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Benefits e-News: A new value added service from Robinson & Cole LLP

In July, 2000, Robinson & Cole launched e-News, an electronic newsletter reporting recent developments in Labor, Employment and Benefits law. Due to the overwhelming success of e-News, Robinson & Cole is launching Benefits e-News, a monthly electronic newsletter reporting on recent changes in the law affecting employee benefits and other developments affecting plan sponsors and their employees.

Benefits e-News will also provide web links to the Internal Revenue Service, the United States Department of Labor, the United States Department of Health and Human Services HIP HIPAA web site, and the Pension Benefit Guaranty Corporation. You can navigate Benefits e-News just like you have navigated previous issues of e-News. To access a web link, position your cursor on the link and click your mouse. To return to Benefits e-News, click the back button on your browser.

We hope that you find Benefits e-News to be informational and helpful. If you know of others who would like to receive this online newsletter (or if you would like to discontinue receiving Benefits e-News), please click here and send us an email message. If there are certain topics that you would like covered in future issues, please let us know.

New Job Creation and Worker Assistance Act Becomes Law

In March, the President signed the Job Creation and Worker Assistance Act, which contained several provisions affecting employee benefit plans. Most significantly, the Act provides anti-cutback relief for Section 415 benefits and contribution limits for non-calendar year qualified plans. The benefits and contribution limits that were increased under EGTRRA automatically became effective for non-calendar year plans on December 31, 2001, if a plan incorporated benefit and contribution limits by reference. In some cases, this has caused unintended benefit increases.The Act permits plan sponsors to amend plans before June 30, 2002 to reduce benefits to the level that applied in 2001 without violating the anti-cutback rules.

The Act provides relief for pension plans from minimum funding standards by increasing the interest rate ceiling from 105% to 120% for the 2002 and 2003 plan years. Pension plans are considered to be underfunded and to require additional contributions if the value of plan assets is less than 90% of the plan's current liability. A plan's current liability, as well as its required contribution, is determined using the weighted average of interest rates on 30 year Treasury Bonds. Developments in buying back Treasury Bonds over the past few years have distorted interest rates. As a result of the higher interest rate provided by the Act, fewer plan sponsors will be required to make the additional plan contributions. The increase in the interest rate ceiling to 120% will also reduce the likelihood that employers will have to pay estimated contributions in quarterly installments. Additionally, PBGC variable premiums, which are based on the amount of a plan's unfunded vested benefits, will be based on 100% of the 30 year Treasury Bond interest rate for the 2002 and 2003 plan years, an increase from the current 85%.

The Act also clarified other EGTRRA provisions, including the rules for deemed IRAs, the ESOP dividend reduction rules, and the technical requirements of catch-up contributions.

Cost of Weight-Loss Programs May Be Deductible

The IRS has announced that taxpayers may deduct the cost of weight loss programs as a medical expense, if the individual is diagnosed as obese or is directed by a doctor to lose weight as treatment for a specific disease. The deductible costs include initial fees to join a weight loss program, as well as additional fees to attend periodic meetings at which individuals may develop a diet plan, receive diet menus and literature, and discuss dieting problems. The cost of purchasing diet food items is not deductible, because the foods are substitutes for food the individuals normally consume to satisfy their nutritional needs. This new designation of weight-loss programs as a deductible medical expense also means that these expenses may be reimbursed under a health care reimbursement plan if the expenses are not otherwise covered by medical insurance. Weight loss program costs are nondeductible personal expenses if the individual participated in the program to improve general health, appearance, or sense of well-being.

DOL Requires Employers to Apply Disability Plan Claims Procedures Rules to Pension Plans

The DOL has indicated that pension plans must apply the disability plan claims procedures rules, rather than the pension plan claims procedures rules, to claims for disability benefits from pension plans. In Guidance issued regarding the new claims procedures rules, the DOL stated that a plan must apply the disability plan claims rules if the plan conditions the availability of a disability benefit on the determination of whether the claimant is disabled, regardless of whether the plan is a pension plan or welfare plan. This interpretation could have a significant impact on the handling of disability benefit claims by pension plans as there are significant differences between the disability plan claims rules and the pension

plan claims rules, including different time limits for claims, different extensions of time, different appeals procedures, different requirements for notices regarding denial of claims and appeals, different standards of review by the plan, and different requirements regarding consultation with parties other than the plan. However, the DOL also provides an exception to this requirement. If a plan relies on a party other than the plan to make the determination of whether a claimant is disabled, the plan is not required to apply the disability plan claims rules and may use the pension plan claims rules. Therefore, plans that define "disabled" as qualifying for Social Security Disability, or use some other standard based on the judgment of a third party (such as for purposes of a Long-Term Disabililty Plan), are relying on a determination of disability by a party other than the plan and may use the pension plan claims rules rather than the disability plan claims rules in processing the claim. Plans that currently do not use such a standard may wish to do so to avoid the administrative burden of apply the disability plan claims rules.

DOL Expands Fiduciary Compliance Programs

The DOL has announced the expansion of the Voluntary Fiduciary Correction Program (VFCP) and the Delinquent Filer Voluntary Compliance Program (DFVCP). The VFCP allows plan officials, sponsors or employers to voluntarily correct specific violations of ERISA. The VFCP has been amended to eliminate the requirement that all participants in the plan receive written notice of the VFCP application; to revise the proof of payment requirement to require proof only for participants and beneficiaries whose location is known; to create a de minimis exception for circumstances in which the distribution to participants would be $20 or less to each individual if the costs of correction exceed the total distribution that would required; and to make several other changes. To encourage participation in the program, the IRS and the PBGC have agreed to provide limited relief for VFCP filers under certain circumstances. The DFVCP allows plan administrators to file delinquent reports, such as Form 5500, with reduced penalties. The DFVCP has been revised to reduce the per day filing penalty; to reduce the limit on the cumulative penalty for a single late annual report filing; to create a new per-plan cap on annual late report filing penalties for violations in multiple plan years; and to make several other changes. The changes to the DFVCP were effective as of March 28, 2002.

DOL Indicates that Brokerage Window Accounts Do Not Disqualify Plans from Section 404(c) Protection

Plan fiduciaries are relieved of liability for the investment of plan assets if participants direct the investment of their own accounts within certain guidelines. The DOL has informally advised that these protections under Section 404(c) of ERISA concerning fiduciary liability are not necessary with respect to a plan offering a brokerage window, which allows participants to invest their plan accounts in individual stocks, bonds and other funds rather than in the specific funds offered under the plan. The DOL based this decision on the fact that the applicable Regulations under Section 404(c) offer protection to fiduciaries providing participants with limited choices, and that brokerage windows provide

participants with the broadest possible choices regarding the investment of their retirement savings and thus meet the requirements of Section 404(c).

IRS Changes Form 5500 and Schedule F Requirement for Certain Welfare Plans

The IRS has changed the filing requirements for Section 125 cafeteria plans, Section 127 educational assistance plans, and Section 137 adoption assistance programs. Some plan sponsors will no longer be required to file Form 5500 for these plans and others will no longer be required to file a Schedule F information return with their annual Form 5500 filings. If an employer sponsors a Section 125 plan, Section 127 plan, or 137 program and also sponsors a welfare benefit plan that is subject to Form 5500 filing requirements (such as a group health plan with more than 100 participants), the employer must continue to file a Form 5500 for the group health plan, but is no longer required to attach Schedule F reporting information on the 125 plan, 127 plan, or 137 program. If an employer does not file Form 5500 for another welfare benefit plan because its plan is exempt from filing (for example, because it has fewer than 100 participants), the employer in the past would file a Form 5500 for the 125 plan, 127 plan, or 137 program and attach the Schedule F information return. It is our understanding that such employers no longer need to file Form 5500 or Schedule F if the sole purpose of the Form 5500 filing is to report the 125 plan, 127 plan, or 137 program. This is especially important to governmental plan sponsors who are otherwise exempt from Form 5500 filing. Previously the IRS had eliminated the Schedule F requirement for Section 79 group term life insurance plans, Sections 105 and 106 accident and health plans, and Section 129 dependent care assistance programs.

The IRS also stated that plans that have not filed Form 5500 or Schedule F returns (as applicable) for years prior to 2001 do not need to seek relief under any fiduciary correction program or directly from the IRS and will not be subject to penalties for failure to file.

Only 365 Days Left to Comply with HIPAA Privacy Rule

If your organization is a health provider, a healthcare clearinghouse, a sponsor of a self funded health plan, or another entity with a covered component, you have just one year left to comply with the Privacy Rule imposed by HIPAA. The effective date for most covered entities is April 14, 2003. The Privacy Rule was released in the last days of the Clinton Administration and many in the health care industry believed the effective date would be delayed when the Bush Administration took office. While this Administration has signaled its willingness to make changes to the Rule, it has not indicated any attempt to give covered entities more time to comply. On March 27, 2002, the Administration proposed certain revisions to the Rule. These proposed revisions won’t become final until October 13, 2002, leaving covered entities with just six months between these final revisions and the compliance date.

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