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WHAT YOU NEED TO KNOW



COMPLIANCE RECAP

May was an active month in the employee benefits world. On May 4, 2017, the U.S. House of Representatives passed a bill titled the "American Health Care Act of 2017" (AHCA) to repeal and replace the Patient Protection and Affordable Care Act (ACA).

The Internal Revenue Service (IRS) released its Employer Shared Responsibility affordability percentage indexed for 2018. The U.S. Citizenship and Immigration Services (USCIS) issued redesigned permanent resident cards

and employment authorization documents. The USCIS also issued a warning about phone scams targeting immigrants. The Occupational Safety and Health Administration (OSHA) announced that it will delay electronic submission of injury and illness records.

The IRS released dollar limits for health savings accounts (HSAs) and high-deductible health plans (HDHPs) for 2018. The IRS released guidance confirming that health flexible spending arrangements (health FSAs) cannot reimburse Medicare premiums. The IRS also released a memo regarding tax treatment of benefits paid under an arrangement that combines a self-funded fixed indemnity health plan and wellness program.

The Centers for Medicare & Medicaid Services (CMS) announced that it will end the Federally Facilitated SHOP Exchange (FF-SHOP) at the end of 2017. The U.S. Department of Labor (DOL) issued an advisory opinion on an employee welfare benefit plan maintained by an association of employers. The U.S. Supreme Court declined to take an opt-out arrangement case, leaving intact a lower court's decision that opt-out payments must be included in overtime calculations under the Fair Labor Standards Act (FLSA).



UBA Updates

UBA released three new advisors in May:

- [House Passes AHCA Bill in First Step to Repeal and Replace the ACA](#)
- [Frequently Asked Questions About Employees' Reduction in Hours](#)
- [What Qualifying Events Trigger COBRA?](#)

The House Passes AHCA Bill in First Step to Repeal and Replace the ACA

On May 4, 2017, the U.S. House of Representatives passed [House Resolution 1628](#), a reconciliation bill aimed at "repealing and replacing" the ACA. The AHCA will now be sent to the Senate for debate, where amendments can be made, prior to the Senate voting on the bill.

It is widely anticipated that in its current state the AHCA is unlikely to pass the Senate. Employers should continue to monitor the text of the bill and should refrain from implementing any changes to group health plans in response to the current version of the AHCA.

[Read more.](#)

IRS Releases Employer Shared Responsibility Affordability Percentage Indexed for 2018

The Internal Revenue Service (IRS) released its [Revenue Procedure 2017-36](#) that sets the required contribution percentage to determine whether employer-sponsored health coverage is affordable at 9.56 percent for calendar year 2018.

Human Resources: USCIS Issues Redesigned Green Cards and Employment Authorization Documents

The U.S. Citizenship and Immigration Services (USCIS) began issuing the new Permanent Resident Cards (also known as Green Cards) on May 1, 2017. The new cards incorporate enhanced graphics and fraud-resistant security features. These new cards are also part of an ongoing effort between USCIS, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement to enhance document security and deter counterfeiting and fraud.

The new Green Cards and Employment Authorization Documents (EADs):

- Display the individual's photos on both sides
- Show a unique graphic image and color palette:
 - ○ Green Cards will have an image of the Statue of Liberty and a predominately green palette
 - ○ EAD cards will have an image of a bald eagle and a predominately red palette
- Have embedded holographic images
- No longer display the individual's signature

Also, Green Cards will no longer have an optical stripe on the back.

Some Green Cards and EADs issued after May 1, 2017, may still display the existing design format as USCIS will continue using existing card stock until current supplies are depleted. For more information about the Green Card application process, please visit [USCIS.gov/greencard](http://uscis.gov/greencard).

Human Resources: USCIS Issues a Warning on Phone Scam Targeting U.S. Immigrants

U.S. immigrants have been targeted by a phone scam that appears as if it is from the Canadian government's Immigration, Refugees, and Citizenship Canada (IRCC) call center (1-888-242-2100). Recipients of these calls are advised to hang up immediately and check their status by:

- Making an InfoPass appointment at <http://infopass.uscis.gov>, or
- Using [myUSCIS](#) to find up-to-date information about their application, or
- Calling the USCIS National Customer Service Center at 1-800-375-5283.

Scam email or phone calls should be reported to the Federal Trade Commission at <http://1.usa.gov/1suOHSS>. Suspicious emails may be forwarded to the USCIS webmaster at uscis.webmaster@uscis.dhs.gov. The USCIS will review the emails received and share them with law enforcement agencies as appropriate. Visit the Avoid Scams Initiative at www.uscis.gov/avoid-scams for more information on common scams and other important tips.

Human Resources: OSHA Proposes to Delay Electronic Submission of Injury and Illness Records

In 2016, the Occupational Safety and Health Administration (OSHA) announced that certain high-risk employers of 20 or more employees and employers with 250 or more employees must electronically file Form 300A for workplace illnesses and injuries that occurred in calendar year 2016.

OSHA recently posted a notice on its website stating that "OSHA is not accepting electronic submission of injury and illness logs at this time and intends to propose extending the July 1, 2017 date by which certain employers are required to submit the information from their completed 2016 form 300A electronically." It should be noted that the requirement to keep records has not changed; only the method in which they are submitted is under scrutiny.

Employers can follow updates at <https://www.osha.gov/recordkeeping/finalrule/index.html>

IRS Releases 2018 Amounts for HSAs

The IRS released [Revenue Procedure 2017-37](#) that sets the dollar limits for health savings accounts (HSAs) and high-deductible health plans (HDHPs) for 2018.

For calendar year 2018, the annual contribution limit for an individual with self-only coverage under an HDHP is \$3,450, and the annual contribution limit for an individual with family coverage under an HDHP is \$6,900.

For calendar year 2018, a "high deductible health plan" is defined as a health plan with an annual deductible that is not less than \$1,350 for self-only coverage or \$2,700 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed \$6,650 for self-only coverage or \$13,300 for family coverage.

IRS Releases Information Letter to Confirm that FSAs Cannot Reimburse Medicare Premiums

The IRS released its [Information Letter Number 2017-0004](#) to confirm that a health flexible spending arrangement (health FSAs) cannot reimburse Medicare premium expenses. The IRS cited its [Publication 969](#) which states that an FSA cannot reimburse health insurance premium payments. Because Medicare premiums are premiums for other health coverage, Medicare premiums are not FSA-reimbursable expenses.

IRS Releases Memo Regarding Tax Treatment of Benefits Paid by Self-Funded Health Plans

On May 12, 2017, the IRS released a [Memorandum](#) to address the taxability of benefits paid under an arrangement that combines a self-funded fixed indemnity health plan and wellness program. The IRS specifically refutes the claim that these arrangements provide nontaxable cash payments to employees and employment tax savings for the employer and employees.

The IRS concluded that benefits paid under a such an employer-provided self-funded health plan should be included in an employee's income and wages if the average amounts received by the employee for participating in a health-related activity predictably exceed the employee's after-tax contributions.

CMS Plans to End SHOP Exchange

On May 15, 2017, the Centers for Medicare & Medicaid Services (CMS) [announced](#) that it will issue rules to essentially end the Federally Facilitated SHOP Exchange (FF-SHOP) at the end of 2017.

Under the rules that CMS intends to propose, HealthCare.gov will continue to make FF-SHOP participation eligibility decisions for small employers regarding the Small Business Health Care Tax Credit, but the FF-SHOP will stop handling SHOP functions, such as processing premium payments or handling employer or employee enrollment, for SHOP plans taking effect on or after on January 1, 2018. CMS intends to allow employers to directly enroll with insurers offering SHOP plans or through FF-SHOP-registered brokers or agents.

DOL Issues Advisory Opinion on Employee Welfare Benefit Plan Sponsored by a Group of Employers

On May 16, 2017, the Department of Labor (DOL) issued its [Advisory Opinion](#) to address whether a membership-based organization could fall within ERISA's definition of "group or association of employers" who sponsor an ERISA employee welfare benefit plan.

Based on the facts presented to the DOL, the DOL concluded that the organization's membership is comprised of employers engaged in the same industry and that the employers have a genuine organizational relationship unrelated to the health plan through their membership in the organization. The DOL determined, based on the proposed arrangement's facts, that the participating member employers would be a bona fide group or association of employers under ERISA and that the health plan would be an ERISA employee welfare benefit plan.

U.S. Supreme Court Declines to Take Opt-Out Arrangement FLSA Case

Last year in court case [Flores v. City of San Gabriel](#), the 9th Circuit Court of Appeals (which covers several western states including Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) determined that when an employer pays cash to an employee for opting out of its health plan, the payment must be considered part of the employee's "regular rate of pay" under the Fair Labor Standards Act (FLSA). This means that the adjusted rate of pay must be used in calculating compensation for overtime hours.

The City of San Gabriel appealed the 9th Circuit's decision to the U.S. Supreme Court. On May 15, 2017, the Supreme Court [declined](#) to take the case, essentially leaving the decision intact.

Practically speaking, if an employer is in one of the states covered by the 9th Circuit and if the employer calculates compensation for overtime hours, then it should consider this additional FLSA aspect to offering cash in lieu of benefits.

Question of the Month

Q. When is the PCORI fee due?

A. The fee is due by July 31 of the year following the calendar year in which the plan/policy year ends.

The fee applies from 2012 to 2019, based on plan/policy years ending on or after October 1, 2012, and before October 1, 2019.

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