



2015 Year-End Wrap Up

Presented to WEB

Diane V. Dygert
Ben Conley



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The contents of this presentation should not be construed as legal advice or a legal opinion on any specific facts or circumstances.

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Today's Roadmap

- SCOTUS Developments
- Retirement Plans
 - ▶ Recap of Developments
 - ▶ Regulatory Outlook
 - ▶ Legislative Outlook
- Executive Compensation
 - ▶ Regulatory Developments
- Welfare Plans
 - ▶ Recap of Developments
 - ▶ Regulatory Outlook
 - ▶ Legislative Outlook



SCOTUS Developments



SCOTUS Benefits Cases

- *King v. Burwell*
 - ▶ *Challenge to State Exchanges established by the Feds -denied*
- *Obergefell v. Hodges*
 - ▶ *States may not ban same-sex marriage*
- *M&G Polymers v. Tackett*
 - ▶ *Rejected Yard-Man Inference that negotiated retiree benefits were intended for life*
- *Tibble v. Edison*
 - ▶ *Duty to monitor investments is continuing duty while offered*
- *University of Notre Dame v. Burwell*
 - ▶ *Vacated 7th Circuit denial of injunction for Notre Dame in case regarding contraceptive mandate in light of Hobby Lobby decision*



Retirement Plans – Recap of Developments



2015 Recap - Cases

- *Lee v. Verizon Communications*
 - ▶ 5th Circuit affirms dismissal challenging Verizon's purchase of group annuity contract to cover pension liability. Retiree consent not required.



2015 Recap - Regulations

- **IRS:**
 - ▶ Proposed and Temporary regs on suspension of benefits by multiemployer pension plans in critical and declining status
 - ▶ Final regs on required minimum contributions to pension plans
- **DOL:**
 - ▶ Proposed expansive definition of “fiduciary” when providing investment advice for individual account plans
- **PGBC:**
 - ▶ Final regs re reportable events



2015 Recap - Agencies

- IRS

- ▶ Elimination of Determination Letter process for ongoing plans
- ▶ Rev Proc 2015-27 and 2015-28
 - Updated EPCRS – most notably for auto enrollment and auto escalation errors
- ▶ Required documentation of hardships and loans
- ▶ Notice 2015-49
 - Limits De-Risking of pensions through lump sum distributions

- DOL

- ▶ Final rule allows additional time for annual fee disclosures (once every 14 months)
- ▶ Final reg for annual funding notices, plus updated model notice
- ▶ Clarification of safe harbor for annuity distribution options



2015 Recap - Legislation

- Bi-Partisan Budget Act:
 - ▶ PBGC Premiums
- Surface Transportation and Veterans Health Care Choice Improvement Act
 - ▶ Form 5500 deadline extended to November 15th (rather than October 15th) for 2016 year filings
 - ▶ Extends ability to transfer excess pension assets to retiree health plans and group term life insurance accounts



Retirement Plans – Regulatory Outlook



IRS Regulatory Agenda

- Regulations on use of lump sum payments to reduce lifetime income stream under pension plans.
- Final regulations on multiemployer plan benefit suspensions under § 432(e)(9) as amended by the Multiemployer Pension Reform Act of 2014
- Additional guidance on issues relating to lifetime income under retirement plans
- Additional rules regarding pension plan funding restrictions



DOL Regulatory Agenda

- Additional guidance on fiduciary definition
- Adoption of amended VFC program



Retirement Plans – Legislative Outlook



Qualified Retirement Plan Legislative Proposals

- Tax code overhaul?
- Legislation to encourage more employers to sponsor retirement plans through starter 401(k)s, establish multiple employer plans and encourage retirees to annuitize their retirement savings
- States requiring retirement savings vehicles (like Illinois in 2014)



Executive Compensation – Recap of Developments



Exec Comp – Regulatory Developments

- IRS: Final 162(m) Regulations
- SEC: Proposed regs on pay versus performance
- SEC: Proposed Claw-Back rules
- SEC: Final Pay Ratio Regulations



Welfare Plans – Recap of Developments



2015 Recap - Cases

- **ACA's Contraceptive Mandate:**
 - ▶ Series of cases as to whether opt-out procedure is a substantial burden
 - ▶ Yes: 8th Circuit
 - ▶ No: 2nd, 3rd, 5th, 6th, 10th and DC Circuits
- **COBRA**
 - ▶ \$1 million settlement of class action case for COBRA notice violations *Slipchenko v. Brunel Energy (S.D. Texas)*
- **Out-Of-Network Providers**
 - ▶ 5th Circuit found standing to sue for ERISA benefits
 - ▶ E.D. Tenn found no standing to sue for benefits where patients remain liable to provider



2015 Recap – Cases (cont'd)

- ABA Therapy Exclusions
 - ▶ Three challenges under Mental Health Parity Act for ABA therapy exclusion. All brought in the Ninth Circuit. *AF v. Provident Health Plans* only reported decision.
- Disclosure of Limitations Period
 - ▶ *Mirza v. Insurance Administrator of America, Inc.* – Third Circuit refused to enforce plan's limitation period where not disclosed in claim denial letter.
- Anthem Data Breach
 - ▶ Series of class actions arising out of Anthem data breach allege violations of federal and state privacy law.
- Electronic Disclosure
 - ▶ *Thomas v. CIGNA Group Ins* -- Employer's posting of amendment on intranet was inadequate notice.



2015 Recap - Legislation

- **PACE Act**
 - ▶ Small Employers from 100 to 50 FTEs
- **Bi-Partisan Budget Act:**
 - ▶ Repealed ACA Auto-Enrollment
- **Surface Transportation and Veterans Health Care Choice Improvement Act**
 - ▶ Form 5500 deadline extended to November 15th (rather than October 15th) for 2016 year filings
 - ▶ Extends ability to transfer excess pension assets to retiree health plans and group term life insurance accounts
 - ▶ Applicable Large Employer change
 - Excludes employees under TRICARE or VA coverage



2015 Recap - Regulations

- DOL:
 - ▶ Proposed changes to disability plan regulations
- EEOC Wellness Regs:
 - ▶ Proposed Regulations under ADA impose greater restrictions than HIPAA
 - ▶ Proposed Regulations under GINA
- ACA related:
 - ▶ Joint: Final Regs on preventive service mandate
 - ▶ Joint: Final Regs on various ACA market reforms



2015 Recap - Agencies

- ACA related:
 - ▶ FAQs on wraparound coverage, supplemental insurance products as excepted benefits
 - ▶ HHS guidance on annual cost-sharing limit and HDHP coverage
 - ▶ Joint FAQs on preventive service requirement
 - ▶ Expatriate Plans
 - ▶ IRS invites comments on Cadillac Tax
 - ▶ IRS Issued Final Forms 1094 and 1095 along with guidance



2015 Recap - ACA Reporting Obligations

- Final Forms and Instructions
 - ▶ Released: February 9, 2015
 - ▶ Revised in June and August, 2015
- Different Series
 - ▶ Forms 1094 and 1095 **B series**
 - Insurance providers of minimum essential coverage
 - Multi-employer plans
 - ▶ Forms 1094 and 1095 **C series**
 - ALEs



2015 Recap – IRS Reporting Forms

- Final instructions included following clarifications:
 - ▶ COBRA reporting
 - ▶ Reporting for union employees
 - ▶ HRA reporting
- Unanswered questions:
 - ▶ “Good-faith compliance”
 - ▶ Reporting sub-MV plans
 - ▶ Contingent worker reporting



2015 Recap – ACA Fees

	PCOR Fee	TRP Fee
How much is the fee?	<ul style="list-style-type: none">• \$1 per covered life in first year• \$2 per covered life in subsequent years	<ul style="list-style-type: none">• \$63 per covered life in first year• \$44 in year 2• \$27 in year 3
When does the fee apply?	<ul style="list-style-type: none">• 2012-2018	<ul style="list-style-type: none">• 2014-2016
Who must Pay the Fee?	<ul style="list-style-type: none">• Insured plans: Insurer• Self-funded Plans: Plan sponsor	<ul style="list-style-type: none">• Insured plans: Insurer• Self-funded plans: Third-party administrator
What type of plans are exempt?	<ul style="list-style-type: none">• Excepted benefits	<ul style="list-style-type: none">• Everything but major medical



Welfare Plans – Regulatory Outlook



IRS Regulatory Agenda

- Section 125 guidance
- Nondiscrimination requirements?
- Cadillac tax
- Additional guidance on minimum value of employer-sponsored health plans



DOL Regulatory Agenda

- Final rules on SBCs
- Additional guidance on claims procedures



EEOC Regulatory Agenda

- Final ADA/Wellness Program Guidance????



Welfare Plans – Legislative Outlook



Welfare Plans – Legislative Outlook

- Repeal of PPACA?
- Expansion of PPACA?
- Fix of PPACA?
 - ▶ Proposed two year delay of Cadillac tax and medical device tax
- Changes to taxation of employer-sponsored health coverage?



Questions?

ddygert@seyfarth.com

bconley@seyfarth.com

To sign up for ACA Resource
Center

<https://aca-seyfarth.com>



@SeyfarthEBLaw