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IN THIS ISSUE

IRS RELEASES ADDITIONAL EXAMPLES OF WHEN AN EMPLOYER MAY RECOVER MISTAKEN HSA CONTRIBUTIONS

The Internal Revenue Service (IRS) recently released Information Letter 2018-0033 which expands the instances in which an employer, who mistakenly contributes to an employee's Health Savings Account (HSA), may recover those funds.

Background

Nearly ten (10) years ago, the IRS released Notice 2008-59 (Notice), which provides general guidance on HSAs. The Notice includes two examples in which an employer may recover a mistaken HSA contribution:

- If an employer makes an HSA contribution to the account of an employee who was never an eligible individual, the employer may request the financial institution to return the amounts back to the employer; and
- If an employer contributes amounts to an employee's HSA that exceed the maximum annual contribution limit due to an error, the employer may request the financial institution to return the excess amounts to the employer

Information Letter 2018-0033

Information Letter 2018-0033 clarifies that the Notice previously released nearly ten (10) years ago was not intended to provide an exhaustive list of circumstances in which an employer may request the return of mistaken HSA contributions. Specifically, Information Letter 2018-0033 provides the following additional examples of when an employer may seek to directly recover mistaken HSA contributions:

- An incorrect amount withheld and deposited in an employee's HSA that is greater than the amount shown on the employee's HSA salary reduction agreement
- An incorrect amount that was withheld and contributed which was the result of an incorrect spreadsheet that was accessed, or because one employee was confused for another employee due to similar names
- An amount was incorrectly withheld and contributed based upon a payroll administrator's incorrect entry (including errors made either by an in-house administrator or a third party administrator)
- An amount that is based upon an incorrect payroll file transmission that caused an employee to receive a duplicated HSA contribution

IRS RELEASES ADDITIONAL EXAMPLES OF WHEN AN EMPLOYER MAY RECOVER MISTAKEN HSA CONTRIBUTIONS (CONTINUED)

- An incorrect amount deposited into an employee's HSA due to a change in an employee's payroll election that was not timely processed, which caused an amount to be withheld and contributed that was greater than (or less than) the amount the employee elected
- An amount that was incorrectly calculated (e.g. an annual amount that was allocated over an incorrect number of pay periods); and
- An incorrect amount an employee had withheld and contributed to his/her HSA due to a decimal position being set incorrectly, resulting in a contribution greater than (or less than) intended.

No Action Required

Employers should be aware of the expanded examples of when they may seek to recover mistaken HSA contributions.

For the text of Information Letter 2018-0033, see:

http://www.irs.gov/pub/irs-wd/18-0033.pdf

COMPLIANCE REMINDER: SAN FRANCISCO HEALTH CARE SECURITY ORDINANCE ANNUAL REPORT DUE APRIL 30, 2019

Covered Employers (defined as for-profit employers with 20 or more total employees and nonprofit employers with 50 or more total employees) **must** file an Annual Report with the City on their required minimum health care expenditures made for the benefit of its employees working in San Francisco. The 2018 Annual Reporting Form (ARF) must be filed no later than **April 30, 2019**. The 2018 ARF is currently available here.

Below is a link to the 2018 Annual Reporting instructions:

- Instructions: Annual Reporting Instructions

Tips for completing the Annual Reporting Form

1. Do not submit (2) separate 2018 Annual Reporting Forms using the same Business Account Number unless you are submitting a correction. If multiple businesses or locations share the same Business Account Number, combine the relevant data into a single Annual Reporting Form. If multiple forms are submitted, only the most recent submission will be recorded.
2. Fill out the form completely. Do not enter commas in numeric fields. Enter zeros where appropriate. Enter all dollar amounts in whole dollars; do not include cents.
3. Employees who worked for you throughout the year should be counted in each quarter.
4. If you cannot access the online forms, call the HCSO Office at (415) 554-7892 to request a paper copy of the Annual Reporting Form.

Employers who fail to submit the form are subject to a $500.00 penalty for each quarter that the violation occurs.

Irrevocable Expenditures

Beginning January 1, 2017, only **Irrevocable Expenditures** will be included in an employer's health care spending requirement under HCSO.

An Irrevocable Health Care Expenditure is an expenditure that the employer cannot recover. Employers who set up benefit plans, such as a limited scope HRA (e.g. dental-only plan), will no longer be able to recover the unused amounts, even if the employee leaves the job or if the business ceases to exist. An irrevocable expenditure includes premium payments to insurers for medical, dental, vision coverage, contributions to employees' HSA, MSA, etc. Any payment to the City Option is considered irrevocable.

Beginning January 1, 2018, **self-funded** employers who have workers in San Francisco must base their health care expenditure rate on the total paid claims of a uniform self-funded health plan (e.g., Bronze plan total paid claims must be calculated separately than the total paid claims from the Silver plan). **Self-funded** employers can no longer base their health care expenditures on the COBRA rate of the plan.

The 2018 and 2019 HCSO required health care expenditure rates are as follows:

Employer Size	Number of Employees	2018 Expenditure Rate	2019 Expenditure Rate
Large	All employers w/100+ employees	$2.83 per hour payable	$2.93 per hour payable
Medium	Businesses w/20-99 employees Nonprofits w/50-99 employees	$1.89 per hour payable	$1.95 per hour payable
Small	Businesses w/0-19 employees Nonprofits w/0-49 employees	Exempt	Exempt

QUESTION OF THE MONTH

Does the Commencement of a Domestic Partner Relationship Allow an Election Change Under the Cafeteria Plan Change in Status rules?

QUESTION: One of our employees has entered into a registered domestic partnership. He would like to drop major medical coverage under our calendar-year cafeteria plan when he becomes covered under the plan of his partner's employer later this year. (His partner's plan has a July 1–June 30 plan year.) Do the cafeteria plan change in status rules allow this?

ANSWER: The commencement of a domestic partner relationship will not permit a change of election under a cafeteria plan. The change in status rules allow an election change on account of a change in legal marital status, including marriage, death of a spouse, divorce, legal separation, and annulment. It's true that the list of events in this category is not exhaustive (i.e., the regulation uses the term "including"), and the beginning or ending of a domestic partner relationship may seem analogous to the listed marital events—especially where the domestic partnership is certified or otherwise recognized by the state or municipality where the employee resides. But without further guidance from the IRS, your cafeteria plan should not allow participants to change an annual election based solely on a change in domestic partner status.

However, another permitted election change event may allow your employee to change his cafeteria plan election to drop major medical coverage under these circumstances. If your plan allows election changes due to a "change in coverage under another employer plan," your employee should be permitted to change his election upon showing that he has become covered under the plan of his partner's employer. For this election change event, there is no requirement that the other employer plan be maintained by the employer of a spouse or dependent. Note, however, that this event does not allow health FSA election changes.

Source: EBIA

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