

MONTHLY BENEFIT News and Developments

Employee Benefits

Milliman on 403(b) Plan Relief

A Milliman white paper, "Ready or not: Clarifications, frustrations, and operations of the final 403(b) regulations," offers a detailed look at what 403(b) plan sponsors need to be doing between now and the end of 2009. The paper describes the relief that the IRS granted 403(b) plan sponsors earlier this year with regards to complying with the requirement that such plans have a written plan document in place by January 1, 2009.

www.milliman.com

Upcoming Key Dates

6/30/09 New, extended deadline for calendar-year multiemployer plans to elect relief under section 204 of the "Worker, Retiree, and Employer Recovery Act of 2008."

9/30/09 (plan years beginning on or before; but after 9/30/08) - Last date defined benefit plans permitted to use prior plan year's funding level for benefit freeze determination.

10/3/09 (plan years beginning on or after) - Effective date for mental health/substance use disorder benefits parity requirements (e.g., 1/1/2010 for calendar-year plans; delay may apply for collectively bargained plans).

10/9/09 (plan years beginning on or after) - Effective date for group health plans and insurance that extend coverage to dependent college students to continue that coverage if the student is on a medically necessary leave of absence (e.g., 1/1/2010 for calendar-year plans).

11/21/09 Effective date that employment nondiscrimination on the basis of genetic information applies.

12/31/09 - Sunset date of one-year suspension of retirement plan minimum required distribution requirements.

Legislative Activity on the Benefits Front

The House and Senate approved a compromise budget resolution for the fiscal year that begins October 1, handing the Obama Administration a major accomplishment by completing work on the nonbinding budget plan that contains the President's top priorities. The negotiated agreement on the budget resolution (S.Con.Res.13) took relatively little time; the House and Senate had approved their respective blueprints in early April, before a two-week-long recess, and hammered out the final document over the following week.

The budget resolution presents a \$3.5 trillion five-year tax and spending plan and spells out the House and Senate priorities, including healthcare system reform. The resolution calls for a "reserve" fund to facilitate healthcare legislation aimed at constraining costs, expanding access, and improving quality. And the final resolution adopted the House version's "reconciliation instructions" for health reform, allowing such legislation to pass the Senate by a simple majority of 51 votes, rather than the 60 normally required to break a filibuster.

The reconciliation instructions direct the various committees (the Senate Finance and the Health, Education, Labor, and Pensions Committees, along with the House Energy and Commerce, Ways and Means, and Education and Labor Committees) to craft bills under their respective jurisdictions that will reduce the deficit by \$1 billion for the 2009-2014 fiscal year period.

In the Senate, the committees' bills should: restrain the growth of health costs; reduce wasteful and inefficient spending; aim for quality, affordable healthcare for all Americans; provide portability of coverage; guarantee choice; invest in prevention and wellness; improve patient safety and quality of care; and pay for itself by reducing healthcare cost growth, improving productivity, or dedicating additional sources of revenue to healthcare coverage.

In the House, the committees' bills should: make affordable health coverage available for all; improve the quality of healthcare; reduce rising healthcare costs; build on and strengthen existing public and private insurance coverage, including employer-sponsored coverage; and preserve choice of provider and plan.

The final agreement also establishes a Senate reserve fund to promote individual savings and financial security, allowing for legislation that promotes "financial security through financial literacy, retirement planning, and savings incentives, including individual development accounts and child savings accounts." The agreement on S.Con.Res.13 does not include provisions found in the original Senate version that called for: expanding the existing "Saver's Credit" (formally, the "Retirement Savings Contributions Credit") that provides an incentive for low- and moderate-income workers to save for retirement; requiring automatic enrollment in 401(k) plans; and requiring employers to offer automatic enrollment in individual retirement arrangements (IRAs) if they do not offer a 401(k) plan.

In an unexpected, but related, development, long-time Republican Pennsylvania Senator Arlen Specter announced his switch in political party affiliation. By becoming a Democrat, the Senate makeup now consists of 57 Democrats and two Independent members who caucus with the Democrats. If the Minnesota court challenge is resolved in Al Franken's favor, the U.S. Senate could have the requisite 60 votes to approve legislation without any support from Republicans. (The House comprises 256 Democrats and 178 Republicans with one seat currently vacant.) ■

CMS Announces 2010 Medicare Part D Drug Benefits

The Centers for Medicare & Medicaid Services (CMS) announced updated benefit parameters for the 2010 Medicare Part D prescription drug benefit.

www.cms.gov

CMS Releases RDS User Guide

The CMS also released the "RDS User Guide," a comprehensive reference for potential participants about the Retiree Drug Subsidy program and how to use the centers' RDS secure Web site.

www.rds.cms.hhs.gov

EEOC's Best Practices for Worker Caregivers

The Equal Employment Opportunity Commission (EEOC) issued guidance on best practices for avoiding discrimination against workers with caregiving responsibilities, including recommendations regarding personal or sick leave, flexible work arrangements, part-time opportunities, and equal-opportunity policies that address unlawful discrimination against caregivers.

www.eeoc.gov

BLS Reports of Interest

The U.S. Bureau of Labor Statistics (BLS) issued a report, "Access to Wellness and Employee Assistance Programs in the U.S.," analyzing the current availability of wellness programs compared with 10 years ago for public- and private-sector workers.

The BLS also issued a study, "Bonuses as Percentage of Cash Compensation," that found that bonuses accounted for only 2.87% of cash compensation for the 42% of employees who received bonuses during the 2001-2007 period.

www.bls.gov

GAO Report on DB Plan Buyouts by Financial Firms

The Government Accountability Office (GAO) issued the report, "Defined Benefit Plans: Proposed Plan Buyouts by Financial Firms Pose Potential Risks and Benefits."

www.gao.gov

Regulatory Roundup

From the Department of the Treasury/IRS:

- *Notice 2009-42*, extending the deadline for calendar-year multiemployer plans to elect relief under section 204 of the "Worker, Retiree, and Employer Recovery Act of 2008" from April 30 to June 30, 2009.
- *Announcement 2009-34*, containing proposed procedures for issuing opinion letters as to the acceptability under section 403(b) of the form of prototype plans. Simultaneously, the IRS is posting draft sample plan language for use in drafting section 403(b) prototype plans.
- An updated annual Health Savings Account tri-fold brochure, with information for 2009.
- *Revenue Ruling 2009-11*, stipulating that differential pay paid by employers to employees who leave their jobs to go on active military duty is subject to income tax withholding but not to Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes.
- A request for comments, jointly with the Department of Labor and the Department of Health and Human Services, regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), to aid in developing regulations implementing MHPAEA.

From the Department of Labor:

- An expanded *Frequently Asked Questions* for employers regarding the COBRA premium reduction with new questions and answers on related model notices.
- The annual "Comparison of State Unemployment Insurance Laws," which provides state-by-state information on which workers are covered, benefit eligibility, and methods of financing, as well as information on six states' temporary disability programs.

From the PBGC:

- *Technical Update 09-3*, providing relief from part 4043 reporting requirements if a required quarterly contribution for the 2009 plan year is not timely made and the failure to do so is not motivated by financial instability.
- Information on the agency's Web site for automobile industry workers and retirees regarding questions about PBGC-insured benefits.

From the Financial Accounting Standards Board:

- *Final Staff Position, FAS 157-4*, Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly.
- *Final Staff Position, FAS 107-1 and APB 28-1*, Interim Disclosures About Fair Value of Financial Instruments.
- *Final Staff Position, FAS 115-2 and FAS 124-2*, Recognition and Presentation of Other-Than-Temporary Impairments.

www.fasb.org

U.S. Court of Appeals Decides in Favor of the PBGC

On April 8, the U.S. Court of Appeals for the Second Circuit overturned a decision by the Bankruptcy Court for the Southern District of New York, finding that a company that enters Chapter 11 and then terminates its pension plan still has to pay the required termination premiums to the PBGC. According to the decision, termination premiums should not be treated as "claims" that can then be discharged in bankruptcy (*PBGC v. Oneida, Ltd.*, No. 08-2964-bk (2nd Circuit, Apr. 8, 2009)). The court reasoned that the clear purpose of the Special Rule in ERISA is to prevent companies from getting out of paying pension plan termination premiums by seeking to reorganize themselves in bankruptcy. The case has been sent back to the Bankruptcy Court for reconsideration in light of the Second Circuit's decision.

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