Employee Benefits News

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KUTAK ROCK LLP

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Three Attorneys Join Employee Benefits Group

Ms. Shira McKinlay joins our group with over 15 years of health and welfare benefits experience. Her expertise extends to the performance of plan audits and reviews, implementation of HIPAA regulations, design of health and welfare plans, and resolution of benefit plan issues during the course of mergers and acquisitions. Ms. McKinlay has also been instrumental in advising clients on the Affordable Care Act and its accompanying regulations.

Ms. McKinlay

Ms. Rosa

Ms. Andreia Rosa is a 2011 graduate of The John Marshall Law School, where she received both her J.D. and LL.M. in Employee Benefits. Ms. Rosa joins us from a boutique employee benefits firm in New York, where she gained experience advising multiemployer plans. Ms. Rosa also spent time as a Benefits Advisor with the U.S. Department of Labor, Employee Benefits Security Administration in Chicago.

Ms. Alexis Kramer is a recent graduate of the University of Nebraska College of Law, where she served as Articles Editor of the Nebraska Law Review. Ms. Kramer has experience advising clients on fiduciary duty and prohibited transaction matters under Title I of ERISA. She will assist all the attorneys in the Employee Benefits groups, with a focus on health and welfare matters.

Ms. Kramer

Obamacare: A Look at the Exchanges

E-commerce comes to health care plans in a big way. Step aside Amazon.com and the other e-commerce giants. The Exchanges (Marketplaces) are open for business. Their potential customers are in the millions from day one. The purpose of this short article is to give you a look at the basics of the Marketplaces without the legislative and political clutter.

Overview

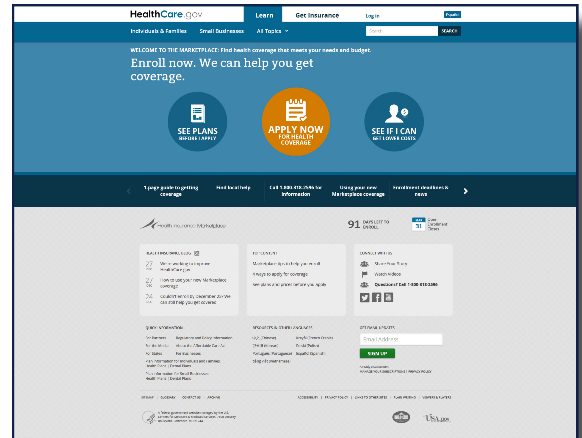
In brief, the health care reform laws (officially known as the Affordable Care Act or the "ACA") envisioned and permitted an online delivery system for individuals and small businesses to use to purchase health insurance coverage. The ACA allows each state to establish its own delivery system. In the absence of a state establishing its own, or combining with other states on a regional basis, the ACA permits the federal government to facilitate the online Marketplaces on the state's behalf.

Currently, 17 states plus Washington, D.C. have elected to run their own Marketplaces. Seven states have entered into a state-federal partnership. The federally facilitated Marketplaces break down as follows: eight states will exercise

Obamacare: A Look at the Exchanges

plan management (i.e., select and manage the insurance carriers) and the remaining 19 will leave everything in the hands of the federal government.

For a view of which states are doing what, please refer to the chart at the end of this article.



Who is Eligible to Buy Their Health Care Coverage (Online) at the Marketplace?

Individuals:

- Individuals are eligible beginning in 2014.
- An individual will be eligible to purchase a Qualifying Health Plan ("QHP") through the Marketplace if the individual:
    - Is a U.S. citizen, national or resident alien (including temporary agricultural workers);
    - Is not incarcerated; and
    - Resides in the state where the Exchange is located.

Small employers:

- Small employers are eligible beginning in 2014.
- A small employer is eligible to select a QHP through a Marketplace for its employees if the employer has up to 50 employees and in 2017, up to 100 employees.

What About Subsidies?

Individuals whose household incomes are between 100% and 400% of the poverty level will be eligible, if they are not eligible for coverage through their employer. If they are eligible, but the employer sponsored coverage is not affordable and/or does not provide minimum value, and if they decline the employer's plan, they could receive subsidized coverage through the Marketplace.

What About People Eligible for Medicaid?

ACA has enacted rules to coordinate health care coverage between Medicaid, the Children's Health Insurance Program, and Marketplace coverage. If an individual or family seeks to enroll in the Marketplace, and if they are or might be eligible for government assistance, the enroller will enroll them in the appropriate source for coverage. The ACA gives each state the opportunity to expand Medicaid eligibility.

What About Coverage for Dependents?

Employers with 50 or more employees will pay a penalty unless they offer affordable, minimum value coverage to employees and their dependents (excluding spouses). If an employee elects coverage for him/herself only, the dependents can go to the Marketplace to obtain coverage. However, the dependents will not qualify for subsidies, even if the family income is below the 400% poverty level.

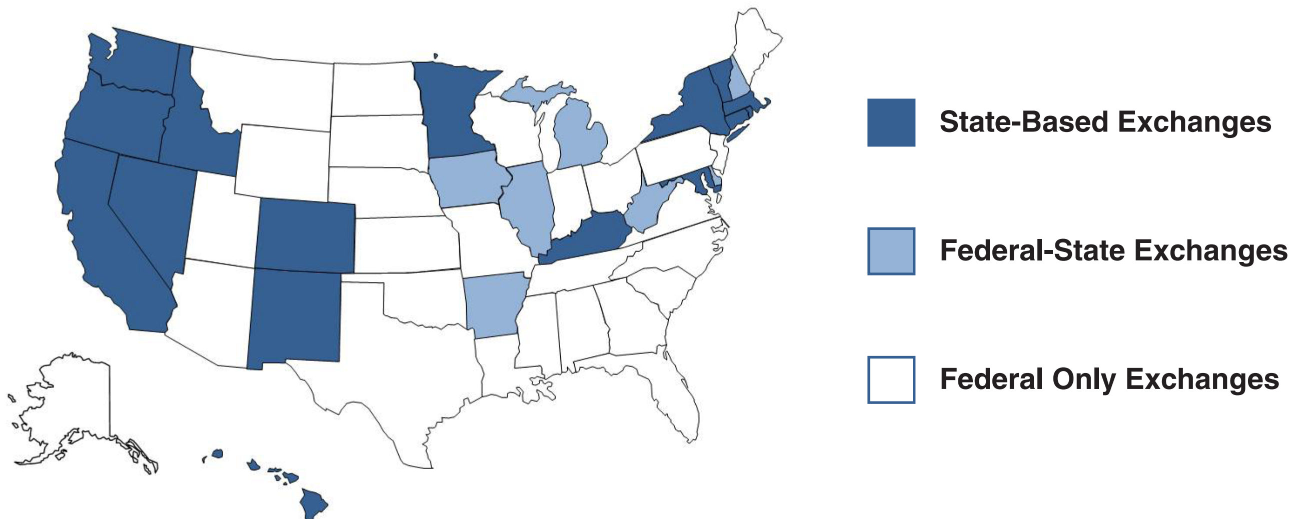
What's the Small Business Health Options Program (SHOP)?

All states intending to run state-based Marketplaces must offer qualifying health care plan options to small business ("SHOPs") as well as to individuals. The SHOP option is available to employers with fewer than 50 employees; however, the plans must meet the minimum value requirements established under the ACA.

In the final analysis, the purpose of the Marketplace and SHOP systems is to provide a mechanism for individuals and small employers to obtain health care coverage at a reasonable cost in a one-stop shopping environment. According to the government, about 32 million people are uninsured. To incentivize the purchase, the ACA has promulgated an income tax penalty for those who file tax returns (Form 1040), beginning with the 2014 tax year, in the event they do not have health insurance.

Stand by folks. There is much more to come, including mid-term elections!

Obamacare: A Look at the Exchanges



Executive Compensation

In a recent decision, a federal district court found Marriott's Stock Bonus Plan (the "Plan") may be subject to ERISA and that no statute of limitations applies. In Bond v. Marriott Int'l, Inc., the Maryland federal district court considered a class action suit regarding whether the Plan, which Marriot considered to be a top-hat plan, was subject to ERISA. Despite the fact the plaintiff's claims were nearly 20 years old, the court refused to dismiss the case due to the statute of limitations.

Background

Marriott provided a deferred stock bonus award to management employees between 1963 and 1990. Under the Plan, Marriott provided stock bonus awards to certain employees. The awards were to vest in annual installments from the grant date until the participant reached age 65. At first, Marriott allowed only a limited number of managers to participate in the Plan. However, during certain periods Marriott allowed wide participation among thousands of employees.

The parties stipulated the Plan constituted an "employee pension benefit plan" under ERISA. However, Marriott took the position the Plan was exempt from many of ERISA's requirements as a "top-hat plan." Accordingly, Marriott allowed the Plan to have longer vesting schedules than what is allowed for nonexempt plans under ERISA. The plaintiff argued that due to excessive participation in the Plan, it was not exempt from ERISA as a top-hat plan.

Holding

The court first held the claim could not be dismissed because the arrangement was not limited to a "select group of management or highly compensated employees" as is required for a plan to be exempt from ERISA as a top-hat plan. Because Marriot, at times, allowed for broad participation in the Plan, the Plan did not necessarily satisfy the top-hat plan exemption from ERISA.

This holding in itself was not shocking—the courts have a wide range of interpretations on whether a plan covers a "select group of management or highly compensated employees." What was shocking was that the court did not apply a statute of limitations to bar the action.

The court held that because the plaintiff did not understand ERISA or how ERISA applied to the Plan, the statute of limitations would not bar the claim. In order to provide further rationale for this result, the court stated that the Plan's lack of administrative claims procedure made it impossible for the plaintiff to receive a formal claim denial and accrue a cause of action.

This case is an excellent reminder that participation in your top-hat plan should be reviewed occasionally. If you have not reviewed the coverage in your nonqualified arrangements recently, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group.

An ESOP as a Prospective Buyer

Business owners often look to the sale of their company to provide them with financial security, the reward of years of hard work and the freedom to step away from the stress of running a company. However, the sales process may result in disappointment. Just to name a few potential frustrations: there may be a lack of ready, willing and able buyers; the offer price may fall short of the seller's expectations; the buyer may want to structure the purchase through a loan arrangement with the seller holding a note; and finally, capital gains taxes can diminish the net proceeds.

A well-established solution that has gained new momentum is a sale of the company to the company's employees through an Employee Stock Ownership Plan ("ESOP"). This discussion will address the fundamental considerations and advantages regarding the sale of a closely held business to the employees through an ESOP transaction. There is no question ESOP transactions are complicated. However, through proper structuring, an ESOP can serve as an excellent tool and a great benefit to loyal employees.

A basic ESOP transaction whereby a selling owner wishes to sell his or her business involves the purchase of the selling owner's stock by an ESOP. In order to finance the transaction, the ESOP may borrow the necessary funds for the stock purchase from a financial institution. The financial institution secures the debt with a pledge by the ESOP of the company stock being purchased from the existing shareholder. The stock is held in a suspense account. As the debt is repaid by the company, in the form of a qualified plan contribution to the ESOP, the stock is released from the suspense account and allocated to the ESOP-eligible employees with the employees receiving a pro rata allocation of company stock based on the ratio each employee's compensation bears to total compensation.

Because the debt repayment is an ESOP contribution, the company is afforded a tax deduction for the contribution, which, in turn, makes the ESOP purchase a tax-deductible transaction. The deductible amount in a given year may not exceed 25% of eligible compensation. Accordingly, the company is purchased by the ESOP at a discounted value equal to the state and federal tax rates, which in many cases can mean a 40% discount.

The seller in the ESOP transaction sells his or her stock at fair market value established by an independent appraiser. If the company is a Subchapter C Corporation, pursuant to Section 1042 of the Internal Revenue Code (the "Code"), the proceeds from the sale may be received by the seller without the imposition of a capital gains tax, provided that the proceeds are invested in qualified replacement property. Qualified replacement property means securities of a domestic operating company with not more than 25% of its income being passive. In addition to the requirement that the proceeds be invested in qualified replacement property, the following rules apply: after the sale, the ESOP must own at least 30% of the total value of the outstanding securities at the time of the transaction; the stock sold to the ESOP may not be allocated to the seller or members of his or her family or to any individual with an interest of 25% or more of the value of any outstanding class of stock in the corporation. A statement of Section 1042 nonrecognition election must be filed with the seller's tax return for the year of the sale.

The nonrecognition of gain rules under Code Section 1042 do not apply to Subchapter S Corporations. However, where an ESOP owns stock in a Subchapter S Corporation, the distributions of income attributable to the stock held in the ESOP are not subject to federal, and in most cases, state income tax. In the context of an ESOP owning 100% of the Subchapter S Corporation stock, the company essentially becomes a tax-exempt entity. In response to situations where few individuals in a company were benefiting from this tax-exempt advantage, allocation restrictions on Subchapter S Corporation ESOPs were passed into law. These restrictions are complex, but generally, the law restricts certain "disqualified persons" from

holding 50% or more of the stock in the corporation. Due to the complexity, including family aggregation and the inclusion of stock holdings outside the ESOP, including “synthetic equity,” a thorough analysis of the nonallocation rules should be conducted prior to the establishment of an S Corporation ESOP.

After considering the possible advantages and disadvantages to establishing an ESOP, the potential seller and the company should follow a systematic approach confirming the viability of establishing the ESOP and putting the proper safeguards in place. The process includes:

- Feasibility Study. The first step in determining whether to establish an ESOP is to determine whether it is feasible. To determine whether an ESOP is a good fit for the company, the company must consider its valuation, estimated annual loan payments, desired contribution levels, employee compensation base, Code limitations, cash flow, repurchase obligations and whether the seller would be willing to accept the terms and concessions associated with establishing the ESOP.
- Adequate Consideration. In order to avoid a “prohibited transaction,” the ESOP must pay “adequate consideration” for the company stock. To meet the adequate consideration requirement, the following applies: commissions may not be charged to the ESOP with respect to the transaction and the fair market value must be determined in good faith by the trustee or ESOP fiduciary. The valuation of the company stock in a transaction in which the departing shareholder sells his or her stock to an ESOP must be as of the date of the transaction and should be determined by a qualified independent appraiser. However, an independent appraisal alone does not ensure the regulatory agencies will consider the transaction as having been made for “adequate consideration.”
- Fairness Opinion. The valuation of the company and its stock is central to the determination of fairness of an ESOP transaction. Although not required by law, a fairness opinion will provide the existing shareholders and ESOP participants with a statement addressing the “fairness of the transaction.” The fairness opinion will usually elaborate on considerations that often are not covered by the valuation. A fairness opinion should examine the extent to which debt financing, to the extent applicable, will impact the ongoing operation of the company and its cash flow, any concurrent changes in the company (such as management changes and the potential impact on the company), the allocation of stock among the ESOP and other owners, alternative approaches, such as the competitive bidding process, and other pertinent considerations. Fairness opinions not only enable

the parties to make an informed decision regarding the transaction, but they also serve as good fiduciary practice and help mitigate the risk that is borne by ESOP trustees and other fiduciaries.

- Independent Trustee. The importance of an Independent Trustee with respect to the decision to enter into an ESOP stock purchase transaction is highly advised. The use of an independent trustee will materially reduce the potential liability on the existing owner and, often, company officials due to the inherent conflict of interest on the part of such individuals. The independent trustee should conduct a due diligence review of the company, review the stock valuation report and fairness opinion, and review and approve applicable documents and finance terms. Once the transaction is completed, the independent trustee can be retained on an ongoing basis, or such person or entity can serve as trustee solely in respect to the transaction.
- Plan Governance. Properly drafted retirement plans will identify the "plan administrator" and the investment fiduciaries. Most plans will appoint the board of directors as the plan administrator with the authority to delegate such responsibilities to a committee. Although the board of directors has a fiduciary responsibility to prudently appoint committee members and monitor their activities, a proper delegation can serve to limit or remove other fiduciary obligations the board would otherwise have and confine many fiduciary duties to the committee. A committee can often operate more effectively than the board members, with members being available for quarterly (or more frequently, if necessary) meetings and having the time to meet with advisors and discuss plan operations, company stock issues and other investments, if applicable. The committee is often comprised of representatives from human resources, financial/audit, and payroll. Committee members can be indemnified by the company and covered through fiduciary liability insurance. It is important that the committee meets regularly and consider plan operations and investments, including stock administration. The U.S. Department of Labor, which regulates ESOPs, will virtually always request copies of committee meeting minutes upon audit, and it is important that the minutes exist and reflect good fiduciary practices.
- Repurchase Liability. In the closely held company context, participants who leave the company are entitled to "put" their stock held through the ESOP back to the company or the ESOP upon the occurrence of a distributable event. Some companies that restrict the ownership of stock will simply make cash distributions to departing employees. The cash payments resulting from an exercise of a put or other cash distribution can place the company in a stressed situation with respect to cash needs and liquidity. For this reason, a well-designed ESOP structure should make provisions for future potential liquidity needs. The most common approach to address future liquidity needs is through a separate company fund or through insurance products with high cash value features. Repurchase liability should be addressed as soon as possible in the life of an ESOP to fund future liquidity demands.

An ESOP can serve as a very advantageous finance tool in the context of the sale of a company to a departing shareholder. If the ESOP concept makes sense for a company, departing shareholders and the company's employees, the result can be hugely beneficial to all parties. The key to a successful ESOP is forethought and careful analysis from the beginning; where these considerations are addressed, an ESOP can serve as the ideal buyer.

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Tibble v. Edison International

Earlier this year, the Ninth Circuit issued its opinion in *Tibble v. Edison International* ("Tibble"), affirming the district court's holding that plan fiduciaries of the Edison 401(k) Savings Plan (the "Plan") breached several fiduciary duties by including certain investment options in the Plan and engaging in inappropriate revenue sharing. *Tibble* highlights plan fiduciaries' obligations to diligently select and monitor investment options and plan fees and to document the same.

Background

In *Tibble*, a class action group of Plan participants sued the parent company, the Plan administrator and other Plan fiduciaries (the "Plan Fiduciaries"). The participants alleged the Plan Fiduciaries violated their fiduciary duties under the Plan by offering a unitized stock fund, money market style investment and retail-class mutual funds. The participants also alleged the Plan Fiduciaries violated the terms of the Plan and improperly allowed revenue sharing in the Plan's mutual funds. Under the revenue sharing, the Plan's mutual funds provided payments to the Plan's service provider, for purposes of paying administration costs that the employer would have otherwise paid.

Two claims survived summary judgment in the district court: first, whether it was a fiduciary breach when the Plan Fiduciaries selected a money market fund that charged excessive management fees; and second, whether it was a fiduciary breach when the Plan Fiduciaries offered retail-class shares of mutual funds. On the first claim, the district court ruled the Plan Fiduciaries did not pay excessive management fees. On the second claim, the district court held the Plan Fiduciaries breached their duty of prudence by failing to investigate the possibility of institutional-class alternatives before including the retail-class mutual funds in the Plan.

Holdings

In issuing its holdings, the Ninth Circuit addressed many important topics of relevance to Plan sponsors, administrators and fiduciaries. The decision provides guidance for how plan fiduciaries carry out their duties.

Statute of Limitations

The Ninth Circuit agreed with the district court that the court cannot review investment purchases made more than six years ago. Perhaps more importantly, the Ninth Circuit rejected the "continuing violation theory." Under the continuing violation theory the statute of limitations does not begin to run as long as the challenged investments are still included in the Plan. The Ninth Circuit held the act of designating the investment starts the statute of limitations; mere continuation of the investment, without more, does not reset the clock. However, the court suggested if changes in conditions should have prompted a full due diligence review, the clock could start over.

Selection of Retail-Class Mutual Funds

The Ninth Circuit agreed with the district court that the Plan Fiduciaries acted imprudently by including retail-class shares of mutual funds in the Plan without looking into institutional-class alternatives. The court stated that, although the Plan Fiduciaries had relied on their investment consultants, expert advice "is not a whitewash." The court explained an experienced investor would have reviewed all available share classes. According to the court, there was no evidence the Plan Fiduciaries reviewed other share classes. However, the court did refuse to hold that offering retail mutual funds is categorically imprudent, just that fiduciaries need to make a fully informed decision before selecting funds and fund classes.

Tibble v. Edison International

Revenue Sharing

The participants argued the Plan Fiduciaries violated both the Plan document and ERISA by allowing revenue sharing. The Plan document stated the company had to pay the cost of the administration of the Plan. ERISA prohibits a fiduciary from receiving consideration for his personal account from any party in connection with a transaction involving plan assets.

The Ninth Circuit applied a deferential standard of review in determining whether the Plan Fiduciaries violated the Plan document because the Plan granted the benefits committee "full discretion" to interpret the Plan. The Ninth Circuit found no abuse of discretion because the Plan did not prohibit third party payment of Plan expenses and inclusion of revenue sharing funds increased the options under the Plan. Participants were also fully informed of the revenue sharing. The court also rejected the ERISA claim because the DOL regulations exempt revenue sharing from the specific claim.

Lessons From Tibble

The Ninth Circuit's decision in *Tibble* highlights several plan fiduciaries' obligations to plan participants and beneficiaries. *Tibble* offers the following lessons:

- Always consider all share classes. Plan fiduciaries should always consider both retail and institutional-class funds and determine which class is best suited for their plan. Plan fiduciaries must always inquire about the availability of alternative class shares.
- Review plan documents for discretionary language. Plan documents should be reviewed to assure they grant the plan administrator full discretion to interpret the terms of the plan.
- Monitor plan investments. Plan fiduciaries should carefully track investment options in their plans to assure they remain reasonable investment alternatives.
- Document, document, document. Perhaps most importantly, plan fiduciaries should make sure they always document their selection and review of plan investments, including class selection and revenue sharing, questions asked, decisions made and the basis for the decisions.

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SUMMARY OF SELECTED EMPLOYEE BENEFIT RELATED LIMITS

	2008	2009	2010	2011	2012	2013	2014
ELECTIVE DEFERRAL ANNUAL LIMITS							
401(k), 403(b) and SEPs	15,500	16,500	16,500	16,500	17,000	17,500	**17,500**
457 Plans	15,500	16,500	16,500	16,500	17,000	17,500	**17,500**
SIMPLE IRAs and 401(k)s	10,500	11,500	11,500	11,500	11,500	12,000	**12,000**
"CATCH-UP" CONTRIBUTIONS							
401(k), 403(b), 457 and SEPs	5,000	5,500	5,500	5,500	5,500	5,500	**5,500**
SIMPLE IRAs and 401(k)s	2,500	2,500	2,500	2,500	2,500	2,500	**2,500**
401(a)(17) MAXIMUM ANNUAL PLAN COMPENSATION	230,000	245,000	245,000	245,000	250,000	255,000	**260,000**
415 ANNUAL ADDITIONS							
Defined Benefit Plan Dollar Limit	185,000	195,000	195,000	195,000	200,000	205,000	**210,000**
Defined Contribution Plan Dollar Limit	46,000	49,000	49,000	49,000	50,000	51,000	**52,000**
414(q) HIGHLY COMPENSATED EMPLOYEE	105,000	110,000	110,000	110,000	115,000	115,000	**115,000**
KEY EMPLOYEE (Top Heavy)							
Officers	150,000	160,000	160,000	160,000	165,000	165,000	**170,000**
1% Owner	150,000	150,000	150,000	150,000	150,000	150,000	**150,000**
IRAs							
Annual Contribution Limit	5,000	5,000	5,000	5,000	5,000	5,500	**5,500**
Catch-Up Contributions	1,000	1,000	1,000	1,000	1,000	1,000	**1,000**
PBGC ANNUAL GUARANTEED BENEFIT	51,750	54,000	54,000	54,000	55,840	57,477	**59,318**
QUALIFIED TRANSPORTATION FRINGE							
Employer-provided parking (monthly)	220	230	230	230	240	245	**250**
Mass transit pass & vanpool (monthly)	115	120/230	120/230	230	125/240	245	**130**
TAXABLE WAGE BASE							
Social Security	102,000	106,800	106,800	106,800	110,100	113,700	**117,000**
HEALTH SAVINGS ACCOUNTS							
Individual Contribution Limit	2,900	3,000	3,050	3,050	3,100	3,250	**3,300**
Family Contribution Limit	5,800	5,950	6,150	6,150	6,250	6,450	**6,550**
Catch-up Contributions	900	1,000	1,000	1,000	1,000	1,000	**1,000**

Sources: IR 2013-86 (10/31/2013); IRS Rev. Proc. 2013-25 (5/2/2013); SSA Press Release (10/30/2013); IRS Rev. Proc. 2013-35 (11/18/2013)

4846-5514-8822.2

Check out the 2014 COLA Chart at
www.kutakrock.com/files/Uploads/Images/2014COLA.pdf

Newsworthy Items

Cycle C Filing. In accordance with the IRS cyclical submission process for submitting an individually de¬signed tax-qualified retirement plan for a determination letter as to its continuing tax-qualified status under the Internal Revenue Code, employers in "Cycle C" must submit their tax-qualified plans to the IRS no later than January 31, 2014. Generally, plans maintained by employers with employer identification numbers ending in either 3 or 8 and governmental plans are Cycle C eligible.

Defense of Marriage Act – Repeal of Section 3. In June, the United States Supreme Court struck down Section 3 of the federal Defense of Marriage Act ("DOMA"), which mandated that under federal law, the term "spouse" included only spouses of a different sex. The Internal Revenue Service (the "IRS") issued guidance in response to the Court's opinion and announced that for federal tax purposes, it will follow a "state of celebration" rule. This means that after September 16, 2013, employers should no longer impute income at the federal level for same-sex spousal benefits. Whether income should be imputed for state tax purposes remains an open-ended question in many locations. States are slowly issuing guidance on this matter, and we will keep you apprised of developments as guidance becomes available.

Health Care Reform Amendments. Due to healthcare reform, most stand-alone Health Reimbursement Accounts ("HRAs") will no longer be permitted after the end of the year. HRAs may need to be amended so as to integrate them with a major medical plan and provide participants the chance to opt out and waive future reimbursements.

2013 Health Savings Account Increases. The IRS adjusted its maximum annual Health Savings Accounts ("HSAs") contribution amounts for the 2014 tax year. The annual limit for an individual with self-only coverage under a high deductible health plan is $3,300 (increase of $50 from 2013). Individuals with family coverage under a high deductible health plan can contribute up to $6,550 (increase of $100 from 2013) per year.

PBGC Premium Increases. The PBGC premiums for single-employer pension plans will increase from the current rate of $42 to $49 per participant in 2014. The variable-rate premium paid by underfunded single-employer plans will be $14 in 2014 and will increase to $19 in 2015. The per-participant rate for multiemployer plans will remain at $12.

2014 Cost-of-Living Increases. The IRS announced its annual cost-of-living adjustments for qualified retirement plans for the 2014 tax year. These adjustments affect the amount of benefits payable and contributions allocable under qualified retirement plans. A chart of the 2014 limitations can be found at: http://www.kutakrock.com/files/Uploads/Images/2014COLA.pdf

Reasonable Limitations Periods To Bring Suit under ERISA § 502(a)(1)(B) Upheld. Earlier this month, the U.S. Supreme Court unanimously held that when an ERISA plan specifies a limitations period within which a beneficiary must bring suit under Section 502(a)(1)(B), that period is enforceable unless it is "unreasonably short." The period in *Heimeshoff v. Hartford Life & Accident Insurance Co.* was three years from the date proof of loss was due. The Court concluded this period was not unreasonably short because, in an ordinary case, the internal claim review process would consume a year, leaving a plaintiff two years to bring suit.

Temporary Relief From Code § 401(a)(4) for Closed DB Plans. The IRS recently issued Notice 2014-5, which provides relief from some of the requirements under Code Section 401(a)(4). For those employers that sponsor both a DC plan and a DB plan closed to new entrants, this Notice may permit the testing of combined plans on an equivalent basis for 2014 and 2015.

In-Plan Roth Conversions. Following issuance of Notice 2013-74, individuals can now roll over an amount from a non-Roth account into their designated Roth account in the same plan, even if that amount is not eligible for distribution at the time of the rollover. For calendar year plans wishing to begin in-plan Roth rollovers in 2013 or 2014, amendments must be adopted by December 31, 2014. Safe harbor 401(k) plans may adopt such an amendment mid-year.

Employee Benefits and Executive Compensation Group

Kutak Rock LLP's Employee Benefits and Executive Compensation Practice Group serves clients with respect to legal matters concerning employee benefits and executive compensation. The group's collective legal expertise provides clients with thorough representation in virtually every aspect of employee benefits matters. Our employee benefits and executive compensation clients range from small, closely held organizations to international, publicly traded corporations to city and state governments. For more information, visit us online at www.KutakRock.com.

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