

## Benefits Counselor – February 2024

### **RETIREMENT PLAN UPDATES**

#### **Guidance Issued on Pension-Linked Emergency Savings Accounts**

Last month, plan sponsors considering whether to adopt the pension linked emergency savings account (PLESA) feature included in the Setting Every Community Up for Retirement Enhancement 2.0 Act of 2022 (SECURE 2.0) received some much needed guidance from the U.S. Department of Labor (DOL) and Internal Revenue Service (IRS). In the first round of guidance, the IRS released Notice 2024 22, which details the permissible anti abuse provisions plan sponsors could consider when implementing the feature. Later, the DOL released a new set of Frequently Asked Questions (FAQs) that provide additional information on administration and reporting for PLESAs. For a detailed discussion of PLESAs and the new guidance, check out our spotlight: [Pension-Linked Emergency Savings Accounts—An Overview for Plan Sponsors](#).

#### **DOL Releases Proposal on Retirement Plan Automatic Portability Transactions**

The DOL recently unveiled proposed regulations to implement automatic portability transactions under SECURE 2.0 (Proposed Rule). Automatic portability transactions are intended to help workers maintain their retirement savings by reducing cash outs when they change jobs. The Proposed Rule offers guidance on how to automatically transfer participants' retirement accounts following termination, first to Safe Harbor Individual Retirement Accounts (IRAs), then directly to their active account in their current employer's plan. The Proposed Rule also allows automatic portability providers to receive a fee for executing automatic portability transactions into Safe Harbor IRAs. Comments on the Proposed Rule are due by March 29, 2024.

### **HEALTH AND WELFARE PLAN UPDATES**

#### **Agencies Release ACA FAQ 64 Addressing Contraceptive Coverage**

On January 22, 2024, the U.S. Department of Health and Human Services, DOL and IRS (the "Departments") issued another round of FAQs (FAQ 64) implementing the contraceptive coverage mandate included as part of the Affordable Care Act. The Departments released FAQ 64 in response to continued reports of widespread barriers to contraceptive coverage. In the guidance, the Departments

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announced a parallel approach for plans to meet their contraceptive coverage obligations by covering, at no cost, all contraceptive drugs and drug-led devices approved by the U.S. Food and Drug Administration (FDA) in a category, other than those for which there is at least one therapeutic equivalent drug that the plan covers without cost sharing, as determined by the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations (otherwise known as the "Orange Book").

## ***GENERAL/PUBLIC PLAN/INVESTMENT UPDATES***

### **Final Independent Contractor Rule Could Impact Plan Sponsors**

On January 10, 2024, the DOL issued a final rule (Final Rule) that revises its prior guidance on determining employee/independent contractor status under the Fair Labor Standards Act. The Final Rule is consistent with the DOL's proposal last October, abolishing the two part approach proposed by the Trump Administration in 2021. The Final Rule reestablishes a six factor test based on whether the worker is economically dependent on the employer, based on (1) the worker's opportunity for profit or loss, depending on managerial skill; (2) the financial stake/investments by the worker; (3) the degree of permanence of the work relationship; (4) the nature and degree of control the employer has over the work; (5) the extent to which the work performed is an integral part of the potential employer's business; and (6) the worker's skills and whether those skills contribute to the business like initiative. The Final Rule is effective March 11, 2024.

### **Civil Penalty Adjustments Released**

In January, both the DOL and Pension Benefit Guaranty Corporation (PBGC) published their inflation adjusted civil penalty amounts for 2024. The Inflation Adjustment Act of 2015 requires an annual adjustment of civil penalty levels for inflation. The updated penalty amounts took effect January 15, 2024. Some of the notable increases include:

- *Form 5500*. The penalty for a plan administrator's failure to file an annual report for the plan has been increased to \$2,670 per day, up from \$2,586.
- *Certain Retirement Plan Disclosures*. The penalty for various retirement plan disclosure failures, including a multiemployer plan's failure to provide notice upon request of a potential withdrawal liability; the failure to provide notice of a funding based limit on benefits or benefit accruals; and the failure of plans with automatic contribution arrangements to provide the required notice to

participants has been increased to \$2,112 per day, up from \$2,046.

- *Blackout Notices.* The penalty for a failure to provide blackout notices or notices of diversification rights increased to \$169 per day, up from \$164.
- *Improper Distribution.* The penalty on a plan fiduciary who makes an improper distribution has been increased to \$20,579 per improper distribution, up from \$19,933.
- *GINA Violations and CHIP Notices.* Penalties for violations of the Genetic Information Nondiscrimination Act of 2008 (GINA) and failures relating to disclosures regarding the availability of Medicaid and the Children's Health Insurance Program (CHIP) have increased to \$141 per employee per day, up from \$137.
- *SBC.* The maximum penalty for failing to provide a summary of benefits and coverage (SBC) increased to \$1,406 per failure, up from \$1,362.

## **COMPLIANCE DEADLINES AND REMINDERS**

Plan sponsors should be preparing to take action on the following upcoming deadlines. If you have any questions or need any assistance on these items, please reach out to your Reinhart attorney.

### **Retirement Plans**

- Form 1099 R: Plan sponsors must file the Form 1099 R with the IRS by February 28, 2024 (March 31, 2024, if e filing).

### **Health and Welfare Plans**

- HIPAA Breach Reporting: Plans must file their annual breach reports under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) with the Office for Civil Rights by March 1, 2024. The annual breach report is for breaches involving fewer than 500 individuals that occurred during the preceding calendar year. Breaches involving 500 or more individuals must be reported no later than 60 calendar days from the date of the breach's discovery.
- Medicare Creditable Coverage: Plans must report the creditable coverage status of their prescription drug plan to the Centers for Medicare & Medicaid Services annually no later than 60 days from the beginning of a plan year. For calendar



year plans, this date is March 1, 2024.

- Furnish Forms 1095 B and 1095 C to Participants/Employees: Plan sponsors of self-funded health plans that elect to mail the Form 1095 B and applicable large employers (ALEs) must distribute Forms 1095 B and 1095 C to applicable individuals by March 1, 2024.
- File Forms with IRS: Plan sponsors and ALEs must file the transmittal Forms 1094 B and 1094 C with their corresponding Forms 1095 with the IRS electronically by April 1, 2024 (February 28, 2024, if eligible to file hard copies).

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Reinhart's [Employee Benefits Practice](#) is one of the largest and most tenured in the country:

Attorneys: Thomas Funk, Jeffrey Fuller, Kristin Bergstrom, Bennett Choice, John Mossberg, William Tobin, Jussi Snellman, Gregory Storm, Rebecca Greene, Lynn Stathas, Philip OBrien, Beth Bulmer, Pete Rosene, Pam Nissen, Michael Joliat, Lucas Pagels, Andrew Christianson, Stacie Kalmer, Jessica Culotti, Bryant Ferguson, Justin Musil, Amanda Cefalu, John Barlament, Woomin Kang, Nicholas Zuiker, Martha Mohs, Katherine Kratcha, Karyn Durkin, Emily Pellegrini, Xavier Prather, Paul Beery, Joshua Hernandez.

Paralegals: Colleen McGuire Schmitz, Laurie Matthews, Mary Kaminski, Amanda Klein, Cheryl Yerkes, Stacy Heder, Pamela Martinez and Patrice Wright.