



## Monthly Benefits Update

January 2013

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*After considering feedback from our clients and contacts who work in the employee benefits area, we have decided to change the format and timing of our periodic employee benefits alerts. Starting with the alert that follows (for January 2013), we will be sending one comprehensive alert at the end of each month that will briefly highlight the most important employee benefits legal developments for that month. It is our hope that these “Monthly Benefits Updates” will be a resource that busy benefits professionals can use to more easily and quickly stay on top of the most critical legal changes and developments (and ensure that none are missed). Perhaps most importantly, our Monthly Benefits Updates will be focused on the clients we serve—namely, employers. We will not include items that employers would generally consider to be low importance or items that do not clearly and directly impact an employer’s responsibility with regard to its benefit arrangements. As a result of this focus, some months will include more items than other months. In any event, we welcome your ongoing feedback and hope you find our new format to be helpful in keeping up with the ever-changing employee benefits landscape.*

### Health & Welfare Plans

#### ***Health Care Reform: IRS Issues Proposed “Pay or Play” Regulations***

The IRS issued [proposed regulations](#) on the Affordable Care Act’s “pay or play” requirement, which is the most important aspect of the ACA for employers. Among many other topics, the proposed regulations clarify that coverage must be offered to at least 95% of an employer’s full-time employees, that the cost of self-only coverage is all that an employer needs to consider when determining whether its coverage is “affordable” for purposes of avoiding pay or play taxes, and that there are a number of design-based safe harbors that an employer can use to ensure its coverage is considered affordable for every employee. The IRS has informally (yet very clearly) stated that employers should rely on these proposed regulations in their planning for pay or play, and that employers should immediately begin this planning in anticipation of the 2014 effective date. Our alert, “[Health Care Reform: Preparations for 2014 Pay or Play Rules Should Begin Now](#),” from January provides a number of strategic considerations for employers as they prepare for the beginning of pay or play in 2014.

#### ***Health Care Reform: IRS Issues FAQs on Various ACA Issues***

The IRS issued another set of [FAQs](#) that covers various topics of interest under the Affordable Care Act. This set of FAQs provides, among other things, that the employer-provided notice of available exchange-based coverage does not need to be provided by the initial March 1, 2013 deadline (a new deadline has not been set but is expected to be late summer or fall of 2013); that health reimbursement arrangements (HRAs) will generally not comply with the ACA’s prohibition on lifetime and annual limits unless the HRA is “integrated” with an employer’s group health plan; and that multiemployer welfare plans can use plan assets to pay the ACA’s annual “PCORI” fee.



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### ***HHS Issues Final HIPAA Regulations Incorporating HITECH Act and GINA***

HHS issued a long-awaited set of [final regulations](#) regarding the changes that were made to HIPAA by the HITECH Act (from 2009) and GINA (from 2008). The final regulations also address changes that have been made to HIPAA's enforcement rules. Employer group health plans (among other covered entities) will generally be required to modify all existing business associate agreements to incorporate the items addressed in these final regulations. Importantly, the deadline for making the required changes to business associate agreements is September 23, 2013.

### **Qualified Retirement Plans**

#### ***IRS Issues New Correction Procedures***

The IRS issued [Revenue Procedure 2013-12](#), which provides a revised Employee Plans Compliance Resolution System, often referred to as "EPCRS." EPCRS allows employers to favorably correct most retirement plan administration errors using either the self-correction program (SCP) or the voluntary correction program (VCP). This new version of EPCRS makes some fairly significant changes to the correction process. Among other changes, employers who correct under VCP will now be required to use a new set of IRS forms when filing a VCP application, and 403(b) plans are now able to voluntarily correct a wider variety of errors than in the past.

#### ***In-Plan Roth Conversions Now Possible Without a Distribution Event***

The American Taxpayer Relief Act (the "fiscal cliff" bill) included a little-publicized provision that allows defined contribution plans to permit participants to convert pre-tax accounts to Roth (post-tax) accounts. Importantly, the participant does not need to experience a distribution event (such as termination of employment, reaching a certain age, etc.) in order to do this. If a plan sponsor would like to allow these conversions, the plan must be amended. The IRS intends to issue further guidance on how these conversions should be administered.

### **Fringe Benefit Arrangements**

#### ***Transit Benefit Limit Increased Retroactively***

The American Taxpayer Relief Act also increased the limit on the amount of pre-tax transit benefits that can be provided under an employer's transit benefit arrangement. The limit was increased to \$240 per month (from \$125), retroactive to January 1, 2012. To ease the administrative headache of making the increase retroactive, the IRS issued [Notice 2013-8](#), which provides employers with a few different alternatives for making the benefit retroactive.



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**ERISA Reporting Requirements**

***DOL Issues Revised Delinquent Filer Voluntary Compliance Program***

The DOL issued a revised [Delinquent Filer Voluntary Compliance Program](#) for late filers of the Form 5500. The revised DFCP Program incorporates changes that have been made to the Program in recent years, primarily to reflect the new EFAST2 electronic filing system for 5500s.

**Other Items of Interest**

***NHL Agrees to Create New Defined Benefit Pension Plan for Players***

Finally, in a somewhat unusual [move](#) that is contrary to current retirement plan and labor trends, the NHL agreed to create a new defined benefit pension plan for its players. The new plan (which will be structured as a jointly trustee multiemployer Taft-Hartley plan) was a key part of the new collective bargaining agreement that was reached between management and the players in early January. Nice work if you can get it.

As always, please let us know if you have any questions on these items or any other recent developments.