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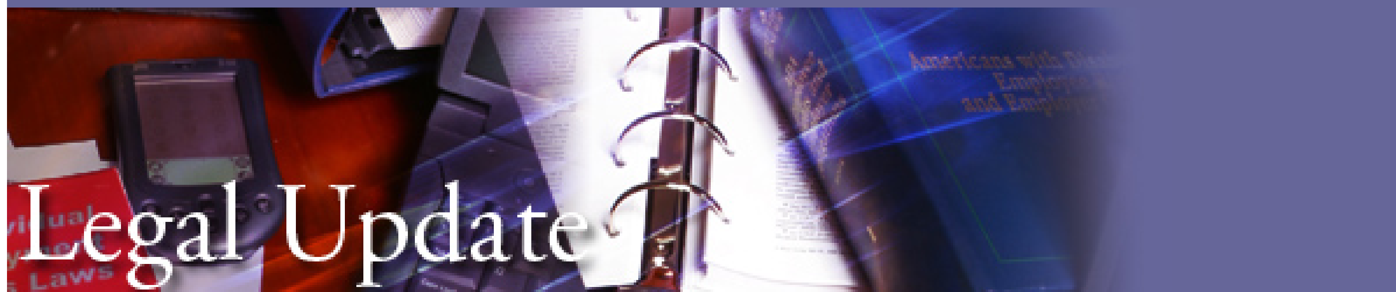

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Employee Benefits & Compensation

New Regulations and New Cafeteria Plan Mandates for Connecticut, Rhode Island, and Missouri Employers

The Internal Revenue Service recently issued long-awaited comprehensive proposed regulations governing cafeteria plans under Section 125 of the Internal Revenue Code. Those regulations are in proposed form and are not proposed to be effective until January 1, 2009.

In addition, Connecticut, Rhode Island, and Missouri recently joined Massachusetts in enacting cafeteria plan mandates which require employers with employees in those states to establish cafeteria plans under Section 125 of the Internal Revenue Code. A cafeteria plan allows employees to make premium payments toward employer-sponsored group health insurance on a pre-tax basis.

In 2006, Massachusetts enacted health care reform legislation which included, among other things, a July 1, 2007 cafeteria plan mandate for employers. Generally, under the Massachusetts law an employer with 11 or more employees is subject to the cafeteria plan requirement. In addition to employee thresholds, the Massachusetts law prescribes the eligible employees that have to be offered cafeteria plans and has certain filing and reporting requirements associated with such plans. The cafeteria plan must offer employees either employer-sponsored health insurance or one of the health plans provided through the state's newly established insurance plans, or both. Under the law, penalties are imposed upon employers for non-compliance with the cafeteria plan mandate.

Connecticut's Cafeteria Plan Requirement:

Effective October 1, 2007, the Connecticut law requires any employer who provides health insurance benefits to its employees where the employees pay premiums through payroll deductions to establish a Section 125 cafeteria plan allowing employees the opportunity to pay such premiums on a pre-tax basis. Unlike the Massachusetts law, the Connecticut law does not define employer, include a threshold number of employees, require filing and reporting, or impose penalties for non-compliance. It is therefore unclear as to how Connecticut intends to enforce this new employer mandate.

Rhode Island's Cafeteria Plan Requirement:

The new Rhode Island law requires that, on or before July 1, 2009 , employers with annual average employment of more than 25 employees for 6 consecutive months of the year adopt and maintain a Section 125 cafeteria plan through which employees may purchase health insurance. The law does not require employers to pay, or otherwise contribute to, the cost of any health insurance purchased through the cafeteria plan. Similar to the Massachusetts law, the Rhode Island legislation defines both employer and employee and includes a threshold number of employees. Although the law itself does not impose penalties for non-compliance, it authorizes Rhode Island's department of labor and training to assume regulatory oversight, including the authority to promulgate rules and regulations implementing the cafeteria plan requirement. However, unlike the Massachusetts law where employers have the ability to offer employees state established health plans in lieu of employer-sponsored health plans, the Rhode Island law appears to require that affected employers establish an employer-sponsored health plan if they do not already have one.

Missouri's Cafeteria Plan Requirement:

Effective January 1, 2008, the Missouri law requires employers that provide health insurance coverage for which the employer pays some portion of the premium to establish a Section 125 cafeteria plan. Employers who provide self-insured plans are exempt from the law. In addition, the new law requires small employers to contribute through a cafeteria plan to the individually underwritten health benefit plan of an employee who is eligible for coverage under the employer's plan.

ERISA Preemption:

These states are not the only states or localities that are attempting to impose requirements upon employers with respect to health insurance. Some other states have discussed similar requirements and the trend is expected to continue. The question is whether these types of laws would survive an ERISA preemption challenge. In general, ERISA's preemption statute supersedes state laws insofar as they relate to employee benefit plans, and although many portions of these new laws contain specific mandates with respect to employer-sponsored plans, only the courts can decide whether the laws are preempted by ERISA.

More recently, Maryland tried to impose health insurance requirements on certain large employers as did Suffolk County in New York ; however their mandates were challenged and struck down this year by the federal courts as being preempted by ERISA. These recent federal court decisions, as well as a long standing Supreme Court case in which the court explained the particular problems and principles Congress intended to address with the ERISA preemption statute, provide some insight as to how the courts might rule if presented with ERISA preemption challenges to these new laws. The Supreme Court stated that through ERISA preemption, Congress intended to clear the field for federal regulation, eliminating the threat of conflicting or inconsistent state and local regulation of employee benefit plans. More specifically, the court stated "[t]he most efficient way to meet these responsibilities is to establish a uniform administration scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits. Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in differing States. A plan would be required to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others." *Fort Halifax Packing Co. v. Coyne,* 107 U.S. 2211 (1987).

As more and more states and local governments attempt to deal with health care access and impose these types of mandates on employers, they will be looking for ways to circumvent ERISA's preemption statute. However, it is likely that the courts will continue to find a number of these state requirements preempted by ERISA if challenged. Until then employers will have to decide whether or not to comply with state laws or to challenge those laws.

If you have questions about the information contained in this e-News, please contact Bruce Barth, chair of the Employee Benefits and Compensation Group at 860-275-8267 or R&C Employee Benefits and Compensation Group attorneys Catherine Reuben at 617-557-5916, Cynthia Christie at 860-275-8259, or Karen McDonough at 860-275-8231. Visit our website at www.rc.com.

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