



Focus on Benefits for Executives

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

- **Cash Balance Plans** – Long-awaited final regulations regarding hybrid plans otherwise known as cash balance plans were recently issued. The regulations provide more flexibility for plan sponsors, including the ability to provide different rates of return for different groups of participants. While these rules expand the rates of return that plan sponsors may include in cash balance plans, they still impose overall limits on allowable rates of return. Some important issues, including whether plans can offer self-directed cash balance plans in the future, are not addressed in the regulations.
- **Frozen Defined Benefit Plans and Nondiscrimination Rules** – Congress is considering legislation to update the rules for frozen defined benefit plans. Legislation has been introduced that would allow plan sponsors to utilize nondiscrimination testing results at the time a defined benefit plan was frozen, assuming certain conditions are met. Workers covered by a frozen defined benefit plan could continue to accrue benefits without concern that their employer would be forced to hard-freeze the plan due to ongoing testing requirements. ERIC supports these legislative initiatives.
- **40th Anniversary of ERISA and Congress** – Both the House and Senate held hearings, which highlighted the tax incentives associated with retirement savings and the need to modernize the incentives to reflect the modern workforce. Witnesses testified regarding the successes of the voluntary retirement system, the trend of employers to offer defined contribution plans, and the need to simplify the rules.

Health

- **Wellness Programs** – The EEOC has sued two companies for violation of the Americans with Disabilities Act. In each case the company targeted by the EEOC required that its employees participate in a wellness program or pay the entire health plan premium. The wellness programs of both companies involved completion of a Health Risk Assessment and other activities that did not involve achieving a health-related goal. As a result of these lawsuits, it is possible that the EEOC is setting out new rules in two areas: 1) they may wish to extend the limits on financial penalties to all incentives and not just to those that apply for health factors which are limited by HIPAA and the Affordable Care Act (ACA); and 2) they may object to incentives that are structured as penalties rather than rewards. These EEOC policies have not been set out in formal guidance but rather, have only been promulgated by these two lawsuits.
- **Reporting Under the ACA** – The IRS has released draft forms and instructions for use in reporting health plan coverage information to employees and the government under sections 6055 and 6056 of the Internal Revenue Code. The first year for which these forms, which are information returns, must be used is 2015; the reports for 2015 must be submitted in early 2016.
- **Employee Assistance Programs (EAPs)** – Final regulations have been published to confirm that an EAP that does not provide significant medical benefits will generally be considered an “excepted benefit” under the Code and thus will not be considered a group health plan under the ACA.

Legal

Tax Subsidization of Premiums Under the ACA – Federal courts have recently considered whether individuals in non-State-run health Exchanges are eligible for federal tax subsidies for the purchase of health insurance. One federal Circuit Court held that subsidies are available in federally operated Exchanges, while another held that they are not. That latter decision was subsequently cancelled because the full court has decided to rehear the case. Subsequently, another district court held that the subsidies are not available in federally run Exchanges. For now, the subsidies continue to be made available to all, but this could change in the future if the Supreme Court were to take up the issue (not a given at this point) and invalidate the subsidies in federally run Exchanges. Such a decision, although unlikely before 2016 at the earliest, could have a significant adverse effect on the overall viability of the ACA.

Time Frame for Monitoring Investments – The U.S. Supreme Court has indicated that it will hear a case involving the length of time participants have to sue when they believe that their retirement plan’s fiduciaries included imprudent investment options in a 401(k) plan. Under ERISA, participants have a limited amount of time to sue the fiduciaries that operate the plan. The Supreme Court’s decision in this case is expected to address whether fiduciaries are liable for investments that were initially chosen too long ago to sue but which are still included as investment options. ERIC is evaluating whether it will file a brief in the case.

Role of State Law for Plans – The law that governs employee benefit plans (known as ERISA) provides that state laws do not apply (are preempted) to the extent that they relate to benefit plans. A recent court decision found that a state law imposing a tax on claims applied to plans, including self-insured plans, was not preempted. Similarly, a state’s prevailing wage law was also allowed to apply to benefit plans. Another court suggested that a state law that prohibited the reimbursement of plans for the medical benefits they paid would not apply to self-funded health plans. ERIC continues to monitor (and file briefs in support of companies when appropriate) as these decisions can have a substantial impact on benefit plans.

Vesting of Retiree Health Benefits – ERIC recently urged the U.S. Supreme Court to reverse a lower court’s decision that a company’s bargained for retiree health benefit was vested based on a “presumption of vesting” despite the lack of any language in an agreement providing for such. The brief argues that courts should not presume that silence regarding the duration of retiree health benefits in collective bargain agreements means that the parties intended those benefits to vest for life. The Supreme Court is scheduled to hear arguments in the case in November and issue its decision by spring.