Benefits BULLETIN

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Bottom Line Benefits

IN THIS ISSUE

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PAGE 1
IRS Expands Tax Relief for Identity Protection

PAGE 1
2015 Annual Employer Health Survey

PAGE 2
Federal Budget Provides Transit Parity

PAGE 2
FLSA Overtime Rule Change

PAGE 3
FLSA Overtime Rule Change (Cont.)

IRS Expands Tax Relief for Identity Protection

Due to growing concerns about data breaches and identity theft, some employers have started offering identity protection services to their employees as a fringe benefit.

The Internal Revenue Service (IRS) has issued two pieces of guidance that address the taxability of this benefit.

In August 2015, the IRS released **Announcement 2015-22** to clarify that the value of credit monitoring and other identity protection services provided by employers to employees is not taxable to the employees when connected to a data breach. In order to receive this favorable tax treatment, employees' personal information must have been compromised in a data breach of an employer's (or of the employer's agent or service provider's) recordkeeping system.

In December 2015, the IRS released Announcement 2016-02 to significantly expand the favorable tax treatment for employer-provided identity protection services. Under this new guidance, the value of identity protection services provided by employers to employees before a breach happens is also nontaxable. However, employers and employees will still have to consider any potential state and local tax implications.

Due to the expanded tax relief, employers can provide tax-free identity protection services to their employees before a breach occurs. Services can include credit reporting and monitoring, identity theft insurance policies, or identity restoration. However, since the IRS guidance only applies to federal tax rules, employers will want to evaluate any state or local tax consequences of providing identity protection services.

Also, if employers require employees to contribute to the cost of identity protection services, the contributions must be deducted on an after-tax basis. Because identity theft services are not a qualified benefit under Internal Revenue Code Section 125, employees cannot purchase the services on a pre-tax basis.

BOTTOM LINE BENEFITS

2015 Annual Employer Health Survey

In 2015, the Kaiser Family Foundation and the Health Research & Educational Trust (HRET) conducted their annual survey to examine employer-sponsored health benefits trends.

Employer-sponsored Coverage
Approximately 57 percent of employers offered health benefits to some of their employees, and 63 percent of workers at those companies elected coverage.

Only 47 percent of businesses that have three to nine employees offered health coverage, while almost all employers with 1,000 or more employees offered coverage to at least some of them.

Premiums and Worker Contributions
The average annual premium for employer-sponsored health insurance was $6,251 (single) and $17,545 (family) in 2015—marking a 4 percent increase from 2014.

Covered employees contributed 18 percent (single) and 29 percent (family) of the premiums.

CONTINUED ON PAGE 2

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2015 Annual Employer Health Survey (Cont.)

Plan Enrollment
Preferred provider organization (PPO) plan enrollment remained the most popular with 52 percent of covered workers enrolling—a slight decline from 2014.

High deductible health plans (HDHPs) continue to grow in popularity with 24 percent of employees choosing this type of plan (a 4 percent increase from 2014).

Of the remaining covered workers, 14 percent were enrolled in a health maintenance organization (HMO), 10 percent in a point of service (POS) plan and 1 percent in an indemnity plan. POS plans remained more popular at small firms than at larger firms (19 percent versus 6 percent).

Wellness and Disease Management Programs
In 2015, 81 percent of large employers and 49 percent of small employers used wellness programs. To motivate employees, 38 percent of large firms and 15 percent of small firms offered a monetary incentive for completing or participating in wellness programs.

While not quite as popular as wellness programs, disease management programs also gained traction in 2015. Sixty-eight percent of large employers and 32 percent of small businesses had disease management programs in 2015.

ACA Response
In general, employer-sponsored health benefits in 2015 remained consistent with years prior. Whether this stability will continue remains to be seen. Market forces such as rising specialty drug prices, narrowing networks and the Cadillac tax implementation in 2020 could force employers to adjust their plan offerings and possibly increase cost-sharing for employees.

Federal Budget Provides Transit Parity

On Dec. 18, 2015, President Barack Obama signed a federal budget bill into law for 2016. This bill increased the maximum monthly tax exclusion for employer-provided mass transit benefits in order to make it equal to the limit for employer-provided qualified parking benefits.

This increase provides permanent equivalence between mass transit and parking benefits, which is often referred to as “transit parity.” Transit parity means that the federal Internal Revenue Code no longer favors parking benefits over mass transit benefits. The increase applies retroactively to months after 2014.

Transit parity is a welcome development for employers, especially those with employees who utilize public transit.

Some major cities (for example, New York and the District of Columbia) now require employers to offer transit benefits to their employees. Employers in these cities should ensure that they are in compliance with local requirements.

Employers that sponsor qualified transportation fringe benefit plans should update their plan designs and work with their vendors to implement the maximum limits.

FLSA Overtime Rule Change

The proposed U.S. Department of Labor (DOL) changes to the “white-collar exemption” in the Fair Labor Standards Act (FLSA) could make more than 5 million individuals eligible for overtime pay—individuals who currently aren’t eligible. This could have a significant impact on employers who may face increased labor costs and compliance efforts.

To qualify for the white-collar exemption, an employee must satisfy a variety of tests, including a duties test, a salary basis test and a salary level test. Currently, under the salary level test, only white-collar workers making less than $23,660 a year are automatically eligible for overtime pay. Under the proposed rule, the salary threshold would increase to a projected $50,440 per year in 2016 and would be updated automatically each year in order to keep up with rising costs.

On Feb. 9, 2016, 108 bipartisan members of Congress signed a congressional support letter, addressed to DOL Secretary Tom Perez, expressing concerns about the proposed rule. Lawmakers are concerned about the unintended consequences for both employers and employees.

Benefits BULLETIN

FLSA Overtime Rule Change (Cont.)

One of these concerns is the unclear explanation of the duties test, which is one of the main components used in determining whether employees are exempt from the FLSA provisions. In the proposed rule, the language is posed in question format instead of in a concrete way that employers can easily understand.

Another concern mentioned in the letter is that increasing the salary threshold by such a significant amount—113 percent—disregards the geographic diversity of the country. It states that since the purchasing power of a dollar is different in various parts of the United States, the DOL is ignoring the differences that exist between rural and urban areas.

If the rule is passed as drafted, its most negative impact could be on individuals entering the workforce and mid-level managers. Many small businesses cannot afford to increase their employees' salaries and would be forced to take actions that could include reducing employees' hours or shifting salaried employees to hourly status. This could mean a reduction in benefits and could be perceived by salaried employees as a demotion.

In addition, employers would need to re-examine employees' exemption statuses, review and revise overtime policies, notify employees of changes and adjust payroll systems. Employers may also incur additional managerial costs because they might need to spend more time tracking when employees clock in and out.

The DOL, on the other hand, projects that the higher salary level requirements could actually simplify the process of employee classification because employers would not be required to perform a duties test for employees making less than $50,440 per year, which, in turn, could result in fewer lawsuits and lower legal costs for employers.

The DOL invited the general public to comment on the new rule from June 3 to Sept. 4, 2015, during which it received more than 200,000 comments. The comment period is now closed and a final rule is expected in the summer of 2016. The time between the date the final rule is announced and the date it goes into effect could be short—giving employers little time to make changes.

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