



HEALTH, ACCIDENT, AND RETIREMENT BENEFITS

CHAPTER 4

2016 CPP Study Group

Types of Health Plans

- Traditional health insurance plans
 - Either through 3rd party or self insured
 - Self insured will typically have a “stop-loss” policy which pays from claims after the ER pays a certain amount or a “minimum premium plan” where cost are shared
- HMO – Health Maintenance Organization
 - Two types of HMO – Traditional (Kaiser) or Individual Practice Association
 - Premium is prepaid to selected medical groups for each member regardless of use
 - No deductible or complex claim forms
- POS – Point Of Service, offered by HMOs
 - Use of non HMO facility with deductible and copay
 - Must select a primary care physician
- PPO – Preferred Provider Organization
 - Higher level of service and choice and lower out of pocket costs if net work physicians are use
- ER and EE typically share cost

Affordable Care Act (ACA)

- Coverage for children up to age 26
 - Includes married child but not their spouse or children
 - States eventually followed federal rules
- Reporting of ER/EE cost on W2, box 12 code DD
- Requires “applicable large employers” (ALE 50 EEs previous calendar year) to provide “affordable” insurance to full time employees (average 30 hrs) with “minimal essential coverage”
- Effective 1/1/15 if such insurance is not provided or is provided to fewer than 95% of EEs and their dependents, ER pays “employer shared responsibility” (ESR)
- Even if insurance is provided to =>95%, if one of their EEs obtain insurance through a “health care marketplace” ER must pay the ESR

Affordable Care Act (ACA) cont.

- Affordable Care
 - Cost no more than 9.50% of EEs annual household income
- Beginning 2016 for year 2015, ALEs must report to the IRS (1094-C) and EEs (1095-C) certifying that the plan meets minimum value requirements
 - Copies of 1095-C filed with IRS by 2/28, 3/31 if electronic (required if 250 or greater)
 - Provided to EEs by January 31 (same as W2)
- ER notice to EE regarding availability of coverage options is required advising EEs of existence of Marketplace, services provided and how to contact
 - Initially by October 1, 2013 then at each new hire

Tax Treatment of Contributions and Benefits

- Employer paid premium
 - Excluded from income when part of a valid IRC 125, otherwise taxable
 - Same Sex domestic partner coverage
 - Reimbursements are for medical care as defined under IRC (diagnosis, cure, mitigation, prevention, treatment etc.)
 - Opt out dollars are taxable income

Tax Treatment of Contributions and Benefits (cont.)

- To qualify for exclusion for SS, M/C and FUTA:
 - Must be a written plan made known to employee
 - The plan is referred to in an employment contract
 - EEs contribute to the plan
 - ER contributions are made to a fund separate from ER salary Account
 - ER is required to make a contribution

Tax Treatment of Contributions and Benefits (cont.)

- Non discrimination required:
 - May not discriminate in favor of highly compensated
 - 5 highest paid officers
 - More than 10% owner of stock
 - Top paid 25% of EEs

Tax Treatment of Contributions and Benefits (cont.)

- To be nondiscriminatory the self insured plan must benefit
 - At least 70% of EE benefit
 - 80% of the 70% are eligible to participate benefit
 - Or a class of EE determined by the Secretary of the Treasury benefit
- If plan is discriminatory, reimbursements made to highly compensated are taxable

W2 Reporting Requirement under the ACA

- Predecessor and successor employer requirements
- W3 reporting not required
- Must report “aggregate cost” in box 12 code DD
 - Total cost of coverage under all ER sponsored coverage
 - Includes EE contribution
- Can use COBRA rates or actual premium
- Chart on page 4-30 to 4-31

Same Sex Spouse or Domestic Partner

- June 2013 Supreme Court struck down sec 3 of DOMA
- EE and ER contributions not taxable if married, otherwise taxable
 - Watch for state laws – states must recognize same sex marriage
 - Living together not enough
- Amend tax returns
- ERs can claim SS/MC tax refund

MEDICAL SAVINGS ACCOUNTS

- Health Insurance Portability and Accountability Act of 1996:
 - Established a pilot project to allow EE of small ERs covered under a high deductible medical plan to make pre tax contributions to a MSA (ER can also make contribution)
 - Employed no more than 50 EEs during either of the two preceding calendar years
 - Deductible – 2016 \$2,250-\$3,350 single and \$4,450-\$6,700 family. Max out of pocket \$4,450 single and \$8,150 family
 - No benefits are paid until deductible is met

TAX TREATMENT OF MSA

- Contributions can be made by EE or ER, not both
- Contributions are not subject to taxation with certain limitations
 - Deduction cannot exceed EE earnings
 - Annual maximum contribution is 65% single, 75% family of deductible
 - Excess contributions are included in income
 - ER contributions must be equal for all EEs

TAX TREATMENT OF MSA

- Cannot be part of a cafeteria plan
- Distributions are excluded from income if used for medical expenses for EE or dependents, otherwise taxable
- MSA trustee is not required to determine if used for medical expenses, account holder makes that determination
- ER contributions are reported in box 12 of W2 using code R
- EE reports ER contributions on personal tax return
- EE contributions are not pretax, EE tax deduction taken on personal tax return
- Plan trustee reports distributions on form 1099-SA

COBRA

- Under COBRA ERs with 20 or more EEs are required to provide EE and dependents the right to elect continued group health coverage if lost due to a “qualifying event”
- Generally for 18 or 36 months depending on the qualifying event
- Qualifying events include:
 - Death of covered EE
 - Termination except gross misconduct
 - Divorce/separation
 - Dependent loses coverage

COBRA (cont)

- Premiums paid by EE – 102% (includes 2% administration cost)
- 150% for disabled qualified beneficiaries after the 18th month of coverage
- COBRA premiums paid by ER on behalf of new hires is taxable for terms it is not if provided equally

HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs)

- Paid solely by ER and not under section 125
- Reimburses EE and dependents for medical care expenses
- Reimburses to a maximum dollar limit and unused amounts carry forward
- Generally excluded from EEs income if for substantiated medical reimbursements
- Cash cannot be paid to EE or payment for anything other than medical expenses
- Cannot discriminate
- Provided under COBRA

HEALTH SAVINGS ACCOUNTS (HSAs)

- Created under the Medicare Prescription Drug bill
- Allows EEs to save for future medical expenses
- High deductible plan – 2016 \$1,300 single, \$2,600 family
- Tax-exempt trusts or custodial accounts created exclusively to pay for qualified medical expenses
- EE contributions are deductible
- ER contribution not included in income if ER believes at the time that they will be used for medical purposes
- Max 2016 contribution - \$3,350 for individual and \$6,750 for family
- Contributions in excess of limits are included in income and are subject to a 6% excise tax
- Can be offered as part of a cafeteria plan (deferred comp. Rule in 125 do not apply here)

HEALTH SAVINGS ACCOUNTS (HSAs)

(cont.)

- Catch up contributions allowed for those age 55+ until they enroll in Medicare at which point no contributions are allowed
- 2009 and beyond is \$1,000
- Beginning 2007 EEs can make a one time transfer from an HRS or FSA to an HAS
- Lower paid EEs may receive higher contributions
- Distributions for qualified medical expenses are excluded from income. Includable distributions are also subject to an additional 10% tax unless made after death or permanent disability, or Medicare eligibility.

FAMILY MEDICAL LEAVE (FMLA)

- ER with 50 or more EEs within a 75 mile radius of ER facilities
- 12 weeks of unpaid leave for serious illness, care for ill family member, birth or adoption of child
- Guarantees continued employment and health benefits
- To be eligible
 - Must be employed at least 12 months and worked at least 1,250 hours within the previous 12 month period
 - Vacation time, STD and unexcused absences can be used to complete the 12 month employment requirement

FAMILY MEDICAL LEAVE (cont.)

- Intermittent leave allowed
 - Only time an exempt EE can have a salary reduction for partial days
- Health benefits continue during leave at the same levels as active staff
- Job guarantee upon return from leave
- Recordkeeping requirements
 - Enforced by the DOL's Wage and Hour Division

FAMILY MEDICAL LEAVE (cont.)

- Premiums are EEs responsibility
 - Payment options (watch out for crossing tax year)
 - Pre-Pay – pay before leave begins. Advantage is that it can be pre-taxed
 - Pay-as-you-go – after tax
 - Catch-up – pay upon return. Can be pre tax if available taxable compensation or after tax
- Medical FSA must be allowed (not dependent)
- No requirement to continue non health benefits such as life insurance

SICK PAY PLANS (STD/LTD)

- Payments may be made by ER or 3rd party carrier
- Taxability of benefits depends on how they are funded
 - Fully ER funded – benefits are taxable
 - ER and EE (pre-tax) funded – benefits are taxable
 - ER and EE (after tax) funded – benefits are partially taxable based on ratio of contribution
 - EE funded with after tax – benefits not taxable

SICK PAY PLANS (cont).

Example 1

coverage annual premium	1,000.00
EE paid (pre tax)	500.00
ER paid	500.00

EE benefit received	2,000.00
taxable	2,000.00

Example 2

coverage annual premium	1,000.00
EE paid (after tax)	200.00
ER paid	800.00

EE benefit received	2,000.00
taxable	1,600.00
non-taxable	400.00

SICK PAY PLANS (cont.)

- Payments made through ER self insured plan
 - Payments made through payroll as salary replacement or supplement (offset by SDI etc)
- Payments made by agent
 - Self insured but 3rd party administers and makes payments
 - ER pays 3rd party a cost plus fee and retains insurance risk
 - Agent may withhold at supplemental rates
 - ER retains responsibility for ER SS/MC/FUTA unless it agrees with agent to make these payments

SICK PAY PLANS (cont)

- Payments made by 3rd party insurance carrier
 - ER pays a premium, 3rd party bears insurance risk and assumes a greater roll in tax withholding
 - Carrier is not required to withhold taxes unless EE submits form W-4S
 - Carrier is responsible for EEs share of FICA
 - Carrier is also responsible for ER share of FICA and FUTA unless liability is transferred to ER. To transfer liability carrier must
 - Withhold and timely deposit EEs share
 - Notify ER of payments on which FICA is withheld
 - Provide statement to ER by January 15th of the following year with EE name, SS#, amount of sick pay, taxes

SICK PAY PLANS (cont)

- Depositing withheld taxes
 - Generally rules are the same as with other employment taxes, however liability for depositing may vary depending on who is responsible
 - Deposits made by 3rd party should be under their FEIN. Deposits made by ER should be under their FEIN
- ER makes payment
 - ER reports all in the same manner as with other compensation on 941, lines 2, 5a and 5c
 - Taxable amounts are reported on the W2 in boxes 1, 3, and 5 with non taxable amounts reported in box 12 with code J; withholding in boxes 2, 4 and 6
 - All payments are reported on form 940 in part 2 line 3 with exempt payment in part 2 line 4; box 4e should be checked

SICK PAY PLANS (cont)

- ER's agent makes payment
 - Generally ER makes payments and uses its FEIN to report 3rd party administers payments. If tax responsibility shifts to 3rd party their FEIN should be used.
 - To shift responsibility for tax reporting form 2678, "Employer/Payer Appointment of Agent", must be filed with the IRS
- LTD in excess of 6 months not subject to SS or M/C

SICK PAY PLANS (cont)

- 3rd party insurer makes payment
 - If liability for ER taxes is not transferred to ER by the 3rd party
 - 3rd party files forms 941, 940 and W2, and reports non taxable amounts in box 12 code J
 - Checks box “third-party sick pay” in box 13 of form W2
 - If the 3rd party transfers liability to ER
 - ER files forms 941, 940 and W2 (mark box 13)
 - 3rd party must provide information to ER

PERMANENT DISABILITY BENEFITS

- How premiums are paid determine taxation (EE/ER, A/tax vs. P/tax)
- Amounts paid under a defined plan on or after termination due to death or disability retirement are not subject to SS, M/C or FUTA

WORKERS' COMPENSATION INSURANCE

■ Benefit payment

- Not included in income
- Supplemental payments in excess of WC benefits payment are taxable

■ Premium payments

- Premiums are based on payroll dollars, type of business and Uniform Classification Code (UCC)
- Laws are determined by state
- National Council states (34 + DC)
 - Use Uniform Classification Code

WORKERS' COMPENSATION INSURANCE (cont.)

- Non-National Council states (12)
 - Do not use UCC but use similar codes
 - Use independent workers' comp manuals
- Monopolistic states (4)
 - WC is solely through a state fund
- Competitive state funds (14)
 - Allows private carriers to compete with state fund
- Calcification Codes
 - Assigned based on type of business, manufacturing, mining, construction etc. with different codes used for certain employees
 - % value is assigned to code and multiplied by the total payroll cost for that code, less certain payments such as overtime premium.

CAFETERIA PLANS

- Offers a menu of choices of cash compensation and nontaxable benefits. Also referred to as “flexible benefit plans” which is authorized by IRC 125
- Deferred compensation plan
 - Cannot be offered as part of a cafeteria plan with the exception of 401(k)
 - Vacation buy
 - Accrued vacation must be used before purchased vacation
 - Purchased days cannot be carried over to subsequent year
 - Unused purchased days must be paid out before the end of the plan year

CAFETERIA PLANS

- Funded through “flex dollars” or “flex credits”
- Salary reduction (pre tax deduction)
- “Negative election” OK
- Mid year changes only allowed due to qualifying event
 - Marriage
 - Divorce
 - Change of job
 - Medical support orders
 - Birth/adoption of child etc.
 - And only if status change results in gain/loss of coverage

CAFETERIA PLANS (cont.)

- Non-discrimination testing
 - Highly compensated or key EEs
 - Eligibility test
 - Contributions and benefits test
 - Concentration test
 - And special health benefits test
- Must be performed at year end
- Union contract exception – no discrimination testing

FLEXIBLE SPENDING ARRANGEMENTS

- Health care FSA
 - Election for full plan year, made before plan year begins
 - No deferred compensation – must have use-it-or-lose-it provision
 - If the plan experiences a gain it must be returned to EEs
 - “grace period” may be allowed for up to 2 ½ months after the end of the plan year. Expenses during the grace period can be paid with the prior years contribution before amounts are lost
 - Full years election amount must be made available for use
 - No revoking or changing elections once plan year begins unless there is a qualifying event
 - Reimbursements must be for qualified medical, dental or vision expenses/copays not covered by insurance (no premiums)
 - Claims must be substantiated
 - 2016 \$2,550 annual limit and \$500 carry over

FLEXIBLE SPENDING ARRANGEMENTS

- Dependent care FSA
 - Not subject to uniform coverage rule requiring full election amount be made available
 - Reimbursements cannot be made until contribution is made
 - \$5,000 annual limit

TAX TREATMENT OF CAFETERIA PLANS

- ER contributions to a qualified plan not taxable
- EE pre tax contribution not included in taxable income, after tax contributions are
- GTL taxation for benefits over \$50,000 apply
- Cash always taxable
- Discriminatory plans – key and highly compensated EEs lose tax benefit
- Watch out for state tax regulations

QUALIFIED PENSION AND PROFIT-SHARING PLANS

- Pension plans are categorized as either defined benefit plan or defined contribution plans
 - Defined benefit plan
 - Benefit provide at retirement are generally based on age, compensation, length of service
 - ER contributions are based on actuarially determined
 - Certain benefits insured by federal government through the Pension Benefit Guaranty Corp.
 - Contributions and benefits forfeited reduce ERs future contributions
 - Funds are combined

QUALIFIED PENSION AND PROFIT-SHARING PLANS (cont.)

- Defined contribution plans
 - Funds are in individual accounts with ER contributing a set amount
 - Benefit amounts are based on account balance
 - ER contributions are usually made annually
 - Plan is easier to understand due to individual accounts
 - No actuarial calculations
 - Annual reports must be filed with the IRS and DOL

QUALIFIED PENSION AND PROFIT-SHARING PLANS (cont.)

- Profit sharing plans
 - Defined contribution plan to which company agrees to make “substantial and recurring” contributions but may be discretionary to some degree
 - Contributions are invested and eventually distributed, either at retirement or death, disability or separation of employment
- Annual compensation limits apply
 - Benefit accruals cannot be made on compensation in excess of 265,000 for 2016
 - Total EE and ER contribution cannot exceed the lesser of \$53,000 in 2016 or 100% of EEs compensation

Page 4-111 for chart

- Taxation of qualified vs. non-qualified plans
- State tax treatment based on residency

401(k) CASH OR DEFERRED ARRANGEMENTS

- EE contribution limit for 2016 is \$18,000
- IRC 415 limits, lesser of \$53,000 (2016) or 100% of the employee's compensation for that year
- Eligible compensation for 2016 is \$265,000
- Catch up contribution – 2016 is \$6,000
- Holding period for elective deferrals is 15th business of the month following the month the deferral is made
- Nondiscrimination testing – must not discriminate in favor for highly compensated
 - 5% owner of stock or capital during the current or proceeding year or annual compensation of \$120,000 during the preceding year
- Default elections allowed

401(k) CASH OR DEFERRED ARRANGEMENTS (cont.)

- EE contributions are deferred from FIT and SIT but not SS/MC/FUTA
- ER matching contributions are not subject to SS/MC/FUTA
- Report deferred amount (including catch up) in Box 12 with code “D” and mark box 13 “Retirement plan”
- Excess deferrals
- Early distribution penalty – may be subject to additional 10% excise tax
 - Some exceptions at least age 59 ½ , permanently disabled etc.
- Veterans can make deferrals while in the military
 - ER must allow the deferrals with the reemployment and lasting 3 times the period of military service but no longer than 5 years
 - Deferrals are not subject to elective deferral or contributing limits for the year they are made but are for the year they relate
 - Based on earnings that would have been had he/she not been in the military

ROTH IRA

- Contributions are after tax
- Combination of 401(k) pre-tax and catch up, and Roth contribution cannot exceed \$24,000 for 2016
- Phase out when adjusted income limit is exceeded
- Distributions are not taxable income
- No matching contribution allowed

NONQUALIFIED DEFERRED COMPENSATION PLANS

- Not restricted by nondiscrimination requirements or contribution or compensation limits (bonus)
- Distributions are reported on W2 not 1099-R
- Funded or unfunded – typically unfunded
- ER contributions are subject to FICA when there is no longer a risk of forfeiture
- 409A, if not compliant included in gross income.
 - All amounts deferred and other vested amounts and their earning are subject to FIT and additional 20% tax on the amount included in income
 - Report taxable amounts in box 1 and box 12 code Z
 - Deferred amounts in excess of \$600 report in box 12 code Y
 - If grossed up taxes are subject to additional 20% tax and interest