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2017 *Legislative Update and Tax Reminders*

Headlines

The Affordable Care Act continues to draw enough attention to give 401(k) and pension plans another reprieve from the normal constant bombardment of regulation. Now with a Republican majority, Congressional dismantling of certain provisions is certain. Republicans' real challenge is how to deal with the 23 million newly insured of which 12 Million are covered by the exchanges.

The Department of Labor final Fiduciary Rule is scheduled to become applicable April 1, 2017. Ekon Benefits strongly supports the intent of the rule (1) to raise the standards of investment advice for retirement accounts and (2) to protect investors from high-fee investment products. Ekon maintains a high ethical standard in dealing with the plan sponsor and the plan participant. All too often, plan participants are taken advantage of by financial advisors when they retire. However, legislation has been proposed in Congress to delay the applicability date of the Fiduciary Rulefor two years. Critics of the legislation say the rule is overly burdensome. We'll keep you apprised of the legal maneuvering and of Ekon's response.

Although The Pension Protection Act of 2006 (PPA) is already ten years old, Defined Benefit prototype plans have not yet received blanket IRS determination letters further delaying their restatement date.

PBGC Premium Rate Hikes*

A governmental agency, Pension Benefit Guaranty Corporation (PBGC), insures defined benefit pension plans and charges premiums for the coverage. Premiums paid to the PBGC are seen as fees, rather than taxes, and therefore are an easy source of revenue for Congress to seek, even for purposes unrelated to the private pension system. In the Bipartisan Budget Act of 2013, significant increases in PBGC premiums were implemented on top of previous increases made as part of the Pension Protection Act of 2006. All covered defined benefit plans will be seeing substantial premium increases over the next several years.

* Plans covering only single owners or professional corporations of less than 25 employees are not covered.

Roth 401(k)

Effective 1/1/2006, 401(k) contributions can be designated as *after-tax* money that grows *tax-free*. The Roth 401(k) has significant advantages, but only for certain highly paid employees. Your Plan must contain this optional provision in order to designate your 401(k) contributions as *after-tax* Roth. If you're maxing out your 401(k), designating them as Roth contributions to permit *tax-free* growth can be a real financial advantage. Visit www.myekon.com to read To Roth, or Not to Roth to get the full scoop.

IRS Dollar Limits for Retirement Plans

The IRS announced the benefit and contribution limits for 2017 which are shown below:

IRS Dollar Limits for Retirement Plans	2014	2015	2016	2017
Elective 401(k) and 403(b) Deferrals	$ 17,500	$ 18,000	$ 18,000	$ 18,000
Catch-up Contributions (age 50 or over)	5,500	6,000	6,000	6,000
Maximum Defined Contribution Limit	52,000	52,000	53,000	54,000
Maximum Defined Benefit Limit	210,000	210,000	210,000	215,000
Maximum Compensation Limit	260,000	265,000	265,000	270,000

Participant Fee and Performance Disclosure Rules – ERISA 404(a)(5)

ERISA 404(a)(5) requires detailed investment and expense disclosures for participant-directed, individual account plans to help American workers manage and invest for their retirement security. Plan Administrators were required to provide the initial annual disclosure by **August 30, 2012** and annually within 12 months thereafter. The DOL granted a one-time extension of 18 months for 2013 or 14, but did not eliminate the "within 12 month" requirement which would have required mailing exactly on the same date each year. Effective June 17, 2015, the DOL distorted the definition of "annually" to mean "at least once in any 14-month period" to eliminate this dilemma.

For those plans on Ekon Benefits' daily trading platform, these disclosures, as well as a comparative investment chart in an easy-to-read, full-color format, are provided **each quarter** on the Participants' ***Savings Spectrum*** benefit statement. Therefore the annual disclosure nuance is not a nuisance at all.

401(k) Contribution Depositing Requirements

Under DOL rules, 401(k) contributions must be deposited as soon as possible after they are withheld from wages. Under final DOL rules for plans of less than 100 participants, contributions are considered to be timely only if deposits are made by the 7^{th} business day after they are withheld from wages.

The DOL final regulations did not address a safe harbor for plans of 100 or more participants, because the DOL presumes that such plans should be able to deposit even sooner than the 7^{th} business day. All companies should be depositing 401(k) contributions as soon as possible after each payroll.

Multiemployer plans may have less stringent requirements as long as contributions are made pursuant to a Collective Bargaining Agreement.

Qualifying Asset Requirement

At least 95% of your Plan Assets must be *Qualifying Plan Assets* as defined by Department of Labor regulations. *Qualifying Plan Assets* include:

- Assets held by banks or similarly organized financial institutions, insurance companies or registered broker-dealers;
- Mutual Fund Shares;
- Insurance investment and annuity contracts; and
- Participant Loans.

If less than 95% of Plan Assets are *Qualifying Plan Assets,* an independent accountant audit or additional bonding is required. Contact your administrator if you have any questions regarding this requirement.

Miscellaneous

- Fidelity Bonds are required on all plans in the amount of 10% of plan assets subject to a maximum of $500,000 ($1 Million for ESOP plans).
- Combinations of Defined Benefit and Defined Contribution plans are not subject to the 25% aggregate limit if DC contributions are 6% or less (actually this turns out to be an overall deduction of 31% of payroll if the employer DC contributions are 6% or less). The 25% limit also doesn't apply at all if the DB plan is covered by PBGC.
- Contributions must be made by your tax-filing time with extensions to be deductible and must be made within 8½ months of the Plan Year end if subject to Minimum Funding Standards.
- Controlled Groups are treated as a single employer for all retirement plan purposes.
- Regular, sick and vacation pay paid after termination and by the later of the end of the Plan Year or 2½ months should be counted unless you have elected to exclude it in your plan document.
- Sub-S pass through of profits is not FICA taxed and therefore not compensation for qualified plan purposes.