New Legal Issues Affecting Employee Benefits in 2018

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Agenda

- Update on Fiduciary Rule
- Update on Disability Claims Procedures
- Trends in State and Local Laws
  - Mandatory Sick Leave
  - Paid Family Leave
  - Mandatory "Safe" Leave
  - Required Breastfeeding Accommodation
  - "Employee" in California
- Federal Regulatory Updates
  - ACA Employer Mandate Penalty Update
  - ACA Affordability Calculations
  - ACA Electronic Filings (Proposed)
  - Wellness Program Incentives

Update on Fiduciary Rule

- Original Rule (effective June 2017)
  - Retirement plan service providers chose to respond by either scaling back recommendations to avoid fiduciary status or embracing fiduciary role
  - "Best Interest Contract" Exemption- service providers changed fees and revised contracts to meet this exemption
- Fifth Circuit Decision
  - Vacated the rule entirely
  - Supreme Court could hear the case
- Takeaways

Update on Disability Claims Procedures

- Regulations Became Effective April 1st
- Plans affected:
  - Disability plans
  - Qualified Retirement Plans (401(k)s, defined benefit plans, etc.)
  - Nonqualified Plans
- Takeaways
  - Make sure plan provisions are updated
  - Make sure claims procedures are followed

Previous Article (before delay to April 1st):
http://www.maynardcooper.com/blog/new-disability-claims-regulations-review-and-revise-claims-procedures-january-1-2018

Trends in State and Local Laws

- Mandatory Sick Leave
  - Design (varies):
    - Typically accrue hours on a weekly basis (Ex: 1 hour leave per 30 hours worked, with maximum of 40 hours/year)
    - Many apply to employers with a minimum number of employees much lower than FMLA requirements
    - Many require paid leave
  - Takeaways:
    - Know your state and local requirements
    - Review sick leave or PTO policy to ensure compliance
    - Determine whether leave is paid out on termination
    - For "unlimited leave" employers, ensure that policy complies with minimum requirements

Trends in State and Local Laws: States with Mandatory Paid Sick Leave

- Arizona
- California
- Connecticut
- Maryland
- Massachusetts
- New Jersey (eff. October 29)
- Oregon
- Puerto Rico
- Rhode Island
- Vermont
- Washington
- Washington D.C.

Trends in State and Local Laws

- Required "Safe" Leave
  - What is "safe" leave?
    - Absence due to sexual assault, domestic violence, stalking, etc.
  - What is required?
    - Often included with sick leave policy/requirements
    - May include leave to participate in legal or court-ordered action, or to seek victin
    - Recent law (Maryland): Includes paid leave for employers with 15+ employees; unpaid for employers with less than 15
  - Also being passed at local level
    - Austin, TX passed paid sick and safe leave law in February (eff. October 1st)

Trends in State and Local Laws

- Mandatory Paid Family Leave
  - State Laws:
    - California, New Jersey, New York, Rhode Island, and Washington
  - Local Laws: Washington, D.C.
  - Not eligible for tax credit (update on next slide)
- Takeaways
  - Subject to paid leave laws: Review leave policy, ensure that leave is accurately described as family leave
  - Not (yet) subject to laws: Review policy for tax credit eligibility

Tax Credit for Paid FMLA Leave

- **Businesses can claim a general business credit between of 12.5% and 25% of the amount of wages paid to qualifying employees during any period in which the employees are on FMLA**
  - **Rate of payment must be at least 50% of the wages normally paid to the employees**
  - **Credit increases .25% for each additional percentage point paid compared to normal wages**
  - **Strings attached, include that all qualifying full-time employees have to be given at least two weeks of annual paid family and medical leave (all less-than-full-time qualifying employees have to be given a commensurate amount of leave on a pro rata basis)**

Trends in State and Local Laws

- Required Breastfeeding Accommodations
  - Typical Requirements
    - Provide reasonable accommodations for breastfeeding or expressing breast milk
    - Some require break time for breastfeeding/ expressing breast milk
    - May prohibit discrimination against employees for breastfeeding/ expressing breast milk

Regulatory Updates

ACA Employer Mandate Update

- 2015 ESRP Enforcement Continues
- IRS Guidance on Letters 227
  - Letter 227-J: Indicates that an agreement has been signed, ESRP will be assessed, and case will be closed
  - Letter 227-K: Indicates that the ESRP has been reduced to zero; and case will be closed
  - Letter 227-L: Indicates that the ESRP has been revised; and employer can agree or request a meeting with manager or IRS Appeals
  - Letter 227-M: Indicates that ESRP did not change and employer can agree or request a meeting with manager or IRS Appeals
  - Letter 227-N: Acknowledges decision made in IRS Appeals, shows revised ESRP; and case is closed

Regulatory Updates

2019 ACA Affordability Calculation

- Current (2018) Affordability Calculation:
  - Lowest-cost self-only coverage does not exceed 9.56% of an employee's household income
  - Federal poverty level safe harbor: employee's premium payment does not exceed $96.08 per month
- 2019 Affordability Calculation:
  - Lowest-cost self-only coverage does not exceed 9.86% of an employee's household income
  - Federal poverty level safe harbor: employee's premium payment does not exceed $99.75 per month

Regulatory Updates

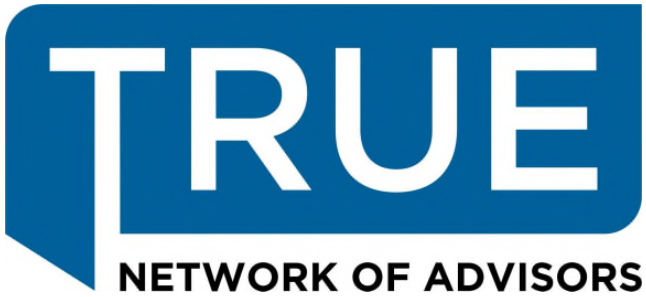
ACA Filing Requirements

- Background
  - The IRS is prohibited from requiring e-filing unless a filer is required to file at least 250 returns during the calendar year
  - 98.5% of information returns were filed electronically last year
- Current Rule:
  - Any person filing 250 or more information returns is required to e-file (i.e., W-2s, 1099s, etc.)
  - The 250 threshold applies to each type of return (separately)
- Proposed Regulation:
  - All types of information returns filed in a tax year would be aggregated to determine whether the 250 return threshold is met (would apply beginning January 1, 2019)

Regulatory Updates

(Potential) Changes to Wellness Program Incentive Limits

- Current rules: EEOC rules (under GINA and ADA) limit the maximum wellness benefit to 30% of employee-only coverage
  - Whereas, the HIPAA wellness rules would permit a 50% limit for certain tobacco-related health-contingent programs and a 100% limit for participatory programs
- The EEOC limit was challenged in court, and EEOC must revise its rules or the limit will be vacated on January 1, 2019
  - EEOC has indicated that it will not meet the court's timeline to fix the rules
- So, now we wait…



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