Holifield & Associates, PLLC

Employee Benefits Law Update

SEPTEMBER 2013

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Upcoming Seminars

October 16, 2013
ERISA Basics National Institute Meeting, Chicago, Illinois

November 6, 2013
7th Annual Labor and Employment Law Conference, New Orleans, Louisiana

For more information visit www.hapc-law.com

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As a service to our clients, Holifield & Associates, PLLC periodically issues a newsletter to keep you informed of developments in statutes, regulations, and case law in the field of employee benefits.

If you would like any assistance or further information about any of the matters described in this update, please call and we will be happy to discuss these issues with you further.

HIPAA Compliance Deadline

The final privacy and security regulations under the Health Insurance Portability and Accountability Act (HIPAA) were issued earlier this year. These regulations make a number of changes but most of all require changes regarding business associate agreements, notifications of breaches of such agreements and other general HIPAA enforcement. The new regulations are effective **September 23, 2013.**

As you recall, HIPAA applies to group health plans, providers and health clearing houses. If your health plan is not compliant, it could face penalties for each violation from a range of a minimum of $100.00 to a maximum of $1.5 million. Recently, a $1.5 million penalty was issued within the State of Tennessee. If you have not revised your notice of privacy practices, business associate agreements, and HIPAA policy and procedures to address the new HIPAA standards, please contact us to discuss what steps you should take immediately.

Amendment of Defined Benefit Plans for Code §436

The Pension Protection Act of 2006 made several changes to the Internal Revenue Code ("Code") that affect retirement plans, including defined benefit plans. One of these changes was the addition of Code § 436, which imposes limitations on the accrual and payment of benefits from underfunded single-employer defined benefit plans.

As a result of this change, defined benefit plans are required to be amended to include the new limitations. **The deadline for this amendment is the last day of the first plan year beginning on or after January 1, 2013. For calendar year plans (those that have a plan year beginning each January 1st and ending December 31st), the amendment deadline is December 31, 2013.**

IRS and DOL Issue Guidance on Effect of US Supreme Court Decision on Defense of Marriage Act

On August 29, 2013 the Internal Revenue Service issued Revenue Ruling 2013-17 addressing the effect of the United States Supreme Court's decision in *U.S. v. Windsor* for federal tax purposes. Later, on September 18, 2013, the Department of Labor also issued guidance on this topic in Technical Release 2013-04. In July the Supreme Court struck down a portion of the Defense of Marriage Act which defined marriage as only between a man and a woman. Since that time, the effect of this decision on employers and employee benefit plans has been unclear. Revenue Ruling 2013-17 and Technical Release 2013-04 provides much needed guidance in this area.

Revenue Ruling 2013-17 adopts the "state of celebration" rule in relation to same-sex marriages, instead of the "state of domicile" rule. Under this rule, beginning September 16, 2013 same-sex couples who are legally married in a jurisdiction that recognizes such marriages will be treated as married under federal tax law, regardless of whether or not the couple lives in a jurisdiction that recognizes same-sex marriages.

Generally, Revenue Ruling 2013-17 and DOL Technical Release 2013-04 adopt the "state of celebration" rule in relation to same-sex marriages, instead of the "state of domicile" rule. Under this rule, same-sex couples who are legally married in a jurisdiction that recognizes such marriages will be treated as married under federal tax law, regardless of whether or not the couple lives in a jurisdiction that recognizes same-sex marriages. For Tennessee employers this means that same-sex couples who are legally married in a jurisdiction which recognizes same-sex marriage must be treated the same as opposite-sex couples for federal tax purposes, even though the couple resides and/or works in Tennessee (which does not recognize same-sex marriage). This ruling has implications on federal income tax filings (both by individuals and employers) as well as on the administration of retirement and welfare plans. The Revenue Ruling provides limited guidance with regard to welfare plans, however, it provides that individuals who purchased health insurance coverage for a same-sex spouse on an after-tax basis may file for a refund to recover federal income tax paid on the value of such health coverage. Similarly, an employer that sponsored a cafeteria plan which allowed employees to pay for health coverage on a pre-tax basis may file an amended return to recover income taxes paid on employee premiums paid on an after-tax basis for health coverage of an employee's same-sex spouse. The Revenue Ruling also states that the IRS may issue further guidance with respect to the application of the *Windsor* decision on federal tax administration and invites other federal agencies to provide similar guidance on other federal programs that are affected by the Internal Revenue Code.

In conjunction with the Revenue Ruling, the IRS also issued "Frequently Asked Questions" which specifically address the effect of Revenue Ruling 2013-17 on qualified retirement plans. Question & Answer #16 states that qualified retirement plans are required to treat a same-sex spouse as a "spouse" for purposes of federal tax laws relating to qualified retirement plans. The IRS also stated in Question & Answer #19 that it intends to issue further guidance on compliance by qualified retirement plans and "other tax-favored retirement arrangements" to address, among other things, plan amendment requirements and plan corrections relating to plan operations for periods before future guidance is issued.

DOL Technical Release 2013-04 adopts the same "state of celebration" rule for purposes of ERISA and its regulations, citing to the need for uniformity and ease of administration in comparison to the "state of domicile" rule. Like the IRS, the DOL stated its intent to issue additional, more specific guidance in the future.

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Deadline Approaching for Employers to Comply with ACA Exchange Notice Requirement

By October 1, 2013, all employers subject to the Fair Labor Standards Act (FLSA) must provide notice to their employees of the coverage options offered through public health insurance exchanges. Employees hired after October 1, 2013, must receive this notice within 14 days of their date of hire. Employers should note that the FLSA considers an "employee" to be one who is economically dependent on the business for which he or she performs personal services, and thus may be one who is classified as an independent contractor for tax purposes. The notice must be provided to all employees, both part-time and full-time, regardless of their plan enrollment status.

The notice must be in writing and written in such a manner that it may be understood by the average person. It must inform employees of the existence of a new public health insurance exchange, describe the services provided by the exchange, as well as contact information for customer service resources within the exchange, and explain appeal rights. In addition, the notice must explain how the employee may be eligible for a premium tax credit or a cost-sharing reduction under the Internal Revenue Code, if the employee purchases a qualified health plan through the exchange and the employer's plan does not meet certain requirements. Furthermore, the notice must inform employees that if they purchase a qualified health plan through the exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of the employer contribution to employer-provided coverage may be excludable for federal income tax purposes.

Update Your Summary of Benefits and Coverage (SBC)

For employers who will be conducting their annual group health plan open enrollments this fall, be sure to include an updated SBC with a uniform glossary to that SBC. The ACA requires group health plans and health insurance issuers to provide SBCs to participants and beneficiaries when they first enroll in coverage, during open enrollment, and at other specified times. Earlier this year a revised SBC template was issued that may be used for coverage beginning on or after January 1, 2014. The updated template adds two statements regarding whether the group health plan provides minimum essential coverage and whether that coverage meets the minimum value requirements. If, however, the group health plan does not use the updated templates for the upcoming open enrollment, the new guidance requires the plan or insurance company to include a disclosure with the SBC that states whether the plan provides minimum essential coverage and meets the minimum value requirements.

IRS and DOL Issue Guidance on Effect of US Supreme Court Decision Defense of Marriage Act

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The implications of this guidance on employers and their benefit plans will depend on the language of your plans. If your plan currently defines "spouse" or "marriage" solely in relation to state law, the plan may need to be amended to point to federal law and include same-sex spouses. At this point, there is no plan amendment deadline. Hopefully, the IRS and DOL will issue guidance on this issue in the near future. However, operational compliance with Revenue Ruling 2013-17 is required beginning September 16, 2013. DOL Technical Release 2013-04 does not contain an express compliance date. However, given the specific language in the Technical Release regarding the congressional directive for the IRS and DOL to coordinate policies, it is safe to assume (and we recommend) that operational compliance with this guidance is immediately required. This will necessitate a review of your plan operations to ensure that employees who are part of a same-sex marriage are treated the same as employees in opposite-sex marriages.

Tennessee Repeals Gift Tax/Relief Granted on Federal Exemption for Gift Taxes

The Tennessee legislature repealed Tennessee's tax on gifts effective January 1, 2012. The gift tax lifetime exemption for calendar year 2013 is adjusted to $5.25 million with inflation. Annual exclusions for 2013 are $14,000.00 to each donee and $28,000.00 for married couples on jointly owned property to each donee. This means an individual may gift up to $14,000 in 2013 (per donee) without the necessity for filing a gift tax return or using any portion of his or her lifetime exemption amount. The gift tax rate is permanently set at 40 percent on gifts above the lifetime exemption amount. The gift tax does not apply to transfers between spouses. Many people use these types of gifts as an alternative avenue for passing on a portion of their children's inheritance tax-free.

Tennessee Phases Out Inheritance Tax:

Over the next few years, the inheritance tax exemption in Tennessee will increase until the inheritance tax is totally phased out in 2016. The Tennessee inheritance tax is only assessed on an estate when the total value of the estate exceeds the exemption. The total estate could include real estate in Tennessee, vehicles, bank accounts, investment accounts, retirement account fund, business interests, proceeds from life insurance, assets held in a revocable living trust, along with other assets. The inheritance tax exemption in Tennessee will increase until 2016, as set out below:

2013	$1,250,000
2014	$2,000,000
2015	$5,000,000
2016	No tax for decedents dying in 2016 and thereafter

Inherited amounts over the exemption are taxed at the following rates in Tennessee:

First $40,000	5.5%
Next $40,000—$240,000	6.5%
Next $240,000—$440,000	7.5%
$440,000 and over	9.5%

The Tennessee inheritance tax exemption must be considered along with the federal estate tax exemption, which is set at $5.25 million for decedents dying in 2013 pursuant to the American Taxpayer Relief Act. The maximum estate tax rate is 40% in 2013.

Also, the unused portion of the first spouse's full exemption is now preserved for use by the second spouse, effectively doubling the exemption for most couples. This preservation between spouses is called portability, which means any unused exclusion of the spouse who died most recently may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption *plus* his or her own exemption when the surviving spouse later dies. In order to take advantage of this portability, the surviving spouse must elect portability by filing a federal Estate Tax Return, even if no tax is due.