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Employee Benefits and Human Resources Law

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2016 Year in Review

Part I: Health and Welfare Plans

Numerous legal and regulatory changes in the health and welfare benefits, human resources, and retirement and pension arenas in 2016 meant another busy year for employers. To help employers navigate the new requirements and legal changes, Haynes Benefits presents its second annual three-part “Year in Review” series. The first installment of this three-part series focuses on the legal and regulatory highlights in the health and welfare benefits arena. Though it is impossible to discuss every action in this brief update, here’s a quick recap of some of the most significant health and welfare benefits compliance developments in 2016:

- IRS issued an alert warning of a new phishing scheme involving W-2s;
- EEOC issued final regulations regarding wellness plans under the ADA and GINA as well as a model notice for compliance with the ADA notice requirements;
- IRS issued proposed Form 5500 updates and regulations, including a new Schedule J, that will significantly impact small and large employers;
- HHS issued final regulations under Section 1557 of the ACA related to coverage of gender transition related services;
- DOL issued guidance outlining plan provisions that may serve as “red flags” for potential parity issues under MHPAEA;
- OCR released guidance on cloud computing services as they relate to the HIPAA Privacy, Security, and Breach Notification Rules;
- IRS released the 2016 final 1094-C and 1095-C forms and instructions and granted a 30-day extension for furnishing statements to individuals;
- IRS released the 2016 final 1094-B and 1095-B forms and instructions;
- OCR announced the launch of Phase 2 HIPAA Audits focused on both covered entities and business associates;
- DOL released a new SBC template and uniform glossary changes;
- HHS, IRS and DOL issued final regulations that generally provide that short-term, limited duration (< 3 months) insurance can be an excepted benefit;
- Congress passed the 21st Century Cures Act which includes provisions for qualified small employer HRAs and calls for agency guidance on health plan disclosures related to MHPAEA;

- IRS issued Notice 2016-64 announcing increased PCOR fee for plan years ending on or after 10/1/2016 and before 10/1/2017;
- OSHA issued final regulations prohibiting employers from retaliating against employees who receive premium tax credits for Exchange coverage or for “whistleblowing” about certain ACA violations;
- IRS Notices 2016-55 and 2016-69 which grant tax relief for employees that elect to forego leave (sick, personal, vacation) in exchange for employer donations to eligible relief organizations before 1/1/2018 (Louisiana storms and Hurricane Matthew);
- IRS issued Revenue Procedure 2016-55 increasing the FSA salary reduction limit to \$2600 for the 2017 plan year; and
- IRS issued numerous letters regarding COBRA disability extension, HSA contributions and cafeteria plan administration aimed at affirming existing rules.

The legal and regulatory landscape in 2017 and beyond holds the promise of both change and uncertainty as the new administration has repeatedly vowed a full repeal of the ACA. On Inauguration Day, President Trump signed an Executive Order establishing the White House’s commitment to seeking something which will be labeled “repeal” of the ACA. While this Executive Order really only reaffirms the commitment to repeal, legislators are looking for options to “replace” or “repair”. We will continue to stay abreast of the latest legal and regulatory changes and will keep you informed on how and when these changes will impact your organization.

Stay tuned for Parts II and III of this series, which will provide a review of 2016 in the human resources and retirement and pension arenas.

Dated: February 24, 2017