

## Emerging Benefit Risks

04.16.18

**Watch All of the Company's Mailboxes for a New Round of Tax Assessments-** Another wave of Internal Revenue Service ("Service") assessments of the employer shared responsibility tax (a/k/a pay or play) were recently released. This is the third wave of assessments. An employer who receives Letter 226J from the Service will need to ensure that this letter assessing taxes is promptly sent to the correct person or member of the legal department to respond to the assessment. Prompt responses on Form 14764 with supporting documentation are necessary to avoid the assessment process from moving forward to a notice and demand letter from the Service, and then lien and levy procedures the Service can use to recover taxes due. *For employers subject to the employer shared responsibility tax who are part of a group of entities, these tax assessment letters may be sent to each of the member entities and so you need to monitor all of the mailboxes for these assessment letters.* The letters are generated via data match based on tax forms filed and issues have been frequently noted in the systems that generated the tax forms and in the data matching so careful and prompt review of the details provided on these assessments is necessary to be able to minimize the risk of the assessment moving forward to the next stages impacting the company's costs.

**COBRA Class Actions Suggest Reviewing What Your COBRA Vendors Are Doing May Help to Minimize Risks-** Allegedly defective COBRA notices have resulted in three class action settlements against the employer sponsoring the plan and responsible for the COBRA compliance as the plan sponsor in recent years. One other case had a partial class certification and another is proceeding beyond the motion to dismiss stage. The most recent settlement alleged the COBRA election notices were deficient because they omitted a couple of items. *Class action litigation is expensive, employers should consider reviewing the notices being provided by their COBRA coverage vendors as the sufficiency of the notices has been contested more frequently in these recent class actions.*

**Implications of Recent CMS Guidance Relaxing Requirements for Individual and Small Group Insurance for 2019-** These changes will not be effective until 2019. The guidance was released in a variety of forms at the same time as the annual benefit payment parameters for 2019 regulation was released. The guidance provided that the limit on the out of pocket maximum for single coverage for 2019 will be \$7,900 and for other than single coverage will be \$15,800 for 2019. This package of guidance permits states to have greater flexibility in defining what constitutes "Essential Health Benefits" for the individual and small group insurance policies sold in the state on the Federally Facilitated Exchanges. This may permit a greater variety of policies to be available on the Exchanges and it also expands what constitutes a "hardship" for an individual to be able to avoid the individual mandate penalty (yes, it is still set to no longer be in effect in 2019 when the penalty is decreased to \$0). *The change in the individual mandate penalty to \$0 in 2019 coupled with the additional flexibility in what is covered in individual policies on the exchanges may mean that employees may look to alternative coverage through an exchange or to opt out of coverage entirely in 2019, so employers should be certain that their rules for enrollment and special enrollments are clearly communicated to preclude the risk of adverse selection. Employers may find that they will be seeing longer assessment letters from the Service after the 2019 year related to the employer shared responsibility penalty as discussed above.*

**Health Plans and Data Security-** The cyber world continues to have more attacks in new and different ways. Group health plans under the HIPAA Security regulations are to periodically assess their compliance with HIPAA's Administrative, Technical and Physical standards. If there have been changes in your plan's vendors, your HR department's physical facility or your procedures or your IT system, the employer's group health plan should verify that the HIPAA security standards are still satisfied after the changes were made. Periodic review of satisfaction of the required standards is also required.

### Contacts:

Greta Cowart

214.745.5275

[gcowart@winstead.com](mailto:gcowart@winstead.com)

[Marsha Clarke](#) (Admitted in MO and IL)

214.745.5877

[mclarke@winstead.com](mailto:mclarke@winstead.com)

[Nancy Furney](#)

214.745.5228

[nfurney@winstead.com](mailto:nfurney@winstead.com)

[Lori Oliphant](#)

214.745.5643

[loliphant@winstead.com](mailto:loliphant@winstead.com)

*Disclaimer: Content contained within this news alert provides information on general legal issues and is not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.*