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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 provides 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. Benefits e-News is easy to navigate. 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.

SEC Imposes Two Day Deadline for Reporting Company Stock Transactions under Employee Benefit Plans

Certain insiders - directors, executive officers and 10% shareholders – who participate in employee benefit plans are now required to report changes in ownership of company stock in the plan to the SEC within two business days. The two day period commences on the date that the plan administrator informs the insider that the trade of company stock has been completed. A plan administrator is required to notify the insider of the details of the transaction within three business days following its execution. Plan sponsors must establish procedures to timely provide the relevant information.

These new rules apply to publicly-held corporations that offer company stock as an investment within a qualified plan, such as a 401(k) plan or an ESOP, a stock purchase plan, or a nonqualified deferred compensation plan. Regular periodic purchases through payroll deduction are exempt from reporting. In a change from prior law, reporting is now required for all discretionary transactions under a plan, such as withdrawals and fund transfers. There are no longer any exempt discretionary transactions. Additionally, an insider must include

company stock holdings under a plan in any transaction report required under the new deadline, even if the report involves company stock that is purchased or sold outside of the plan. Company stock held under a plan must also be included in the Form 5 annual report of the insider's entire company stock holdings.

New Restrictions on Personal Loans to Directors and Officers

The Sarbanes-Oxley Act, perhaps best known for its provisions regarding certification of corporate financial statements and blackout periods, also prohibits publicly-held corporations from directly or indirectly making personal loans to officers and directors of the corporation, or materially modifying existing loans, after July 31, 2002. This prohibition clearly applies to personal use of corporate credit cards, relocation loans, salary advances and other direct loans to officers or directors by a corporation. However, the prohibition also has a significant impact on employee benefits as it could be interpreted to apply to 401(k) plan loans, cashless stock transactions, and the practice of employer payment of split dollar life insurance premiums. At this time, the SEC has not indicated whether or not it will prohibit 401(k) plan loans to affected parties. Cashless option exercises appear to be prohibited under this new rule if the company has selected the broker that advances the funds to the affected individual. If such a procedure is in place, cashless exercises should be suspended for affected individuals. Since it appears that split-dollar life insurance policies are covered by the prohibition, many companies are suspending payment of split-dollar life insurance premiums, even if the split dollar agreement was made prior to July 31, 2002. Until further guidance is issued, caution is warranted to avoid the significant penalties, including criminal penalties, that could result from violation of the loan prohibition.

Plan Sponsor's Failure to Provide Information to Employee was not a Breach of Fiduciary Duties

In Watson vs. Deaconess Waltham Hospital, an employer did not breach its fiduciary duties under ERISA by failing to give information about its long-term disability plan to an employee at the time that he switched from part-time to full-time employment, becoming eligible to participate in the plan. The plan sponsor's failure to initially provide a summary plan description did not constitute a breach of fiduciary duties. The court ruled that since ERISA imposes a specific remedy for this violation, no further remedies were appropriate and that special circumstances, such as bad faith, must be present in order to establish a breach of fiduciary duties.

ERISA Preempts State Law Claims for Breach of Contract and Intentional Infliction of Emotional Distress

The District Court of Connecticut recently found in Levine vs. Hartford Life Insurance

Company that ERISA preempted state law claims for intentional infliction of emotional distress and breach of contract brought by the former spouse of a deceased group life insurance plan participant. Although claims to recover benefits due under an ERISA plan are preempted by ERISA, the spouse contended that the action was for breach of contract and was not a claim for life insurance proceeds. Therefore, it should not be preempted. However, since ERISA supercedes any and all state laws that relate to an employee benefit plan, the court found that the plaintiff's claims were preempted by ERISA and the case against the plan sponsor was dismissed.

Headline

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For more information, please contact us

Bruce Barth	Dawn Zammitti	John Tannenbaum
860-275-8267	860-275-8320	860-275-8317

ROBINSON & COLE LLP
Boston - Hartford - Stamford - Greenwich - New York

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