Benefits Compliance Update

9/27/17 Client Webinar

Jason Cogdill
Benefits Attorney

This Session

- Quick Washington update
- Practical training: Plan Documents & SPDs
- Update on benefits taxation
- *Your questions*

2017 Webinars

- Last month: ACA update, recent developments, & compliance tips for open enrollment
- Slides & YouTube recordings available for all 2017 sessions
  - *Featured session: Compliance Training Short Course for Advisors (May)*
- Ask your Sales Rep about other compliance & training options

ACA Update

- Same old song: ACA remains the law of the land
  - *Other than Cadillac tax (2020), all major provisions in effect*
- Employers should continue to comply with ACA provisions, including employer mandate (Play-or-Pay) & reporting
  - *** Next round of reporting (for 2017 calendar year) due beginning **1/31/18***
  - *Individual coverage mandate still in effect*

What Next?

- Congress moving on to tax reform
  - *Health care impact?*
- Next questions:

  (1) Level of federal agency enforcement of ACA
  - *4 recent IRS information letters confirm continuing responsibility to enforce ACA provisions*

  (2) Will Congress revisit health care?

  - Unlikely before terms end January 2019 (election November 2018)

Plan Documents: Big Picture

- **Practical considerations**
  - Benefits described in writing
- **IRS rules**
  - Tax benefit plans must be in writing
- **ERISA rules**
  - Plans subject to ERISA must meet content & distribution requirements outlined by law & enforced by DOL

IRS Document Requirements for Flex Plans

- Section 125 Plans = Cafeteria Plans = Flex Plans
- 2 basic types of flex plans
  - Premium-only plan ("POP")
  - Pre-tax premiums + Flexible Spending Accounts ("FSAs")
- All Section 125 plans must have compliant Summary Plan Description ("SPD") to meet IRS rules & protect tax-free deductions.
- If Health FSA is included, ERISA also applies to the FSA triggering ERISA requirements
- FSA should be included in same Section 125 docs as pre-tax premium component (*one set of documents*)

ERISA Document Requirements

- All group-sponsored benefits (including pre-tax components of Section 125 plan) require separate documents if subject to ERISA
  - *Common ERISA plans*: medical, dental, vision, life, disability, HRA, supplemental health
- **Basic ERISA document requirements:**
  - **Plan Document** adopted by Employer as plan sponsor
    - Foundational document establishing formal plan
  - **** SPD****
    - Written in plain language & designed for participant understanding of plan rights & responsibilities
    - Must include 33 required items
    - Generally includes carrier booklets + Wrap SPD doc, if needed
    - *More details on Wrap SPDs available*

Refresher: Pre-Tax Benefit Options

Group-sponsored benefits that are tax-free

- Health insurance
- Dental insurance
- Vision insurance
- Group term life (up to $50K coverage)
- Group accident coverage
- *Long-term* & short-term disability**
- Flexible Spending Accounts ("FSAs")
  - Health FSA: out-of-pocket medical/dental/vision expenses
  - Dependent Care FSA: work-related child care expenses
- HSA bank account contributions
- Most supplemental products (cancer, critical illness, telemedicine, etc.)

Benefits not eligible are fully taxable

Pre-Tax HSA Contributions

- **Q:** Can Health Savings Account ("HSA") contributions be made pre-tax through a Section 125 plan?
- **A: Yes** - both employee &employer contributions to HSA bank accounts can be made pre-tax
  - Preferred method since employer contributions outside of a Section 125 plan must comply with strict comparability rules
  - Limit: Employer + Employee contributions cannot exceed the IRS annual limits for HSA contributions
    - *2017 limits*: Self-only $3,400; Family $6,750
    - *2018 limits*: Self-only $3,450; Family $6,900
  - Section 125 SPD should specifically provide for HSA contributions
  - For individuals ineligible to participate in 125 plan (certain owners), contributions can be made on a post-tax basis. The individual & employer lose FICA savings, but individual can deduct HSA contributions on personal income taxes

HSA Contributions

- **Q:** Can an employer that does not sponsor a High Deductible Health Plan contribute to an HSA bank account for an employee enrolled elsewhere?
- **A: Yes**
  - Not many employers or advisors know this, but the employer does not have to sponsor HSA-eligible health plan to contribute to HSA bank accounts. This is one of several important tools available to small employers or those without a group health plan.

Individual Premium Reimbursement

- History & context (*IRS RR 61-146*)
- Under ACA rules effective 2014, employer payment or reimbursement of individual or Marketplace health premiums no longer allowed for active employees (*taxable or non-taxable*)
  - Guidance removed employer options to (1) reimburse individual premiums directly, or (2) administer pre-tax under Section 125 plan. Tax rules still allow, but ACA rules present significant new risk for employers.
  - Limited transition relief for small employers expired 6/30/15 (IRS Notice 2015-17)
  - Tax-free reimbursement still an option for retirees ("fewer than two" exception). Otherwise, employer cannot be involved & may only address with regular taxable comp
- *Examples & scenarios*

New Option & Exception: QSEHRA

- QSEHRA = *Qualified Small Employer Health Reimbursement Arrangement*
  - Included in 21st Century Cures Act passed in Dec 2016
  - Effectively an exception to ACA rules
- "*Back to the future*"
  - QSEHRA restores option available to employers before ACA changed the law in 2014
- Only an option for small employers that are not ALEs & do not have group health plans
  - Employers with group health plans or that have 50 or more FT employees not eligible

QSEHRA Basics

- Fully employer funded
  - *EEs may not fund directly or indirectly*
  - *Annual maximum for 2017: $4,950 single; $10,000 family*
- HRA may reimburse out-of-pocket medical, dental, vision expenses, incl. individual health premiums
- Standard HRA rules apply:
  - *Claim & reimbursement process*
  - *Expenses are eligible for reimbursement only after they are incurred*
- Availability of QSEHRA will impact subsidy eligibility

Tools From The Cason Group

- Benefits Compliance Checklist(s) & other practical tools for use with your clients
- Continuing webinars, updates, & blog posts
- Support & training options for your team
- Agency-branded workshop or training sessions on various topics (*live or webinar*)

Ask your Sales Rep about these or additional options

Additional Resources

- **The Cason Group**
  - Compliance & ACA updates on website
  - Ongoing updates & info posted on LinkedIn site
  - Contact your Sales Rep for more details on any topic
  - Compliance checklists & brand-able reference content available for active producers
  - Compliance seminars/workshops available
- **Jason Cogdill**: Partner benefits attorney
  - **ProBenefits**: Plan administration & compliance firm
    - *FSA, POP, HRA, HSA, COBRA, ERISA services*
    - *Integrated COBRA/POP/FSA solution for Beacon Benefits Solution*