

LEGAL UPDATES

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## Service

Employee Benefits &  
Executive  
Compensation

## Professionals

DAVID W. ECKHARDT  
MILWAUKEE:  
414.978.5414  
DAVID.ECKHARDT@  
HUSCHBLACKWELL.COM

ALAN H. KANDEL  
ST. LOUIS:  
314.345.6463  
ALAN.KANDEL@  
HUSCHBLACKWELL.COM

CRAIG A. KOVARIK  
KANSAS CITY:  
816.983.8249  
CRAIG.KOVARIK@  
HUSCHBLACKWELL.COM

# Year-End Deadlines Reminder for Employee Retirement, Health and Welfare Plans

If it is true that change is the only constant in life, it is equally true that knowledge is the great equalizer. Irrespective of the uncertainty relating to potential income tax reform legislation, employers should be aware of important year-end deadlines and considerations related to their retirement and health and welfare plans.

## Changes to 2018 Plan Limits

Employers should incorporate the new 2018 dollar limits for various employer-sponsored retirement and welfare plans in their summary plan descriptions and other participant communications, and make any necessary changes to the payroll system to apply the new IRS limits for 2018.

The employee salary deferral limit for 401(k), 403(b), and 457(b) plans is increased from \$18,000 to \$18,500. The age 50 catch-up limit remains the same for 2018 at \$6,000. A detailed list of the 2018 retirement plan limits can be found on the IRS website.

The contribution limits for health care FSAs increased from \$2,600 to \$2,650. The contribution limits for HSAs increased from \$3,400 to \$3,450 (single) and from \$6,750 to \$6,900 (family).

## Qualified Retirement Plan Considerations

**Safe Harbor Notices for 401(k) and 403(b).** If a 401(k) or 403(b) plan provides for a safe harbor match or non-elective contributions, the plan must provide an annual safe harbor notice to participants at least 30 days (but no

more than 90 days) before the beginning of each plan year. For calendar year plans, the deadline is December 1, 2017.

**Automatic Enrollment Notice.** If a plan has an automatic enrollment or re-enrollment feature, the plan must provide an automatic enrollment notice at least 30 days (but no more than 90 days) before the beginning of each plan year (i.e., December 1, 2017 for calendar year plans).

**Qualified Default Investment Alternatives (QDIA) Notice.** If participant-directed plan intends to rely on the QDIA safe harbor relief from fiduciary liability, the plan must provide an annual notice at least 30 days (but no more than 90 days) before the beginning of each plan year (i.e., December 1, 2017 for calendar year plans).

**Eligible (and Qualified) Automatic Contribution Arrangements.** EACA and QACA provisions generally cannot be added to a plan mid-year. Therefore, if an employer intends to add an EACA or QACA to its plan for the 2018 plan year, a plan amendment must be adopted before the beginning of each plan year. Participant notices must also be provided at least 30 days (but no more than 90 days) prior to the start of the year (i.e., December 1, 2017 for calendar year plans).

**Adoption of Discretionary Plan Amendments.** If an employer implemented discretionary changes during the plan year, the plan generally must be amended to reflect those changes no later than the last day of the plan year.

**Amendment to Defined Benefit Pension Plans for Bifurcated Payment Options.** For a defined benefit plan that provides bifurcated benefit distribution options (e.g., allows a portion of the participant's benefit to be paid in an accelerated form with the remaining portion paid in the normal form), the plan may need to be amended by December 31, 2017 to receive relief from the anti-cutback rule.

**Revenue Share Account and Forfeiture Accounts.** Revenue sharing payments received by a plan and forfeitures incurred during the 2017 calendar year must generally be used or allocated to plan participants no later than the close of the current plan year, and should not be carried over to the following plan year.

**Provide Annual Funding Notice to Defined Benefit Plan Participants.** An annual funding notice (AFTAP) of the plan's funding status must be provided to participants within 120 days after the

end of the plan year for large plans and by the due date of the Form 5500 annual report for small plans (100 or less participants).

**New Mortality Tables for Defined Benefit Plans.** The IRS recently issued applicable mortality tables used by single-employer defined benefit plans to determine minimum funding requirements beginning in 2018. Plan sponsors may be able to apply, no later than February 28, 2018, for a one-time option to delay use of the new tables for one year provided that they meet certain administrative requirements. If you have not already done so, you should contact the plan actuary of the plan's intent to use the new mortality table or the prior one by applying for the one-year delay.

### **Nonqualified Retirement Plan Considerations**

**Elections for Deferrals.** Participants in a nonqualified deferred compensation plan that is subject to Section 409A of the Code generally must make deferral elections (including payment elections) prior to December 31, 2017, for any amounts that would otherwise be earned during the 2018 calendar year. Plan sponsors are encouraged to provide eligible employees a reminder of any restrictions and advance filing requirements the plan may impose.

### **Health and Welfare Considerations**

**ACA Summary of Benefits and Coverage.** The Affordable Care Act (ACA) requires health plans and health insurance issuers to provide a Summary of Benefits and Coverage (SBC) upon a participant's enrollment to help them understand their coverage. The DOL issued a new updated SBC template for use beginning on or after April 1, 2017, which can be found on the DOL website. Plan sponsors that have an annual open enrollment period are required to use the new SBC template. Therefore, sponsors of calendar-year plans with open enrollment must use the new SBC template for the 2017 fall open enrollment for coverage beginning on January 1, 2018.

**ACA Reporting Deadlines.** Applicable large employers must report to the IRS and provide employees information designed to verify compliance with the employer and individual shared responsibility rules and eligibility for Marketplace subsidies. The following deadlines apply: Forms 1094-B and C must be filed with the IRS by February 28, 2018 (or April 2, 2018 if filing electronically).

Forms 1095-B and C must be distributed to employees by January 31, 2018

**Health Care Exchanges.** The ACA open enrollment period was shortened from 90 days to 45 days for 2018, which may impact employer communications. The open enrollment period for coverage starting January 1, 2018 runs from November 1 to December 15, 2017.

**ACA Employer Mandate Assessments.** Before the end of the year, the IRS will be sending letters to employers that are subject to ACA employer mandate assessments for prior tax years. If an employer wishes to challenge the assessment, it will need to prepare a response and provide any changes to Forms 1095-C or 1094-C. The employer must respond within 30 days of the IRS letter.

### **Contact Us**

Please contact one of our attorneys in the Employee Benefits and Executive Compensation practice group if you have any questions or if you need assistance in preparing plan amendments or employee communication.