

# Time to Prepare for 2013

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### Insight — October 15, 2012

Like a date out of a science fiction film, the year 2013 is almost upon us! It is therefore that time of year for benefits professionals to take a look ahead and prepare for the latest legal developments. Some of the issues you may need to address before the end of 2012 include:

**Health Care Reform.** With the Supreme Court upholding the health care law this past June, it is full steam ahead with respect to compliance with the various health care requirements. All plans (including to some extent, grandfathered plans) have changes to implement for 2013, such as:

- Summary of Benefits and Coverage (starting with open enrollment for 2013 plan year).
- Form W-2 reporting (reflecting aggregate cost of 2012 employer sponsored health coverage).
- Notice requirement to employees about the health insurance exchanges to be established by the states.
- Coverage of preventive care for women not already required (namely, contraceptives) without cost-sharing.
- Limiting health FSAs to \$2,500 (must comply in practice for 2013 but plans have an extended deadline to the end of 2014 to amend for this).
- Expansion of HIPAA electronic transaction rules relating to eligibility and health care claim status.

**Determination Letter Filings.** Qualified retirement plans are on a rolling 5 year cycle for filing determination letter applications with the IRS. Plans sponsored by employers with tax ID numbers ending in 2 or 7 must file by January 31, 2013.

**Qualified Retirement Plan Amendments.** As usual, sponsors of qualified retirement plans will need to check to see if year-end amendments are necessary. Some of the items that may require amendments are:

- Governmental plans: the 2009 required minimum distribution exception, non-spouse beneficiary rollovers found in WRERA, and the HEART Act provisions relating to military service rights and benefits.
- Defined benefit plans: the model amendment for Code Section 436 restrictions on accrual and payment of benefits from underfunded plans.
- Hybrid plans (such as cash balance plans): Code Section 411 age discrimination rules.
- Plans holding employer securities: definition of "readily tradable on

an established securities market."

- All plans: discretionary plan design changes enacted during the 2012 calendar year.

**Corrections of Certain Deferred Compensation** – December 31, 2012 will be the last date for a correction program affecting certain nonqualified deferred compensation arrangements. Where deferred compensation is paid only when the service provider signs a release, the IRS may view the arrangement as permitting improper discretion as to the timing of the payment. To avoid significant penalties, parties will want to take advantage of transition relief before the end of the year.

**Evaluate Retirement Plan Service Provider Fee Disclosures.** Plan sponsors must evaluate any fee disclosures provided to them within a reasonable time of receipt in order to avoid a prohibited transaction. The deadline for service providers to provide fee disclosures to plan sponsors was July 1, 2012, so plan sponsors should be reviewing the disclosures now if they haven't already.

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

**Dodd-Frank Financial Reform.** Public companies are still awaiting regulations that will activate Dodd Frank's clawback provisions. Nonetheless, some companies are choosing to forge ahead and develop clawback policies now, as a result of pressure from institutional shareholders and complexity of decision-making required. Regardless of whether your company decides to implement clawback rules now or later, it is wise to at least start identifying programs that will be affected and outlining possible action items.

Please contact any member of Holland & Hart's Benefits Law Group for questions on these year-end compliance requirements, any aspects of health care reform, or any other benefits issue.

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For questions regarding this update, please contact  
Kevin Selzer  
Holland & Hart, 555 Seventeenth Street, Suite 3200, Denver, CO 80202-3979  
email: [kaselzer@hollandhart.com](mailto:kaselzer@hollandhart.com) , phone: 303-295-8094

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