ADP National Account Services
Outsourcing for HR, Benefits and Payroll

TECH FLEX

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THREE-MONTH DELAY GRANTED FOR DRUG SUBSIDY RECONCILIATIONS

On March 25, 2008, the Centers for Medicare and Medicaid Services (CMS) announced that employers offering retiree prescription benefits will be provided an additional three months to complete the 2006 and first quarter of 2007 retiree drug subsidy (RDS) reconciliation process. Normally, the reconciliation deadline is the last day of the 15th month following the last day of the plan year. However, as a result of the CMS action, the deadline for all plan sponsors with plan years ending in 2006 with payment reconciliation deadlines of March 31, 2008 now have until June 30, 2008 to complete the reconciliation process. This additional time applies to both calendar and non-calendar year RDS applications that have plan years ending in 2006. Further, plan sponsors whose plan years end in the first quarter of 2007 will also be provided a three-month extension. As a result, the reconciliation process deadline for plans ending in January, February or March of 2007 will be July 31, August 31, or September 30, 2008, respectively. However, the announcement of the extension made it clear that no additional extensions would be granted.

CMS stated the following:

> Please be advised that Plan Sponsors with a 2006 or 2007 application affected by this notice that fail to meet the new reconciliation deadlines…will not be granted any additional time to complete reconciliation (i.e., CMS will not provide a longer time limit and no Plan Sponsor requests for deadline extensions will be considered).

In the event that a plan sponsor who was afforded the extension fails to meet the new deadline, any interim payments made to the plan sponsor will be considered overpayments and CMS will initiate “immediate overpayment recovery action.” Plan sponsors provided

extensions via the CMS announcement, who have not received interim payments, will not be eligible for any subsidy payments for the 2006 or first quarter 2007 applications.

It is important to note that for plan sponsors with plan years ending on or after April 1, 2007, the reconciliation deadline will remain unchanged at 15 months from the last day of the plan year.

As a way of background, The Medicare Prescription Drug Improvement Act of 2003 (MMA) added a new voluntary prescription benefit (Part D) to the Medicare program, effective January 1, 2006. In an attempt to encourage employers who currently offer retiree prescription drug coverage to continue to do so, the MMA offers a subsidy to group health plans that cover retirees who are entitled to enroll in Part D but who elect not to do so. Plan sponsors of retiree prescription drug coverage seeking the 28% tax-free subsidy for providing prescription drug coverage to Medicare Part D-eligible retirees and family members must file an application for each plan year with CMS.

As part of the application process, plan sponsors must complete a reconciliation process. Reconciliation is the mandatory, final accounting of actual retiree drug costs for which the plan sponsor has or will be receiving the 28% tax-free subsidy. Failure to provide the required reconciliation will result in denial of the subsidy application. In the event interim subsidy payments have been made, CMS will initiate actions to recover the previously paid funds.

For a copy of the CMS announcement, please click on the link provided below:

http://www.rds.cms.hhs.gov/recon_deadline.htm

HSA SUBSTANTIATION REQUIREMENT PASSES HOUSE

On April 15, 2008 the United States House of Representative passed a bill titled "The Taxpayer Assistance and Simplification Act of 2008" (Act), that if enacted into law would require that health savings account (HSA) claims would need to be substantiated "in a manner similar to the substantiation required for flexible spending arrangements." The vote count was 238 in favor and 179 opposed.

Under the current HSA guidance, an HSA account holder is allowed to claim expenses incurred for any reason (medical and non-medical). Claims incurred that are qualified medical expenses are tax free to the HSA account holder. Non-medical expenses claimed under an HSA are subject to income tax plus a 10% additional withholding. However, HSA trustees are not required to request substantiation of any expense claimed under the HSA. The HSA account holder is responsible for reporting to the Internal Revenue Service (IRS) any expense claimed under the HSA that is not a qualified medical expense and subject to taxation.

Under the Act and as passed by the House, an expense will only be considered to be a qualified medical expense if the expense claimed under the HSA is substantiated by the trustee "or a party designated by the trustee." As under the present law, distributions from an HSA would be allowed for any purpose and substantiated qualified expenses would be excludable from income. Expenses not substantiated would be includible in the income of the HSA account holder and subject to the 10-percent additional tax. However, the Act would require the HSA trustee to request substantiation of the expense to determine if the expense claimed was a qualified medical expense. If the expense claimed is not substantiated (no

receipt submitted) or does not constitute a qualified medical expense, the HSA trustee must report to the account holder and the IRS, no later than January 15th of each calendar year, the name, address and identifying number of the account holder and the amount paid or distributed out of the HSA for the preceding year not substantiated as a qualified medical expense.

If the Act should become law, it would be effective for amounts paid or distributions made out of a HSA after December 31, 2008. In order to become law, the Act must still pass the full Senate and be signed into law by the President. On April 16, 2008, the Act was received in the United States Senate and introduced and referred to the Senate Committee on Finance.

For a copy of "The Taxpayer Assistance and Simplification Act of 2008", please click on the link provided below:

http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.5719.RFS:

MASSACHUSETTS RELEASES 2008 HIRD FORM

Massachusetts released the 2008 version of the Health Insurance Responsibility Disclosure (HIRD) form. The HIRD form must be utilized by employers subject to the Massachusetts Health Care Reform Act (Act) to collect information from workers in Massachusetts who decline employer health care coverage or do not enroll in the employer's pre-tax premium payment cafeteria plan. Under Massachusetts law, employers with 11 or more full-time employees are subject to the provisions of the Act.

Background:

On April 12, 2007, Massachusetts Governor Mitt Romney signed the Act into law. The main goal of the law is to ensure that all Massachusetts state residents over age 18 have affordable, comprehensive medical coverage. Residents who have access to affordable coverage but do not obtain the coverage, or do not obtain a waiver from the mandate, will face state tax penalties. The penalty for failing to obtain affordable coverage for calendar year 2008 and going forward is up to 50% of the cost of the minimum insurance premium for the coverage available to the individual.

Employers subject to the Act, except those who pay 100% of the premium must establish an Internal Revenue Code §125 plan to enable employees to pay their share of health care premiums on a pre-tax basis. The coverage may be purchased through the employer's plan or through the state if the employee is not eligible for employer-subsidized coverage. A copy of the Section 125 plan must be filed with the state.

Employers who are required to establish a Section 125 plan and fail to do so may be charged a "free rider surcharge" IF:

- One of their employees or dependent(s) of an employee receives health care services paid for as free care on three or more occasions during any hospital fiscal year, OR if there are five or more occurrences of health care services paid as free care by all employees combined during any fiscal year, AND

- The total cost of the free care to the state is $50,000 or more.

The Division of Health Care Finance will base the size of the "free rider surcharge" on a number of factors including past compliance failures and the size of the employer. The amount of the penalty assessed may be between 10% and 100% of the cost of the free care paid by the state.

All employers subject to the Act will be required to file with the state an Employer HIRD form containing the following information regarding:

- the number of full-time and part-time employees working in Massachusetts;
- the employer sponsored group health plan, if any;
- whether the employer offers to arrange for coverage; and,
- whether the coverage is insured or self-insured.

Also note that an additional Employee HIRD form, for which the 2008 version has been released, must be filed for each employee indicating whether the employee was offered coverage, whether they accepted or declined, or whether the employee has access to alternative coverage such as through a spouse. Employers should immediately discontinue use of the 2007 version.

For a copy of the 2008 Employee HIRD form, please click on the link provided below:

http://www.corpsyn.net/Legislative/Images/Reg_021208.pdf

WASHINGTON ENACTS FAMILY MILITARY LEAVE ACT

On March 18, 2008, Governor Christine Gregoire of Washington signed into law the Family Military Leave Act (S.B. 6447). This new law, **effective June 12, 2008,** provides that during a period of military conflict an employer must allow an employee who is married to a military member of the U.S. armed forces, national guard, or reserves to take up to 15 days unpaid leave while their military spouse is on leave from a deployment; or before and up to deployment once the spouse receives official notification of an impending call or order to active duty. The 15 days of unpaid leave is per deployment.

At the signing ceremony, Governor Gregoire stated the following:

> I am pleased to sign this and to thank those who are sacrificing so much for our country. Effective June 12, 2008, the bill will give military families an opportunity to connect before and after deployments. By doing so, these families already facing uncertainty are better able to stay intact and healthy."

For a copy of the Washington Family Military Leave Act, please click on the link provided below:

http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Senate%20Passed%20Legislature/6447.PL.pdf

IRS REISSUES W-2 AND W-3 FORMS AND INSTRUCTIONS

The February 2008 Tech Flex noted that the Internal Revenue Service (IRS) released Forms W-2 (Wage and Tax Statement) and W-3 (Transmittal of Wage and Tax Statement) and the accompanying instructions. Due to errors in the employer instructions, these forms and instructions have been reissued. Corrections to the previously released information are as follows:

Form W-2

On page 10, under *Due dates,* the first two sentences should read: "Furnish Copies B, C, and 2 to the employee generally by February 2, 2009. File Copy A with the SSA by March 2, 2009."

Form W-3

Under *When To File*, the first sentence should read, "mail any paper Forms W-2 under cover of this Form W-3 Transmittal by March 2, 2009."

Instructions

On page 3, under *Furnishing Copies B, C, and 2 to employees,* the first sentence should read: "Furnish Copies B, C and 2 of Form W-2 to your employees, generally, by February 2, 2009."

On page 8, under *Failure to file correct information returns by the due date,* the third, fourth and fifth sentences should read:

$15 per Form W-2 if you correctly file within 30 days (by March 31 if the due date is March 2); maximum penalty $75,000 per year ($25,000 for small businesses, defined later).

$30 per Form W-2 if you correctly file more than 30 days after the due date but by August 3; maximum penalty $150,000 per year ($50,000 for small businesses).

$50 per Form W-2 if you file after August 3 or you do not file required Forms W-2: maximum penalty $250,000 per year ($100,000 for small businesses)."

On page 8, under *Exceptions to the penalty,* the last bullet should read, "Filed corrections of these forms by August 3."

On page 8, under *Failure to furnish correct payee statements*, the second sentence should read: "The penalty applies if you fail to provide the statement by February 2, if you fail to include all information required to be shown on the statement, or if you include incorrect information on the statement." The last sentence of the second paragraph should read: "The penalty is not reduced for furnishing a correct statement by August."

The IRS posted these corrections on its website on March 11, 2008. Forms and/or instructions downloaded or printed prior to this date are now obsolete.

For a copy for the updated version of Form W-2, please click on the link provided below:

http://www.irs.gov/pub/irs-pdf/fw2.pdf

Please click on the link below to obtain the revised Form W-3:

http://www.irs.gov/pub/irs-pdf/fw3.pdf

The modified W-2 and W-2 Instructions are located on the provided below link:

http://www.irs.gov/pub/irs-pdf/iw2w3.pdf

ILLINOIS MODIFIES GARNISHMENT RULES

As a result of the enactment of Illinois Senate Bill 229, the following provisions of the current Illinois law in relation to garnishments are modified **effective January 1, 2008.**

The administrative fee that an employer may charge for a garnishment order will be 2% of the amount that is required by the order to be deducted. Under the previous law, the employer withheld administrative fee is the greater of $12 or 2% of the amount required to be deducted based on the garnishment order.

Also effective on January 1, 2008, the new rules stipulate that an employer that ceases to remit payments required by a garnishment order, except for a lawful reason (i.e. employee terminated employment) may have a conditional judgment entered against it for the remaining balance due on the garnishment withholding order. However, the employer will be afforded the opportunity to demonstrate why the conditional judgment should not be made a final judgment. Where the employer fails to respond to the conditional judgment, the court will finalize the judgment and add court costs.

For a copy of Illinois S.B. 229, please click on the link shown below:

http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=51&GA=95&DocTypeId=SB&DocNum=229&GAID=9&LegID=27696&SpecSess=&Session=

TEXAS SUSPENDS UI REPLENISHMENT TAX FOR 2008

On March 10, 2008, Governor Rick Perry announced that the unemployment insurance (UI) replenishment tax in Texas would be suspended for 2008. An estimated 370,000 Texas businesses will be eligible for the tax suspension, which will save employers $90 million.

As a way of background, the replenishment tax is a flat tax assessed to all employers. Its purpose is to replenish the UI Trust Fund for one half of the benefits paid to eligible workers that are not charged to any specific employer. In 1983, this tax was added in order to recoup these benefits, as in these cases no employer is liable for repayment of these benefits, thus

depleting the UI Trust Fund. The Legislature decided the only way to replenish these funds was to have all experienced employers pay for this cost.

In his announcement regarding the replacement tax suspension, Governor Perry stated the following:

> I believe in truth-in-budgeting: when government levies a tax and collects more money than is needed, we must either stop collecting the tax, return the money or both," Thanks to our healthy economy and low unemployment rate last year, the state collected more money for the unemployment trust fund than we need, which is why I'm directing the state to bring that tax to a screeching halt for this year.

Please click on the link provided below, for a copy of Governor Perry's announcement.

http://www.twc.state.tx.us/news/press/2008/031008press.pdf

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