

Happy New Year!

2019 Benefits Update



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AGENDA

- ▼ **Changes to Plan Limits**
- ▼ **Upcoming ACA Filing Deadlines**
- ▼ **ACA Individual Mandate Case Law Update**
- ▼ **Transportation Fringe Benefits**
- ▼ **EEOC Wellness Program Regulations**
- ▼ **New Contraception Regulations**
- ▼ **AHP Regulations & State Laws**
- ▼ **Proposed HRA Regulations**

Health and Welfare Plan Dollar Limits

	2018	2019
Annual Cost Sharing Limit (self-only coverage)	\$7,350	\$7,900
Annual Cost Sharing Limit (other than self-only coverage)	\$14,700	\$15,800
HDHP Out-of-Pocket Maximum (self-only coverage)	\$6,650	\$6,750
HDHP Out-of-Pocket Maximum (family coverage)	\$13,300	\$13,500
Annual HDHP Deductible (self-only coverage)	Not less than \$1,350	Not less than \$1,350
Annual HDHP Deductible (family coverage)	Not less than \$2,700	Not less than \$2,700
Maximum Annual HSA Contributions (self-only coverage)	\$3,450	\$3,500
Maximum Annual HSA Contributions (family coverage)	\$6,900	\$7,000
Maximum HSA Catch-Up Contribution	\$1,000	\$1,000
Health Flexible Spending Account Maximum	\$2,650	\$2,700

Qualified Retirement Plan Dollar Limits

Applicable Limit	2018	2019
Limit on Section 401(k) deferrals (Section 402(g))	\$18,500	\$19,000
Dollar limitation for catch-up contributions (Section 414(v)(2)(B)(i))	\$6,000	\$6,000
Limit on deferrals for government and tax-exempt organization deferred compensation plans (Section 457(e)(15))	\$18,500	\$19,000
Annual benefit limitation for a defined benefit plan (Section 415(b)(1)(A))	\$220,000	\$225,000
Limitation on annual contributions to a defined contribution plan (Section 415(c)(1)(A))	\$55,000	\$56,000
Limitation on compensation that may be considered by qualified retirement plans (Section 401(a)(17))	\$275,000	\$280,000
Dollar amount for the definition of highly compensated employee (Section 414(q)(1)(B))	\$120,000	\$125,000
Dollar amount for the definition of a key employee in a top-heavy plan (Section 416(i)(1)(A)(i))	\$175,000	\$180,000
Dollar amount for determining the maximum account balance in an ESOP subject to a five-year distribution period (Section 409(o)(1)(C)(ii))	\$1,105,000	\$1,130,000
SIMPLE retirement account limitation (Section 408(p)(2)(E))	\$12,500	\$13,000
Social Security Taxable Wage Base	\$128,400	\$132,900

2019 ACA REPORTING DEADLINES

**To IRS
[NOT EXTENDED]**

Paper Filers

February 28, 2019

Electronic Filers

April 1, 2019

**To Employees
[EXTENDED]**

March 4, 2019

“Good Faith Effort” Relief

- ▼ IRS extended relief from penalties for entities that report incorrect or incomplete information
- ▼ Relief applies if entity can show that they made *good faith efforts* to comply
- ▼ Not available for failure to file or furnish employee statements
 - ▼ But IRS indicates entities should still file asap and it will take such efforts and timing into account
- ▼ Existing penalty relief for “*reasonable cause*” failures (Code § 6724)
- ▼ Extensions may “raise” burden of establishing this standard

ACA Litigation and the Individual Mandate

- ▼ Effective for months beginning after December 31, 2018, the TJCA reduces the ACA Individual Mandate tax penalty to \$0
- ▼ Litigation:
 - ▼ *Texas v. U.S.* – Litigation challenge to ACA (20 state plaintiffs) –
 - ▼ Court found that the individual mandate is unconstitutional (no longer a tax) and, it is not severable from the remainder of ACA. As a result, court held that the ACA as a whole may not survive
 - ▼ What now??
 - ▼ ACA still in effect pending appeal (according to the White House)
 - ▼ Appeal process is likely to take years...

TCJA: Transportation Fringe Benefits

▼ Background:

- ▼ Before the Tax Cuts and Jobs Act (TCJA), tax-favored status of commuter benefits was first enacted under the Energy Policy Act of 1992
- ▼ It was eventually made permanent in 2015 under the Protecting Americans from Tax Hikes Act (PATH Act)

▼ TCJA doesn't take away tax-favored status of commuter benefits (other than bicycle commuting benefits repealed for 2018–2025) or the option to pay with pre-tax dollars

▼ Instead, IRC § 274 was amended (effective 1-1-18) to disallow income tax deduction for employers for expenses incurred in providing transportation expenses to employees

TCJA: Transportation Fringe Benefits

- ▼ **Corresponding Provision for Nonprofits:**
 - ▼ Nonprofits must include in unrelated business income (UBIT) the cost of qualified transportation fringe benefits
- ▼ **Transportation Fringe Benefits exclusion limit:**
 - ▼ 2018 → \$260 per month
 - ▼ 2019 → \$265 per month
- ▼ **Employers' Dilemma:**
 - ▼ Continue to provide transportation fringe benefit despite loss of business deduction, or discontinue making these benefits available
- ▼ **Local laws could require employers to provide transportation benefits to employees**

Potential Issue: Parking Garages

▼ IRS Notice 2018-99

- ▼ Recent IRS guidance on determining what parking expenses are nondeductible (or subject to UBIT) under the new rule
- ▼ Deduction disallowed under IRC § 274(a)(4) involves the expense of providing parking benefits, not the value

▼ Repairs, maintenance, utilities, insurance, property tax, interest, snow removal, parking attendant expenses, security and rent or lease payments

▼ Two methods for determining disallowed deduction:

1. Payments to a 3P for parking spots
2. Employer-owned or leased parking facility



Wellness Programs and the ADA

- ▼ Two relevant rules under the Americans with Disabilities Act (ADA):
 1. No employment discrimination against disabled individuals
 2. Limited circumstances under which employer may make disability-related inquiries or require medical examinations
- ▼ Exception → *Voluntary* medical exams and disability-related inquiries
- ▼ What does it mean for participation to be voluntary?
 - ▼ Is a program voluntary if the employer provides financial incentives to participate (e.g. lower health plan premiums for those participating in the wellness program)?

Wellness Programs and the ADA

- ▼ EEOC issued final regulations (effective 1-1-2017) addressing the extent to which a wellness program may offer incentives for participation and still qualify for the ADA exception for voluntary employee health programs
 - ▼ Wellness programs may offer incentives of up to 30% of the cost of employee-only coverage
- ▼ AARP v. EEOC:
 - ▼ Federal Court vacated EEOC's regulations, effective 1-1-2019
 - ▼ Court held that the EEOC failed to adequately justify the 30% incentive level.
- ▼ What does this mean for employers offering wellness programs?

Contraceptive Mandate Exemptions

- ▼ Under the ACA, group health plans generally are required to cover contraceptives, without cost-sharing
- ▼ Exemption for qualifying religious employers, and accommodation process for other nonprofit organizations with religious objections
- ▼ DOL, HHS, and IRS issued final regulations (effective 1-14-2019) generally adopting, with clarifications, interim 2017 regulations:
 - ▼ Expanded existing exemption to include individuals or nongovernmental entities that object based on sincerely held religious beliefs
 - ▼ Also expanded to include entities or individuals that object based on sincerely held moral convictions (publicly-traded entities not eligible)
- ▼ Before adoption of the final regulations, two federal courts issued preliminary injunctions blocking enforcement of the interim final regulations – What does this all mean for employers?

Associated Health Plan Updates

DOL updates regulations in June 2018

Updates:

- ▼ **“Substantial Business Purpose”**
- ▼ **Broadens definition for “commonality” standard**
 - ▼ Allows association with members who maintain their principal place of business in (1) a region that does not exceed the boundaries of the same state; or (2) the same metropolitan area
 - ▼ Permits Employers in the same trade, industry, line of business or profession
- ▼ **“Working Owners”**

States Challenge to MEWAs and AHP Regulations

- ▼ States have varying degrees of regulation of AHPs, with some states effectively banning these entities from operating.
- ▼ Eleven states and the District of Columbia have instigated litigation against the DOL challenging the application of the new Regulations.
 - ▼ These states include: New York, Massachusetts, California, Delaware, Kentucky, Maryland, New Jersey, Oregon, Pennsylvania, Virginia, and Washington

Health Reimbursement Arrangements (HRAs)

- ▼ **Background on Proposed Rule**

 - ▼ **Proposed Rule: October 23, 2018**

 - ▼ **Proposed Effective Date: January 1, 2020**

- ▼ **Proposed Rule**

- ▼ **Increase the usability of HRAs**

- ▼ **Expand Employers' ability to offer HRAs to their employees**

- ▼ **Would allow Employers to offer HRAs to pay for Participant's non-group health insurance coverage**

Health Reimbursement Arrangements (HRAs)

▼ Enrollment in Individual Health Insurance Coverage

- ▼ HRAs must require the participants be enrolled in individual health insurance coverage for every month the participant is covered by the HRA

▼ Uniformity Across a Class of Employees

- ▼ If Plan Sponsor offers any class of employees (full-time, part-time, or seasonal employees), an HRA the Plan Sponsor may not also offer a traditional group health plan to the same class of employees

▼ Same-Terms Requirement (Non-Discrimination)

- ▼ The terms of the HRA must be offered uniformly to all employees within the same class

▼ Opt-Out

- ▼ Participants must be permitted to opt out and waive future reimbursements from the HRA

Health Reimbursement Arrangements (HRAs)

- ▼ **Reasonable Procedures for Substantiation and Verification of Individual Health Insurance Coverage**
 - ▼ HRA must have reasonable procedures to verify that Participants are, or will be, enrolled in individual health insurance coverage for the plan year
- ▼ **Notice Requirements**
 - ▼ HRA must provide written notice to each Participant at least 90 days before the beginning of each plan year
- ▼ **Winners of Proposed Regulations**
 - ▼ Small employers new to benefits
 - ▼ Small employers with low wage employees
 - ▼ Large employers wary of group premium increases



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