Burns & Levinson LLP

EMPLOYMENT UPDATE

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Employee Benefits Checklist

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Employers that offer an array of benefits to their employees have done so often to keep their compensation packages competitive in the marketplace. Offering retirement and certain fringe benefit programs can be particularly cost-efficient, provided that the employer complies with the rules allowing for tax relief.

Healthcare coverage is undergoing fundamental change thanks to the Affordable Care Act (ACA or "Obamacare"). These changes affect how employers are evaluating their health benefits for employees.

The following is a checklist of issues for employers to keep in mind as they manage employee benefits programs.

A. Retirement Plans

1. Does the employer have the best type of retirement plan for its workforce, and does it meet the highest priority goals? Choosing the right plan design is one basic key to meeting retirement goals.

2. Have the employer's Cycle D individually-designed retirement plans been filed with IRS for a new tax determination letter? (An employer is a Cycle D filer if the employer's federal tax identification number ends in 3, 4, 8 or 9.) Having an up-to-date tax determination letter provides evidence that the money held in the retirement plan is not subject to immediate tax.

3. If the retirement plan is on a prototype document, have all the interim amendments been made and signed timely? Not having made interim amendments timely can adversely affect the tax shelter of the plan.

4. Are the retirement plans amended to allow for spousal rights to participants in same-sex marriages?

5. Is the plan's summary plan description up to date? The law requires employers to distribute summaries of the retirement plan and any material plan changes periodically. Such summaries are also an important way for employers to communicate the retirement benefits available to employees.

6. If the retirement plan has more than 100 employees, has the employer made arrangements to have outside auditors audit the retirement plan? Audits are required as part of the annual Form 5500 with the federal government. They are also an important tool for catching operational errors and other problems.

7. Is the proper amount of employer contributions made timely to the plan? Missing the deadline can mean missing a deduction on the employer's tax return for the prior year.

8. Are 401(k) deferrals deposited into the plan as soon as administratively practicable and fast enough to satisfy U.S. Department of Labor requirements? Failing to meet the deposit rule timely can subject the employer to penalties and the cost of correction.

9. Do the retirement plans meet the nondiscrimination tests, taking into account all related business entities and applicable employees? Failing such tests can adversely affect the tax shelter of the plan if not corrected.

10. If employees select plan investments, have the fiduciary responsibilities been met for selecting investment options? Has a default investment option been chosen that meets U.S. Department of Labor standards?

11. If investment managers select investments, have they been meeting the investment criterion set by the employer?

12. Do plan fiduciaries meet during the year to review investments and make changes as appropriate? Is a record kept of these meetings?

13. Are plan administrative and investment fees reasonable for the services rendered?

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14. Are plan fiduciaries appropriately bonded for the protection of plan assets?

15. Do plan fiduciaries have liability insurance?

16. Are plan operations being appropriately monitored and administered (e.g. plan eligibility, vesting, loan programs, hardship withdrawals, etc.)?

17. Has the employer been meeting its requirements regarding employee disclosures and Form 5500 filing requirements?

B. Health Plans

1. Have the balances in health flexible spending accounts been limited to $2,500?

2. For reimbursements of medical costs over $2,500, has the employer considered other tax-favored strategies?

3. Have the flexible spending accounts been "integrated" with the employer's regular medical plan to ensure compliance with the ACA?

4. Is the employer's cafeteria plan up to date?

5. Will the employer's health plan be updated to comply with the ACA? Planning now for ACA changes helps employers anticipate and plan for any increased costs.

6. Has the employer put a strategy in place for dealing with the employer mandate under the ACA?

C. Other Employee Issues

1. Has the employer stopped imputing compensation income and withholding tax on employees receiving benefits for same-sex spouses?

2. Is the employee handbook up to date?

3. Has the employer considered having employment agreements, severance programs and/or deferred compensation packages for its executives? If so, are those programs tax efficient and in compliance with applicable law and reporting requirements?

Burns & Levinson, LLP is available to help employers meet the complex requirements relating to employee benefits. For more information, please contact:

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