McGohan Brabender

September 30, 2015, Compliance Update

IRS Issues Final 2015 Forms 1094 and 1095 and Instruction – Good News

The IRS released the final versions of Forms 1094 and 1095 with revised instructions, and the good news is that the IRS has eliminated the need for employers to report most Health Reimbursement Arrangements. The draft instructions required all employers sponsoring HRAs to prepare and distribute the forms. However, the final instructions say only those employers that integrate their HRAs with another employer's group health plan need to prepare and distribute the forms. Here are a couple of articles on the new reporting requirements.

http://bit.ly/1WgsKR6

http://bit.ly/1OylCOK

Again, the Form 1095 has to be distributed to the employees by January 31, 2016, and Form 1094 and Form 1095 have to be submitted to the IRS by February 28, 2016, if submitted in paper format and March 31, 2016, if sent to the IRS electronically.

Government Continues to Work on Your Cadillac

One of the more controversial provisions under health care reform is the 40% non-deductible excise tax (i.e. the Cadillac tax) on high valued employer provided health plans. The tax is scheduled to kick in January 1, 2018, and the government continues to issue preliminary guidance on the tax.

http://bit.ly/1VaaXbT

People are speculating the tax may go away or be substantially changed but health care reform is expensive and the Cadillac tax will be a major revenue generator that can be used to pay for the statute.

Transgender Discrimination Rules

The Department of Health and Human Services issued proposed rules precluding health programs and activities that receive financial assistance from the federal government from discriminating against a person based on the individual's gender identity.

http://bit.ly/1Mu9qv9

Again, the rules only apply to entities that are receiving federal funds but there is a question if the rules will be applied against private employers who use TPAs that receive federal funds. Stay tuned for the final regulations.

IRS Releases New Webpage on Employer Mandate

The employer mandate or play or pay rule applies to large employers (i.e. those with 100 or more full-time and full-time equivalent employees) this year and mid-sized employers (i.e. those with between 50 and 99 full-time and full-time equivalent employees) next year.

http://1.usa.gov/1YFfDvb

Here is a link to the government's webpage devoted to this topic. It is a good place to start but the rules are extremely complex so it will take more than one source to fully understand how this provision of the statute works.

Don't Give Up on Health Risk Assessments

Wellness programs have been around for a while and have been subject to rules under health care reform and, more recently, EEOC has released proposed rules. Health risk assessments (HRAs) are a major component on many wellness programs, and this article talks about how to keep HRAs "fresh."

http://bit.ly/1QCUwUd

The rules governing wellness programs can be confusing and the EEOC's proposed guidance makes compliance a little more challenging but hopefully everything will fall into place soon.

Relatively Low Growth in Health Premiums in 2016

A major consulting house conducted a survey of employers and the results predict premiums will increase by less than 5% on average.

http://bit.ly/1LaVaue

Even though it appears trends are down, a majority of the employers still plan to make design changes to their programs.

Government Vendors Have to Provide Paid Sick Leave

Federal contractors (and their subcontractors) now have to provide at least seven days of paid sick to workers annually.

http://bit.ly/1WmX78L

Note that the new rules only apply to new contracts solicited for or awarded outside the solicitation process on or after January 1, 2017. Therefore, it is possible a new administration may revoke or modify the rules.

Severance Plan – ERISA or Not?

Most of the time it is pretty easy to determine if a program is subject to ERISA. For example, a group health plan is going to be subject to ERISA assuming the employer is not a church or government entity. However, sometimes, depending on the program, the determination is not so easy. This is especially true with a severance program.

http://bit.ly/1QCV2Bz

This article talks about a lawsuit where one party argued the arrangement was a plan subject to ERISA and the other side said it was simply a policy not governed by ERISA.

Reinsurance Fee Coming Due

Employers sponsoring self-funded health plans just got through reporting and paying the PCORI fee; now they have to start thinking about the reinsurance fee. The employee count has to be submitted by November 15, 2015, and paid next year.

http://bit.ly/1MNzWmf

The reinsurance fee goes away after next year but the fee for this year is $44 per person covered under the self-funded health plan. Employers sponsoring fully insured plans do not have to pay the fee but, as a practical matter, the carrier passes through the cost by increasing the premiums.