Are Your Fringe Benefits Legal?

Presented by:
Barbara Erickson
of
Hodges, Loizzi, Eisenhammer, Rodick & Kohn
website: www.hlerk.com

Fringe Benefits

• Fringe benefits are a form of pay for the performance of services that is in addition to “stated pay”

• Generally, fringe benefits are taxable wages unless excluded by the Internal Revenue Code (“IRC”).
Fringe Benefits Overview

• Popular benefit plans:
  - Health Insurance
  - Section 125 Cafeteria Plans
  - Health Flexible Spending Accounts
  - Health Savings Accounts
  - Health Reimbursement Arrangements

• Retirement Plans
  - 403 (b)
  - 457 (b)
  - 457 (f)

• Practical Application

Health Insurance
Health Insurance

- **Methods of Funding**
  - Fully Insured
  - Self-Insured

- **Methods of Providing**
  - Administrator Contracts
  - Collective Bargaining
  - Board Policy

Health Insurance

- **Major Governing IRC Sections**
  - IRC 105
  - IRC 106
  - IRC 125

- **Affordable Care Act Issues**
  - IRC 105(h) (Non-Discrimination)
  - IRC 4980H (Employer Shared Responsibility)
  - IRC 4980I (Cadillac Tax)
Health Insurance

• Non-Discrimination
  • Public Health Service Act Section 2716
    • Applies IRC Section 105(h)(2) to fully insured plans
    • Effective Date

• IRS Notice 2011-1
  • Delayed Enforcement of Section 2716
  • Level of Premiums
  • Self-Insured Plans

Health Insurance

• Employer Shared Responsibility
  • IRC Section 4980H
  • Mandatory Insurance?
    • Applicable Large Employers Must Offer the Opportunity to Enroll in Employer-Sponsored Group Health Insurance With Minimum Essential Coverage That is Affordable and Has Minimum Value to at Least 95% of Their Full-Time Employees (and Their Dependent Children) or Risk Paying an Assessable Payment (Penalty) to the Government
Health Insurance

• Employer Shared Responsibility

• Terms Defined:
  • Applicable Large Employer
  • Minimum Essential Coverage
  • Full-Time Employee
  • Minimum Value
  • Affordable

Health Insurance

• Employer Shared Responsibility

• Transition Rules for First Year
  • Non-Calendar Year Plans
  • Small Applicable Large Employers
  • 70% Offered (Rather Than 95%)
Health Insurance

• Employer Shared Responsibility
  • Penalty Structure
    • 4980H(a)
    • 4980H(b)

• Determination of Full-Time
  • 30 hours – not 40
  • Month-to-Month Method
  • Look-Back Measurement Method

Health Insurance

• Employer Shared Responsibility
  • Look-Back Measurement Issues
    • New Full-Time Employees
    • New Variable Hour Employees
    • On-Going Employees
    • Counting Hours
      • Hourly Employees
      • Non-Hourly Employees
    • Substitute Teachers
    • Hours Reduction
    • Unintended Consequences
Health Insurance

- Cadillac Tax
  - IRC Section 4980I
    - 40 Percent Excise Tax on High-Cost Employer-Sponsored Health Plans
- Amount of Tax
- Plans Included in Calculation
- Responsibility for Calculation
- Calculation of Cost Similar to COBRA
- Effective Date

Health Insurance

- Reporting Health Insurance
  - W-2
    - Mandatory?
    - Effective Date
Health Insurance

• Reporting Health Insurance
  • IRC Section 6055
    • Provider of Minimum Essential Coverage
    • Who Provides?
    • To Whom? Provided?
    • When to Provide?
    • Potential Penalties

• Reporting Health Insurance
  • IRC Section 6056
    • Applicable Large Employers Must File Information Returns and Provide Statements About Health Insurance Offered
    • To Whom Provided?
    • When to Provide?
    • Potential Penalties
Health Insurance

• Practical Applications
  • New Superintendent Contract for ABC Public School District
    • Wants Employer to Pay Full-Family Coverage
    • Premium for Full-Family Coverage is $30,000/Year
    • Employer Pays Full Cost of Single Coverage for Teachers but Not Full-Family
  • PPO Plan is Self-Funded
  • HMO Plan is Fully Insured

Health Care Reimbursement Plans
Health Reimbursement Arrangements

- IRC Section 105
- Funded Solely By Employer
- Reimburse Eligible Medical Expenses
- Unused Amount May Roll to Next Plan Year
- Plan Document Required
- Considered to Be a Health Plan
- May Not Stand Alone (Limited Exceptions)
- No $ Limit

Health Reimbursement Arrangements

- Were Popular Options for Employees Not Offered Medical Insurance
- Must be Integrated With Health Plan
  - Methods of integration
  - No Individual Plans
- Retiree – Only
Medical Reimbursement Plans

• IRC Section 105
• Also Known as Health FSA
• Often Included in Section 125 Plan
• Reimburse Eligible Medical Expenses
• May Not Discriminate in Favor of Highly Compensated
• Employee Contributions Limited to $2,550 Plan Year (2016)
• Plan Document Required
• Use it Or Lose It
• Uniform Coverage Rule

Medical Reimbursement Plans

• Must Remain Excepted Benefit to Avoid ACA Penalty
  • Other Group Health Plan Coverage Not Limited to Excepted Benefits is Made Available for the Year to Employees Offered the Health FSA by the Employer and
  • Maximum Benefit Payable to Participant Cannot Exceed Two Times the Participant’s Salary Reduction Election for the Health FSA for the Year (or, if Greater, Cannot Exceed $500 Plus the Amount of Participant’s Salary Reduction Election)
Health Savings Account

• IRC Section 223
• Annual Limits Apply
• Trust Requirement
• Must be Used With High-Deductible Health Plan
• Individual Must be Eligible
• Non-Discrimination or Comparable Contribution Rules
• FSA and HRA Interactions?

Section 125 Cafeteria Plans

• IRC Section 125
• Exclusive Means to Offer Choice Between Taxable and Nontaxable Benefits Without Causing Taxation of the Nontaxable Benefits
• Choice Without a Valid 125 Plan Results in Taxation of the Otherwise Nontaxable Benefit to the Extent of the Choice
Section 125 Cafeteria Plans

• Plan Document Required
• Non-Discrimination Rules Apply
• May Only Offer Qualified Benefits
• 403(b) Not Allowed
• Outside Health Insurance Not Allowed
• Elements of Written Plan

Health Insurance

• Practical Applications
  • New Superintendent Contract for ABC Public School District
    • Now, While Negotiating Contract, New Superintendent Wants Option to Have Cash Instead of Insurance
    • No Other Employee in School District Has Option of Cash
    • Also Wants Board to Pay for Full Physical Up to $2,000 Each Year and Reimburse Him for Out-Of-Pocket Medical Costs Up to $1,000 Each Year
Deferred Compensation

Section 403 (b)

- Governs Tax-Sheltered Annuity (TSA) Plan
- Retirement Plan for Certain Employees of Public Schools and Certain Not-For-Profit Organizations
- Employer-Sponsored Retirement Plans
- Annual Contribution Limits Apply
- Written Plan Requirement
Section 403 (b)

• Contributions to Plan
  - Employee
    • universal Availability
    • Roth
    • After-Tax
    • Severance
  - Employer
    • Non-Elective
    • Matching
    • Post-severance

Section 403 (b)

• Distributions From Plan
  - Reaches age 59½
  - Severs Employment
  - Dies
  - Becomes Disabled
  - In the case of elective deferrals, encounters financial hardship
  - Qualified Reservist
Section 403 (b)

- Other Considerations
  - Transfers
  - Loans
  - Funding Policy
  - Fiduciary Liability?
  - Third Party Administration
  - IRS Audits
  - Correcting Mistakes

Section 457 (b)

- Governs Eligible Deferred Compensation Arrangements
- Established by State and Local Governments
- Limits Apply
- Not Offset by 403 (b) Contributions
- Plan Document Required
- No Discrimination Rules
Section 457(f)

- Governs Ineligible Nonqualified Deferred Compensation Plans
- Benefits Taxed When No Longer Subject to Substantial Risk of Forfeiture
- Often Found as Post-Retirement Benefits in Collective Bargaining Agreements or Administrator Contracts

Section 457(f)

- Potential Issues Include Failure to Withhold and Pay Over Taxes
- Penalties and Interest
- Contractual Problems
- Interaction With IRC Section 409A
Health Insurance

• Practical Applications
  • New Superintendent Contract for ABC Public School District
    • New Superintendent Wants Option to Have 403(b) Contribution In Lieu of Health Insurance
    • He Also Wants to be Able to Contribute to a 457(b) Plan
    • He Also Wants the Employer to Contribute $40,000 to His 403(b)
    • He Wants a $10,000 Severance in Cash When He Chooses to Leave

Miscellaneous Benefits
Accountable Plans

• Everything is Taxable to an Employee Unless an IRC Code Section Says it Isn’t

• Certain Types of Fringe Benefits May be Provided Tax-Free if They Meet the Accountable Plan Rules

In School Settings, Usually Auto and Travel Allowances

To Meet Rule
  - Allowance Provided in Close Proximity of Time of Use
  - Allowance Amount Reasonable Considering Expected Expense
  - Timely Substantiation
  - Timely Return of Excess
**De Minimis Benefits**

- IRC Section 132
- Applies to Property or Service Provided by Employer to Employee That Has Little Value
- Examples:
  - Non-Cash Holiday Gifts
  - Personal Use of Copying Machine
  - Occasional Tickets for Events

**Meals & Lodging**

- IRC Section 119
- Must be On Employer Premises
- Must be for Employer’s Convenience
- For Lodging, Must be a Condition of Employment
Transportation

- IRC Section 132
- Car
- Travel Reimbursement
- “In-District Travel”
- Commuting
- Mass-Transit

Cell Phones, Computers, & Tablets

- Cell Phones and Cell Phone Allowances May be Provided as Nontaxable Benefit Without Substantiation if Certain Conditions Met
- Does Not Apply to Computers and Tablets
Gift Cards

• A Note About Gift Cards

• If They Are General Merchandise, They Are Cash and Must be Taxed

Miscellaneous

• Practical Applications

  • New Superintendent Contract for ABC Public School District
    • New Superintendent Also Wants $500 Per Month for Travel
    • New Superintendent Wants District to Pay for his Commuting From His House, Which is 30 Miles Away
    • New Superintendent Wants a Cell Phone Allowance of $60 Per Month
A quick word about audits.

Questions