The ERISA & Employee Benefits Bulletin™

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INSIDE THIS ISSUE

Let's Roll!

By Mark A. Amadeo, Esq.

This month, the Amadeo Law Firm rolls out its first issue of The ERISA & Employee Benefits Bulletin. This complimentary newsletter for clients and friends of the firm will highlight a few recent legal developments concerning employee benefits. For example, passage of the health care reform law dramatically altered the landscape for companies that offer employee benefits to its employees. In the aftermath of the health care reform legislation, the IRS, Department of Labor, and Department of Health and Human Services clarified aspects of the law by issuing notices and regulations, a few of which will be discussed in this inaugural issue.

If you would like a topic addressed in future issues, please feel free to send along your suggestions to newsletters@amadeolaw.com.

New Rules For Adult Child Health Coverage

By Mark A. Amadeo, Esq.

Under the health reform legislation passed in March 2010 – specifically, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (both of which shall be referred to collectively as the "Affordable Care Act") - group health plans and health insurance issuers generally are required to extend health plan dependent coverage to an employee's adult child until age 26.

On April 27, 2010, the IRS released Notice 2010-38, which made a number of clarifications in order to provide guidance to plans and employers. The Notice clarifies that any employer-paid coverage for an adult child, to the extent the child is not yet age 27, is excluded from an employee's income. The Notice also explains that adult child coverage and benefits are excluded from wages for purposes of FICA and FUTA and that this exclusion applies regardless of age, residency, financial support, and or other dependency limits set forth under the tax code. Notice 2010-38 also provides a transition rule for cafeteria plans that permits employees to make pre-tax salary deductions for accident and health benefits for adult children under age 27 even before a cafeteria plan has been amended to cover these adult children. However, the cafeteria plan must be amended on or before December 31, 2010, to retroactively cover the adult child. Notice 2010-38 can be found at http://www.irs.gov/pub/irs-drop/n-10-38.pdf.

More recently, on May 13, 2010, the United States Departments of Labor, Treasury, and Health and Human Services issued an interim final regulation that also implements the requirements under the Affordable Care Act. The interim final regulation applies generally to plan or policy years beginning on or after September 23, 2010. The interim regulation provides that the terms of a plan or policy concerning dependents cannot vary based on the age of a child younger than 26. The interim final regulation also provides a transitional rule for children who had previously "aged-out" under a plan prior to reaching age 26 or who were too old when the parent first became eligible to participate in the plan. Under the transition rule, a plan must give these children written notice of availability of coverage and an opportunity to enroll in a plan that lasts at least 30 days. The notice and opportunity for enrollment must be provided no later than the first day of the plan year beginning on or after September 23, 2010, and coverage must not begin later than the first day of the plan year. The interim final regulation can be found at http://edocket.access.gpo.gov/2010/pdf/2010-11391.pdf.

Enhanced Tax Credits For Small Businesses Include Dental and Vision

By Mark A. Amadeo, Esq.

The Affordable Care Act signed into law in March 2010 included a health care tax credit to encourage small employers to offer health insurance coverage or to maintain coverage if it was already provided. On May 21, 2010, the Internal Revenue Service issued Notice 2010-44, which clarifies that small businesses that receive state health care tax credits may qualify for the full federal tax credit. The Notice also clarifies that the tax credit is for add-on dental and vision coverage, in additional to regular health insurance. The Notice also contains specific guidelines on qualifying for the credit and several examples to help employers determine if they qualify for the credit and the amount of the credit.

The credit is generally available to small employers that pay at least half of the cost of single coverage for their employees in 2010. The Notice provides that in order to be an eligible small employer, the employer must have fewer than 25 full-time equivalent employees for the taxable year; the average annual wages its employees for the year must be less than $50,000 per employee; and the employer must maintain a "qualifying arrangement" — in which the employer premiums for each enrolled employee offered by the employer is a uniform percentage. For 2010 to 2013, the maximum credit is 35% of premiums paid by eligible small employers and 25% of premiums paid by tax-exempt organizations. Notice 2010-44 can be found at:http://www.irs.gov/pub/irs-drop/n-10-44.pdf.

Supreme Court: Mistakes Happen

Recognizing that "people make mistakes. Even administrators of ERISA Plans," on April 21, 2010, the U.S. Supreme Court ruled that a court is still required to pay deference to a plan administrator's interpretation of a plan, even though the plan administrator's earlier plan interpretation was found to have violated ERISA. In Conkright v. Frommert, *the U.S. Supreme Court ruled in favor of the Xerox Corporation pension plan and the plan's administrator, holding that a court must defer to the plan administrator's interpretation if the plan grants the plan administrator authority to interpret the terms of the plan, and the plan administrator's prior erroneous interpretation was not made in bad faith. The Supreme Court's decision reinforces the already significant deference owed to plan administrators under prior Court precedent.*

ABOUT THE LAW FIRM:
The Amadeo Law Firm, PLLC, is a litigation and consultation boutique with offices in Frederick, MD & Washington, D.C. The firm represents clients in commercial, employment & employee benefit, and government contracting matters.

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IRS Issues Final Regulation on Diversifying Defined Contribution Plans

By Mark A. Amadeo, Esq.

The IRS released its final regulation on diversification requirements for certain defined contribution plans that hold employer securities. Section 401(a)(35) of the Internal Revenue Code imposes a diversification requirement on defined contribution plans that hold publicly traded stock. Under the IRS' final regulation, certain investment funds that include employer securities as part of a broader fund are not treated as holding employer securities. Also under the final regulation, the determination of whether the value of employer securities exceeds 10% of the total value of the fund's investments is made for the plan year as of the end of the preceding plan year. With respect to the prohibition under Section 401(a)(35) against restrictions on investments of employer securities that are not imposed on investments of other plan assets, the final regulation provides that this prohibition applies to any direct or indirect restriction on an individual's right to divest an investment in employer securities, as well as a direct or indirect benefit that is conditioned on investment of employers securities. The final regulation also contains transition rules for certain leveraged ESOP's. The final regulation also permits a plan to allow transfers to be made into or out of a stable value fund more frequently than a fund invested in employer securities and permits a plan to transfer out of a qualified default investment alternative more frequently than a fund invested in employer securities. The final regulation is effective for plan years on or after January 1, 2011, and can be found at http://edocket.access.gpo.gov/2010/pdf/2010-11924.pdf.