

ISLER DARE RAY RADCLIFFE & CONNOLLY, P.C.

EMPLOYEE BENEFITS UPDATE

November 2011

Year-End Compliance Checklist for Benefit Plans

With the holidays fast approaching and 2011 drawing to a close, we wanted to highlight some key compliance actions that benefit plan sponsors should take in the coming weeks:

DEADLINE	REQUIRED ACTIONS
December 1, 2011	Safe Harbor Notice: If you sponsor a safe harbor 401(k) plan, you must prepare and distribute a notice describing the safe harbor or nonelective contributions that you will make to your plan in 2012 in order to avoid ADP/ACP testing requirements. If you sponsor a “springing” safe harbor 401(k) plan, your notice must describe any amendments that you may have made to the plan regarding your safe harbor contribution for 2011, as well as the possibility that you may elect safe harbor status for 2012.
	Annual Enrollment Notice: If your 401(k) plan automatically enrolls participants in the plan, you must prepare and distribute a notice describing the level of contributions that will be taken from each employee’s paychecks automatically, unless the employee makes an affirmative election otherwise.
	QDIA Notice: If your defined contribution plan lets participants direct the investment of their plan accounts, you must prepare and distribute a notice describing the default investment fund into which plan accounts will be invested automatically, unless the participant makes an affirmative election otherwise.
December 15, 2011	Summary Annual Report: For each calendar year retirement, health and welfare plan that filed a 2010 Form 5500 on extension by October 15 th , prepare and distribute a Summary Annual Report. (Note that there are some exceptions to the Summary Annual Report rules, which may apply in limited circumstances.)

DEADLINE	REQUIRED ACTIONS
<p>December 31, 2011</p>	<p>Amendments for Retirement Plans: For calendar year retirement plans, adopt amendments reflecting:</p> <p>(1) Any suspension or waiver of required minimum distributions implemented for the 2009 plan year. (Defined contribution plans only).</p> <p>(2) Any in-plan Roth conversion features that might have been adopted by a 401(k) plan, permitting participants to convert their vested 401(k) accounts to Roth accounts without taking a distribution from the plan. (Defined contribution plans only).</p> <p>(3) Funding-based benefit restrictions that are required for traditional pension plans that are less than 80% funded. (Defined benefit plans only).</p> <p>(4) Any discretionary amendments reflecting changes made to the plan's terms or design that were implemented in 2011 but have not been memorialized in writing, or that are taking effect in 2012 but need to be adopted before implementation. (Defined contribution and defined benefit pension plans).</p>
	<p>Amendments for Health Plans: For calendar year health plans, if your plan documents/Summary Plan Descriptions have not been updated in the past year, adopt amendments reflecting:</p> <p>(1) Health reform changes that took effect in 2011, including coverage of adult children, market-reform changes applicable to non-grandfathered plans, internal claims and external review procedures, etc.</p> <p>(2) Any discretionary changes to the plan's terms or design that were implemented in 2011 but have not been memorialized in the plan documents (except through open enrollment materials), or that are taking effect in 2012.</p>
	<p>CHIP and Other Required Health Plan Notices: Prepare and distribute an updated CHIP Notice, annual notices under such laws as the Women's Health & Cancer Rights Act, and information regarding the availability of your HIPAA Privacy Notice, if they were not already provided in your open enrollment materials this Fall.</p>

Looking ahead to 2012, here are some key dates that you may want to note on your calendar, to plan for the implementation of some requirements that will become effective for the first time next year:

DEADLINE	REQUIRED ACTIONS
January 1, 2012	W-2 Reporting on Value of Health Coverage: If you sponsor a group health plan, you will need to work with your Payroll Department/Payroll Vendor to ensure that they can capture the value of employer-provided health coverage, to be reported on 2012 W-2 forms that will be issued in 2013. Certain delays apply to small employers.
January 17, 2012	File 8955-SSA for 2009 and 2010 Plan Years: This is a one-time, combined filing, due to implementation of the new Form 8955-SSA.
May 31, 2012	Participant Fee Disclosure: If you sponsor a defined contribution retirement plan and let your participants direct the investment of their plan accounts, you will need to provide them with enhanced information regarding investment fees, based on the information that you will be receiving from your vendors during the first quarter of 2012. This new compliance obligation presents an opportunity for you to develop and implement a comprehensive investment education program for your participants in 2012.
TBD***	<p>Summary of Benefits and Coverage, Plus Uniform Glossary: If you sponsor a group health plan, you will need to provide two new documents--the SBC and Uniform Glossary—in addition to the Summary Plan Descriptions and other enrollment materials that you provide to new hires and health plan participants.</p> <p>***Initially, these new disclosure obligations were scheduled to become effective on March 23, 2012. However, in FAQs published on November 16, 2011 by the U.S. Departments of Treasury, Labor, and Health and Human Services, the Federal government announced that this requirement will not become effective until final regulations are issued. This is good news for employers who were otherwise facing a deadline of March 23, 2012 for complying with this new requirement.</p>

If you have any question about implementing year-end items for 2011 or planning for 2012, please let me know. Best wishes for a happy and healthy holiday season!

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