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Under the Patient Protection and Affordable Care Act (the "ACA"), individuals will be allowed to purchase health insurance coverage on exchanges, referred to as the Health Insurance Marketplace (the "Marketplace"). Certain lower income individuals may also qualify for premium tax credits if they do not have affordable, minimum value health coverage available through their employers. The Marketplace and the low income tax credits will be available beginning January 1, 2014.

Under the ACA, employers subject to the Fair Labor Standards Act (the "FLSA") must provide a notice to their employees regarding the coverage available on the Marketplace. Although this notice was originally required to be distributed by March 1, 2013, the Department of Labor ("DOL") postponed the notice requirement.

The DOL recently issued Technical Release 2013-02, which provides guidance regarding the Marketplace notice requirement as well as a model Marketplace notice. In addition, the DOL revised its model COBRA notice to address the availability of the Marketplace. The following are some key points from the Technical Release:

- No later than October 1, 2013, an employer subject to the FLSA is required to provide the Marketplace notice to each current employee who was hired before that date.
- Beginning October 1, 2013, an employer subject to the FLSA is required to provide the Marketplace notice to each new employee at the time of hiring. For 2014, the DOL will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee's start date.
- An employer must provide the Marketplace notice to employees even if the employer does not provide health plan coverage.
- An employer must provide a Marketplace notice to each employee, regardless of whether the employee is eligible to enroll in the employer's health plan and regardless of whether the employee is part-time or full-time.
- An employer is not required to provide a separate Marketplace notice to dependents or other individuals who are eligible for coverage under the employer's health plan but who are not employees.
- The Marketplace notice must inform the employee regarding the existence of the Marketplace, provide the employee Marketplace contact information to request assistance, and provide a description of the services provided by the Marketplace. The notice must also inform the employee that the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Marketplace. The notice must include a statement informing the employee that, if the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health plan offered by the employer and that all or a portion of that employer contribution may be excludable from income for Federal income tax purposes.
- The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor are met.

A model Marketplace notice is available on the DOL's website. There is one model for employers who do not offer a health plan and another model for employers who offer a health plan to some or all employees. Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements. The model Marketplace notice includes sections to be completed by an employer offering health coverage to its employees related to whether the coverage is *affordable* and provides *minimum value* (as defined under the ACA).

Each employer should review the model Marketplace notice in view of the provisions of its group health plan. The notice may need to be tailored to particular groups of employees if the employer's plan has differing design features for various employee groups (e.g., eligibility, waiting period, employer contribution, etc.).

In addition, an employer should update its COBRA notice in view of the changes to the DOL model COBRA notice.

Our Compensation & Benefits attorneys are available to assist you in preparing your Marketplace notice and your updated COBRA notice and to assist with all of your ACA compliance efforts.

IRS Announces 2014 Inflation Adjustments for Health Savings Accounts and High Deductible Health Plans

The IRS announced the 2014 inflation adjusted amounts for Health Savings Accounts ("HSAs") and for High Deductible Health Plans ("HDHPs").

- For calendar year 2014, the annual limit on deductions for contributions to an HSA for an individual with self-only coverage under an HDHP will be $3,300 and the annual limit on deductions for contributions to an HSA for an individual with family coverage under an HDHP will be $6,550.
- For calendar year 2014, an HDHP is defined as a health plan under which:
    - the annual deductible is not less than $1,250 for self-only coverage and not less than $2,500 for family coverage; and
    - annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $6,350 for self-only coverage and $12,700 for family coverage.

IRS to Review 457(b) Plans

The IRS will be instituting a compliance check program for nongovernmental 457(b) plans. The IRS will be sending questionnaires to approximately 200 nongovernmental, tax-exempt employers that have indicated on their Form 990s that they have 457(b) plans.

A 457(b) plan (or "eligible deferred compensation plan") is a popular form of nonqualified deferred compensation plan available to tax-exempt organizations and government employers. Amounts contributed to a 457(b) plan for the benefit of an eligible employee are not subject to income tax until distributed from that plan. 457(b) plans are subject to annual contribution limits. Under a 457(b) plan of a nongovernmental tax-exempt employer, total contributions (i.e., employee salary reduction contributions and employer contributions) of up to $17,500 can be made for 2013. This annual limit is periodically adjusted by the IRS to reflect increases in the cost of living.

Although 457(b) plans are not subject to the often complex tax rules of Internal Revenue Code ("Code") section 409A or 457(f), a 457(b) plan must satisfy certain plan document requirements and be operated in accordance with the terms of the plan and Code section 457(b). With respect to salary reduction contributions, 457(b) plans are subject to special rules regarding the timing of salary reduction elections. 457(b) plans are also subject to rules that can be complex with respect to the required timing of distributions. In addition, the fact that the rules applicable to the 457(b) plans of government and nongovernmental entities differ (e.g., age 50 catch-up contributions are not permitted under the 457(b) plan of a nongovernmental entity) can create confusion. Finally, for employers who are subject to ERISA, participation in a Code section 457(b) plan must be limited to a select group of management or highly compensated employees.

The IRS anticipates that it will find problems with funding arrangements, improper loans, improper catch-up contributions, and employer eligibility. In reviewing 457(b) plans in recent months, we have also found plan documents in need of revision.

If your organization has a 457(b) plan, it would be a good time to review the plan document, salary reduction contribution election forms, and the plan's operation generally. Please contact one of our Compensation & Benefits attorneys if you would like assistance in reviewing your 457(b) plan or with any of the topics discussed in this Law Update.

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