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PLLC

BENEFIT PLANS: YEAR-END CONSIDERATIONS AND LOOKING FORWARD TO 2019

IRS Changes to Hardship Distributions:

On November 9, 2018 the IRS issued new proposed regulations that simplify and expand hardship distributions from 401(k) and 403(b) retirement plans. Generally, these regulations go into effect for plan years beginning on or after January 1, 2019. The changes contained in these regulations include:

- Allowing hardship distributions of all earnings on elective contributions to a 401(k) plan (removing the ban on distribution of earnings on elective contributions accrued before 1989);
- Allowing hardship distributions from qualified non-elective contributions (QNECs) and qualified matching contributions (QMACs) made to a 401(k) plan;
- Removing the requirement that a plan suspend a participant from making elective contributions for six months following a hardship distribution;
- Removing the requirement that a participant take available plan loans before receiving a hardship distribution;
- Removing the requirement that, for hardship distributions relating to casualty losses made on or after January 1, 2018, such losses must be attributable to a federally declared disaster; and
- Adding a new safe-harbor expense for any expense or loss (including lost income) incurred due to a federal declared disaster if the participant's principal residence or place of employment is within an area designated by FEMA as eligible for individual assistance.

In addition, these proposed regulations clarified that qualifying medical, educational, or funeral expenses of a participant's primary beneficiary under the plan constitute a permissible expense for which a hardship distribution made be made.

The proposed regulations also provide a general standard for plan administrators to use in determining whether a requested hardship distribution meets the requirement that it be "necessary to satisfy a financial need." Under this proposed standard, plan sponsors would (1) limit the amount of the distribution to the participant's need (including amounts necessary to pay taxes or penalties on the distribution), (ii) verify that the participant has taken all available distributions under the plan (other than loans), and (iii) obtain a representation from the participant that there are insufficient cash or other liquid assets to satisfy the need (and the plan sponsor has no actual knowledge to the contrary).

These changes are optional for plan sponsors. However, for plan years beginning on or after January 1, 2020, plans may not require the suspension of elective contributions for six months following a participant's receipt of a hardship distribution and plan sponsors must obtain representations from participants regarding the absence of necessary cash or liquid assets to meet the financial need.

Because the regulations have not been finalized, there is no established amendment deadline for adopting the optional changes contained in the proposed regulations. Plan sponsors may, however, adopt any of these optional changes prior to finalization of the regulations. Furthermore, plan sponsors should begin planning now to implement the required changes relating to the six month suspension period and the participant representation requirement that becomes effective January 1, 2020.

Contact HRJF for more information or to amend your plan for these changes.

ACA Reporting Deadlines for 2019:

Despite news reports hailing the end of Obamacare, the reporting requirements under the Affordable Care Act remain very much in place. In November, 2018 the IRS published new forms and instructions under the ACA. Although no substantive changes were made, the release of these documents evidences the IRS's continued enforcement of the reporting requirements under the ACA.

Form 1095 – delivered to employees March 4, 2019 (extended from January 31st)

Transmittal Form 1094 with all Forms 1095:

– paper filing with IRS February 28, 2019

– electronic filing with IRS April 1, 2019

(As a reminder, employers that are filing 250 or more Form 1095s must file electronically.)

We are continuing to see penalty letters issued to employers by the IRS. These letters are based on information from employee tax returns and the ACA information reporting. In most instances, the proposed penalty is based on an employee's receipt of a premium subsidy and the employer's failure to offer health coverage at all or offering coverage that does not meet the ACA requirements for minimum essential coverage and/or affordability. In our experience, the proposed penalty can be resolved through the proper reporting of applicable safe harbors on the Form 1094.

Contact us today if you have received a proposed penalty notice under the ACA and would like to discuss a possible resolution. There are strict response deadlines associated with these penalty notices. It is important that you meet this deadline or the proposed penalty will be imposed.

Year-End Plan Compliance Issues:

For calendar year plans, December is a good time to review your plan document and administration to determine whether any plan amendments are needed to adopt changes made to the plan during the year. Such optional amendments must be adopted by the last day of the plan year in which the change was effective.

We also recommend that you review your health flexible spending account plans, health savings account plans and high deductible health plans to ensure that they comply with the limits set by the IRS for 2019:

Health FSA	$2,700 (up from $2,650 in 2018)
HSA – self only coverage	$3,500 (up from $3,450 in 2018)
HSA – family coverage	$7,000 (up from $6,900 in 2018)
HDHP – self only coverage:	
Out-of-pocket	maximum of $6,750 (up from $6,650 in 2018)
Annual deductible	minimum of $1,350 (no change from 2018)
HDHP – family coverage:	
Out-of-pocket	maximum of $13,500 (up from $13,000 in 2018)
Annual deductible	minimum of $2,700 (no change from 2018)

Plan documents that refer to the specific dollar amount of these limits and summary plan descriptions should be updated to reflect changes in these limits.
