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WHAT YOU NEED TO KNOW



COMPLIANCE RECAP

August was a quiet month in the employee benefits world.

The Internal Revenue Service (IRS) released its 2018 affordability rate, four information letters regarding the Patient Protection and Affordable Care Act (ACA), and its draft Forms 1094 and 1095. The U.S. Department of Labor (DOL) increased the McNamara-O'Hara Service Contract Act (SCA) health and welfare fringe benefit rate and issued compliance guidance for employee benefit plans impacted by Hurricane Harvey. The Centers for Medicare and Medicaid Services (CMS) projected Medicare Part D premiums for 2018. A U.S. District Court remanded wellness program rules to the U.S. Equal Employment and Opportunity Commission (EEOC) for reconsideration.



UBA Updates

UBA released three new advisors in August:

- [The COBRA Payment Process](#)
- [What You Need to Know about Dependent Care Flexible Spending Accounts](#)
- [What You Need to Know about Health Flexible Spending Accounts](#)

IRS Released the 2018 Affordability Rate

The Internal Revenue Service released its [Revenue Procedure 2017-36](#) which sets the affordability percentage at 9.56 percent for 2018. Under the Patient Protection and Affordable Care Act (ACA), an applicable large employer may be liable for a penalty if a full-time employee's share of premium for the lowest cost self-only option offered by the employer is not affordable (for 2018, if it's more than 9.56 percent of the employee's household income) and the employee gets a premium tax credit for Marketplace coverage.

Because the 2018 affordability rate is lower than the 2017 affordability rate, applicable large employers may need to reduce their employees' share of premium contributions to maintain affordable coverage. Employers should double check their anticipated 2018 premiums now to prevent the need for mid-year changes.

IRS Releases Information Letters

The IRS issued Information Letters [2017-0010](#), [2017-0011](#), [2017-0013](#), and [2017-0017](#) on the ACA's employer shared responsibility provisions and individual mandate.

IRS Information Letters 2017-0010 and 2017-0013 explain that the ACA's employer shared responsibility provisions continue to apply. The letters state, "The [President's January 20, 2017] Executive Order does not change the law; the legislative provisions of the ACA are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe." Further, the letters indicate that there are no waivers from potential penalties for failing to offer health coverage to full-time employees and their dependents.

IRS Information Letters 2017-0011 and 2017-0017 address the continued application of the ACA's individual shared responsibility provisions. Letter 2017-0017 states, "The Executive Order does not change the law; the legislative provisions of the ACA are still in force until changed by the Congress, and taxpayers remain required to follow the law, including the requirement to have minimum essential coverage for each month, qualify for a coverage exemption for the month, or make a shared responsibility payment."

IRS Issues Draft Forms 1094/1095

The IRS issued draft Forms [1094-B](#), [1095-B](#), [1094-C](#), and [1095-C](#) for the 2017 tax year. Coverage providers use Forms 1094-B and 1095-B to report health plan enrollment. Applicable large employers use Forms 1094-C and 1095-C to report information related to their employer shared responsibility provisions under the ACA.

There are no changes to the face of draft Forms 1094-B, 1095-B, or 1095-C. The IRS made one substantive change to draft Form 1094-C. The IRS removed the line 22 box "Section 4980H Transition Relief" which was applicable to the 2015 plan year only.

DOL Increases SCA Health and Welfare Fringe Benefit Rate

The U.S. Department of Labor (DOL) released its [All Agency Memorandum Number 225](#) which increased the prevailing health and welfare fringe benefits issued under the McNamara-O'Hara Service Contract Act (SCA) to a rate of \$4.41 per hour which is required in all government contract bids or other service contracts awarded on or after August 1, 2017.

There is a different rate for Hawaii. The new SCA health and welfare fringe benefits level for Hawaii will be \$1.91 per hour for all employees on whose behalf the contractor is required to provide health care benefits under the Hawaii Prepaid Health Care Act (HPHCA). The new SCA health and welfare fringe benefits level will be \$1.63 per hour for employees on whose behalf the contractor is required to provide health care benefits under the HPHCA and who are performing on contracts covered by [Executive Order 13706 Establishing Paid Sick Leave for Federal Contractors](#).

DOL Issues Compliance Guidance for Employee Benefit Plans Impacted by Hurricane Harvey

The DOL issued [guidance](#) for employee benefit plans, plan sponsors, and employers located in a county identified for individual assistance by the Federal Emergency Management Agency (FEMA) due to Hurricane Harvey.

Because plan participants and beneficiaries may have difficulty meeting deadlines for filing ERISA benefit claims and making COBRA elections, the DOL advised plan sponsors to "act reasonably, prudently, and in the interest of the workers and their families who rely on their health plans for their physical and economic well-being. Plan fiduciaries should make reasonable accommodations to prevent the loss of benefits in such cases and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes."

The DOL acknowledged that group health plans may not be able to timely and fully comply with deadlines due to a physical disruption to a plan's principal place of business. The DOL's enforcement approach will emphasize compliance assistance, including grace periods and other relief as appropriate.

CMS Issues Projected Part D Premiums for 2018

The Centers for Medicare and Medicaid Services (CMS) [projects](#) that the average basic premium for a Medicare Part D prescription drug plan will be \$33.50 per month for 2018.

Court Remands Wellness Regulations to EEOC for Reconsideration

On August 22, 2017, the United States District Court for the District of Columbia [held](#) that the U.S. Equal Employment Opportunity Commission (EEOC) failed to provide a reasoned explanation for its decision to adopt 30 percent incentive levels for employer-sponsored wellness programs under both the Americans with Disabilities Act (ADA) rules and Genetic Information Nondiscrimination Act (GINA) rules.

The court declined to vacate the EEOC's rules because of the significant disruptive effect it would have. However, the court remanded the rules to the EEOC for reconsideration.

Question of the Month

Q. Based on the recent court decision to require the EEOC to reconsider its wellness program rules, does this mean that the EEOC rules no longer apply to employer wellness programs?

A. No. For now, the current EEOC rules apply to employer wellness programs. However, employers should stay informed on the status of the EEOC's reconsideration of the wellness program rules so that employers can change their wellness programs' design, if necessary, to comply with new EEOC rules.

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