

2004 Year-End Benefits Alert

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Take a few minutes and read our 2004 Year-End Benefits Alert to determine whether your benefits plan is compliant and ready for 2005. If you have any questions or need assistance regarding these or any other benefit matters, contact any of the attorneys in Holland & Hart's Benefits Law Group.

COBRA FINAL REGULATIONS

The Department of Labor published final regulations that require group health plan sponsors and administrators to review and update their COBRA administrative forms and procedures. The new COBRA notification rules take effect for plan years that start after November 26, 2004, meaning for most employers a deadline of January 1, 2005. Actions that must be taken by then include—

- Revising the general COBRA notice and COBRA election notice,
- Creating new notices for unavailability of coverage and early termination of coverage,
- Establishing reasonable procedures for employees to provide notice of a qualifying event,
- Adopting the new time limit for qualified beneficiaries to provide notice of a qualifying event, and
- Delivering notices under the clarified rules.

NEW DEFINITION OF DEPENDENT

On October 24, 2004, the Working Families Tax Relief Act of 2004 was signed into law. Although the primary purpose of this Act was to extend various tax provisions that otherwise would have expired, it also contains some substantive provisions that affect employee benefits. Among other things, the new law includes a new definition of dependent under Section 152 of the Internal Revenue Code that may have some surprising consequences for employee benefit plans.

To qualify as a dependent, a person must be a U.S. citizen or national or resident of the United States or a resident of a country contiguous to the United States (or be a child adopted by and living with such a person), and must be either a person's "qualifying child" or "qualifying relative." While the new "qualifying relative" definition is very similar to the current rules under Code Section 152, a major difference is that a person cannot be a "qualifying relative" if he is a "qualifying child" of another taxpayer. The new rules provide a narrow exception if support of a person is shared as well as additional tests for determining whether a person is a qualifying relative for general tax purposes. Note while this new definition does not apply to health plans (which is good news for health plans that cover

domestic partners or same-sex spouses of employees), it does apply to Health Savings Accounts.

WARN ACT/SEVERANCE PLANS

A recent case suggests that severance plans may provide that if termination of employment was covered by the Worker Adjustment and Retraining Notification ("WARN") Act, which governs plant closings and mass layoffs, severance benefits would be considered payments required by the WARN Act. Thus, any payments under the plan would be reduced dollar-for-dollar by payments required pursuant to the WARN Act. To implement this offset, severance plans may require amendment.

NONQUALIFIED DEFERRED COMPENSATION

The American Jobs Creation Act of 2004 became law on October 22, 2004. This Act imposes significant new restriction on deferred compensation. If these restrictions are not satisfied, deferred compensation amounts will become taxable as they vest and become subject to tax penalties. Most deferred compensation arrangements are impacted by this Act. A detailed article on these implications is available from Holland & Hart's Benefits Law Group.

HIPAA SECURITY

HIPAA's Security Rule requires covered entities, including health plans, to maintain reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of their electronic protected health information against any reasonably anticipated risk. Most covered entities must be in compliance with the final Security Rule by April 21, 2005; although small health plans (those with annual receipts of \$5 million or less) have until April 21, 2006.

401(K) SAFE HARBOR NOTICE

If you sponsor a 401(k) safe harbor plan, do not forget to send the required safe harbor notice to your employees at least 30 days before the beginning of the 2005 plan year.

FIDUCIARY CHARTER

As the Department of Labor brings its fiduciary education campaign into full swing, it is also applying high standards of fiduciary conduct in its plan investigations. One of the best ways to demonstrate and maintain compliance is to develop and adopt a fiduciary charter that enumerates the duties and powers of plan fiduciaries, whether individuals or committees. The Department of Labor will be asking for a copy of internal fiduciaries' charters in their reviews.

DEFINED BENEFIT INTEREST RATE

Under the Pension Funding Equity Act of 2004, the 30-year Treasury interest rate continues to be substituted for 2005 with a composite corporate bond rate for purposes of funding defined benefit plans. As it

was for 2004, the interest rate used for purposes of determining a plan's current liability is between 90% and 100% of a weighted average of the monthly composite long-term corporate bond rates for the 4-year period ending on the last day before the beginning of the applicable plan year. Interest rates for other purposes are also addressed in the legislation. The IRS has provided interim guidance for determining the applicable interest rate in IRS Notice 2004-34.

2005 PENSION PLAN LIMITS

Compensation Limit		\$210,000
Section 415 Defined Benefit Dollar Limit		\$170,000
Section 415 Defined Contribution Dollar Limit		\$42,000
Elective Deferral Limit		\$14,000
Catch-up Contribution Limit		\$4,000
Highly Compensated Employee Definitional Limit		\$95,000
Key Employee Officer Compensation		\$135,000
ESOP Payout Limits		\$170,000 / \$850,000
Social Security Wage Base		\$90,000
Minimum Compensation Amount for SEPs		\$450
Contribution Limit for SIMPLE		\$10,000
Catch-up Limit for SIMPLE		\$2,000
IRA Contribution Limit(Traditional, Nondeductible or Roth)		\$4,000

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