FOR YOUR *Benefit*:

Armstrong Teasdale

NEWS FROM AT'S EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION GROUP

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Here are some brief updates and reminders that might affect your retirement and welfare plans. Administering these plans is challenging. We hope the information assists you and your company with meeting your obligations. Please contact us with any questions.

Retirement Plans

Pre-Approved 401(k) and Profit Sharing Plans – April 30, 2016 Deadline

If your company-sponsored 401(k) or profit sharing plan uses a "pre-approved plan" (prototype or volume submitter document), you likely need to execute an updated adoption agreement for the plan no later than April 30, 2016. Contact your document provider or legal advisor to confirm the status of your plan document.

Safe Harbor 401(k) Plan Update

If you maintain a safe harbor 401(k) plan, recent guidance from the Internal Revenue Service ("IRS") makes mid-year changes to your plan more flexible. A safe harbor plan is a 401(k) plan which complies with certain matching or nonelective contribution requirements. Adopting these requirements allows a plan to avoid having to comply with nondiscrimination tests that may limit the salary deferral contributions and matching contributions that more highly compensated employees may receive for a plan year. Some changes may require advance notice and distribution of an updated safe harbor notice. More information is available on our blog – ***For Your Benefit***.

401(k) Fee Litigation

Since December 2015, several class action lawsuits have been filed against 401(k) investment fiduciaries alleging various breaches of fiduciary duties. Common liability theories include: (1) fiduciaries failed to understand, consider, monitor or disclose revenue sharing payments by fund managers to service providers, (2) revenue sharing fees paid to service providers were excessive, (3) fiduciaries selected more expensive funds when substantially similar or identical lower cost funds were available, and (4) fiduciaries failed to negotiate better fees with service providers. What should your plan fiduciaries be doing?

- Update the investment committee charter and investment policy statement
- Establish quarterly reviews of investment fund options in accordance with criteria in the investment policy statement
- Conduct an “all-in” fee analysis and negotiate with current vendors over their fees
- Analyze whether the money market fund in your plan is prudent
- Review participant fee disclosures for compliance with ERISA rules
- Seeks expert investment and legal assistance if needed

Affordable Care Act Compliance – What Should I Be

Thinking About Now?

2015 Form 1095-B and Form 1095-C Deadlines

Applicable large employers should have distributed 2015 Form 1095-C's to full-time employees by March 31, 2016, the extended due date for furnishing these statements to full-time employees and others with coverage during 2015. The deadline for submitting these forms to the IRS is May 31, 2016 if not filing electronically, or June 30, 2016 if filing electronically.

Form 1095-B and 1095-C – Information for Individuals and Families

On its website, the IRS provides information about the Affordable Care Act to individuals and families. If you are interested in giving your employees additional information about the 1095-B or 1095-C that they may be receiving due to enrollment in your group health plan, the IRS recently posted succinct descriptions of these forms that may be helpful.

Updated Summary of Benefits and Coverage

On April 6, 2016, the Department of Health and Human Services, Department of Labor and Department of the Treasury (collectively, the Departments) issued changes to the Summary of Benefits and Coverage (SBC) template and glossary. In its most recent FAQ regarding Affordable Care Act implementation, the Department of Labor advised that the updated SBC will be required for use in open enrollment periods that begin on or after April 17, 2017. If your plan does not have an annual open enrollment period, the updated SBC must be used in plan years beginning on or after April 1, 2017. Additional information about the updated SBC is available on our blog - ***For Your Benefit***.

Opt-Out Payments – Did you know … ?

The IRS believes that the amount of an opt-out payment effectively increases the cost of coverage to the employee by the amount of the opt-out payment. When determining whether coverage is affordable for purposes of the employer "play or pay" penalty under Section 4980H(b) of the Internal Revenue Code ("B penalty"), the amount the employee is required to contribute, *plus the amount of any offered opt-out payment*, is the true cost to the employee. The IRS defines an opt-out payment as "an arrangement providing for a payment conditioned solely on an employee declining coverage under an employer's health plan and not on an employee satisfying any other meaningful requirement related to the provision of health care to employees, such as a requirement to provide proof of coverage provided by a spouse's employer." In Notice 2015-87, the IRS indicated that it intends to propose regulations reflecting this rule.

For any opt-out arrangement adopted by December 16, 2015, the proposed rules will contain limited grandfathering. Until the applicability date of regulations, employers maintaining these pre-existing opt-out arrangements are not required to include the amount of the opt-out payment in the employee's required contribution total, and the opt-out amount will not be included when determining if the coverage is affordable for purposes of the B penalty. However, an employee may treat the opt-out payment as increasing his or her required contribution for purposes of Sections 36B (premium assistance credits) and 5000A (individual shared responsibility) of the Internal Revenue Code.

However, for any arrangements adopted after December 16, 2015, the amount of the opt-out payment will be added to the required employee contribution to determine whether the coverage is affordable. Before continuing or adopting an opt-out arrangement, look into the effect of the opt-out payment on the affordability of the coverage.

Compliance Tip - Benefit Denial Notices

ERISA plans should consider updating their plan's claim denial letters to include notice of a plan imposed time limit for filing a suit challenging a denial of benefits. For claim denial letters sent without notice of the time limit, a supplemental notice of the time limit should be considered. If your plan includes a time limit on filing suits that is shorter than the applicable statute of limitations under ERISA, the claim denial letters sent to participants should include that time limit. The First Circuit is the latest Federal Court of Appeals to hold that a plan's time limit will be inapplicable if notice of the time limit is not included in the final claim denial letter. Additional information about this issue and *Santana-Diaz v. Metropolitan Life Insurance Co.*, No. 15-1273 (1st Cir. Mar. 14, 2016) is available on our blog – ***For Your Benefit***.

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