Employee Benefit Plans Alert

March 2022 Employee Benefit Alerts

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In this Thought Leadership article, we have summarized some employee benefit changes and reminders that our busy clients should be aware of for this quarter; namely:

- **Health Savings Account (HSA) Compliance and Requirements**
  - Plan Document
  - High Deductible Health Plan
  - Contribution Limits
  - Out-of-Pocket Expenses
  - Other Items of Note
- **Remove Excess Salary Deferrals by April 15, 2022**
- **Quick Hits**
  - Cycle 3 DC Plan Restatements Due July 31, 2022
  - PBGC Terminating Plan Audits
  - New Jersey Mandatory Retirement Savings in Effect This Month

Health Savings Account (HSA) Compliance and Requirements

During the annual enrollment period, each year employees are asked to change/confirm their health and welfare benefits for the coming year. One commonly offered benefit is a Health Savings Account (HSA). For employees, this is a tax-favored way to pay for medical expenses. Contributions are deducted from taxable income, the money in the HSA grows tax-free, and any distributions used for qualified medical expenses are not taxable to the employee. For employers, there are certain requirements and rules that their HSA benefit needs to follow, some changing annually. Those items are discussed below.

- **Plan Document –** An employer is not required to have a separate plan document for HSAs. However, if an employer's Section 125 cafeteria plan document includes the HSA feature, the plan will need to include language indicating employees can make pre-tax contributions from their pay into an HSA. When pre-taxed amounts are contributed, they must be included in the annual nondiscrimination testing conducted for the Section 125 cafeteria plan.

- **High Deductible Health Plan** – An employer must offer a high deductible health plan (HDHP) in order for its employees to contribute to an HSA. The IRS requires that in 2022, the health plan must have a self-only deductible of at least $1,400 or a family deductible of at least $2,800. These amounts are adjusted annually by the IRS.

- **Contribution Limits** – The IRS also imposes annual limits on how much can be contributed to an HSA. The limit for self-only covered employees in 2022 is $3,650, and $7,300 is the limit for family coverage. Employees over 55 years old can also make catch-up contributions up to $1,000. **The amount that an employee can contribute from pre-tax deferrals is reduced by any employer contributions through the employer's 125 cafeteria plan. Employer contributions are tax-free to the employees.**

- **Out-of-Pocket Expenses –** The employer's plan must also limit an employee's out-of-pocket expenses (deductibles, copays, etc.). For 2022, the maximum out-of-pocket for medical expenses is $7,050 for self-only coverage, and $14,100 for family coverage.

- **Other Items to Note**

  - Employer contributions to an HSA under a section 125 cafeteria plan are subject to nondiscrimination testing.
  - To contribute to an HSA, an employee cannot have any other health coverage except the employer's High-Deductible Health Plan (HDHP).
  - An employee must be allowed to rollover unused HSA funds when they leave the employer.
  - HSA contributions included in a cafeteria plan must be reflected on an employee's Form W-2 in box 12, using code W.

Remove Excess Salary Deferrals by April 15, 2022

The maximum allowable employee salary deferral into a retirement plan(s) for 2021 was $19,500 (plus an additional $6,500 if age 50 or over).

If this limit was exceeded in 2021, Plan Sponsors must take corrective action (including earnings) by April 15, 2022. If corrected by April 15:

- Excess deferrals are taxed in the calendar year deferred (2021)
- Earnings on the excess are taxed in the year withdrawn (2022)
- Excess will not be subject to the 10% early distribution tax, 20% withholding, or spousal consent requirements

If corrective action is not taken by April 15:

- Excess deferrals are taxed in the calendar year deferred (2021) and in the year withdrawn
- Earnings on the excess are taxed in the year withdrawn
- Excess may be subject to the 10% early distribution tax, 20% withholding, and spousal consent requirements
- Make correction(s) to the affected plan using the IRS's Self-Correction or Voluntary Correction Programs

Participants who made salary deferral contributions to two or more retirement plans in 2021 may be most at risk for exceeding the deferral limit as plan contributions must be aggregated.

Quick Hits

Cycle 3 DC Plan Restatements Due July 31, 2022 – Employers who sponsor defined contribution (DC) retirement plans through the adoption of an IRS pre-approved plan document (i.e., volume submitter or prototype plan) have until July 31, 2022 to adopt a new pre-approved plan document. DC plans include 401(k), profit-sharing and money purchase plans. The restated plan documents will incorporate regulatory changes enacted prior to February 1, 2017. For a detailed explanation of the Cycle 3 restatement process, please refer to the May 2021 Employee Benefit Alert.

PBGC Terminating Plan Audits – The Pension Benefit Guaranty Corporation (PBGC) recently announced it changed the participant threshold for terminating defined benefit (DB) plans subject to PBGC audit. Previously, any terminating plans with 300 or more participants were automatically selected for audit. Going forward, the participant limit is changed to 1,050. Any terminating DB plans under 1,050 participants may still be randomly selected. This applies to plans undergoing a standard termination.

New Jersey Mandatory Retirement Savings in Effect This Month – New Jersey employers with 25 or more employees that do not offer a retirement plan will be required to enroll employees in the New Jersey Secure Choice Savings Program Fund via payroll deduction. The New Jersey Secure Choice Savings Program Act was enacted in March 2019, creating the Fund. The implementation date was extended due to COVID to March 28, 2022. After that date employers will have 9 months to comply. There are certain requirements to be considered a "covered employer" who must participate. A "covered employer" is an employer who employs 25 or more employees in NJ, has been in business at least two years, and has not offered a qualified retirement plan in the last two years. A 3% pre-tax contribution of employee's earnings is required to be made unless the employee affirmatively opts out.

Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist plan sponsors in meeting the various compliance requirements applicable to health, welfare and cafeteria plans. We also provide a full spectrum of compliance services for qualified retirement plans and nonqualified deferred compensation plans. For more information, please contact your client services partner or any of the following:

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