing and out of network costs, pharmacy benefit arrangements, all of these things, they were important before, but they've come into even sharper focus now, given that we're looking back on 2020 and we're looking ahead in a new administration.

Sue Odom (20:49):

That's right, Joy. And it's funny that you bring up the Affordable Care Act in this context. I remember yesterday, one of my employer clients telling me, "What are they requiring us to enroll people in group medical coverage? Of course, employers will do the right thing and offer coverage to their employees. We don't need a mandate." Kind of picking up on the ERISA concept of ERISA doesn't require any employee benefits. It just says that if you offer them you have to do so in accordance with these rules. But what we're starting to see more and more of now is little pushes by the federal government, by state governments. Paid sick leave being another area. We saw it through the pandemic, paid sick leave for people so that they didn't have to worry about not being able to come to work due to coronavirus so that they have that continuing pay. There has been legislation introduced nationally on paid sick leave. And we'll have to keep an eye on that because that will affect our short term disability programs.

But as we wind things down here, I think, Joy, you already touched on the great suggestion that employers reevaluate their programs and perhaps leveraging this opportunity to ramp up their communications and the like. What other recommendations would you have for employers as they get started on 2021?

Joy Napier-Joyce (22:11):

Yeah. I think I would start early and often. It's always a daunting task. A lot of our clients are, they go into a black hole when open enrollment is rolling through. Starting earlier is always a good thing. And one thing that we've seen employers do from time to time, which benefit surveys. They're a double edged sword, because people think, well, we told you we want X and not Y so now you have to defend why you're giving Y and not X. But I think they are helpful. I think benefit dollars are often not realized the extent to which an overall company's budget is devoted to benefits. And they're big dollars and I think there's a lot to be said for having a pipeline to your employee base and understanding what they value and understand what they might be interested in adding and what they don't value and what's underutilized.

And so you can allocate those dollars the best way possible. It gives you the biggest bang for what you're spending. I think looking at it fresh coming out of this, trying to prognosticate what the workforce of the next couple of years are going to look like, but not being wed to any one particular one size fits all. Because as we said, that's probably going to change quite a bit and staying tuned. That would be my number one thing to take away from this benefits is something I know I got into. And I'm sure you did, Sue, too, because it is not stagnant by any stretch. We have a financial crisis in 08 and 09 and we get section 409A of the code. We have healthcare issues. We get the ACA. There will be other and probably the most since the new deal era of government introductions in the benefits space. And it's going to be a mesh between government programs and employer programs.

We just saw today, there was an introduction in legislation for a 100% COBRA subsidy for the unemployed. There's going to be a lot of moving parts. And so I would say to our clients and our friends, buckle up, stay tuned and look at this more of as what can I do? And not what do I have to do?

Sue Odom (24:08):

And of course we wouldn't be benefit attorneys. If we didn't say, don't forget to amend your plans. I've really enjoyed this conversation with you, Joy, and look forward to continuing the dialogue as the year goes on.

Joy Napier-Joyce (24:20):

Yeah, same here. Thanks, Sue.

Alitia (24:24):

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