June 2012, Issue VI

ADP National Account Services
Outsourcing for HR, Benefits and Payroll

Tech Flex

ESSENTIALS

Topics Covered in this Issue:

Benefits:

- IRS Provides Health FSA Salary Reduction Contribution Limit Guidance
- Summary of Benefits and Coverage Calculator Released

Payroll:

- Georgia Modifies Garnishment Administrative Fee

Leave:

- Connecticut Provides Leave Rights to School Paraprofessionals

IRS PROVIDES HEALTH FSA SALARY REDUCTION CONTRIBUTION LIMIT GUIDANCE

The Affordable Care Act (ACA) enacted in March of 2010 limited the annual amount of salary reductions that an employee may contribute to a health flexible spending account (health FSA) to $2,500. The new limit is effective for "taxable" years beginning after December 31, 2012.

On May 30, 2012, the Internal Revenue Service (IRS) released Notice 2012-40 to provide further guidance on the $2,500 salary reduction contribution limit.

Interpretation of Term "Taxable Year"

The ACA stipulated "that an employee may not elect for any **taxable year** to have salary reduction contributions in excess of $2,500 made to such arrangement." The IRS has interpreted "taxable year" in this context to mean the plan year of the cafeteria plan (rather than the tax year of the participant, which would generally run from January 1 through December 31) "as this is the period for which salary reduction elections are made." For example, an employee whose employer's cafeteria plan begins April 1, 2013 and runs through March 31, 2014 may make salary reduction contributions to the health FSA during this period in an amount not exceeding the statutory limit.

Effective Date of Limit

Notice 2012-40 confirms that the $2,500 limit does not apply to cafeteria plan years that commence prior to January 1, 2013. Consequently, a plan year beginning July 1, 2012 and ending on June 30, 2013 would not be subject to the $2,500 salary reduction contribution limit. Such a plan would be subject to the limit with the plan year beginning July 1, 2013.

Deadline to Amend Plan Documents

Notice 2012-40 stipulates that a cafeteria plan which includes a health FSA option must amend its plan documents (plan document and summary plan description) to reflect the $2,500 limit, or at the employer's discretion, a lower limit specified under the terms of the plan. Although the cafeteria regulations provide that cafeteria plan amendments must be effective prospectively, the IRS states that amendments to conform to the salary reduction contribution limits specified in the ACA and that are adopted on or

before December 31, 2014 may be effective retroactively as long as the cafeteria plan implements the statutory limits for plan years beginning on or after January 1, 2013.

Impact of Limit on Grace Period

The cafeteria plan regulations provide that a plan may implement a period of up to two and one-half months following the end of the plan year to allow participants to incur and be reimbursed for expenses from contributions made in the previous plan year. The IRS guidance stated that, where a plan provides such a grace period, unused salary reduction contributions to the health FSA for plan years beginning in 2012 or later that are carried over into the grace period for the next plan year will not count against the $2,500 limit for the subsequent plan year.

Limit Applies to Salary Reduction Contributions and Certain Flex Credits, but Not Employer Non-Elective Contributions

The $2,500 limit applies ONLY to salary reduction contributions under a health FSA and does NOT apply to employer non-elective contributions. However, if an employer provides flex credits that employee may elect to receive as cash or a taxable benefit, those flex credits are treated as salary reduction contributions and would count toward the $2,500 limit.

Impact of Short Plan Years

The cafeteria plan regulations allow that a plan may implement a "short plan" year (*i.e*. a plan year of less than twelve months) but "only for a valid business purpose." The IRS stated that if a plan implements a short plan year "in order to delay the application of the $2,500 limit, such change is invalid and the plan year for the cafeteria plan remains the plan year that was in effect prior to the attempted change."

Further, if a cafeteria has a short plan year that begins after 2012, the $2,500 limit must be prorated based on the number of months of that short plan year. For example, a nine month plan year is required to have a health FSA salary reduction contribution limit of $1,875 ($2,500/12 = $208.33 X 9 = $1,875).

Limit Applies on Employee-by-Employee Basis

Notice 2012-40 provides that the $2,500 limit in effect for plan years commencing on or after January 1, 2013 applies on an employee-by-employee basis regardless of the number of individuals (spouse, child of employee) whose expenses are reimbursable from the health FSA. However, if two spouses work for the same employer and participate in the same health FSA, the limit applies separately to each participant.

Inadvertent Excess Salary Reduction Contributions

The IRS guidance provides that if a plan timely amends its plan documents to limit the amount of health FSA salary contributions to $2,500, but one or more employees is erroneously allowed to contribute in excess of the limit, the cafeteria plan will not be disqualified for the plan year in which the excess contributions were made IF (1) the terms of the plan apply uniformly to all participants; (2) the error is based on a "reasonable mistake by the employer (or the employer's agent)" and is not due to willful neglect by employer or its agent and (3) salary reductions made in excess of the limit are paid to the employee and reported as wages subject to withholding on the employee's Form W-2 or W-2c for the employee's taxable year "in which, or with which, ends the cafeteria plan year in which the correction is made." For example, if the employer's cafeteria plan year ends on June 30, 2014, any excess salary reduction contributions made to a health FSA must be reported as wages on the Form W-2 or W-2c issued for the taxable year ending December 31, 2014.

Limit to Be Adjusted Annually for Inflation

In accordance with the ACA, Notice 2012-40 provides that the $2,500 health FSA salary reduction contribution limit will be adjusted annually for "cost-of-living" for taxable years beginning after December 31, 2013.

For a copy of Notice 2012-40 please paste the following web address into your browser.

http://www.irs.gov/pub/irs-drop/n-12-40.pdf

SUMMARY OF BENEFITS AND COVERAGE CALCULATOR RELEASED

As reported in the May 2012 Tech Flex, the United States Treasury Department (Treasury), Department of Labor (DOL) and Department of Health and Human Services (HHS), collectively referred to as "the Departments," released on May 11, 2012 additional guidance in the form of frequently asked questions regarding the Summary of Benefits and Coverage (SBC) and uniform glossary requirements under the Patient Protection and Affordable Care Act (PPACA) that must be prepared and distributed by the plan administrator in the case of a self-insured plan, or the insurer in the case of a fully-insured plan. In addition, various other documents including a model SBC template, instructions, and uniform glossary were made available as well as comments that a "model coverage examples calculator" (calculator) would be made available soon.

On June 5, 2012, the Departments made available the calculator, and related instructions and algorithm, to assist plans and insurers in preparing the required coverage examples for the SBC. Under the regulations, SBCs must include "coverage examples" that illustrate the proportion of care expenses a health plan would cover in two common benefits scenarios: having a baby and managing type 2 diabetes. The intended purpose of the SBC is to estimate what proportion of expenses under an illustrative benefits scenario might be covered by the plan to allow a covered individual to make a comparison of his or her share of the costs under different plan options.

The Departments state that the calculator is intended as a transitional tool for plans and insurers to use as a safe harbor to complete the coverage examples in a streamlined fashion for the first year of applicability although this approach will be "less accurate."

The calculator instructions provide the following:

"The Departments developed this calculator for plans and issuers to use as a safe harbor for the first year of applicability to complete the coverage examples in a streamlined fashion; because this approach will be less accurate, it is being allowed as a transitional tool for the first year of applicability. This tool is intended to provide plans and issuers with time to develop accurate methods to populate the coverage examples treatment tables in the summary of benefits and coverage (SBC) template. Plans and issuers will be required to provide comprehensive coverage examples that are based on the coverage information specific to the benefit package no later than January 1, 2014."

For a copy of the calculator, calculator instructions, calculator checklist and calculator logic, please click on the links provided below.

Calculator:

http://cciio.cms.gov/resources/files/sbc-coverage-calculator.xlsm

Calculator Instructions:

http://cciio.cms.gov/resources/files/sbc-cover-ex-calc-instructions.pdf

Coverage Calculator Checklist:

http://cciio.cms.gov/resources/files/sbc-cover-ex-calc-check.pdf

Calculator Logic:

http://cciio.cms.gov/resources/files/sbc-cover-ex-logic.pdf

For additional information regarding the SBC requirements, please see the April 2012 and May 2012 editions of Tech Flex.

April 2012 Tech Flex:

http://westnsc.adp.com/fsa_cobra/tf/Tech_Flex_Newsletter_April_2012.pdf

May 2012 Tech Flex:

http://westnsc.adp.com/fsa_cobra/tf/Tech_Flex_Newsletter_May_2012.pdf

GEORGIA MODIFIES GARNISHMENT ADMINISTRATIVE FEE

As a result of the enactment of Georgia House Bill 683 (HB 683), the administrative fee that an employer as garnishee can impose on an employee for whom the employer is required to prepare and file a garnishee's answer to a summons of garnishment has been increased from **$25.00** or 10 percent of the amount paid into court, whichever is greater, not to exceed **$50.00** to **$50.00** or 10 percent of the amount paid into court, whichever is greater, not to exceed **$100.00**

HB 683 specifically amended Georgia Code Section18-4-97, relating to the right of garnishee to actual reasonable expenses in making a true answer of garnishment as follows:

"(a) The garnishee shall be entitled to ~~his~~ the garnishee's actual reasonable expenses, including attorney's fees, in ~~making a true answer~~ preparing and filing a garnishee's answer to a summons of garnishment. The amount so incurred shall be taxed in the bill of costs and shall be paid by the party upon whom the cost is cast, as costs are cast in other cases. The garnishee may deduct ~~$25.00~~ $50.00 or 10 percent of the amount paid into court, whichever is greater, not to exceed ~~$50.00~~ $100.00, as reasonable attorney's fees or expenses.

(b) If the garnishee can show that ~~his~~ the garnishee's actual attorney's fees or expenses exceed the amount provided for in subsection (a) of this Code section, ~~he must~~ the garnishee shall petition the court for a hearing at the time of ~~making his~~ filing the garnishee's answer without deducting from the amount paid into court. Upon hearing from the parties, the court may enter an order for payment of actual attorney's fees or expenses proven by the garnishee to have been incurred reasonably in ~~making his~~ preparing and filing the garnishee's answer."

For a copy of HB 683, please click on the link provided below:

http://www.legis.ga.gov/Legislation/20112012/119972.pdf

CONNECTICUT PROVIDES LEAVE RIGHTS TO SCHOOL PARAPROFESSIONALS

On May 31, 2012, the Governor of Connecticut enacted Senate Bill 150 (SB 150) which reduces the number of work hours school paraprofessionals in educational settings need to qualify for family and medical leave benefits. Under federal law, all municipal employees, including these paraprofessionals, qualify for benefits under the Family and Medical Leave Act (FMLA) if they have been employed by the municipality for at least 12 months and worked at least 1,250 hours in the previous 12 months.

SB 950 requires boards of education to provide benefits equal to those provided by the federal FMLA to paraprofessionals who have (1) been employed by the board for at least 12 months and (2) worked at least 950 hours for the board during the 12 months prior to taking the benefit. It similarly reduces the work requirement, from 1,250 to 950 hours, for the paraprofessionals to request leave to serve as an organ or bone marrow donor.

It is important to note that SB 150 requires the labor commissioner adopt implementing regulations and specifies that the paraprofessionals cannot begin accruing the necessary 950 hours before the labor commissioner has adopted implementing regulations.

A copy of SB 150 is provided below:

Senate Bill 150 modified Connecticut Statute Section 31.55rr as follows:

Substitute Senate Bill No. 150

Public Act No. 12-43

AN ACT CONCERNING FAMILY AND MEDICAL LEAVE BENEFITS FOR CERTAIN MUNICIPAL EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 31-51rr of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Each political subdivision of the state shall grant any employee of such political subdivision who is (1) a party to a **[**civil union, as defined in section 46b-38aa**]** marriage in which the other party is of the same sex as the employee, and who has been employed for at least twelve months by such employer and for at least one thousand two hundred fifty hours of service with such employer during the previous twelve-month period the same family and medical leave benefits under the federal Family and Medical Leave Act, **[**Public Law**]** P.L. 103-3, and 29 CFR 825. 112, as are provided to an employee who is a party to a marriage in which the other party is of the opposite sex of such employee, or (2) on or after the date regulations are adopted pursuant to subsection (f) of this section, a school paraprofessional in an educational setting who has been employed for at least twelve months by such employer and for at least nine hundred fifty hours of service with such employer during the previous twelve-month period the same family and medical leave benefits provided under subdivision (1) of this subsection to an employee who has been employed for at least twelve months by such employer and for at least one thousand two hundred fifty hours of service with such employer during the previous twelve-month period.

(b) (1) Any employee of a political subdivision of the state who has worked at least twelve months and one thousand two hundred fifty hours for such employer during the previous twelve-month period, or (2) on or after the date regulations are adopted pursuant to subsection (f) of this section, a school paraprofessional in an educational setting who has been employed for at least twelve months by such employer and for at least nine hundred fifty hours of service with such employer during the previous twelve-month period may request leave in order to serve as an organ or bone marrow donor, provided such employee may be required, prior to the inception of such leave, to provide sufficient written certification from the physician of such employee of the proposed organ or bone marrow donation and the probable duration of the employee's recovery from such donation.

(c) Nothing in this section shall be construed as authorizing leave in addition to the total of twelve workweeks of leave during any twelve-month period provided under the federal Family and Medical Leave Act, **[**Public Law**]** P.L. 103-3.

(d) The Labor Department shall enforce compliance with the provisions of this section.

(e) For the purposes of subdivision (2) of subsections (a) and (b) of this section, no hours of service worked by a paraprofessional prior to the date regulations are adopted pursuant to subsection (f) of this section shall be included in the requisite nine hundred fifty hours of service.

(f) The Labor Commissioner shall promulgate regulations for the provision of family and medical leave benefits to school paraprofessionals in an educational setting pursuant to this section.

Please contact ADP National Account Services for further information at:

20700 44th Ave. West Suite 600 Lynnwood, WA 98036
Phone: (425) 415-4800 Fax: (425) 482-4527