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HR AND BENEFITS UPDATE

NOVEMBER-DECEMBER 2009

IRS AND SOCIAL SECURITY ADMINISTRATION ANNOUNCE 2010 INDEXED LIMITS

The IRS announced the 2010 indexed dollar limits applicable to qualified retirement plans. In addition, the Social Security Administration announced there would be no cost-of-living increase in 2010. As a result, most limitations that are adjusted for cost-of-living increases will remain unchanged for 2010 – the first time this has occurred since the automatic adjustment was implemented in 1975.

The cost-of-living index is calculated by comparing the Consumer Price Index (CPI) from the quarter ended Sept. 30, 2009, to the CPI for the quarter ended Sept. 30, 2008. Since there was no increase in the CPI, the procedures under the Social Security Act state that the limits cannot go down, but instead remain constant. The cost-of-living cannot increase if there is an annual decline in the index.

For qualified retirement plans, the limitations that are adjusted by reference to Section 415(d) will remain unchanged for 2010. Overall, very few changes were made. Of particular interest are the deferral limits, catch-up contributions, defined benefit and defined contribution dollar limits and highly compensated employee income limits, which all remained unchanged.

Regarding Social Security, in 2009, Social Security beneficiaries received a 5.8 percent cost-of-living adjustment, which was the largest increase since 1982. This was due mostly to higher gas prices, according to Michael J. Astrue, commissioner of Social Security.

Also of interest, the Department of Health and Human Services has not yet announced if there will be any Medicare premium changes for 2010. The legislation determining the amount of premium increases, if any, was passed by the House on a bipartisan basis on Sept. 24. However, the Senate has not yet acted on this legislation. The President is calling on the Senate to enact legislation before it becomes too late.

NFP Benefits can provide a document that summarizes a three-year history of changes to Health Savings Accounts, retirement benefits and compensation, Social Security and Medicare. Please contact your advisor for a copy.

A NEW KIND OF HYBRID RETIREMENT PLAN: THE DB(K)

Beginning in 2010, small employers will have the opportunity to take advantage of an "eligible combined plan," also referred to as a "DB(k) plan." The DB(k) will be a hybrid plan: part defined benefit and part defined contribution. The design will allow employers to sponsor a plan that provides employees with a low employer-paid guaranteed lifetime income* that employees can supplement with their own deferrals. Some of the requirements and definitions for these new plans are:

- "Small employer" means that the sponsor employed between two and 500 employees on each business day during the preceding calendar year (reasonable expected average can be used for new employers).
- Assets are held in a single trust (for both portions of the plan).
- Single 5500 are required for both portions of the plan.
- Defined benefit must be funded at 1 percent of final average pay for up to 20 years of service, or using an age-weighted cash balance method.
- Defined contribution must be an automatic contribution arrangement (4 percent deferral) where the employer is required to match 50 percent of deferrals (as long as the deferral does not exceed 4 percent of compensation).
- The accrued defined benefit must be fully vested after three years of service.
- Matching contributions must be immediately fully vested, and any nonelective contributions that the plan may make must be fully vested after three years of service.
- All benefits under both portions of the plan must be provided uniformly to all participants.
- ADP/ACP testing is considered to have been automatically met and the plan will be treated as meeting top-heavy requirements.
- Notice requirements exist.

Additional guidance is expected from the IRS before the end of the year. As a result, many vendors are still in the planning stages for these new plan designs. But this is still a good time to consider whether a DB(k) would be a good fit for your company.

*Guarantees are subject to the claims paying ability of the issuing insurance company. This article discusses fixed insurance only.

BENEFITS COMPLIANCE FAQ

Question: Our former employees who were eligible to enroll in COBRA and take advantage of the ARRA premium subsidy effective March 1, 2009, are nearing the end of the nine-month subsidy program. What happens on Dec. 1, 2009, does ARRA end? Does their COBRA coverage end?

Answer: The American Recovery and Reinvestment Act of 2009 (ARRA) provided for an extended election period for eligible individuals, as well as provided a COBRA premium subsidy for up to nine months. In most cases, the premium subsidy first applied on March 1, 2009. Therefore, as long as an individual remains eligible (i.e., are not eligible for any other coverage) their nine months of premium assistance will end on Nov. 30, 2009. Then, as of Dec. 1, 2009, the individual will become responsible for paying 100 percent of the entire COBRA premium or 102 percent if applicable. Remember that ARRA does not alter the COBRA maximum eligibility periods and an individual can terminate COBRA at any time.

Keep in mind that the provisions of ARRA are not terminating until next fall so the nine-month premium subsidy is still available to those who experience an involuntary termination until Dec. 31, 2009. This means that if an individual is both involuntarily terminated and experiences a loss of coverage in the month of December, the individual is eligible for the premium subsidy for up to nine months. The loss of coverage date is defined in the plan documents; for example it could be the date of termination or the last day of the month. Therefore, the loss of coverage date is not necessarily the date that COBRA begins.

With that said, White House representatives have acknowledged that President Obama is considering requesting the extension of ARRA because it was implemented as a result of the economy, which has not dramatically improved. The Department of Labor's COBRA ARRA website (www.dol.gov/ebsa/COBRA.html) will provide information as it is released.

You can find us online at http://www.solenture.com

Four Gateway Center
444 Liberty Ave. Suite 1105
Pittsburgh, PA 15222

Henderson Builiding
575 Route 28 Suite 204
Raritan, NJ 08869

Give us a call at 1-800-456-7226

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