

From: James Monge <JMonge@ck-law.com>
Sent: Friday, December 11, 2020 12:28 PM
To: 'cityclerk@stacymn.org'
Subject: Employee Portion of Benefits

Hi Sharon,

The Council asked me to look into whether it could pay the employee portion of their benefits should the employee be laid off or have a significant decrease in hours. I assumed this was for health insurance benefits, but let me know if it is for something else. Here is what I found out:

It may not be necessary for the City to make the employee contribution if the employee applies for unemployment insurance.

Furloughed employees often keep their employment benefits like health insurance, but typically furloughed employees must continue to cover their share of the benefit contribution.

There is no black letter law that prevents the City from paying the employee's share of health insurance benefits. But, there are some complications:

First, the City should check with its insurer to see if its health plan says anything about coverage during a furlough.

Second, it would have to be made very clear that the benefit payment is tied to economic conditions caused by the COVID-19 pandemic.

Third, if the health plan is self-insured, including Public Employee Insurance Program (PEIP) and a Service Cooperative, then Internal Revenue Code Section 105(h) nondiscrimination rules apply if either of the employees is a "highly compensated individual" (HCI). HCI's include employees amongst the highest-paid 25% of all employees. The rule prevents giving better benefits to HCIs than other employees. Contribution rates that are better for HCIs are considered discriminatory. The City could still make the contributions for the employees, but they would be taxed as income.

Fourth, if the employees are members of a union. There would need to be a memorandum of understanding with the union and a clear statement that this is temporary and in response to the COVID-19 pandemic with no rights to this compensation level in the future.

Fifth, there could be some unhappy employees, if they are still paying for their portion of benefits when others are not.

Sixth, unfortunately there is no immediate end in sight to the COVID-19 pandemic, the City should carefully consider how long it will continue to make these contributions for the employees.

Let me know if you have any questions.

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