Employee Benefits News

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KUTAK ROCK LLP

KUTAK ROCK EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION GROUP CONTACTS

John E. Schembari
John.Schembari@KutakRock.com

Michelle Ueding
Michelle.Ueding@KutakRock.com

William C. McCartney
William.McCartney@KutakRock.com

P. Brian Bartels
P.Brian.Bartels@KutakRock.com

Alexis Pappas
Alexis.Pappas@KutakRock.com

Shane E. Strong
Shane.Strong@KutakRock.com

Jeffrey J. McGuire
Jeffrey.McGuire@KutakRock.com

Kutak Rock Locations

Atlanta
Chicago
Denver
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Irvine
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www.KutakRock.com

Strong Addition to Employee Benefits Group

Mr. Strong

Mr. Shane Strong is a 2013 graduate of Creighton University School of Law, where he was a member of the *Creighton Law Review*. He joined our group in September following a two-year clerkship with the Honorable Judge Lyle E. Strom. Prior to law school, Mr. Strong served as an Arabic linguist in the United States Air Force. He will assist all the attorneys in the Employee Benefits Group, with a focus on retirement plans.

Osberg v. Foot Locker Emphasizes Importance of Participant Communications

Earlier this year, the District Court for the Southern District of New York found that Foot Locker failed to properly disclose a change in the design of its pension plan. As a result, Foot Locker was ordered to pay thousands of employees the benefits they would have received if the design change had not taken place. The court's opinion in *Osberg v. Foot Locker*, No. 1:07-cv-01358-KBF (S.D.N.Y. 2015), reminds plan sponsors of the important need to fully disclose plan changes to participants in an understandable way.

Background

In 1996, Foot Locker converted its traditional defined benefit plan into a cash balance pension plan. The conversion formula it used effectively froze participants' benefits for several years. The plaintiffs in *Osberg* alleged that Foot Locker breached its fiduciary duties under the Employee Retirement Income Security Act of 1974 by failing to properly disclose this effective freeze in benefits. Foot Locker, in turn, alleged that it provided enough information to participants for them to understand

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Osberg v. Foot Locker Emphasizes Importance of Participant Communications

what was happening. Additionally, Foot Locker argued that it was not required to describe the effective freeze because the conversion process would be too complicated for participants to understand.

In ruling in the plaintiffs' favor, the court found that Foot Locker provided plan participants with materially false, misleading and incomplete descriptions of the plan. In particular, the court focused on several major issues, including:

- Even though evidence at trial showed that plan participants would have understood the effective freeze, participant communications were drafted as "good news" letters that did not describe the effective freeze;
- Foot Locker knew that the effective freeze would negatively impact almost all its employees for several years, but did not disclose the potentially negative effect;
- Foot Locker's disclosures were too confusing for virtually all participants to understand, including a former chief financial officer and employees who worked with pensions on a daily basis; and
- Foot Locker's administrative committee did not provide all of the relevant facts regarding the effective freeze to inside or outside counsel and did not follow the advice of outside counsel.

In light of Foot Locker's egregious conduct, the court ordered Foot Locker to pay the benefits the participants would have received if the conversion had not occurred.

Plan sponsors should ensure disclosures to participants are drafted in plain English.

Lessons Learned

Although Foot Locker's conduct was extreme, plan sponsors can learn valuable lessons from its mistakes. First, plan disclosures should be drafted in a way that clearly describes the changes to the plan. The court in *Osberg* identified using excessively technical terminology as a major defect in Foot Locker's notices. Thus, plan sponsors should ensure disclosures to participants are drafted in plain English.

Second, the disclosure document should not attempt to characterize the change as better or worse for an employee than it actually is. In *Osberg*, the most significant issue the court identified with Foot Locker's disclosures was its mischaracterization of the design change as a positive change for employees. Furthermore, if the disclosure document includes information regarding a benefit to which plan participants are entitled, the disclosure should clearly describe that benefit.

The disclosure document should not attempt to characterize the change as better or worse for an employee than it actually is.

Finally, plan sponsors should consult with inside and outside counsel regarding disclosures. The facts in *Osberg* make it clear Foot Locker's outside counsel attempted to resolve disclosure issues. However, Foot Locker greatly weakened its case by failing to provide sufficient information to its attorneys and by not following their advice.

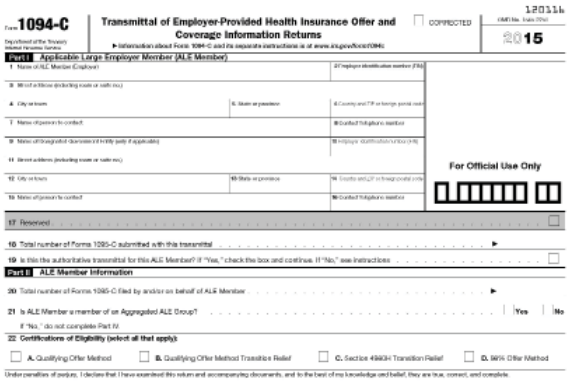
Conclusion

In light of the court's holding in *Osberg v. Foot Locker*, plan sponsors should ensure their disclosures do not fall prey to the mistakes made by Foot Locker. In particular, plan sponsors should prepare disclosures that clearly and accurately describe proposed changes to the plan. Additionally, plan sponsors should ensure they work with and follow the guidance of inside and outside counsel in preparing plan disclosures.

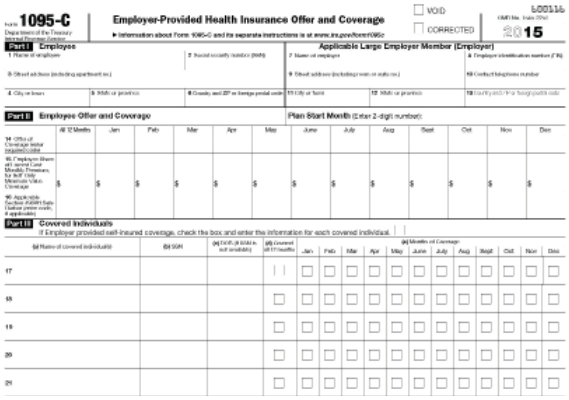
by Jeffrey McGuire

Preparing for Affordable Care Act Reporting

Starting in 2016, new reporting obligations will become effective under the Patient Protection and Affordable Care Act (the "ACA"). The ACA generally requires every person who provides minimum essential coverage to report information regarding that coverage to the Internal Revenue Service ("IRS") and furnish a statement to the individual. "Minimum essential coverage" generally includes employer-sponsored coverage, such as self-insured plans and COBRA continuation coverage. The ACA also requires large employers (generally those with 50 or more full-time employees, including equivalents) to file information returns with the IRS and provide statements to certain employees regarding the health insurance coverage the employer offered during the 2015 calendar year.


Form 1094-C Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns 2015

Affected employers with fully insured coverage should also ensure they are able to timely and accurately furnish and file Forms 1094-C (above) and 1095-C (below).


Form 1095-C Employer-Provided Health Insurance Offer and Coverage 2015

Minimum Essential Coverage Reporting

Any person who provides minimum essential coverage to an individual must satisfy certain reporting requirements. For insured coverage, the insurer is generally responsible for satisfying the reporting obligations. For self-insured coverage, the plan sponsor (the employer) is responsible for satisfying the reporting obligations.

How To Report

Forms 1094-B, 1095-B, 1094-C and 1095-C are used to report minimum essential coverage and large employers' offers of health insurance coverage. The specific forms used to report depend, in part, on the insurance arrangement. For example, if a large employer has fully insured coverage, the insurer generally reports on Forms 1094-B and 1095-B and the employer reports on Forms 1094-C and 1095-C. In contrast, a large employer with self-insured coverage reports on Forms 1094-C and 1095-C. The IRS issued guidance on December 28, 2015 that extends the deadlines for 2015 calendar-year reporting. Under the extended deadlines, forms are due to individuals no later than March 31, 2016 (the deadline was February 1, 2016). Forms must be filed with the IRS no later than June 30, 2016 if filed electronically (the deadline was March 31, 2016) (for non-electronic filers, the deadline is May 31, 2016 instead of February 29, 2016).

Next Steps

Affected employers with self-insured coverage should ensure they have systems and processes in place to complete Forms 1094-C and 1095-C and timely provide them to individuals and file with the IRS. Affected employers with fully insured coverage should also ensure they are able to timely and accurately furnish and file Forms 1094-C and 1095-C. If an employer is contracting with a third-party service provider to process and prepare the forms, the agreement should be reviewed to determine whether it properly describes the services, allocates risk, and provides appropriate indemnification.

by P. Brian Bartels

The Changing Role of the Government With Employee Benefit Plans

It goes without saying that the government plays a big role in a company's employee benefit plans. After all, it is the legislative branch of the government that enacts the laws that regulate employee benefit plans, the regulatory arm that enforces these laws, and the judicial branch that decides the scope of these laws. But recent changes in government policy at the federal, state and local levels have also subtly (and not so subtly) impacted the employee benefit plans offered by our clients. This article highlights our observations in recent government behavior that will impact employee benefit plans.

Recent changes in government policy at the federal, state and local levels have also subtly impacted the employee benefit plans offered by our clients.

1. **Increased HIPAA Audits**. The Health Insurance Portability and Accountability Act ("HIPAA") requires group health plans and certain service providers to group health plans to protect the privacy and security of employees' personal health information. HIPAA audits by the U.S. Department of Health and Human Services Office of Civil Rights ("OCR") are big business for the federal government. Recently, OCR announced settlements of over $1 million with three medical groups in Boston, Arizona and Indiana. In addition, earlier this fall OCR announced that "Phase 2" HIPAA audits will commence in late 2015 and early 2016. Under Phase 2, OCR will audit group health plans, medical providers and service providers to health plans and medical providers. Given OCR's recent track record of aggressive HIPAA enforcement actions, we expect HIPAA-related settlements and fines to reach record levels in 2016. Please see our recent Client Alert for more information.

2. **Curtailment of IRS Determination Letter Program**. Earlier this year, the Internal Revenue Service ("IRS") announced that due to staffing issues it will significantly curtail its determination letter program for qualified retirement plans. Most qualified retirement plan sponsors seek a "determination letter" from the IRS every five years to be assured that their plan meets IRS requirements. The IRS announced that it will no longer issue periodic determination letters. It intends to issue determination letters only for new plans or plans that are terminating. While normally a reduction in government "approvals" is a positive development for employers, that may not be the case here. Instead, we expect many employers will need to obtain legal opinions from counsel as to the tax qualification of their retirement plans. These legal opinions would be used in connection with corporate financings or M&A transactions or as a part of the company's general governance process.

3. **Increased DOL Audits**. It is clear that the current leadership at the Employee Benefits Security Administration branch of the Department of Labor ("DOL") is serious about enforcing the fiduciary provisions of the Employee Retirement Income Security Act ("ERISA"). The DOL reported that in its 2015 fiscal year alone, it conducted almost 2,500 civil investigations of possible breaches of fiduciary duties. While some of these cases resulted in recoveries to employee benefit plans (almost $700 million last year), in many cases the resolution of these investigations is nothing more than a finding that a fiduciary may have breached its duties. While this may seem insignificant,

Due to staffing issues, the IRS will significantly curtail its determination letter program for qualified retirement plans.

The Changing Role of the Government With Employee Benefit Plans

most fiduciaries would prefer not to have such a determination in the hands of a plaintiff's attorney! In addition to the 2,500+ civil investigations, the DOL filed suit in nearly 100 cases and initiated 275 criminal investigations (leading to 67 guilty pleas and convictions).

4. **DOL Emphasis on Fiduciary Behavior**. Not to be outdone by the investigatory arm of the Employee Benefits Security Administration, earlier this year the DOL released comprehensive proposed rules governing any person or entity, including brokers, administrators, banks, insurance companies and investment advisors, who offers certain kinds of investment advice to ERISA plans and individual retirement accounts for a fee. While the DOL has not set a date for the release of final regulations, we expect it will occur in 2016. While final regulations would not directly impact employee benefit plans, we expect the increased regulation of advisors to lead to higher investment-related fees.

5. **Continued Attacks on Obamacare**. The federal government has been forced to litigate the constitutionality of the Affordable Care Act ever since its inception. In addition, states have challenged provisions of the law and refused to enforce other provisions. Congress has furthered the political animosity of this law with countless bills designed to block funding for certain parts of the Affordable Care Act and to eliminate other provisions of the law. Couple all of this congressional bickering and ongoing litigation with the thousands and thousands of pages of regulations being issued on the law and you have one of the most highly controversial and political laws of all time. With elections right around the corner, we do not expect the political attacks on the Affordable Care Act to go away anytime soon.

The federal government has been forced to litigate the constitutionality of the Affordable Care Act since its inception.

6. **Erosion of ERISA Preemption**. In 1974, one of the primary reasons Congress enacted ERISA was to provide a uniform set of rules that employers operating in multiple states could follow. ERISA accomplishes this uniformity goal by "preempting" any state law that relates to an employee benefit plan (with certain notable exceptions). For over 40 years, the courts have used the preemption clause of ERISA to strike down attempts of states to pass laws that impact an employer's employee benefit plans. However, the momentum has shifted considerably with respect to the use of ERISA's preemption clause to prevent state regulation of employee benefit plans. In 2015, three states and the District of Columbia required employers to provide paid sick leave for their employees. Eighteen cities have similar rules. Governmental agencies are setting minimum employee benefit and leave policies for employers with whom they do business. All of this local regulation has made it very costly for employers with employees in multiple states to comply with the myriad of local rules impacting their employee benefits programs.

While the traditional impact of the government on employee benefit plans has not changed, the foregoing examples illustrate how new behavior by federal, state and local governments has impacted employee benefit plans in 2015. We expect these trends to continue in 2016.

by John Schembari

Electronic Disclosure Requirements: A Trap for the Unwary

Under Department of Labor ("DOL") regulations, plan sponsors can furnish summary plan descriptions ("SPDs") and other disclosures electronically. Although many plan sponsors rely on these rules, Employee Retirement Income Security Act of 1974 ("ERISA") compliance issues are common. Recent case law highlights the importance of complying with these regulations to avoid potentially costly mistakes.

***Thomas v. Cigna Group Insurance*, 09-CV-5029 (E.D.N.Y. 2015)**

Judith Thomas (the "Participant"), an employee of Countrywide, was a participant in Countrywide's basic and voluntary life insurance plans. She became disabled in 2004 and passed away in 2008. Her life insurance lapsed because she did not apply for a waiver of premium. Raymond Thomas, her beneficiary, claimed neither he nor the Participant received adequate notice of the waiver of premium provision.

At hire, Countrywide provided the Participant with a letter notifying her she could access Countrywide's intranet. Countrywide also posted SPDs on its intranet. The court found these steps did not comply with ERISA's requirements for electronic disclosure. The court specifically noted several deficiencies, such as Countrywide's failure to determine if it could provide electronic disclosures to the Participant.

Who Can Receive Electronic Disclosures?

Plan sponsors must verify whether DOL rules authorize the intended recipients of electronic disclosures to receive those disclosures. These rules apply only to:

- Participants who have effective access to electronic documents at work and access the employer's electronic information system as an integral part of their job; and
- Participants, beneficiaries, or other parties who meet special consent requirements.

Thus, plan sponsors should ensure they are providing electronic disclosure only to the proper parties.

What Can Be Disclosed Electronically?

A wide variety of documents can be disclosed under the DOL's regulations. The electronic disclosure regulations cover SPDs, summaries of material modifications, and summary annual reports. They also cover many other employee notifications required under ERISA, such as funding notices, qualified domestic relations notices, and notices regarding claims.

What Delivery Requirements Apply?

In addition to the requirements above, several special delivery requirements apply to electronic notices. In general, the plan sponsor must:

- Take appropriate and necessary measures reasonably calculated to ensure (1) participants actually receive the disclosure (e.g., return-receipt features or periodic surveys to confirm receipt) and (2) the plan sponsor protects participant confidentiality;
- Inform recipients of the significance of the notice (e.g., an explanation that the document describes changes in the benefits provided by the plan) and the recipients' right to request paper copies of disclosures; and
- Provide paper copies of disclosures on request.

If a plan sponsor fails to meet any of these requirements, it could be deemed to have failed to provide notices required by ERISA to plan participants.

Conclusion

Electronic disclosures have been part of the employee benefits landscape for several years. However, recent case law indicates some employers still struggle with these rules. Employers should review their current electronic disclosure practices to ensure they comply with DOL regulations.

by Jeffrey McGuire

Is Your Wellness Program in Need of a Checkup?

Wellness programs are popular methods for employers to help improve employees' health while also controlling health insurance costs. Wellness programs can take a variety of forms. For example, an employer might offer periodic wellness seminars during lunch breaks to educate employees on nutrition and exercise. An employer might also charge higher premiums for tobacco users but then reduce the premium if affected employees complete a tobacco cessation program.

Regardless of program design, it is important that wellness programs comply with applicable laws. Wellness programs are subject to the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA imposes a number of requirements for wellness programs, including limits on the size of rewards and notice requirements for certain types of wellness programs. Wellness programs can also be considered employee welfare benefit plans or group health plans under the Employee Retirement Income Security Act ("ERISA"), thereby subjecting wellness programs to additional requirements. The federal Equal Employment Opportunity Commission ("EEOC") has proposed regulations to govern wellness programs under the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act.

To help ensure compliance, employers offering wellness programs should:

- Review wellness program documents to ensure they accurately describe the wellness program and are in compliance with applicable laws.
- Confirm the wellness program rewards do not exceed applicable limits.
- Ensure wellness program rewards are being properly treated for tax purposes.
- Depending on the wellness program design, ensure that required notices are provided.
- Once final regulations under the Americans with Disabilities Act and Genetic Nondiscrimination Act are issued, review and revise the wellness program's design and documents.

by P. Brian Bartels

Whether in the form of lunchtime wellness seminars or smoking cessation plans, wellness programs must comply with applicable laws.

With an Aging Workforce, Nonqualified Deferred Compensation Makes More Sense Than Ever

Nonqualified deferred compensation ("NQDC") arrangements provide many benefits to employees, particularly those who are older and high-dollar earners. NQDC plans allow employees to defer receipt of their compensation until a later date. This is an especially valuable tool for employees who are close to retirement and in higher tax brackets.

Since many older workers are among the highest-paid individuals at a company, they are likely to be in a higher tax bracket, so the benefit of participating in an NQDC arrangement is even greater.

An Aging Workforce

In the United States, 10,000 people turn 65 each day. This trend will likely continue until 2030. In addition, the average retirement age for current workers is now expected to be 66, up from 57 just 20 years ago. With this growing population of older Americans, many employers will have a workforce that is older than ever before.

Why NQDC Arrangements Work for Older Workers

While NQDC arrangements can benefit all employees, they are especially valuable for older workers. This is because NQDC arrangements allow employees to defer compensation until a time when they are in a lower tax bracket. Under a typical NQDC arrangement, employees elect to delay receipt of their compensation until a later date, usually sometime after retirement. After they retire and are in a lower tax bracket, they will receive the money they deferred and only then be taxed on that compensation.

Unlike typical qualified plan arrangements (e.g., a 401(k) plan), NQDC arrangements are not subject to annual deferral limits. If an employee would like to defer compensation above the qualified plan annual contribution limit ($18,000 in 2016), an NQDC arrangement gives the employee a means to do so. Since many older workers are among the highest-paid individuals at a company, they are likely to be in a higher tax bracket, so the benefit of participating in an NQDC arrangement is even greater. Older workers also tend to have more disposable income, so they are more able to defer a portion of their compensation.

Have an Expert Prepare Your NQDC Arrangement

While an NQDC plan can be a great benefit for your employees, both young and old, there are some very strict rules that must be followed in designing, implementing and maintaining an NQDC arrangement. The penalties for failing to follow the strict rules can be severe, including a 20% tax on all compensation deferred under an NQDC arrangement.

Employers wishing to implement an NQDC arrangement should have their arrangements and their plan procedures reviewed for compliance with applicable law. If you would like to establish an NQDC plan or have your NQDC arrangement reviewed, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits and Executive Compensation practice group.

by William McCartney

Selecting a Plan Auditor for Annual Reporting Requirements

In recent years, the Department of Labor (the "DOL") has focused on a number of issues associated with Form 5500 employee benefit plan audits. Earlier this year, the DOL released a report of its findings, showing major audit quality issues, entitled "Assessing the Quality of Employee Benefit Plan Audits." Specifically, the report indicated that nearly 40% of all audits performed in connection with filing Form 5500 were deficient. However, the report also gives plan sponsors valuable insight on selecting the right auditor for their plan.

Your Obligations in Selecting and Monitoring a Plan Auditor

In connection with a plan sponsor's duty of prudence, the plan sponsor must prudently select and monitor plan auditors. This means that a plan sponsor must engage in an objective selection process designed to determine:

- Provider qualifications;
- Quality of services offered; and
- Reasonableness of fees, to the extent those fees are paid from plan assets.

For plan auditors, the selection process should involve soliciting bids and information about the firm's experience auditing similar retirement plans, the identity, experience, and qualifications of firm-certified public accountants ("CPAs"), proposed fees, and the firm's disciplinary and performance record.

"Green Flags" in Selecting a Plan Auditor

From the DOL's report, a plan sponsor can discover a number of factors that provide evidence of an auditor's qualifications. These include:

- *More than 100 Audits Performed*. The DOL's report found that CPA firms that performed more than 100 audits per year had the lowest deficiency rates in their Form 5500 audits (12%).
- *"Specialization" in Employee Benefit Plan Audits*. The DOL's report found that CPA firms that derived more than 20% of their revenue from employee benefit plan work tend to have lower deficiency rates.
- *Membership in the American Institute of Certified Public Accountants Employee Benefit Plan Audit Quality Center* (*the "Center"*). CPA firms that are members of the Center tend to have lower deficiency rates than non-member firms.

Plan sponsors should consider developing requests for information that look for these "green flags" in selecting a plan auditor.

"Red Flags" in Selecting a Plan Auditor

- *Less than 25 Audits Performed*. CPA firms with less than 25 audits performed per year tended to have significantly higher deficiency rates than more experienced firms (67.4%-75.8%).
- *Negative Peer Review Reports*. In general, CPA firms must engage in peer review programs. A negative peer review report can indicate issues with the quality of the CPA firm's work. Although a negative peer review report is an important "red flag" to look out for, plan sponsors should be aware that a positive peer review report is not necessarily an indicator that the firm is less likely to produce deficient audits.

Conclusion

A plan sponsor has a fiduciary duty to prudently select and monitor its plan auditors. Plan sponsors should solicit bids for auditors in an objective, independent process. Plan sponsors should also look to membership in the AICPA's Employee Benefit Plan Audit Quality Center and to the number of audits performed by a potential auditor. In contrast, plan sponsors should consider carefully whether to retain firms with less demonstrable employee benefit plan auditing experience.

by Jeffrey McGuire

Newsworthy Items

Revised Retirement Plan Correction Procedures. In April, the IRS announced changes to its voluntary program that allows employers to correct retirement plan operational errors. The program, known as the Employee Plans Compliance Resolution System ("EPCRS"), now allows employers to correct certain operational errors by making much smaller contributions if the corrections are made shortly after the errors occurred.

New Wellness Program Guidance. Also in April, the Equal Employment Opportunity Commission ("EEOC") released new proposed rules that describe the requirements a wellness program must meet in order to comply with the Americans with Disabilities Act. The EEOC's new rules generally reflect HIPAA requirements as they relate to wellness programs, but provide additional guidance on whether participation in a wellness program is "voluntary" and impose a new notice requirement for such programs.

More Stringent Hardship Distribution and Loan Recordkeeping Requirements. The IRS clarified documentation requirements for 401(k) plans that pay out hardship distributions or issue loans for principal residences with terms exceeding five years. Participants may not self-certify their eligibility for such distributions and loans. Instead, plan administrators must request and retain documentation showing the existence and the nature of the hardship or eligibility for the loan and maintain records with respect to that distribution, even if the plan uses a third-party administrator.

Curtailment of Determination Letter Program. The IRS announced that it will significantly change its determination letter program for qualified plans as of 2017. Instead of continuing to issue letters to restated plans every five years, it intends to issue determination letters only for new and terminating plans and to assess compliance with new laws (as specifically identified by IRS guidance). It appears that the last plans to file for a periodic determination letter will be those eligible for Cycle A (January 31, 2017 filing deadline). For a variety of reasons, we recommend that plans retain their restatement cycles even if they can no longer seek a favorable determination letter.

Cities and States Continue To Pass Paid Leave Laws. In 2015, a record number of localities passed legislation requiring employers to provide paid sick leave to their employees. This brings the total to four states, the District of Columbia, 21 cities and one county that have paid sick leave laws in effect or that will take effect in early 2016. We anticipate this trend will continue, as New Jersey and several cities are poised to pass similar laws next year.

Nationwide Health Care Subsidies Upheld. The Supreme Court's decision in *King v. Burwell* held that the IRS can offer tax credit subsidies to individuals enrolled in health insurance through a federally operated Exchange. This meant that low- and middle-income individuals who purchase coverage through an Exchange will remain eligible for tax credit subsidies regardless of whether the Exchange is state or federally run.

End of Lump Sum Windows for Certain Retirees. Effective July 9, 2015, defined benefit plans may no longer amend their plans to permit participants in pay status to elect to receive the remaining value of their annuity payments as a lump sum. Plan sponsors may continue to offer lump sum windows to participants who are not in pay status, however.

2016 Health Savings Account Increases. The IRS adjusted its maximum annual Health Savings Account ("HSA") contribution amount for family coverage, effective 2016. The annual limit for an individual with self-only coverage under a high-deductible health plan will remain at $3,350. Individuals with family coverage under a high-deductible health plan can contribute up to $6,750 (an increase of $100 from 2015) per year.

The IRS adjusted its maximum annual HSA contribution amount for family coverage, effective 2016.

Phaseout of Employer-Mandated Transition Relief. The IRS extended several forms of transition relief to employers for 2015 that relate to the ACA's "pay-or-play" mandate. That relief will not apply to most plans in 2016. Starting

Newsworthy Items

in 2016, all applicable large employers ("ALEs") with 50 or more full-time equivalents will be subject to pay-or-play penalties (down from 100 or more FTEs in 2015). Employers should note that they will be required to consider all 12 months in the prior year to determine their ALE status. In addition, the phaseout will require ALEs to offer minimum essential coverage to 95% of their full-time employees and their dependents (up from 70% in 2015).

New York City and Washington, D.C. are joining San Francisco in requiring certain employers to offer commuter benefits.

Increase in HIPAA Audits. Health and Human Services announced that it would begin conducting Phase 2 audits of covered entities and business associates in late 2015 and into 2016. The audits will check for compliance with HIPAA's privacy and security rules, such as security risk assessments, mitigation plans, breach notification procedures and encryption. This announcement came on the heels of several significant HIPAA enforcement proceedings in 2015.

Rise in Commuter Benefit Laws. Similar to the dramatic increase in the passage of paid sick leave ordinances, cities are also starting to pass laws requiring employers to provide commuter benefit programs to their employees. Beginning January 1, New York City and Washington, D.C. will join the San Francisco Bay Area and require that certain employers offer commuter benefits. These benefits typically take the form of allowing employees to use pre-tax dollars to pay for transit fares or employer subsidization of employees' transit costs.

The Securities and Exchange Commission issued new guidance to address concerns about the stability of money market funds.

Cycle E Filing. In accordance with the IRS cyclical process for submitting an individually designed retirement plan for a determination as to its tax-qualified status, employers in "Cycle E" (or those electing Cycle E) must submit their qualified plans to the IRS no later than January 31, 2016. Generally, governmental plans and plans maintained by employers with employer identification numbers ending in either 5 or 0 are Cycle E eligible.

Money Market Reform Amendments. The Securities and Exchange Commission issued new guidance designed to address concerns about the stability of money market funds in the wake of the 2008 financial crisis. The reform rule amendments will require institutional prime and municipal money market funds to move from a stable $1.00 price per share to a floating net asset value. We expect to see record keepers make changes to the money market funds they offer to plans as a result.

Commuter Benefit Parity in 2016. On December 18, President Obama signed legislation that includes a permanent extension of tax parity between public transit and parking benefits. Effective January 1, the monthly tax exclusion for parking benefits will increase from $250 to $255, and the monthly tax exclusion for public transit benefits will increase from $130 to $255.

by Alexis Pappas

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.

John E. Schembari
John.Schembari@
KutakRock.com

Michelle Ueding
Michelle.Ueding@
KutakRock.com

William C. McCartney
William.McCartney@
KutakRock.com

P. Brian Bartels
P.Brian.Bartels@
KutakRock.com

Alexis Pappas
Alexis.Pappas@
KutakRock.com

Shane E. Strong
Shane.Strong@
KutakRock.com

Jeffrey J. McGuire
Jeffrey.McGuire@
KutakRock.com

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Atlanta
Suite 2750
303 Peachtree Street, NE
Atlanta, GA 30308
404-222-4600

Chicago
Suite 2050
One South Wacker Drive
Chicago, IL 60606
312-602-4100

Denver
Suite 3000
1801 California Street
Denver, CO 80202
303-297-2400

Fayetteville
Suite 200
234 East Millsap Road
Fayetteville, AR 72703
479-973-4200

Irvine
Suite 1500
5 Park Plaza
Irvine, CA 92614
949-417-0999

Kansas City
Suite 800
Two Pershing Square
2300 Main Street
Kansas City, MO 64108
816-960-0090

Little Rock
Suite 2000
124 West Capitol Avenue
Little Rock, AR 72201
501-975-3000

Los Angeles
Suite 4550
777 South Figueroa Street
Los Angeles, CA 90017
213-312-4000

Minneapolis
Suite 1750
U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, MN 55402
612-334-5000

Oklahoma City
Suite 475
6305 Waterford Boulevard
Oklahoma City, OK 73118
405-848-2475

Omaha
The Omaha Building
1650 Farnam Street
Omaha, NE 68102
402-346-6000

Philadelphia
Suite 28B
Two Liberty Place
50 South Sixteenth Street
Philadelphia, PA 19102
215-299-4384

Richmond
Suite 800
Bank of America Center
1111 East Main Street
Richmond, VA 23219
804-644-1700

Scottsdale
Suite 300
8601 North Scottsdale Road
Scottsdale, AZ 85253
480-429-5000

Spokane
Cutter Tower
Suite 800
510 West Riverside Avenue
Spokane, WA 99201
509-747-4040

Washington, D.C.
Suite 1000
1101 Connecticut Avenue, NW
Washington, DC 20036
202-828-2400

Wichita
Omni Center IV
Suite 110
111 S. Whittier
Wichita, KS 67207
816-960-0090