McGohan Brabender

COMPLIANCE UPDATE
MARCH 2018

IRS REDUCES MAXIMUM 2018 HSA CONTRIBUTIONS

In a surprise move, the IRS reduced the maximum amount an individual with family coverage under an HDHP can contribute to a HSA this year. The reduction is only $50 for the year. The IRS had previously said the 2018 maximum limit was $6,900 for anyone having family coverage under an HDHP, but earlier this month the IRS announced the maximum amount for anyone electing family coverage under an HDHP will be $6,850. There is no change to limits for anyone having single coverage under an HDHP and the $1,000 catch-up limits remain unchanged.

HSA Contribution Limits Effective Immediately

HSA Adjustment Presents Administrative Issues

Transition Relief Not Certain

It is not that the amount of the reduction is that large. It is that the reduction creates an administrative burden for employers, employees and individuals. Excess HSA contributions are subject to excise taxes of the amounts of the excess contribution, plus earnings are not taken out of the HSA. Many HSA vendors charge a fee for taking out the money so someone could end paying more in fees to withdraw the funds. The excess contributions and earnings have to be withdrawn before the end of this year. There is speculation the IRS may offer transitional relief for those that have already contributed the maximum amount before the IRS announced the reduction.

NEW CLAIMS RULES FOR DISABILITY CLAIMS

The Department of Labor issued new claim procedures for disability claims that become effective April 1, 2018. The rules were supposed to be effective January 1, 2018, but the government pushed back the effective date to April 1, 2108. Note that the rules apply to disability claims. Obviously they apply to disability plans but also can come into play whenever the payment of benefits is contingent on a determination of disability. Therefore, the new claim procedures would apply to retirement plans that pay disability benefits.

[Disability Claim Regulations to Apply April 1]

[Update ERISA Plans to Reflect DOL changes]

[Preparing for Disability Claim Rules Change]

The new rules are designed to give participants more rights by bringing the claims for disability benefits more in line to the expanded procedures applicable to medical benefits. If you are sponsoring a self-funded short and/or long term disability plan, you should ensure that the administrator is aware of the new rules.

MALE CONTRACEPTIVE COVERED UNDER HDHP

A High Deductible Health Plan ("HDHP") cannot provide first dollar benefits except for preventive care. The government has previously ruled that male contraceptive was not preventive care. Therefore any plan providing first dollar benefits for male contraceptives could not be considered an HDHP and participants could not make HSA contributions.

[IRS Issues Transition Relief for Male Contraceptive Plans]

The IRS has released a statement saying that, at any time prior to 2020, an individual will not fail to be HSA-eligible solely because he or she is covered under what would otherwise be an HDHP except for the plan's coverage of male sterilization or contraception before the IRS-required minimum deductible is met.

NEW TAX CREDIT FOR PAID FMLA

The Family and Medical Leave Act ("FMLA") was signed into law by President Clinton. The law requires larger employers to provide certain employees up to 12 weeks of unpaid leave under certain circumstances. During this time, the employer must continue to pay its share of the health plan premiums.

[Tax Credit for Paid FMLA]

[FMLA Credit Part of Tax Reform]

[Is New FLMA Tax Credit Worth It?]

The tax reform signed by President Trump on December 22, 2017 provides a tax credit for employees that provide employees **paid** family and medical leave to their employees. The credit only applies with respect to eligible leave taken after 2017 but before 2020, when the law sunsets.

U.S. SUPREME COURT WEIGHS IN ON RETIREE HEALTH COVERAGE

A seminal Sixth Circuit Court of Appeals case (Ohio is in the Sixth Circuit) decided in 1983 held that employers faced an uphill battle when it comes to terminating retiree health coverage. That case held that, in the context of a union agreement, there was inferred vesting of retiree health benefits. In other words, the presumption was retirees became vested in retiree health coverage and the employer could not terminate those benefits unless there was clear evidence to the contrary.

Court Reverses Inferred Vesting Ruling

The U.S. Supreme Court reversed that position and says that regular contract principals should be applied. In other words, there should be no inference that the retirees become vested in the retiree health benefits just because there is a union contract.

IRS EMPLOYER MANDATE PENALTY LETTERS

One of the main components of health care reform is the employer mandate that is assessed if a large employer fails to offer quality/affordable coverage to full time employees. The IRS is starting to send out notices telling certain employers they may be liable for the penalty.

Sample Invoice for 4980h Penalties

It is well known the Trump administration opposes the current health care reform rules. However, until Congress acts to repeal the law, employers should be prepared to comply with the rules.

ASSOCIATION HEALTH PLANS – POTENTIAL IMPACT

President Trump signed an executive order telling various government agencies to develop rules to encourage the formation of association health plans or AHPs. AHPs are a form of multiple employer welfare arrangements or MEWAs. Under a MEWA, small employers band together to buy health coverage.

Projected Impact of Proposed AHP Rules

The government issued proposed AHPs regulations in January of this year and the comment period for those regulations closed earlier this month. This in-depth article talks about the potential impact AHPs can have on the individual and small group markets.

INDIVIDUAL MANDATE REPEAL JEOPARDIZES HEALTH CARE REFORM

It is clear President Trump wants to repeal and replace Obamacare. Congress passed legislation repealing the individual mandate beginning next year and President Trump signed it into law. Twenty states have filed a lawsuit saying all of Obamacare should be repealed since the individual mandate goes away after this year.

20 States Argue for Repeal of Obamacare

Obamacare is composed of three main parts. They are (1) the employer mandate (2) the individual mandate and (3) the health care exchange. According to the lawsuit, all three parts are intertwined and if one part goes away, the entire statute should be repealed.

MEDICARE SECONDARY PAYER RULES

Older and disabled individuals are entitled to Medicare. Medicare is a government health program covering millions of people. Oftentimes a person has multiple coverage. For example, the person may be covered under his or her employer's group health plan and Medicare.

Medicare Secondary Payer Compliance

There are complex rules for coordination of benefits, or COB, governing when Medicare is the primary or secondary payer. As a general proposition, Medicare is usually the secondary payer when a person is covered under his or her employer's group health plan. This article explains those rules. There is nothing new here; but I thought I would include the article in this newsletter.

STUDENT LOAN REPAYMENT PROGRAM

An emerging type of employee benefit program is a student repayment loan program. The cost of college continues to rise and some students are graduating with staggering loans. In some cases it could take years to pay off the debt.

Student Loan Repayment Benefit

Some employers are establishing student loan repayment programs as a recruitment tool. Currently only a small percentage of employers have adopted these program but the trend is increasing.

FIDUCIARY LIABILITY INSURANCE – A MUST HAVE

ERISA requires that everyone handling money have a fidelity bond. The bond protects against fraud, theft, etc. However, there is no statutory requirement for fiduciary insurance.

Why You May Need Fiduciary Liability Insurance

People often confuse the two. That is, they think the fidelity bond protects against a fiduciary breach. However, that is not the case. They are two different types of coverage and prudent employers secure fiduciary insurance coverage along with an ERISA mandated fidelity bond.

SHORT-TERM HEALTH INSURANCE POLICIES

President Trump continues to weaken Obamacare any way he can and the latest moves do just that. The Departments of Health and Human Services, Labor, and Treasury issued proposed regulations last month governing short-term health policies. The new rules allow insurance companies to sell individual policies that do not comply with all the requirements under Obamacare.

New Rules Would Loosen Short-Term Coverage Plans

These short-term policies have been around for a while but they could not last for more than three months. Under the new rules, short-term health policies can last for up to 364 days. Since the short-term policies do not have to comply with all the Obamacare rules, the coverage may not be as comprehensive as traditional policies but, on the other hand, the cost of this reduced coverage will be less than traditional policies.

CAFETERIA PLAN ELECTION RULES

Cafeteria plans have been around for some time. One of the requirements is that the employees' elections must be irrevocable for the plan year unless certain enumerated events happen during the year,

Pre-Tax Cafeteria Plan Elections are Irrevocable

Is Change in Cost a Change in Status?

These two articles talk about the election rules. There is nothing new here. Just a refresher course and a reminder not to simply ignore the rules.

2018 FEDERAL POVERTY LEVEL AMOUNT RELEASED

Larger employers are subject to the employer mandate if the employer does not offer quality/affordable health coverage to full-time employees. There are three safe harbors employers can use to determine if the cost of single coverage is affordable. One of those safe harbors for 2018 is if the cost of single coverage does not exceed 9.56% of the Federal Poverty Level or FPL.

New Poverty Guidelines and ACA Safe Harbor

For this year that translates into the employee's monthly premium for single coverage not to exceed $96.71. Note that this is just one of the safe harbors. This does not mean that if the employee's share of the premiums exceed this amount the employer is subject to the employer mandate. It simply means that the employer cannot take advantage of this safe harbor.

NON-COMPLIANCE PENALTIES INCREASE

ERISA imposes a number of filing and reporting requirements on employers and plan administrators. Those amounts can increase due to inflation.

2018 ERISA Penalties

This article lists the new amounts. Note that the amounts are the maximum amount that can be assessed. The Government rarely assesses the maximum penalty. However, the goal should be to comply with the rules and not have any penalty assessed.

SAME-SEX BENEFITS

The U.S. Supreme Court ruled that all the states must recognize same sex marriages. This means people of the same sex can now be legally married and must be treated the same as opposite-sex married couples.

Benefit Rules for Same-Sex Married Couples

This is an in-depth piece on the benefit rules for same-sex married couples. There is nothing new but it explains all the major rules in one place.