



## For Executives A Focus on Benefits

This quarterly publication is designed to alert company management about several of the most important recent developments in the benefits arena that warrant their attention.

### Retirement

**PBGC Premiums** – Congress over the past few years has repeatedly increased the premiums that companies must pay to the Pension Benefit Guaranty Corporation (PBGC) for their defined benefit plans.

- Premiums were increased by almost \$9 billion in 2012 and by an additional \$7.9 billion in 2013.
- The PBGC has argued for higher premiums and the President's budget proposed to give the PBGC Board authority to adjust variable premiums.
- ERIC, along with others, funded a study which showed the proposed increases would limit the ability of companies to invest, create jobs and grow the economy. It found PBGC premiums would cost an average of 42,000 jobs per year, peaking at a loss of more than 67,000 jobs in 2017. Congress could save an average of 24,500 jobs per year by rejecting additional premium hikes. The study also found that allowing the PBGC to raise premiums, plus the two recent increases, would result in a cumulative \$51.4 billion hit to the U.S. economy over 11 years.
- ERIC, with others, also recently hosted a briefing for staffers in the U.S. House of Representatives and U.S. Senate about the study and its findings.
- The PBGC recently issued its FY 2013 Projections Report, which reflects that there has been significant improvement in the funded status of the PBGC's single-employer program, but that they still believe it is underfunded.
- ERIC continues to work to preclude further PBGC premium increases and extensions of its authority.

### Health

- **Cadillac Tax and COBRA** - An ERIC task force is addressing the regulatory and statutory changes that need to be made to the ACA Cadillac tax. A second task force is examining changes that should be made to the COBRA rules in light of the availability of insurance coverage through the ACA Exchanges. Member input is still welcome.
- **Health Plan Identification Numbers** - Large health plans that are covered entities under the HIPAA privacy and security rules – including self-funded plans – must register with HHS for a Health Plan Identifier Number (HPID) by November 5.
- **Health Plan Fees** - Employers must pay a Transitional Risk Reinsurance Program fee for 2014, as mandated by the Affordable Care Act (ACA), which will be \$63 per covered life. Employers must register with [www.pay.gov](http://www.pay.gov) and submit their annual enrollment counts to HHS by November 15. The first payment installment will be due in January, 2015.
- **SCOTUS** - The U.S. Supreme Court partially invalidated the Administration's contraceptive mandate applicable to closely-held for-profit corporations, finding that the mandate imposed a substantial burden on the religious owners of three closely-held corporations and did so in a manner that was not the least restrictive approach available. Although the decision will not significantly affect the implementation of the ACA (the source of the contraceptive mandate), it could potentially open the door to further claims that the ACA (and other laws) infringe on the rights of corporations with religiously-oriented owners.

### Legal

**Stock Drop Lawsuits** – The U.S. Supreme Court recently decided two key cases for retirement plans that invest in company stock. In an ERISA case, the Supreme Court held that fiduciaries of plans that include company stock as an investment option are not entitled to any "presumption of prudence" (often applied to dismiss cases at an early stage), but the court did provide principles to be used to help dismiss meritless claims. The Supreme Court also decided a non-ERISA case, in which it held that securities fraud class actions may be dismissed before the class is certified if the company provides direct evidence that the stock price was not affected by any alleged misrepresentation by the company (even though companies are not allowed to challenge the alleged misrepresentations themselves at that stage of the litigation). These cases will have a significant impact on the manner in which cases involving company stock are litigated and decided by courts.

**Retiree Health** – The U.S. Supreme Court has also agreed to hear a case involving the vesting of retiree health benefits. The Court will decide whether collective bargaining agreements that are silent concerning the duration of retiree health benefits should be interpreted to mean the parties intended those benefits to vest. The appellate court held that there is a presumption of vesting in such cases unless there is a clear indication otherwise. Other courts had adopted a variety of ways to evaluate such claims of vesting, but had not adopted a presumption of vesting. The Supreme Court's decision will clarify the standard and may substantially impact companies' decisions to offer health benefits to their retirees. ERIC is filing an amicus brief in the case, which argues that retiree health benefits should not be considered vested unless the agreement clearly states that the benefits are vested.

**Equitable Remedies** – The courts continue to grapple with what remedies are available in cases involving alleged intentional, negligent or inadvertent miscommunications. Since an important Supreme Court case on this issue several years ago, most courts have held that misrepresentations that have been relied or acted upon (e.g. retirement upon mistaken belief of eligibility for retiree healthcare) will result in remedial relief for plaintiff participants. However, there is an emerging split among the courts when there is no direct reliance or adverse action taken. (The Department of Labor continues to assert that sponsors, administrators and fiduciaries should be liable even if no harm has been caused by the miscommunication.) The issue may be clarified at the Supreme Court within the next several years.