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

Benefits e-News is 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 also provides web links to the Internal Revenue Service, the United States Department of Labor, the United States Department of Health and Human Services HIPAA web site, and the Pension Benefit Guaranty Corporation. To access a web link in Benefits e-news, 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.

Participant Loan Repayments are Plan Assets

The DOL has provided guidance on when payroll deduction participant loan repayments become plan assets. A recent Advisory Opinion states that loan repayments withheld from wages become plan assets as of the earliest date on which they can reasonably be segregated from the plan sponsor's general assets. This position is consistent with the participant contribution regulations, which provide that participant contributions become plan assets as of the earliest date on which such amounts can reasonably be segregated from general assets, but no later than the 15th business day of the month following the month in which the contributions would otherwise have been paid to the participant. If a plan sponsor fails to remit participant loan repayments to its plan as of such date, such action would be considered to be a prohibited transaction under ERISA.

GUST Compliance

• Municipalities Must Adopt GUST Amendments

All qualified plans, except master and prototype plans and volume submitter plans, were required to be amended to comply with GUST and submitted to the IRS for a determination letter before February 28, 2002, or the last day of the 2001 plan year, if later. Since most qualified plans sponsored by municipalities have plan years ending on June 30, the deadline for amending such plans is June 30, 2002. Any other employer sponsoring a plan with a plan year ending during the year must also amend its plan for GUST before the end of the plan year beginning in 2001.

• IRS Grants an Extension to Delinquent Amenders

Plan sponsors who have already missed the deadline for complying with GUST were recently granted an extension by the IRS. A plan sponsor that did not timely amend and submit its plan to the IRS can avoid plan disqualification if the plan is amended and submitted before September 3, 2002 with a late filing fee. The fee is $1,000 for plans with fewer than 100 participants, $3,000 for plans with 101-1,000 participants, and $10,000 for plans with more than 1,000 participants.

IRS Provides Guidance on the Tax Implications of the Division of Non-Qualified Benefits in Divorce

The IRS has issued guidance on dealing with non-qualified stock options, as well as other types of deferred compensation, that are divided pursuant to a divorce settlement. The IRS has determined that no taxable event occurs upon the initial transfer of stock options or non-qualified deferred compensation from an employee spouse to a non-employee spouse in a divorce settlement. Once the non-employee spouse exercises stock options, he or she will recognize income for income tax purposes of the same character and to the same extent as would have been the case if the options had been exercised by the employee spouse. If options under a statutory stock purchase plan (Section 423 plan) are transferred pursuant to a divorce settlement, the options become non-qualified options and are subject to the same tax treatment as non-qualified options and result in income to the spouse upon purchase of the stock.

Plan sponsors must ensure that income tax withholding requirements are satisfied. At the time the options are exercised, FICA tax will also have to be withheld from the payment to the non-employee spouse. The amount includible in the non-employee spouse's income is not reduced by the amount of FICA withheld. However, because the FICA tax is attributable to the employee spouse's service, the FICA tax that is withheld from the payment to the non-employee spouse is reported on an employee spouse's Form W-2.

IRS Blesses Automatic Cafeteria Plan Enrollments, but...

Although the IRS has for a long time informally approved of the automatic enrollment of participants in cafeteria plans, a recently issued Revenue Ruling formally approves

automatic enrollment arrangements. Previously, there was a question as to whether participant contributions could be made on a pre-tax basis if no affirmative salary reduction election had been made. The IRS has confirmed that employers can automatically enroll employees in health coverage and withhold pre-tax participant contributions for such coverage unless the employee opts out of coverage. If a plan sponsor requires an employee to certify that he or she has other health care coverage in order to opt out of coverage, participant contributions are not excluded from income under Section 125.

The Ruling also addresses how automatic enrollment arrangements impact the definition of compensation for Section 415 purposes when an employer requires an employee to certify that he or she has other coverage in order to opt out of coverage. The IRS stated that employers sponsoring such automatic enrollment arrangements must amend their qualified plans before the end of the 2002 plan year in order to treat "deemed Section 125 compensation" as compensation for purposes of Section 415.

Update on EGTRRA Non-Conforming States

Last month Benefits e-news reported the actions Massachusetts has taken in handling its non-conforming state income tax laws. A few more states have taken action to update the state tax laws to conform with changes in the income tax laws passed as part of EGTRRA a year ago. At this time only Massachusetts, North Carolina, and Wisconsin have failed to make progress towards conformity. Arkansas and Hawaii are not yet conforming states, but at this time it appears that conforming legislation will be passed in those states.

Road to HIPAA Privacy Compliance

If you are an employer with a self-insured health plan or an on-site health care provider, chances are you are a covered entity and subject to the HIPAA Privacy Rules. The compliance date is April 14, 2003, but covered entities should start the compliance process now. Here are some steps to get you started on the road to compliance:

- Assemble a privacy compliance team
- Assess your existing uses and disclosures of protected health information
- Compare your assessment results to HIPAA's Privacy Rules
- Establish a compliance plan, including specific action items and due dates
- Implement the plan
- Draft and/or renegotiate any business associate contracts with outside vendors to whom you disclose protected health information
- Create a long-term monitoring plan
- Appoint a privacy officer to oversee your company's compliance

Following these steps can help you reach your HIPAA Privacy compliance destination. If you need "roadside assistance," Robinson & Cole is ready to help you on your journey.

For more information, please contact us

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