

## **MARCH 2019 COMPLIANCE UPDATE**

### **CONTRACT THEORY GOVERNS RETIREE HEALTH COVERAGE**

Health coverage is expensive and employers are having a hard time offering quality/affordable coverage to employees. Therefore, it comes as no surprise that employers often want to reduce or eliminate coverage for retirees.

#### [COURT APPLIES ORDINARY PRINCIPALS OF CONTRACT LAW FOR BARGAIN AGREEMENTS](#)

##### [SIXTH COURT RULES FOR EMPLOYER TO TERM RETIREE COVERAGE](#)

It also should come as no surprise the retirees will resist any attempt to reduce or eliminate those retiree benefits. Since ERISA does not impose a vesting concept on health coverage, it boils down to what the employer promised the retirees most often in the form of a union contract. The latest case in the Sixth Circuit (Ohio is in this circuit) held the employer innocent and could eliminate the retiree health coverage.

### **PATIENTS IN THE MIDDLE**

An interesting fight is developing between some out of network providers and a couple of insurance companies. The patient goes to an out of network provider and runs up a large bill, The insurance company, instead of paying the provider, cuts the large check made payable to the patient. This makes the provider chase the patient for the money.

#### [CARRIERS PAY PATIENTS TO GAIN PROVIDERS IN NETWORK](#)

Most providers require the patient to “assign” his or her rights under the plan over to the provider. However, many insurance companies have anti-assignment provisions.

### **CAN EMPLOYERS GET BACK HSA CONTRIBUTIONS**

As a general proposition, once an employer makes an HSA contribution, that money is gone. There are very limited circumstances where the employer can get the money back.

#### [COMPLIANCE ALERT: HSA CONTRIBUTION ERROR EXAMPLES](#)

The IRS recently released a letter that was drafted a while ago listing a limited number of circumstances when an employer may try to recover mistaken HSA contributions.

## **GRANDMA MAYBE GOING AWAY SOON**

One of President Obama's promises under the Affordable Care Act is that you can keep your health plan if you like it. This was referred to as grandfathered health plans. In reality, few plans qualified and there are very few grandfathered health plans around. What has happened is grand-mothered plans came into being.

### [WINNERS AND LOSERS IF GRANDMOTHERED PLANS TERMINATE](#)

Grand-mothered plans, also known as transitional plans, were purchased after health care reform was enacted but before October 1, 2013. These plans usually offered coverage at a lower premium. They were medically-underwritten and/or did not include all of the required services. There is talk the government may no longer allow for these grand-mothered plans.

## **NO FREE LUNCHES**

The Internal Revenue Code is written so that everything an employer provides to employees is taxable income unless specifically excluded, including free meals unless certain strict requirements are satisfied.

### [NO FREE LUNCH, BUT YES TO FREE SNACKS](#)

#### [IRS SAYS 'LET THEM EAT SNACKS'](#)

So unless the meals satisfy these requirements: the value of the meals must be included in the employees' taxable income and be subject to employment taxes. Note: providing beverages and snacks – which include small, difficult to quantify goods that are stored in open access area can still be provided, but are tax free.

## **IRS FORM 1094 & FORM 1095 REPORTING TIPS**

The individual mandate penalty went away as of January 1<sup>st</sup> of this year. However, the employer mandate and the reporting requirements remain.

### [ACA EMPLOYER MANDATE STILL REQUIRES REPORTING](#)

#### [IS YOUR SERVICE PROVIDER KEEPING YOU COMPLIANT WITH 1094/1095 REPORT?](#)

Even though the forms have been around for several years, questions still pop up. This article talks about some of the more common questions that come up when completing the forms.

## **CREATIVE NEW BENEFIT**

The economy is doing relatively well and employers are battling over quality employees. To sweeten the pot for younger talent, some employers are adopting student loan repayment programs.

### [NEW BENEFIT FOR RECENT GRADS- LOAN PAYOFF ASSISTANCE](#)

The cost of higher education has skyrocketed and some of the students leaving college are saddled with very large loans. Some employers are helping with these loans but, unfortunately, the current tax code does not make these programs attractive from a tax standpoint.

## **GOVERNMENT SUSPENDS EMPLOYER DATA MATCH PROGRAM**

The Medicare Secondary Payer Rules require employer group health plans to be primary and Medicare to be secondary in many cases. This requires the government to gather information to determine if the group health plan should be the primary payer for certain people.

### [EMPLOYER DATA MATCH SUSPENDED](#)

As part of that process, the government would send employers questionnaires and employers would have to respond by setting up an account and respond electronically. The good news is the government has suspended this program for the time being.

## **NON-COMPLIANCE GETS MORE EXPENSIVE**

ERISA imposes a number of reporting and disclosure requirements and there are penalties associated with non-compliance. The statute also provides those penalties to increase each year due to inflation.

### [DOL INCREASES NON-COMPLIANT PENALTIES FOR 2019](#)

The government has released the numbers for this year. The potential penalties are noticeably large. Hopefully you never have to deal with the penalties, however if you do, it is rather rare for the government to assess the maximum amount. It is slim consolation if you are faced with a penalty.

## **SPD AND COMPANY'S INTRANET**

ERISA requires the plan administrator (most often the employer) to distribute a summary plan description or SPD to the plan participants. The Department of Labor several years ago issued rules regarding the electronic distribution of documents.

### [RULES FOR POSTING SPD ON COMPANY INTRANET](#)

Most large employers use the company's intranet to communicate with employees. This article talks about using the intranet to distribute the SPDs.

### **IS A CAPTIVE INSURANCE CARRIER IN YOUR FUTURE**

Employers continue to look for ways to provide quality/affordable health coverage to the employees and their family members and the insurance community continues to try to answer the call.

#### [INSURANCE CAPTIVE: COULD THESE BENEFIT ARRANGEMENTS BE RIGHT FOR YOU?](#)

A growing trend is the formation and utilization of captive insurance carriers where the employers have a greater say in the management of the carrier.

### **ERISA PREEMPTS STATE WAGE WITHHOLDING LAWS**

Not sure many employers would want to take this approach, but an employer in Kentucky implemented automatic enrollment in the company's group health plan. Several employees did not want to participate and pointed to the state law that requires employees to agree, in writing, to any payroll withholdings for benefits.

#### [WRITTEN CONSENT NOT REQUIRED FOR EMPLOYEE DEDUCTION OF PREMIUM](#)

The Department of Labor reaffirmed its previous rulings that ERISA preempts those types of state laws and that the employer need not get the employees' written consent to withhold their portion of the premiums. Healthcare reform requires large employers (i.e. those with 50 or more full time and full time equivalent employees) to opt out of health coverage that is not quality and affordable. Larger employers would have to take this into account before forcing employees to enroll in and pay for health coverage.

### **SOME 2020 LIMITS RELEASED**

We are still in the early stages of 2019 but the Department of Health and Human Services has released the proposed out-of-pocket limits for 2020 for essential benefits under non-grandfathered health plans. The numbers are adjusted each year for an inflationary factor.

#### [DEPT OF HEALTH PROPOSES OUT-OF-POCKET MAXIMUMS FOR 2020](#)

This article also projects the employer mandate penalty. Note: these are projections with respect to the employer mandate penalty for 2020. It is estimated the annual employer mandate penalty for 2020 for not offering coverage to at least 95% of the full time employees will be \$2590 per employee, per year, minus the first 30 full time employees. If the coverage is

offered to at least 95% of the full time employees, the annual penalty in 2020 will be \$3890 for each employee that got a premium subsidy under the health care exchange.

## **EMPLOYERS ARE FIGHTING BACK WHEN IT COMES TO PRESCRIPTION DRUGS**

One of the fastest growing cost drivers in the health care system is prescription drugs. Americans are taking more drugs than ever before. The pharmaceutical companies continue to promote their products through direct advertising to the general public.

### [17 WAYS EMPLOYERS ARE COMBATING RX COSTS](#)

This article talks about ways employers can try to reduce the cost of prescription drugs in employer sponsored group health plans.

## **SELLING INSURANCE ACROSS STATE LINES – SOUNDS GOOD BUT.... !!**

A number of people are saying that if insurance companies could sell products across state lines the premiums will go down.

### [HEALTH INSURANCE ACROSS STATE LINES- STILL A DEBATE](#)

Although this sounds good in principal, as practical matter, there are a number of roadblocks that make this extremely difficult to achieve.

## **EMPLOYER SPONSORED HEALTH PLANS – HOW DID WE GET INTO THIS MESS ?**

Employers spend more on group health plan premiums than any other employee benefit and there are a lot of countries that have socialized medicine under which the government takes on this obligation.

### [THE FUTURE OF EMPLOYER PROVIDED HEALTHCARE](#)

Some politicians are talking about Medicare for all; however, this article says the future of employer provided health coverage is strong and that most people are happy with the current system. Maybe the current system needs some tweaks, but the major of the public do not want to scrap it.

## **IRS FORM 1094 & IRS FORM 1095 - COMMON ERRORS**

Employers are starting to get notices from the IRS regarding proposed penalties under health care reform. Namely, the employers are getting IRS Letter 226J saying they are liable for the employer mandate penalty.

### [CHECKING "YES" BOX ON 1094-C UNLOCKS SAFE HARBORS](#)

Often times this letter is generated because the employer completed IRS Form 1094 and/or IRS Form 1095 wrong. This, in turn, generated the IRS Letter 226J because the government is thinking the employer failed to offer quality/affordable health coverage to at least 95% of the full time employees. If you get this letter from the IRS you need to review it carefully and respond in a timely manner if you disagree with some or the entire proposed penalty.

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