

When I first started practicing law, I did both welfare and retirement benefits. I certainly do not want to date myself, but I started getting more involved with the welfare side of things when COBRA was enacted. As time went on I gave up on the retirement area because welfare benefits became more and more complicated and expensive. That trend has continued and, in fact, is picking up speed. I do these newsletters twice a month and I am seldom at a loss for material. With that said, I want to discuss the following topics.

### **New Form 5500 Signing Options**

As everyone knows, welfare benefit plans (e.g. health plans) with at least 100 participants (i.e. employees) in it on the first day of the plan year must file an annual report (i.e. Form 5500) with the government within seven months after the close of the plan year. (Different filing rules apply to retirement plans.) This means plans maintained on a calendar year must file the forms by July 31<sup>st</sup> of the following year. Failure to file the forms on time can result in very large penalties although there is a voluntary compliance program where employers can come forward and file all the late forms and pay a reduced penalty.

The government recently changed the rules to require all the forms be filed electronically. This means the forms have to be prepared and, most importantly, signed and submitted electronically. As a result, whoever is “signing” the forms has to register with the government and obtain a “PIN.” It is not that difficult but it can be a hassle. The government just changed the rules to allow whoever is preparing the forms (e.g. yours truly) to “sign” the forms on behalf of the plan sponsor. In other words, rather than

making the employer jump through all the hoops of registering with the government and getting a PIN, the employer can simply sign the first page of the Form 5500 and an authorization form and the person who prepared the forms can submit it on behalf of the employer. See the following article from the government explaining this new option.

<http://www.dol.gov/ebsa/newsroom/fsEFAST2.html>

This is an article from a vendor explaining this option:

<http://www.relius.net/News/TechnicalUpdates.aspx?ID=514>

If I prepare the Form 5500 for you, I am more than willing to work with you to take advantage of this new signing procedure.

#### IRS Releases the 2011 HSA and HDHP Limits

The IRS released the 2011 limits for HSA contributions and High Deductible Health Plans ("HDHP"). The limits will remain the same for next year.

<http://www.fordharrison.com/shownews.aspx?show=6223>

## Adult Children Health Coverage to Age 26

The government continues to issue rules to help explain various provisions of health care reform. The following articles talk about covering adult children up to age 26 under health care reform:

<http://tinyurl.com/2erwj2o>

and

<http://tinyurl.com/24fepfd>

We talked about these rules in a previous newsletter but, as I said, the government continues to issue guidance. As a result, I may go over topics that have been covered in previous newsletters.

## Pre-Existing Condition Restrictions

HIPAA has been around for some time and one of the main components of that statute was to restrict the way health plans could limit benefits for pre-existing conditions. The rules under HIPAA regarding pre-existing conditions are pretty complicated and are not all inclusive. Therefore, the government wanted to revisit this area under health care reform. As a practical matter many group health plans do not apply pre-existing conditions today because of HIPAA. Nevertheless, the government wanted to drive a stake through the heart of pre-existing condition limitations under health care reform. The following article

talks about the current rules governing pre-existing conditions and how those rules will change under health care reform:

<http://www.mckennalong.com/news-advisories-2319.html>

As a practical matter, in the case of a fully insured health plan (as opposed to a self funded health plan), the changes may not be that noticeable.

#### Limitations on Health FSAs

Under health care reform, the maximum salary deferral to a Health FSA will be limited to \$ 2500 beginning January 1, 2013. Note that the limit is on salary deferrals. The limit does not apply to employer contributions. Therefore, an employer could, for example, match the employee's salary deferral \$ 1 for \$ 1. In this case, the employee could get up to \$ 5,000 in his or her Health FSA. Again, the new limit is on salary deferrals not the total amount deposited into the person's Health FSA. See the following article:

<http://tinyurl.com/26bzhp9>

This limitation really is a form of hidden tax used to help finance health care reform. That is, employees will end up paying higher taxes because the amount excludable from taxable income in the form of salary deferrals to a Health FSA is being limited.

## Health Care Reform Lawsuits

A number of states are challenging the constitutionality of health care reform. One of the major provisions of health care reform is that beginning in 2014 most individuals will be required to have health insurance or pay a penalty. During the health care reform debate, President Obama said this is similar to requiring people to have car insurance. That is, most states require you to have car insurance if you want to drive a car. Although the President's analogy seems to make sense, it really is not the same. In the case of having to buy car insurance; it is a privilege to have a driver's license. That is, the states require you to pass a test and then you are entitled to have a driver's license. As part of that privilege the states can require you to have car insurance. If you do not have car insurance, the state can revoke or suspend your driver's license.

The penalty for not having health insurance is different. The penalty is invoked or assessed by you doing nothing. In other words, you are subject to the penalty for a non-action. Some people say this penalty is more akin to having to pay a penalty for not exercising. For an in-depth analysis on this topic see the following link:

<http://www.ncsl.org/documents/health/Constitutionality.pdf>

This is an interesting article for those who are interested and have the time to read it.

## **Auto Enrollment for Large Employers**

One of the requirements under health care reform is that large employers (i.e. those with at least 200 full time employees) must automatically enroll employees in their health plans. Employers are required to tell employees about this at the time of hire. The effective date of this provision is a little unclear. The statute itself does not list an effective date but the statute does require the Department of Labor to issue regulations. Therefore, common sense suggests that employers should not be required to comply with the rules until the regulations are issued. The following is a link to an article talking about this new requirement.

<http://www.hr.cch.com/news/benefits/051810.asp>

## **HIRE**

I have written about the Hiring Incentives to Restore Employment Act (HIRE) in past editions. The government recently released revised payroll tax forms for employers to claim the exemption. See the following article.

[http://www.plansponsor.com/IRS\\_Distributes\\_Payroll\\_Tax\\_Exemption\\_Forms.aspx](http://www.plansponsor.com/IRS_Distributes_Payroll_Tax_Exemption_Forms.aspx)

### Small Employer Tax Credits

We have discussed the small employer tax credit before. Basically smaller employers (i.e. those with less than 25 full time employees) may be eligible for up to a 35% tax credit on the amount the employer spends on health premiums. The government continues to issue guidance on how the credit works. The following is an article on the latest government guidance.

<http://tinyurl.com/2ck49ho>

The credit can certainly save the employer money. However, it is questionable how many employers are actually eligible for the credit.

### Penalty Calculator

Beginning in 2014 health care reform will require most employers (i.e. those with 50 or more full time employees) to offer affordable health coverage or be penalized. The following is a link to a calculator employers can use to determine the potential penalty for not offering health coverage or if the coverage is not affordable.

[http://www.nrf.com/modules.php?name=Pages&sp\\_id=1290](http://www.nrf.com/modules.php?name=Pages&sp_id=1290)

The calculator is somewhat rudimentary but, nevertheless, it can give you an idea of what you may be facing in 2014 when the employer mandates kick in.

As always, please contact me if you have any questions regarding this newsletter.