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2016 Year in Review Part II: Retirement Plans

This article is the second of our three-part “2016 Year in Review” series. This article highlights significant retirement plan developments in 2016.

- DOL Final Fiduciary Rule Revisited in 2017
 - Clearly the most significant legal development in 2016 was the issuance of the Department of Labor Final Fiduciary Rule, which redefined a fiduciary in the DOL regulations and revised prohibited transaction requirements. The new rule is controversial, particularly by some broker-dealer advisers and insurance agents, and several lawsuits have been filed.
 - President Trump has sent a memo to the DOL to revisit the Final Rule. The Secretary of Labor has started the process which proposes to delay the April 10, 2017, applicability date of the Final Fiduciary Rule by 60 days.
- IRS Determination Letters for Individually Designed Retirement Plans
 - The IRS announced that effective January 1, 2017, applications for determination letters by individually designed retirement plans will no longer be accepted. An exception applies for new or terminated retirement plans and other limited circumstances as determined by the IRS.
 - The IRS also indicated that in the last quarter of each calendar year, beginning in 2016, the IRS will issue a “Required Amendments List” of the required amendments that need to be adopted during the immediately following two calendar years. On December 27, 2016, the IRS announced in IRS Notice 2016-80 that for most individually designed retirement plans, no changes would need to be made in 2017 and 2018.
- DOL Exempts Certain Retirement Savings Arrangements Established by States and Political Subdivisions for Non-Governmental Employees

- In 2016, the DOL granted an exemption from ERISA for payroll deduction savings programs established and maintained by a state or a qualified subdivision of a state, such as a certain cities. The program must be implemented and administered by the state or city establishing the program for private sector employees.
- Participation in the program is voluntary for employees. Employer involvement in the program is required but is limited to collecting employee contributions and promptly remitting them to the program and other administrative requirements.
- Seven states have passed legislation to create these programs (California, Connecticut, Illinois, Maryland, New Jersey, Oregon, and Washington) and several other states are considering the adoption of state run retirement savings plans for private workers. The U.S. House of Representatives, however, has adopted a resolution revoking the DOL exemption.
- COLA and Other Benefit and Contribution Increases for 2017
 - Here is a link to our earlier Haynes Benefits alert that discusses the 2017 IRS limits.

[2017 Cost-of-Living Adjustments for Retirement Plans](#)
- Restatement of 403(b) Plans
 - On January 31, 2017, the IRS issued Rev. Proc. 2017-18, which provides that 403(b) plans must be restated using IRS pre-approved plan documents and adoption agreements during the three (3) year amendment period ending on March 31, 2020.
 - IRS opinion and advisory letters for 403(b) pre-approved plans should be issued soon. Employers can expect to receive restated 403(b) documents from their providers in the near future.

Please watch for our final article next week that will review key HR legal developments in 2016.

Dated: March 9, 2017