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IN THIS ISSUE

DOL ISSUES FINAL REGULATIONS EXTENDING THE APPLICABILITY DATE OF THE FINAL RULE FOR DISABILITY BENEFIT CLAIMS PROCEDURES

In Marsh & McLennan Agency's October 2017 Legislative Compliance Monthly newsletter, an article was included discussing the Department of Labor (DOL) issuing proposed regulations on October 12, 2017. The proposed regulations delayed the applicability of the Final Rule on claims procedure requirements for ERISA covered disability benefit plans. As a reminder, the Final Rule applied certain ACA protections to disability coverage claims procedures, in order to make the claims denial process more uniform.

The Final Rule was to apply to all disability benefit claims filed on or after January 1, 2018, but the proposed regulations issued on October 12, 2017, proposed to delay the applicability date of the Final Rule to April 1, 2018. On November 29, 2017, the DOL issued **final regulations**, which confirm that the applicability date of the Final Rule on the claims procedures requirements for these disability benefit plans will be delayed by ninety (90) days, meaning the Final Rule will apply to claims filed **on or after April 1, 2018**.

No Action Required

Although no immediate action is required, plan sponsors of disability plans may want to consult with legal counsel as to whether the delay of these rules impacts any future decision making as it relates to future disability claims filed by employees.

For the complete details, see: https://www.gpo.gov/fdsys/pkg/FR-2017-11-29/pdf/2017-25729.pdf

This is informational only, and is not intended to serve as legal, tax or financial advice. You should consult with our qualified legal, tax, or financial advisor before making any changes to your plan.

SAN FRANCISCO UPDATES HCSO WAIVER FORM

Recently, the San Francisco Office of Labor Standards Enforcement (OLSE) posted a new Employee Voluntary Waiver Form. As a reminder, under the San Francisco Health Care Security Ordinance (HCSO), employers need not make a health care expenditure on behalf of an employee who executes a San Francisco Employee Voluntary Waiver Form. This new form is to be used by employers on or after November 1, 2017. More information regarding the waiver form is contained below.

Background

The San Francisco HCSO requires employers with 20 or more employees (50 or more for non-profit companies) to make a health care expenditure on behalf of each employee working a minimum of 8 hours a week. The amount of that expenditure is based upon the number of hours an employee works within the city of San Francisco. The rates contained below are the rates of the minimum health care expenditure amount for an employee working in San Francisco:

Employer Size	Number of Employees	2017 Expenditure Rate	2018 Expenditure Rate
Large	All employers w/100+ employees	$2.64 per hour payable	$2.83 per hour payable
Medium	Businesses w/20-99 employees Nonprofits w/50-99 employees	$1.76 per hour payable	$1.89 per hour payable
Small	Businesses w/0-19 employees Nonprofits w/0-49 employees	Exempt	Exempt

An employer, however, is not required to provide these health care expenditures on behalf of an employee who signs a valid Employee Voluntary Waiver Form issued by the city of San Francisco. If an employee waives employer sponsored coverage, and the employer does not intend to provide a health care expenditure on behalf of that employee, **it is important that the employer specifically have the employee sign the San Francisco "Health Care Security Ordinance Employee Voluntary Waiver Form**". If an employee fails to sign the **Employee Voluntary Waiver Form** issued by the city of San Francisco, the employer will still need to make a health care expenditure on behalf of the employee. Employers are required to retain the signed waiver for a period of not less than four (4) years.

New HCSO Waiver

The updated Employee Voluntary Waiver Form has been amended to include the new HCSO rules issued on October 29, 2017. In order for an employee's waiver to be valid, all of the elements below must be met:

1) The specific Employee Voluntary Waiver Form must be signed by the employee. An employer cannot modify the waiver form in any way.
2) An employer cannot coerce the employee into signing the waiver, and the employee must do so voluntarily.
3) An employee must detail the alternative group sponsored coverage the employee has chosen to enroll into (e.g., spousal coverage, parental coverage, domestic partner coverage).
4) The waiver must be executed at least once a year, because the waiver expires every year.
5) An employee can revoke the waiver, at any time.
6) An employer must provide a copy of the signed waiver to the employee.
7) Electronic versions of the waiver may be signed, so long as:
    a. The waiver is identical to the San Francisco issued Employee Voluntary Waiver Form.
    b. The entire form is viewable to an employee when they are electronically signing the waiver.
    c. The website or location of the electronic waiver does not imply that the employee must sign this electronic waiver.

Action Required

Covered employers in San Francisco should ensure that they are using the new Employee Voluntary Waiver Form, which includes much more information than the previous version of the waiver. Employers should also ensure that they are following the stringent requirements related to employees executing the waiver form.

For the complete details, see Health Care Security Ordinance Employee Voluntary Waiver Form:
https://sfgov.org/olse/sites/default/files/Document/HCSO%20Files/Employee%20Voluntary%20Waiver%20Form%20-%2011.01%20Final.pdf

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QUESTION OF THE MONTH

Does a Midyear Change to a Plan's Deductible Require an Update to the SBC?

QUESTION: Our company sponsors a self-insured major medical plan subject to ERISA. We are considering amending our plan midyear to increase the amount of the deductible, with no other changes in the plan terms. Are we required to update our SBC for this change or otherwise provide notice?

ANSWER: Yes, increasing the deductible under your plan would constitute a "material modification" that would trigger a notice requirement. A "notice of material modification" of a summary of benefits and coverage (SBC) must be provided if a plan makes a material modification in the plan terms affecting the content of an SBC. A material modification includes any modification to the coverage offered under a plan—an enhancement or reduction—that would be considered by an average plan participant to be an important change in covered benefits or other terms of coverage under the plan. Since the deductible is described on page one of the SBC, and the average participant would consider a change in the deductible amount to be important, an increase in the deductible would require a notice of material modification or, alternatively, an updated SBC.

This notice must be provided no later than 60 days prior to the date on which such change will become effective, if it occurs mid-plan year and is not reflected in the most recent SBC that was provided. Note that this notice is in advance of the timing for providing a summary of material modifications (SMM) of a summary plan description (SPD)—generally, not later than 210 days after the close of the plan year in which the modification or change was adopted, or, in the case of a material reduction in covered services or benefits, not later than 60 days after the date of adoption of the modification or change. In situations where a complete SBC notice of material modification is provided in a timely matter, a plan will also satisfy the requirement to provide an SMM.

Source: EBIA

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