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ERISA Group Benefits Alert

November 2012

2013 Retirement Plan Limits

The IRS has released the plan limits for 2013. Many of the plan limitations have changed, so be certain to review the below list and update your systems accordingly.

	<u>2012</u>	<u>2013</u>
Compensation Limit	\$250,000	\$255,000
401(k)/403(b)/457 Elective Deferrals	\$17,000	\$17,500
401(k)/403(b)/457 Catch-Up Contributions	\$5,500	\$5,500
SIMPLE Plan Employee Deferrals	\$11,500	\$12,000
SIMPLE Plan Catch-Up Contributions	\$2,500	\$2,500
Annual Defined Contribution Limit	\$50,000	\$51,000
Annual Defined Benefit Limit	\$200,000	\$205,000
Highly Compensated Employee Threshold	\$115,000	\$115,000
Key Employee/Officer Threshold	\$165,000	\$165,000
Social Security Taxable Wage Base	\$110,100	\$113,700
SEP Minimum Compensation	\$550	\$550
SEP Maximum Compensation	\$250,000	\$255,000

401(k) Employee Notices

A 401(k) Safe Harbor Notice must be provided to each employee who is eligible to participate in a 401(k) plan that uses "safe harbor contributions" within a "reasonable time" (generally, at least 30 days and no more than 90 days) before the first day of the plan year. Accordingly, for calendar year plans, a notice should be provided to each employee who is currently eligible to participate in the plan no later than December 1, 2012. Please note that posting the 401(k) Safe Harbor Notice in a common area does not meet the IRS notice requirement.

In addition to providing the notice to all currently eligible employees, each employee who becomes eligible to participate in the plan during the plan year (e.g., on the monthly, quarterly, or other entry dates) must be provided a copy of the notice no more than 90 days before the employee becomes eligible to participate in the plan, and no later than the date the employee becomes eligible to participate in the plan. We recommend that you provide the notice at least 30 days before the employee becomes eligible to participate in the plan, even though you could technically wait until the employee's actual entry date.

In addition, plan sponsors should also consider whether they need to provide the following notices:

- Qualified Automatic Contribution Arrangements Notice
- Eligible Automatic Contribution Arrangement Notice
- Qualified Default Investment Alternative Notice
- Non-Safe Harbor Automatic Contribution Arrangement Notice

When applicable, these notices are generally required to be distributed 30 days prior to the start of the plan year.

Health Care Reform Update

Health Flexible Spending Account Plan Changes

For plan years beginning on or after January 1, 2013, salary reduction contributions for the reimbursement of medical expenses under a health flexible spending account plan (also referred to as a medical expense reimbursement plan) will be limited to \$2,500 for each plan year. This new limit will be indexed for cost-of-living adjustments in future years. Although plan documents do not need to be amended until December 31, 2013, to reflect this new limit, plans must be administered in accordance with this new limit and summary plan descriptions must be updated accordingly. Employee elections offered during open enrollment will need to reflect the new \$2,500 limit.

2012 IRS Form W-2 Reporting of Health Care Costs

As part of the Health Care Reform, the cost of employer-sponsored health coverage must be reported on Form W-2 for the 2012 calendar year (reported in January 2013). This requirement was originally effective for the 2011 calendar year, but was delayed by one year. There are exemptions for certain employers and the costs for certain types of employer-sponsored health coverage.

The Internal Revenue Service has provided transition relief with respect to this reporting requirement for certain small employers who file fewer than 250 Forms

W-2 in the prior year. In making the determination as to whether an employer filed fewer than 250 Forms W-2, you do not need to consider related corporations and other business entities (the commonly controlled group rules and affiliated service group rules do not apply at this time).

The following coverage costs are exempt from this new reporting requirement:

1. Dental and vision coverages provided by separate plans that are not integrated into a consolidated group health plan. An employer must include the cost of dental or vision coverage if such coverage is integrated into a group health plan providing primary health care coverage and other additional health care coverages.
2. Employee deferral contributions to a health flexible spending account.
3. Contributions to a health savings account (HSA). (Please note that employer contributions, including an employee's contributions through a cafeteria plan, to an HSA will continue to be required to be separately reported on the Form W-2 in box 12 with code W.)
4. The value of coverage under a health reimbursement arrangement (HRA).

It is important to take steps now to ensure that systems are in place to report this information on the Form W-2.

Proper Classification of Part-Time and Full-Time Employees

For purposes of the new health care reform requirements, it is important to properly classify your employees as either part-time or full-time employees. The IRS and DOL have issued guidance on how to make this determination. Although the rules that require the proper classification of employees generally become effective in 2014, it is important, as you move into 2013, that you have an idea of how you are going to make the determination. We will be providing a more detailed analysis of the guidance for your review in December.



Please note that this *Benefits Alert* only highlights the most significant changes in the law. The details of these changes are complex and beyond the scope of this Alert. We look forward to discussing these changes and how they may impact your plans with you. Please do not hesitate to contact any of the following members of our Employee Benefits and Executive Compensation Practice if you have any questions or if you would like additional information.

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