Employee Benefits Report

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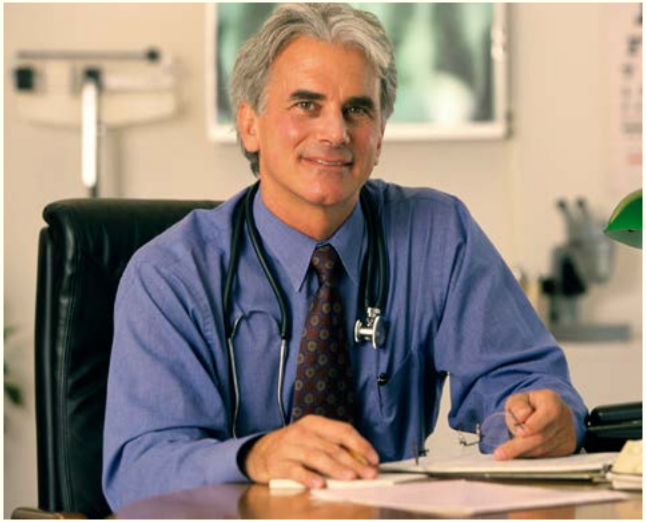
Health Benefit Update

Regulators, insurers and others continue to tweak health insurance benefits due to changes brought by the Affordable Care Act. Here are just a few recent changes and clarifications you should be aware of.

"Cadillac Tax" Delayed. At the end of 2015, Congress gave a holiday gift to employers stressed out about the so-called Cadillac Tax—they delayed its implementation for two years. The tax, originally scheduled to go into effect in 2018, will now go into effect in 2020.

Created by Section 9001 of the Affordable Care Act, the Cadillac tax will apply to sponsors of "high-cost" health plans. Section 9001 defines a high-cost plan on the basis of total premiums (or costs, for a self-insured plan).



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This Just In

Procrastinators rejoice. The IRS has extended certain reporting deadlines for 2015 employer-provided coverage. The Department of the Treasury and IRS determined that some providers of minimum essential coverage needed additional time to gather, analyze and report this information, as required under the Affordable Care Act. Revised deadlines will apply to insurers, self-insuring employers and large employers that provide "minimum essential coverage" under the Affordable Care Act. The deadline changes apply to Forms 1094-B, 1095-B, 1094-C, and 1095-C.

The Act requires insurers, self-insured employers, government entities and others that provide individuals with minimum essential health insurance to give them information on their coverage. The IRS has extended the due date for

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IRS Notice 2015-87

IRS Notice 2015-87, issued in late 2015, provides several clarifications on affordability. The Notice provides significant guidance on the employer shared responsibility rules (or "play-or-pay") and on information reporting requirements.

Cost of living adjustments. IRS Notice 2015-87 announced that cost-of-living adjustments will apply to the Affordable Care Act's affordability percentage. The ACA requires large employers to offer their full-time employees health coverage that meets the "minimum essential coverage" and affordability standards. The law defined affordability as not exceeding 9.56 percent of a family's household income for 2015 for self-only coverage. For 2016, this threshold will increase to 9.66 percent. Self-only coverage is used for this calculation, even for people with a spouse or dependents who would enroll in an individual plus spouse plan or a family plan.

Wellness program incentives: Employers sometimes give employees incentives to participate in wellness programs by reducing the amount of monthly premiums. The incentive amount will reduce the premium amount used to determine whether coverage is affordable only if it relates to tobacco use. Whether or not an employee actually completes these program incentives, the cost of premiums will be considered to be reduced by the incentive amount offered.

Health reimbursement arrangements (HRAs): When employers offer both a traditional employer-sponsored health plan and an integrated HRA, the employer's contribution toward the HRA could count toward affordability. Newly made employer contributions to the HRA reduce the employee's required contribution for the coverage under §§ 36B and 5000A. The HRA amount is taken into account as an employer contribution whether or not the employee uses the HRA to pay the employee share of contributions for the major medical coverage.

Cafeteria plans: If an employer offers traditional employer-sponsored health coverage and also contributes to a cafeteria plan, cafeteria plan contributions may count as reducing the amount of premiums for the traditional coverage for purposes of the affordability determination. In general, amounts an employer contributes to the cafeteria plan count as reducing the employee's contribution only if they may be used to pay premiums for traditional coverage and employees cannot take these amounts as additional compensation or to pay for benefits other than health coverage.

IRS Notice 2015-87 affects other aspects of health plan administration; for more information, please contact us. In other changes:

Special enrollment period changes: In the individual and small group markets, insurers have complained that special enrollment periods have been abused. In the first half of 2015, the number of people who enrolled in a health plan through a special enrollment period exceeded 10 percent of the number who enrolled during regular open enrollment.

Special enrollment periods allow people who had not signed up for health insurance during the regular enrollment period to obtain coverage, if they have certain special circumstances. Those special circumstances include losing coverage due to job loss, transfer or move; childbirth, marriage or the gaining of citizenship or legal alien status. Some categories were open-ended, however, including special enrollment periods for "other exceptional circumstances." The Centers for Medicare and Medicaid Services has eliminated six categories for special enrollment eligibility.

The changes should help control adverse selection. An insurance market's health depends on enrolling a mix of healthy and unhealthy individuals. Adverse selection—and cost increases—occur when people who are most likely to use health services enroll in a plan, then drop coverage when they no longer need it.

We will continue to keep abreast of changes to the Affordable Health Act and other laws, regulations and court cases that affect your employee health plan. For more information, please contact us.

providing this information on Form 1095-B, *Health Coverage*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from February 1, 2016, to March 31, 2016.

The Act also requires these entities to report this coverage information to the IRS. They now have until May 31, 2016 to submit Form 1094-B, *Transmittal of Health Coverage Information Returns*; and Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return*; and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage* if the employer is not filing electronically, and to June 30, 2016 if filing electronically.

Commuting Benefits

A few sentences Congress slipped into HR 2029, a consolidated appropriations act, will bring parity to tax-favored mass transit and parking benefits.

You'd think lawmakers would want to encourage the use of public transit. But for years, the law allowed employees to receive higher tax-free dollar amounts toward qualified parking benefits than toward qualified mass transit benefits. Congress has passed several stopgap measures that created parity for a year's time. When the last one sunset at the end of 2014, employees who used public transit found themselves short-changed again. HR 2029 permanently eliminates that disparity and applies retroactively to benefits provided in 2015.

Prior to HR 2029, employees could receive up to $130 per month in tax-free qualified transportation benefits. Qualified parking benefits had a significantly higher monthly cap, at $250. HR 2029 retroactively raises limits for both transportation and parking benefits for 2015 to $250 per month. The limit for both transportation and parking benefits for 2016 will be $255 per month.

What Are Qualified Transportation Benefits?

Certain transportation benefits qualify for tax-preferred treatment. They include:

- A ride in a commuter highway vehicle between the employee's home and workplace. This includes mass transit and vehicles seating 14 or more passengers operated by a person in the business of transporting persons for pay or hire.
- A transit pass. Employers can either provide passes or vouchers toward their purchase, or reimburse employees for their passes.
- Qualified parking. This includes parking on or near your premises or parking at the location where your employees commute to work using mass transit, commuter highway vehicles, or carpools.
- Qualified bicycle commuting reimbursement. This can include the purchase, repair, improvements and storage of a bicycle incurred during any month in which the employee regularly uses the bicycle for a substantial portion of travel between his/her residence and place of employment. He/she cannot receive employer-provided transportation in a commuter highway vehicle (such as a vanpool), transit pass or qualified parking benefits during that month.

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Administering Commuter Benefits

Employers can structure a commuter benefit program in many ways.

1. **Direct benefits** - An employer can provide qualified transportation benefits directly to employees, by providing free parking, rides in company-provided van pools or vouchers or passes given directly to employees.
2. **Reimbursement plan** – Employees can set aside pre-tax dollars to use toward commuting expenses. To receive reimbursement, employees must present documentation of qualified work-related commuting expenses. Administering a reimbursement plan might cost an employer $4 to $5 per employee per month; however, the employer pays no FICA on money employees put into the plan.

Employees can exclude the value of these benefits from their gross income for income tax purposes; the employer can exclude them from employees' wages for payroll tax purposes. Generally, employers can exclude qualified transportation fringe benefits from an employee's wages even if they provide them in place of pay. However, qualified bicycle commuting reimbursements can't be excluded if the reimbursements are provided in place of pay.

If the value of a benefit for any month is more than its limit, you must include the amount over the limit in the employee's wages, minus any amount the employee paid for the benefit.

Self-employed individuals and 2 percent shareholders of S corporations do not qualify as employees for tax-favored treatment of transportation benefits. Treat these individuals as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions.

For more information on setting up or administering a commuter benefits program, please contact us.

Retirement Plan = Retirement Confidence

Whether or not Americans have a retirement savings plan is a key factor in their outlook about having an affordable retirement, say the Employee Benefit Research Institute and Greenwald & Associates. The authors of the annual Retirement Confidence Survey found confidence levels in 2015 were higher than during the recession, but still have a way to go.

The days of cradle-to-grave employment are gone, and so are most of the generous pensions and retiree health benefits that made it possible for so many members of older generations to retire comfortably at age 65. Only 22 percent of Americans reported being very confident that they would have enough money to retire comfortably. When you add in the 36 percent who report being "somewhat confident," only about half of Americans are comfortable about their retirement prospects. And, when most workers have saved only $25,000 for retirement (according to CNN), the reality is that you'll have many employees who are long past "traditional" retirement age.

So why should employers care if their older employees aren't ready for retirement?

Many older individuals remain productive well past "traditional" retirement age. However, workers who stay on the job because they feel they have to, rather than want to, may grow to resent their jobs and become less productive. Age discrimination laws make firing older workers very difficult, so some employers let less than productive older workers remain. While avoiding discrimination claims, they might be creating morale problems, as other employees pick up the slack and may be denied opportunities for advancement.

What about healthcare costs? Doesn't it cost more to insure older workers than younger ones? That's only partly true. Older male employees do cost more to cover than younger male employees. On the other hand, they generally have fewer dependents to cover than younger males. As for female employees, women over age 50 generally use fewer healthcare dollars because their

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childbearing years are past.

Overall, older workers make valuable employees. Their experience and maturity give them perspective that younger workers might lack. Research has shown that absenteeism rates are lower for employees 50 to 65 years of age than for employees between 33 to 44 years of age. They are less likely to steal, have lower turnover rates and have fewer injuries than younger employees.

Providing a good retirement plan can help build loyalty with both older and younger employees. If you don't already have one, consider an IRA-based plan. These require the least administration and appeal to many smaller employers. Your options include:

The Simplified Employee Pension (SEP): Available to any employer with one or more employees, this is an IRA-based plan funded solely by employer contributions. The employer can opt to make contributions or not, as your circumstances dictate. Filing is simple: Employers must complete IRS Form 5305-SEP or use an IRS-approved "prototype" available through many financial institutions. Self-employed individuals can contribute to their own accounts, subject to certain conditions.

For 2016, employers can contribute the lesser of $53,000 or 25 percent of pay.

The Savings Incentive Match Plan for Employees (SIMPLE IRA): Available to any organization with 100 or fewer employees. To establish a SIMPLE IRA, employers must file either IRS Form 5304-SIMPLE or 5305-SIMPLE, depending upon whether or not the employee selects the financial institution that holds the account. Once the plan is in place, the employer has no other filing responsibilities. Any employee who earns $5,000 or more during the preceding year can qualify.

Employers can elect to contribute either 1) a matching contribution of up to 3 percent of the employee's compensation or 2) a 2 percent nonelective contribution for each eligible employee. Each participating employee must receive an annual statement of the contribution amounts to their account for the year.

Employees aged 50 and over can make an additional "catch-up" contribution of up to $3,000 for 2015 and 2016.

Employers generally must contribute to SIMPLE IRAs every year, as long as the plan is maintained, regardless of financial circumstances.

Neither SEPS nor SIMPLE IRAs permit participants to take plan loans. Funds vest immediately, which some employers may see as a shortfall. To qualify for either of these plans, you cannot sponsor any other retirement plan.

SEPs and SIMPLE IRAs allow small businesses to provide retirement benefits with very little administrative cost or expense. Once the plan is in place, the employer has no other filing responsibilities. No discrimination testing is required.

For more information on SEPs and SIMPLE IRAs, go to www.irs. gov/Retirement-Plans, or contact us for more information about these and other retirement plan options for small employers.

How to Get the Most Out of Your Retirement Plan

- **Make investing a no-brainer for employees.** Consumer studies suggest that too many decisions to make can make consumers less likely to buy; automatic 401(k)s apply this principal to investment savings.

  With an "automatic" 401(k), new employees must actively opt out of participating, rather than actively deciding to enroll. Studies suggest that automatic enrollment could reduce the non-enrollment rate to 10 percent, from about one-third among plans that lack this feature. Automatic plans also have a default eligible contribution rate, usually 3 percent or less of salary, and automatically allocate employees' contributions to a default fund. Participating employees can opt to change both their contribution rate and their allocations. The Profit Sharing/401k Council of America estimates that approximately 38 percent of employees who have access to 401(k) plans work for employers who automatically enroll new workers.
- **Make sure employees know about their retirement benefits.** A good benefits program can enhance employee morale and help you attract and retain valued employees. Solid retirement benefits also make it easier for employees to retire when the time comes.
- **Provide financial education.** Many employers fear they'll incur liability if they steer employees toward investments that later underperform. However, providing general information on retirement savings can help employees better understand their benefits and use them more wisely. "Safe" topics include the importance of saving for retirement, calculating retirement savings needs, general information on types of investments available and how to allocate investments according to age.

For more information on getting the most out of your company's retirement benefit plan, please contact us. ■

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