

Robinson+Cole

Manufacturing Law Group

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Please Note

This roundtable is designed to provide accurate information about the subject matter. However, it only provides general information and does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, let us know directly.

Preliminary Considerations

- This platform should not be used for activities prohibited by antitrust law.
- Avoid discussions leading to a restriction, or coordination, of competition between or among attendees.
- Attendees should not share information, have discussions, and/or make arrangements on, among other things, pricing, market conduct, terms of sale, individual manufacturing costs and costs of sale, output, or supplier or customer relations/allocation.

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The Latest Trends and Practices in Employee Benefits

Virginia McGarrity



Presentation Overview

- ACA Employer Mandate Penalties
- Tax Cuts and Job Act
- 401(k) Plan Trends
- Pension Plan Trends

ACA Employer Mandate Penalties

- Letter 226-J penalty notices issued for the 2015 Form 1095/1094 reporting year
 - IRS has issued almost 100,000 penalty letters
 - Some of the penalties are for millions of dollars
 - More are expected to be issued this year, including for 2016
- Form 1094/1095 reporting errors are widespread
 - IRS has a process to submit corrections and dispute the assessment – 30 day deadline from date of notice to appeal
 - Provide a statement and supporting documentation
 - Describe changes to Form 1094/1095

Tax Cuts and Jobs Act

- **26 U.S. Code § 162(m) limitation expanded**
 - Performance-based compensation exception was repealed (subject to limited grandfathering)
 - CFOs are again subject to Section 162(m)
- **Limited ability to defer income on stock options and RSUs**
 - Applies to private companies
 - At least 80% of employees must be granted awards
- **Liberalized rules on plan loan rollovers**
 - Applies to employees whose plans terminate or who separate from service
 - Time for eligible rollovers extended to due date for filing tax return

Tax Cuts and Jobs Act (cont.)

- **Changes to fringe benefits**
 - Employers can no longer deduct qualified transportation benefits (e.g., mass transit, parking, bicycle commuting)
 - Moving expenses are now taxable to the employee
 - Employers can no longer deduct entertainment expenses, and the deduction for meal expenses is limited to 50%
- **Tax credit for paid leave provided under FMLA**
 - Leave program must pay at least 50% of normal wages
 - Tax credit ranges from 12.5% to 25% of the amount paid during the leave period

401(k) Plan Trends

- **Hardship distributions on the rise**
 - The Bipartisan Budget Act of 2018 (HR 1892) relaxes distribution rules for 2019
 - Eliminates the suspension of employee deferrals for 6 months post-distribution
 - Eliminates requirement that participant first take a loan before a hardship distribution
 - Permits hardship withdrawals to include QNECs, QMACs, and related earnings
- **Employers continue to add/enhance auto-enrollment**
- **Increased use of investment consultants**
- **Focus on “financial wellness” (including HSAs)**

Pension Plan Trends

- An average of 86% of plan sponsors are pursuing at least some steps to de-risk a pension plan*
 - Among industry sectors, this number increased to 94% for employers in industrial and manufacturing
- The forms of risk reduction can vary
 - Risk Transfer – lump sum payouts, insurance contract buyouts, full plan termination
 - In-Plan De-Risking – liability-driven investment strategies, plan design changes, plan closure, plan freeze

**PBGC Participant and Plan Sponsor Advocate 2017 Annual Report*

Pension Plan Trends (cont.)

- Why the increased interest in pension de-risking?
 - Improved funded ratio in pension plans
 - Several years of strong market returns
 - Some larger-than-expected contributions for 2017 due to increasing PBGC premiums and higher tax rates that were in effect pre-Tax Reform
 - Tax Reform is creating additional revenue for many companies
 - Continued interest by companies to limit the impact of pension plans on company finances, creating certainty around potential cash contributions and satisfying benefit payments, but also, importantly, getting back to their core businesses

Thank You



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