

New Health FSA Contribution Limit Just Released for 2015 Plan Years

10.31.14

Today, the Internal Revenue Service released a number of new limits. Please do not blame the messenger because I know that many of you have already started annual enrollment for plan years beginning on or after January 1, 2015 and this was just released changing the limit for health flexible spending accounts for such plan years. Employee salary reduction contributions toward health flexible spending account coverage has been indexed and increased for the first time to \$2,550 for plan years beginning on or after January 1, 2015. The Revenue Procedure announcing the increase did not provide any guidance or relief to plans that had already offered or completed annual enrollment and communicated the unadjusted limit to their employees. This did not change the treatment of amounts that an employer may permit to rollover from a prior year or any of the other relief such as gap periods that employers can elect to use or not use. It just increases the employee salary reduction contribution limit for the health flexible spending accounts by \$50 for next year and employers are not required to use the maximum limit.

There were no changes to the limits for dependent daycare flexible spending account contributions because those are tied to statutory amounts in section 129 of the Code which are not indexed and are not tied to the amount of the dependent care tax credit in Code section 21.

Qualified Transportation Benefits Amounts Do Not Change

Qualified transportation benefit limits for transit passes did not change and remain at \$130 per month for 2015 and the exclusion for qualified parking for 2015 remains at \$250 per month.

Adoption Assistance Benefit Limits

Adoption Assistance programs providing adoption assistance for children with special needs is increased to \$13,400 for 2015 and this limit also applies to expenses paid or incurred by an employer for adoption assistance furnished to employees under an adoption assistance program or plan. The phase out of the exclusion for individuals was also adjusted so that taxpayers with modified adjusted gross income in excess of \$201,010 will see the income exclusion phasing out with it completely phased out at \$241,010.

Health Care Premium Tax Credit Parameters to be Adjusted and those Limits Relate to an Employer's Potential Liability under the Employer Shared Responsibility Penalty

The Internal Revenue Service will issue additional guidance regarding the Affordable Care Act's health care premium tax credit amounts that will be adjusted for inflation in 2015 separately. Those amounts will be relevant to employers in their planning for the employer shared responsibility tax that will be assessed based on offers of coverage and individuals electing out of employer coverage and receiving a health care premium tax credit while purchasing coverage on insurance marketplaces. No timetable was provided regarding when such guidance must be issued.

EEOC Continues its Attack on Wellness Program

The EEOC filed another complaint alleging that another employer's wellness program that required the employees and spouses to undergo certain biometric testing violated the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008 and the Genetic Information Nondiscrimination Act. While the EEOC is challenging wellness programs, there have not been any authoritative opinions issued by courts on any of these recent challenges. So while the EEOC has staked out its position on the programs it challenged, the law is not yet settled in this area. It is important to also remember that many of these programs have been tied to health plans to attempt to take advantage of previous EEOC guidance related to the Americans with Disabilities Act and health plans and a court decision on wellness programs issued in the last few years.

Computer Security and HIPAA Security Must be Monitored on an Ongoing Basis

It is also important to remember the HIPAA Privacy and Security compliance aspects related to health plans and the wellness programs incorporated in the health plans. Data security is increasing in importance to health plans and to

companies as cyber-attacks from hackers are increasing. (See the CBS 60 minutes interview of the FBI director on October 6, 2014). Be sure your health plan (and employer) are keeping watch on the health plan's and employer's computer security to be HIPAA Security compliant and to protect your business. Very few health plans have separate computer systems at an employer and so to the extent the employer's system has any vulnerabilities, so will the health plan. Are you one of the ones that knows you've been hacked or one that does not know they have been hacked.

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