

NOVEMBER 2018 COMPLIANCE UPDATE

HOLIDAY SEASON GIFT IDEAS

Just in time for the gift giving season I am pleased to announce the 2018/2019 Edition of my book, the Welfare Benefits Guide: Health Plans and Other Employer Sponsored Benefits is now available.

[Welfare Benefits Guide, 2018-2019](#)

This makes the perfect stocking stuffer and we are adding a new twist. If you buy at least 10 sets of my book, I will autograph each one for a nominal fee.

NEW HRA RULES

The Trump administration has issued proposed rules designed to make HRAs more attractive by eliminating some of the current restrictions applicable to HRAs.

[Summary of new HRA proposed regulation](#)

[Paving the way for more HRAs](#)

[Proposal allows using HRAs to pay individual premiums](#)

[Proposal incentivizes HRAs](#)

The new rules, which are in proposed format, will allow HRA funds to be used to buy individual health policies. The new rules, which are scheduled to become effective January 1, 2020, are intended to make HRAs more popular and to give both employers and employees more options when it comes to health coverage.

EMPLOYER MANDATE OVERVIEW

The Affordable Care Act (aka ObamaCare) requires large employers (i.e. those with 50 or more full-time and full-time equivalent employees) to offer quality/affordable health care or pay a penalty.

[ACA penalties are coming](#)

The government has started contacting employers regarding this penalty for the 2015 calendar year. Although the individual mandate has been repealed effective 2019, the employer mandate remains in effect. This means large employers still could be assessed this penalty. It also is important to note that employers must continue to comply with the reporting requirements (i.e. IRS Form 1094 and IRS Form 1095) until the statute is amended to eliminate the employer mandate.

2019 CHECKLIST

The following is a checklist applicable to health and other welfare benefit plans for the upcoming year.

[Checklist of 2019 requirements](#)

There are a number of tools out there to help employers comply with all the reporting and disclosure requirements.

2018 ACA REPORTING FORMS RELEASED

As a previous article states, employers still are subject to the ACA reporting requirements applicable to large employers. The IRS has released the 2018 reporting forms.

[Final 2018 reporting forms and instructions](#)

The forms are not new and there are little changes from the 2017 to 2018 versions. It is important to complete the forms accurately and submit them on time. The government has started contacting employers asking if the forms have been submitted and there are penalties for not submitting the forms.

BENEFIT PITFALLS FOR SMALLER COMPANIES

Interesting article on the potential pitfalls you can run across establishing benefit programs for smaller companies.

[Common compliance failures for small businesses](#)

This article talks about a wide range of topics including health and retirement plans as well as nonqualified retirement plans.

ARBITRATING ERISA CLAIMS

ERISA provides plan participants and beneficiaries several types of relief whenever there is a fiduciary breach.

[Arbitration vs. litigation for ERISA claims](#)

This article talks about the pros and cons of resolving those disputes through arbitration as opposed to filing a lawsuit in Federal court.

STOP LOSS COVERAGE

Self-funding is becoming more popular when sponsoring a group health plan. However, few employers are large enough to go “bare” when it comes to health coverage. Instead most employer purchase stop loss coverage to reimburse the employer after the claims reach a certain point.

[Five questions about stop loss for self-funded plans](#)

Employers should not automatically assume the stop loss coverage provides full protection. The employer has to take an active role when it comes to securing stop loss coverage. This article talks about some of the issues that need to be addressed.

EMPLOYER DODGES BULLET

Most group term life insurance contracts have a conversion provision that allows an individual to convert his or her coverage under the group policy into individual coverage. That is, once an employee terminates employment, the former employee may have the option to continue the coverage on an individual basis.

[Employer not required to disclose conversion rights](#)

However, that conversion is not automatic. The individual has to contact the carrier. Obviously the individual has to be aware of this requirement and the basis of this lawsuit is that the employee’s widow sued the employer because the employer failed to tell the former employee his group term life insurance coverage had to be converted to individual coverage if he wanted it to stay in force. The Court ruled the employer did not breach its fiduciary duty but the lawsuit could have been avoided and the widow could have had the coverage if the employer simply complied with the notice requirements.

HEALTH COVERAGE FOR SAME-SEX SPOUSES

This is a survey regarding health coverage for same-sex spouses. The US Supreme Court has ruled that states have to treat same-sex spouses the way they treat opposite-sex spouses.

[Same-sex benefits coverage on rise](#)

Surprisingly, the number of employers offering coverage to domestic partners has not declined. That is, many people thought that since all the states have to recognize same-sex spouses, fewer employers would offer coverage for domestic partners since same-sex domestic partner can now get married.

FSA, HSA or HRA

There are a number of options when it comes to offering health coverage to employees. There are Health FSAs, Health Savings Accounts and Health Reimbursement Arrangements.

[Pros and cons of FSAs, HSAs and HRAs](#)

This article talks about the pros and cons of each option. Clearly one size does not fit all and each employer's situation is different.

ACA AND AFFORDABLE COVERAGE

The Affordable Care Act requires large employers to offer quality/affordable health coverage to full-time employees or potentially be subject to a penalty. The coverage is considered affordable if it does not exceed a certain percentage of the employees' income. That percentage changes each year due to inflation.

[Affordability threshold increases for 2019](#)

This article talks about the penalties and the affordability tests and lists the percentages for the upcoming calendar year.

YEAR-END CHECKLIST

As this year comes to a close and you focus on the upcoming open enrollment period (see previous article for 2019 checklist) now is a good time to make sure you have buttoned down this year.

[End of year to-do-list for plan sponsors](#)

This article is a nice checklist for year-end items. Again, it is easy to forget something that has to be done before the end of this year because you are focusing in on next year.

2018/2019 PCORI FEE ANNOUNCED

The IRS just announced the PCORI fee for plan years ending on or after Oct. 1, 2018, and before Oct. 1, 2019. The fee is going up from \$2.39 per covered life to \$2.45 per covered life.

[Adjusted Applicable PCORI Amount](#)

The fee is due each July 31st and is reported on IRS Form 720 and is paid with IRS Form 720V. As you can see, the fee is not that much.

WELLNESS PROGRAMS REMAIN IN LIMBO

Many employers are adopting wellness programs to reduce health care costs and to promote a healthier workforce. Unfortunately the rules governing wellness program are complex and are in a state of flux.

[EEOC guidance on wellness plans not forthcoming](#)

The EEOC issued regulations governing wellness programs but the United States District Court for the District of Columbia in December 2017 ruled those regulations are invalid as of January 1, 2019. People were hoping the EEOC would issue new regulations before that date but the EEOC has indicated the new rules will be released by June 2019.

In the meantime the Department of Labor continues to audit wellness programs to ensure they comply with the other rules.

[DOL lawsuits allege HIPAA noncompliance](#)

The fact there are two different government agencies involved (i.e. the EEOC and the Department of Labor) and the rules are not uniform makes it difficult for employers to comply with the rules.

HEALTH CARE AFTER THE MIDTERMS

The election results still are coming in but it is clear the Republicans will retain control of the Senate and the Democrats will regain the House. This article tries to predict what will happen on the legislative front over the next two years.

[What to expect as control shifts to Democratic lawmakers](#)

It is important to realize that a lot can happen even though there may be little legislative changes. The Trump administration can rewrite regulations without Congress approval, and those regulations can have a major impact. So even if there are few new laws, the rules can still change dramatically.

PRE-EXISTING CONDITIONS

Most Americans are concerned that health coverage may exclude benefits for pre-existing conditions, and the Trump administration continues to chip away at the protections for pre-existing conditions.

[Genetic testing and pre-existing conditions](#)

Central to the debate is the actual definition of a pre-existing condition. This article talks about the role of genetic testing when defining a pre-existing condition.

CUTTING OUT THE MIDDLE MAN

I have never met the guy but everyone seems to hate him. That is, the Middle Man. This is true with the health care system. More employers are starting to contract directly with providers, setting up on-site clinics and entering into coalitions to help control costs.

[Legal considerations with value-based contracting](#)

This article raises some of the legal issues involved with this strategy. Because the stakes are so high it makes sense to explore all the options.

IMPACT OF MEDICARE PROPOSAL

The Trump administration is considering a proposal to reduce the drug cost under Medicare. This all sounds good but this may have a negative impact on employers.

[Medicare proposal could shift costs to private sector](#)

In health care, as with most things, there is no free lunch. If the government cuts back on what it pays the pharmaceutical companies and physicians, they will try to recoup that money from the private sector. This will translate into higher premiums down the road.

DIVORCES IMPACT EVERYONE INCLUDING EMPLOYERS

People get married and, unfortunately, people get divorced. Sometimes a divorce can impact the employer.

[Impact of divorce on spousal benefits](#)

Some employer-sponsored benefit programs cover the employee's spouse and children. Oftentimes the employee gets a divorce but fails to notify the employer in a timely manner. This can have significant consequences to the plans, and this article explores those issues.

HIPAA BREACH – NOW WHAT

HIPAA has been around for some time now. One of its main goals is to protect individuals' private health information. No one can argue that is not worthwhile. However, the rules are complex and the penalties can be substantial

[Handling HIPAA breaches](#)

Hopefully, you never need to rely on this article. However, it talks about the steps you should take if there ever is a HIPAA breach.

On behalf of McGohan Brabender and Folkerth & Routh, we want to wish everyone a safe and happy Holiday. To celebrate the holiday season we will not be issuing a Compliance Update in December but we look forward to seeing you next year!!!!

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