



August 31, 2010

Time to Prepare for 2011

As summer draws to a close, it is time to think about fall and what it brings: back to school shopping, fantasy football drafts, leaves to rake, and health care reform! Now is the time of year for benefits professionals to take a look ahead and prepare for the latest legal developments, in health care as well as in other areas. Some of the issues you may need to address before the end of 2010 include:

Health Care Reform. Many of the new requirements of this landmark legislation go into effect in 2011. All plans (including grandfathered plans) have changes to implement, such as:

- coverage for dependents up to age 26;
- elimination of lifetime benefit limits;
- restriction of annual benefit limits;
- elimination of pre-existing condition exclusions for children under 19;
- over-the-counter medications no longer eligible for reimbursement; and
- limits on ability to rescind coverage.

For non-grandfathered arrangements, additional requirements include:

- new claims and appeals procedures;
- required coverage of preventive services;
- new nondiscrimination rules; and
- other patient protections.

And of course several of these new healthcare requirements will mean not only amending plan and enrollment materials, but also distribution of new notices. Some of the new notice requirements include:

- grandfathered plan notice;
- age 26 dependent coverage notice;
- lifetime limit notice; and
- patient protection (primary provider, OB/GYN care, etc.) notice.

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Cafeteria Plan Amendments. Consistent with the changes made under health care reform, most cafeteria plans will need to be amended before year-end to take into account expanded definitions of “dependent,” and to remove the ability to be reimbursed for over-the-counter medications.

409A Plan Document Compliance. Earlier this year the IRS issued guidance permitting correction of deferred compensation arrangements to comply with Code Section 409A. To obtain most favorable treatment, some arrangements should be amended before December 31, 2010.

Dodd-Frank Financial Reform. Although most of the provisions affecting executive compensation are aimed at compensation committee procedures, a few are more substantive. A significant change included in this law is a requirement that public companies recoup (“claw back”) incentive compensation to an executive officer if it was paid based on erroneous company financial information.

Determination Letter Filings. Qualified retirement plans are on a rolling 5-year cycle for filing determination letter applications with the IRS. Cycle E, for plans sponsored by employers whose tax ID numbers end in 0 or 5, ends on January 31, 2011.

Qualified Retirement Plan Amendments. As usual, sponsors of qualified retirement plans will need to check to see if year-end amendments are necessary. The IRS has not yet published its list of required amendments, but some of the items that will be listed are:

- Pension Protection Act provisions affecting cash balance and defined benefit plans; and
- Protections for active military personnel under the Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008.

Plan Fees. In July 2011, 401(k) plan service providers will be required to disclose the amounts of direct and indirect compensation they receive from their retirement plan clients. While no action is necessarily required by the end of the year, plan sponsors should soon begin establishing policies and procedures for receiving and reviewing this information, in order to document their fiduciary prudence.

HITECH Act Compliance. The Health Information Technology for Economic and Clinical Health (HITECH) Act, passed as part of the 2009 economic stimulus legislation and regulations, became effective this year. Plan sponsors should be prepared to revise business associate agreements, notices of privacy practices and policies and procedures to reflect regulatory guidance. Proposed regulations were issued in July and could be final as early as September of this year.

Regular Annual Notices. With all of the new requirements, plan sponsors should not lose sight of the recurring notices required. These include notices for safe harbor 401(k) plans, qualified automatic 401(k) enrollment arrangements, and mastectomy rights under the Women’s Health and Cancer Rights Act.

For assistance, or if you have questions about any other employee benefit matters, please contact a member of our [Benefits Law Group](#).



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