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ERISA Group Benefits Newsletter
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Department of Labor Postpones Enforcement of Fiduciary Rule

On March 15, 2018, the U.S. Court of Appeals for the Fifth Circuit in *U.S. Chamber of Commerce v. DOL* vacated the Department of Labor's fiduciary rule. The Department of Labor has informally stated following the *Chamber of Commerce* decision that, pending further review of the decision, it will not be currently enforcing the fiduciary rule.

Changes to 2018 Limits

The Social Security Administration (SSA) announced on November 27, 2017, that the Social Security taxable wage base for 2018 would be lowered to $128,400. This amount is lower than the taxable wage base previously announced by the SSA in October 2017 ($128,700). The reduction resulted from updates to national wage data following the October 2017 announcement.

The Internal Revenue Service (IRS) has announced multiple changes to the health savings account (HSA) limit for family coverage for 2018. In Revenue Procedure 2017-37, released May 22, 2017, the IRS originally announced that the family HSA limit for the 2018 calendar year would be $6,900. Later, it reduced the limit to $6,850 under Revenue Procedure 2018-18, released on March 5, 2018. However, on April 26, 2018, under Revenue Procedure 2018-27, it raised the limit back up to the original amount of $6,900.
Employers should ensure that the proper limits are utilized for purposes of its plans and communicated to employees where appropriate.

Hardship Withdrawal Changes in the Bipartisan Budget Act

The Bipartisan Budget Act of 2018 (Act), signed by President Trump on February 9, 2018, did more than extend funding for the federal government. The Act also contained a number of provisions affecting qualified retirement plans and, in particular, hardship withdrawals under such plans. Relevant changes included:

- Removing the six-month suspension on participant contributions following receipt of a hardship withdrawal
- Removing the requirement that a participant take all available loans under any qualified retirement plans before receiving the hardship withdrawal
- Permitting plans to allow hardship distributions from qualified non-elective contributions, qualified matching contributions, safe harbor contributions, and earnings on those amounts (and on elective deferrals)

The above changes are to be effective for plan years beginning after December 31, 2018. The Act directs the IRS to modify the applicable regulations within one year from February 9, 2018, to address the above items. The IRS has not issued proposed or final regulations with respect to these matters at this time. Therefore, employers should consider waiting on making any changes to their plans based on the Act until the IRS issues further guidance.

Casualty Loss Changes and Hardship Withdrawals

The Tax Cuts and Jobs Act (Jobs Act), signed into law on December 22, 2017, may have unintended consequences with respect to hardship distributions under qualified retirement plans. The six safe harbor hardship withdrawals under the applicable hardship regulations include, among other things, expenses for the repair of damage to an employee's principal residence that would qualify for the casualty deduction under Internal Revenue Code (IRC) section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

The Jobs Act limited the availability of the casualty deduction under IRC section 165, providing that a personal casualty loss deduction will only be available with respect to losses attributable to a federally declared disaster. With this limitation, the casualty loss hardship withdrawal safe harbor permits a hardship distribution where expenses result from repairs to an employee's principal residence which were caused by only a federally declared disaster. This would severely limit a participant's ability to utilize this hardship option. Pending further guidance from the IRS, plan administrators should exercise caution in granting hardship distributions for casualty losses.

If you have questions about how these tax law changes may impact your business or would like to discuss planning alternatives, please contact one of the attorneys listed below.

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