

Compliance Corner

March 20, 2018

Health Care Reform

CMS Letter Questions Idaho's Authorization of Non-ACA-Compliant Individual Policies

On March 8, 2018, CMS issued a letter to Idaho Gov. Otter and Insurance Director Cameron that states that health insurance products sold under the state insurance department's Bulletin No. 18-01 don't comply with several provisions required under the ACA. As such, CMS acknowledged its duty, somewhat reluctantly, to take over enforcement responsibility if it determines that a state fails to substantially enforce the requirements. [Continue reading »](#)

Federal Health Updates

IRS Updates Publication 969 Addressing HSAs, HRAs and Health FSAs

On March 1, 2018, the IRS released an updated version of Publication 969 for use in preparing 2017 individual federal income tax returns. While there are no major changes to the 2017 version (as compared to the 2016 version), the publication provides a general overview of HSAs, HRAs and health FSAs, including brief descriptions of benefits, eligibility requirements, contribution limits and distribution issues. [Continue reading »](#)

IRS Publishes 2018 Version of Publication 15-B, Employer's Tax Guide to Fringe Benefits

The IRS recently published the 2018 version of Publication 15-B, Employer's Tax Guide to Fringe Benefits. Publication 15-B contains information for employers on the tax treatment of certain fringe benefits, including accident and health coverage, employer assistance for adoption, dependent care and educational expenses, discount programs, group term life insurance, HSAs, FSAs and transportation benefits. [Continue reading »](#)

IRS Revises Certain Annual Limits Due to Tax Reform Legislation

In the last edition of Compliance Corner, we announced that the IRS had decreased the maximum HSA contribution for family coverage in 2018 from \$6,900 to \$6,850. This was one of several adjustments needed to be made to inflation amounts due to changes made in the Tax Cuts and Jobs Act (2017 tax reform). Two of the other adjusted limits announced in Rev. Proc. 2018-18 (as part of Bulletin 2018-10) on March 5, 2018 were the adoption assistance exclusion/adoption credit and the small business health care tax credit. [Continue reading »](#)

Fifth Circuit Reverses Standard of Review for ERISA Cases

On March 1, 2018, in *Ariana M. v. Humana Health Plan of Tex., Inc.*, 2018 WL 1096980 (5th Cir. 2018), the U.S. Court of Appeals for the Fifth Circuit issued a landmark decision, changing how the court will review cases involving ERISA claims.

Announcements

Podcast Episode 26: Is the DOL's Fiduciary Rule Doomed?

In this episode, Beth Allen, former DOL investigator, discusses the DOL's fiduciary rule and how it changed the definition of "fiduciary" to include more investment advisors. Then she highlights the recent Fifth Circuit Court decision that could result in the Fiduciary Rule's demise. [Continue Reading »](#)

Reminder: Sections 6055 and 6056 Reporting Deadlines

Applicable large employers (ALEs —those with 50 or more full-time employees, including equivalents) during 2016 must comply with IRC Section 6056 reporting in 2018. Specifically, ALEs should have completed and distributed a Form 1095-C to full-time employees by March 2, 2018. Additionally, self-insured employers should have completed and distributed Forms 1095-B to employees by March 2, 2018 (as required under IRC Section 6055 reporting requirements). [Continue reading »](#)

State and Territory Updates



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As background, there are generally two standards of review for ERISA benefit cases: *de novo* and deferential. With a *de novo* standard of review, the court examines the plan document and evidence to render a decision on merit. In contrast, a deferential standard of review gives preferential treatment to the plan administrator's decision. The court examines the plan administrator's decision to see if it's supported by substantial evidence and confirm it wasn't an abuse of discretionary authority. Under deferential treatment, a plan administrator's decision could be upheld even if it's technically in contradiction to the plan language, as long as it's supported by reasonable evidence and wasn't capricious or arbitrary. [Continue reading »](#)

Retirement Updates

Fifth Circuit Vacates the Fiduciary Rule

On March 15, 2018, the U.S. Court of Appeals for the Fifth Circuit (the Court) vacated the fiduciary rule (the Rule) in a 2-1 decision in U.S. Chamber of Commerce v. DOL, 5th Circ., No. 17-10238. As background, the Rule amended ERISA's definition of "fiduciary" by considering a larger subset of communications to be investment advice that renders the person providing that advice a fiduciary. [Continue reading »](#)

Tenth Circuit Rules in Favor of DOL Fiduciary Rule on Issue of Fixed Indexed Annuities

On March 13, 2018, the U.S. Court of Appeals for the Tenth Circuit issued a ruling upholding the DOL's fiduciary rule (the Rule). As background, the Rule was adopted by the DOL in April of 2016, and it amended ERISA's definition of "fiduciary" by considering a larger subset of communications to be investment advice that renders the person providing that advice a fiduciary. Additionally, the DOL introduced new prohibited transaction exemptions (PTEs) and amended others in order to permit common compensation structures and to cover certain types of transactions. The PTEs that were central to this case are the new Best Interest Contract Exemption (BICE) and PTE 84-24, which allows an exemption for commissions paid to insurance brokers in connection with a plan's purchase of insurance or annuity contracts. [Continue reading »](#)

IRS Memo Provides Guidelines for Missing Participant Audits of 403(b) Plans

On Feb. 23, 2018, the IRS issued a memorandum to employee plans auditors that discusses the steps an employer should take in attempting to locate missing plan participants. As background, the memo specifically addresses how to locate missing participants who may be due required minimum distributions from their 403(b) plan. However, the IRS guidance is also helpful for any situation where an employer must locate participants for purposes of distributing benefits. [Continue reading »](#)

FAQ

We have an employee moving from full-time to part-time. Do we need to continue offering benefits? [Read the Answer »](#)

Reference

Commonly Used Acronyms [Glossary »](#)