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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 2@ Disability Compensation

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Chapter 6@ VOLUNTARY PLANS

3260-1 Disposition of Excess Employee Contributions by Voluntary Plans

Section 3260-1@ Disposition of Excess Employee Contributions by Voluntary Plans

(a)

The amounts deducted by an employer from the wages of his or her employees as their contributions under a voluntary plan are trust funds. They may be used only for the purpose of providing benefits to the employee group covered by the voluntary plan and paying any assessments made by the department under the code and this part in connection with the voluntary plan. No part of such employee contributions or income resulting therefrom may be diverted to the employer's own use or profit. In the case of a plan insured by an admitted disability insurer, any accumulated excess of such employee contributions over and above the net cost of premiums, after premium dividends or experience rate credits, and assessments made by the department in connection with the plan, must inure to the benefit of the employee group covered by the plan commensurate with their contributions or in an otherwise fair and equitable manner. In the case of a self-insured plan, any accumulated excess of such employee contributions over and above the amount needed to provide benefits, including a reasonable reserve for future claims, assessments made by the department in connection with the plan, and direct costs of administration of the voluntary plan, must inure to the benefit of the employee group covered by the plan commensurate with their contributions or in an otherwise fair and equitable manner. Methods of using

excess voluntary plan funds which are commensurate with contributions, or fair and equitable, would include but is not limited to the following examples, including percentages and amounts contained therein.

EXAMPLE 1 All employees contribute at a rate of 1.0%. The excess voluntary plan funds are used to reduce that rate to .7% for all employees.

EXAMPLE 2 Two classes of employees are distinguished. Class A contributes at a rate of 1.0%. Class B contributes at a rate of .8%. A rate reduction of 25% for each class would be allowable, resulting in Class A contributing at .75% and Class B at .6%. It would not be allowable to reduce the rate by an equal amount, such as .2%, for each class. That would yield a .8% rate, or 20% contribution reduction for Class A and a .6% rate, or 25% contribution reduction for Class B.

EXAMPLE 3 During a one year period, an excess of \$50,000 accumulates in a plan in which contributions totaled \$100,000. A refund to each employee of 50% of the amount he/she contributed in that year would be allowable.

EXAMPLE 4 All employees are paid a benefit equal to 55% of their current wage to a weekly maximum of \$400. To distribute excess funds, a 10% increase in the benefits that each employee receives would be allowable. It would also be allowable to increase the benefit calculation to 65% of current wage, and increase the weekly maximum of \$473 for each employee.

EXAMPLE 5 Two classes of employees, who contribute at the same rate, are distinguished. Class A, those employees with more than five years of service, receive a regular benefit equal to 65% of current wage with no weekly maximum. Class B, those employees with less than five years of service, receive a regular benefit equal to 55% of current wage with no weekly maximum. Using excess contributions to provide a 10% increase for each class would be allowable, resulting in Class A now receiving 71.5% of current wage and Class B now receiving 60.5% of current wage.

COMMENT: In a situation where all employees receive a regular benefit of

60% of current wage with no weekly maximum, it would not be allowable to use excess contributions to add \$20 per week to each benefit amount. Under this method, employees whose regular benefit is \$50 would then receive \$70 per week, realizing a 40% benefit increase. Employees whose regular benefit is \$500 would then receive \$520, realizing only a 4% increase. The disparity between the percentages of benefit increase is neither commensurate with contributions nor fair and equitable.

EXAMPLE 6 A voluntary plan, which has been operating for six years, began accumulating an excess beginning in the fourth year of operation. Employees have always contributed at the same rate. A health insurance policy covers all employees at a cost of \$140 per month per person, shared equally between the employer and the employee. The employer proposes to use excess voluntary plan contributions to defray part of the employee cost for the health care policy for a one-year period. The proposal relieves each employee of his or her obligation at a rate of \$20 per month for each full calendar year of service during the three years that the excess accumulated. Service for any partial calendar year during the same three-year period would reduce the employee's obligation by \$10 per month. With the consent of the majority of the employees, this would be allowable.

EXAMPLE 7 Two classes of employees are distinguished. The voluntary plan contribution total for each class is determined for the previous year by adding individual contributions as reflected on the W2 forms. Class A, employees who have more than two years with the company, will be provided with life insurance, using excess voluntary plan contributions. Class B, employees who have less than two years with the company, will receive a rebate from the excess voluntary plan contributions. If the amount of excess used for the life insurance and for the rebate is proportionate to the total contributions of each class, as determined by the W2 forms, this use would be allowable.

EXAMPLE 8 Two classes

of employees are distinguished. The employer keeps separate records on income and expenses for each class. After disbursements in a given year, the amount of excess remaining from Class A contributions is \$30,000. After disbursement in the same year, there is no excess remaining from Class B contributions. It is allowable to use the \$30,000 excess to benefit only Class A employees. An employer may use any one of the following methods, or combination thereof, to dispose of any such accumulated excess, provided that method No. 4 may be used only upon the consent of a majority of the employees covered by the plan at the time of the disposition. Consent of the majority of the employees at the time of disposition shall mean that the employer shall secure employee consent within 60 days prior to the date the disposition of funds begins. (1) Reduce or waive payroll deductions for a sufficient period to dispose of the excess. (2) Refund the excess to the employees covered by the voluntary plan in a fair and equitable manner as approved by the department. (3) Increase disability benefits under the plan either temporarily or permanently. (4) Apply such excess to the purchase of other employee benefits for the employees covered by the voluntary plan such as group life, hospital, or medical insurance.

(1)

Reduce or waive payroll deductions for a sufficient period to dispose of the excess.

(2)

Refund the excess to the employees covered by the voluntary plan in a fair and equitable manner as approved by the department.

(3)

Increase disability benefits under the plan either temporarily or permanently.

(4)

Apply such excess to the purchase of other employee benefits for the employees

covered by the voluntary plan such as group life, hospital, or medical insurance.

(b)

In the case where the employer advances a portion of the cost of benefits under a voluntary plan (including any benefits in addition to wage loss indemnity which may be "packaged" therewith), in the absence of any representation or agreement to share a definite portion of such costs, the amount of any premium dividend, experience rate credit or other excess available for distribution may be applied by the employer to offset the amount he or she has advanced and the remainder applied to the benefit of such employee group as herein above provided. If, however, the employer by representation or agreement has undertaken to bear a certain share of the cost of the plan, the employer may recover from such premium dividend, experience rate credit or other excess available for distribution only such portion thereof as his or her share of the original contribution bore to the total contributions, and the remainder must be applied to the benefit of such employee group as herein above provided.

(c)

If the amount of excess employee contributions held by an employer at any one time is so small that any of the foregoing methods of disposition is impracticable, the amount may be carried over to a future period to add to any additional accruals until there is a sufficient amount to permit the use of any of the foregoing methods.

(d)

A self-insurer may, with prior approval of the department, invest trust funds of the self-insured plan in securities which a savings bank may legally purchase under Chapter 9 of Division 1 of the Financial Code or which a commercial bank may legally purchase under Article 4 of Chapter 10 of Division 1 of the Financial Code.

(e)

Failure to comply with the provisions of this section shall be good cause for termination of a voluntary plan.