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▶ 3Q2010

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Retirement Legal and Compliance Update

REMINDER: FORM 5500 FILING DEADLINE

Form 5500 filing deadline is Oct. 15, 2010, for calendar year plans that previously filed an extension (Form 5558). As of this publication, the DOL has not provided an extension for filings, even as these plans prepare to file electronically for the first time. Electronic filing using the EFAST2 systems applies for plan years beginning on or after Jan. 1, 2009.

HEALTHFORM UPDATES:

UPDATE TO OVER-THE-COUNTER DRUG REIMBURSEMENTS

In response to the recent IRS Notice 2010-59 issued pursuant to changes made by the Patient Protection and Affordable Care Act (PPACA), the Special Interest Group for IIAS Standards (SIGIS) is making significant changes to the list of over-the-counter (OTC) drugs and medicines considered eligible for reimbursement using a debit card at a point of sale merchant.

Based on the SIGIS press release (see link below), over 15,000 items will be removed from the Eligible Products List. Over 27,000 items will remain on the list for purchase without a prescription or the need for further substantiation. These include: insulin, medical devices (including crutches, blood sugar monitors, etc.), bandages, contact lens solution and denture bond. The updated Eligible Products List will be published on Dec. 15, 2010, and merchants will have until Jan. 15, 2011, to be compliant with the new guidance.

Press Release about Eligible Products List:

www.sig-is.org/en/documents/2010_09_22_SIGIS_PressRelease.pdf

Press Release about IRS Guidance:

www.sig-is.org/en/documents/2010_09_08_PressReleaseHCR.pdf

SIGIS Website:

www.sig-is.org/en/index.asp

DOL Updates PPACA Website to Add FAQs, Part II

The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) updated its Affordable Care Act Web page on Oct. 8, 2010, to add PPACA FAQs, Part II. These nine questions further address grandfathered status scenarios, dental and vision benefits, rescissions and preventive health services, and provide clarification relating to policy year and effective date for individual health insurance policies.

PPACA FAQs, Part II: www.dol.gov/ebsa/faqs/faq-aca2.html

Original PPACA FAQs (Sept. 20, 2010): www.dol.gov/ebsa/faqs/faq-aca.html

IRS Offers PPACA Guidance on Adoption Credit

The Internal Revenue Service (IRS) has released Notice 2010 – 66 providing guidance on the expanded adoption credit that is available for tax year 2010 as a result of the health care law, along with a draft version of the form that taxpayers will use to claim it. PPACA increased the maximum adoption credit to \$13,170 per child, up from \$12,150 in 2009. It also makes the credit refundable, meaning that eligible taxpayers can receive the credit even if they owe no tax for that year.

IRS Notice 2010 – 66: www.irs.gov/pub/irs-drop/n-10-66.pdf

IRS Draft Version of Form 8839: Qualified Adoption Expenses: www.irs.gov/pub/irs-dft/f8839--dft.pdf

EBSA Posts Spanish HCR Notices

The EBSA has a website with health care reform information, including model notices. Links are available on the site for notices in English and Spanish.

For more information: www.dol.gov/ebsa/

The Medicare Donut Hole: 50 Percent Discount Starts in 2011

PPACA has started to address Medicare's so-called "donut hole," which is a coverage gap in Medicare's prescription drug program that may cause serious financial challenges to Medicaid participants who reach a certain amount of spending on their drugs. Currently, the government is issuing \$250 rebate checks to Medicare participants affected by the coverage gap in 2010. Starting in 2011, Medicare participants will receive a 50 percent discount on covered brand-name drugs they need while in the "donut hole," and will start to pay less and less for generic drugs.

For more information: www.healthcare.gov/news/blog/donuthole.html

PPACA Will Help States Plan for Health Insurance Exchanges

On Sept. 30, 2010, the Department of Health and Human Services (HHS) awarded nearly \$49 million to help 48 states and the District of Columbia plan for the establishment of health insurance exchanges. Although state exchanges are not required to be operational until 2014, these planning grants begin laying the groundwork for 2014.

For more information: www.dhhs.gov/news/press/2010pres/09/20100930b.html

Fact Sheet: www.healthcare.gov/news/factsheets/esthealthinsurexch.html

State Grant Awards List: www.healthcare.gov/news/factsheets/grantawardslist.html

HHS Announces Second Round of Accepted Applicants for the ERRP

On Oct. 4, 2010, HHS announced additional employers and unions accepted into the Early Retiree Reinsurance Program (ERRP). Nearly 1,000 large and small businesses, state and local governments, educational institutions, nonprofit organizations and unions have been accepted into the program and will begin to receive reimbursements for their early retirees' medical claims this fall. That brings the total number of approvals to nearly 3,000 organizations. HHS announced the first round of nearly 2,000 approvals in August.

News Release: www.hhs.gov/news/press/2010pres/10/20101004a.html

For More Information: www.ERRP.gov

Fact Sheet: www.healthcare.gov/news/factsheets/early_retiree_reinsurance_program.html

HHS Releases ERRP Reimbursement Guidance

On Sept. 28, 2010, HHS released guidance relating to the ERRP. The new guidance further clarifies ERRP reimbursement policy by describing the types of medical items or services that are generally excluded from Medicare coverage. Such medical items and services will generally not be credited for purposes of the program's cost threshold and will not be reimbursed.

www.errp.gov/download/Claims_Eligible_for_Reimbursement%5b1%5d.pdf

FEDERAL UPDATES:

Small Business Jobs Act Makes Changes to Roth, Other Tax Issues

On Sept. 27, 2010, the Small Business Jobs Act of 2010 (SBJA) was signed into law, significantly expanding potential use of Roth IRAs within the retirement plan landscape. Specifically, beginning in 2010, the new law allows eligible employees to rollover amounts from their retirement plans – 401(k), 403(b) or governmental 457(b) – to a Roth IRA, and to defer to 2011 and 2012 any related tax. The new rules describe certain eligibility requirements and limitations relating to Roth IRA rollovers from the various types of retirement plans. SBJA also provides for certain small business tax credits and deductions relating to health insurance, as well as new rules in connection with cell phones and fringe benefits.

Pub. L. No. 111-240: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5297enr.txt.pdf

Joint Committee on Taxation Technical Explanation: www.jct.gov/publications.html?func=startdown&id=3707

Abercrombie & Fitch Fined \$1,047,110 After I-9 Audit

Investigations announced a \$1,047,110 fine settlement reached with the clothing retailer Abercrombie & Fitch for violations of the Immigration and Nationality Act related to an employer's obligation to verify the employment eligibility of its workers.

In 2009, ICE implemented a new, comprehensive strategy to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce. Under this strategy, ICE is focusing its resources on the auditing and investigation of employers suspected of cultivating illegal workplaces by knowingly employing illegal workers.

For more information: <http://www.ice.gov/pi/nr/1009/100928detroit.htm>

DOL Orders Payment of \$173,000 in Back Wages for Misclassifying Employees

Barlen Contracting Inc. and Barlen PG Inc., two landscaping and snow removal companies in Farmington Hills, MI, have been court-ordered to pay \$173,000 in back wages to 16 employees following an investigation by the DOL's Wage and Hour Division (WHD). The investigation disclosed that the companies violated the Fair Labor Standards Act (FLSA) by requiring employees to register as independent contractors and then paying them straight time for hours worked beyond 40 in a week.

The WHD's investigation found that the two companies failed to pay the misclassified employees the minimum wage for all hours worked and overtime compensation for all hours worked over 40 in a week. In addition, the company failed to preserve adequate and accurate pay records as required by law.

For more information: www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Midwest/20101007.xml
FLSA requirements information: www.dol.gov/whd