BottomLine
Information that matters to you

Benefits & Compensation

Coming rules listed in the semi-annual agenda

Twice per year, federal agencies publish agendas of upcoming rulemaking actions. The most recent agenda was published in May. The information below focuses on the more imminent rules that will impact employer benefit plans. Note that agencies solicit comments on proposed rules and must review those comments. Once the review is completed, the agency may issue a final rule or may issue a revised proposed rule with another comment period.

The Department of Health and Human Services (HHS) evaluated comments on a proposed rule for a Summary of Benefits and Coverage (SBC) and Uniform Glossary. The rule is intended to help individuals better understand their health coverage and compare coverage options. Many comments addressed the proposed template for making SBC disclosures, but very few comments addressed the regulations for SBCs. The final rule published on June 16 did not include the new disclosure template. It will be finalized by January 2016 and will apply to coverage that renews or begins on or after January 1, 2017, including open enrollment periods that occur in the fall of 2016 for coverage beginning on or after January 1, 2017.

The Employee Benefits Security Administration (EBSA) expected to publish a proposed rule in July regarding the obligation for retirement plans to provide individual benefit statements. Generally, defined benefit plans must provide the statement every three years, with an annual alternative. Defined contribution plans must provide the statement quarterly if the plan allows participant direction, or annually if the plan does not allow participant direction. The EBSA will explore whether, and how, these statements should and could present the individual's account balance as a lifetime income stream of payments.

The EBSA is considering comments regarding a proposed rule amending the definition of the term "fiduciary" to include persons who

render investment advice to plans and individual retirement accounts for a fee. The rule would address how advisers are compensated in ways that might subject them to conflicts of interest. The comment period ended July 21.

The EBSA may revise the process for filing a Form 5500 Annual Return/Report of Employee Benefit Plan and expects to publish a proposed rule in September. This is part of a long-term project to modernize the Form 5500, with a focus on making the information more data mineable and enhancing EBSA's ability to collect plan data.

The Equal Employment Opportunity Commission (EEOC) recently published proposed rules on the interaction between the Americans with Disabilities Act (ADA) and wellness programs that offer employees incentives or penalties for participation. The comment period ended in June. The agency expected to publish another rule in July to address the interplay between the Genetic Information Nondiscrimination Act (GINA) and wellness programs that offer incentives to employees' spouses or family members who respond to questions about current or past medical conditions on health risk assessments.

In This Issue

2 **Compensation**
Employers remain liable when outsourcing payroll

3 **Health Care**
FAQs on cost sharing limits under the ACA

4 **Your News Now**
39 percent of benefit plan audits had 'major deficiencies'

4 **2016 HSA contributions and deductible limits**

5 **Court Report and State Updates**

6 **Offering retirement savings with a profit sharing plan**

7 **Your Questions Answered**
If we suspect that an employee arrived late, do we have to pay him for the full day?

7 **What Would You Do?**
Can an employee's W-4 request only a dollar amount of withholding?

8 **Retirement**
Continuing duty to monitor retirement plan investments

SAMPLE

Employers remain liable when outsourcing payroll

Many employers outsource some or all of their payroll and related tax obligations to third-party payroll service providers (PSPs). The services provided may include administering payroll and employment taxes for the employer, and depositing taxes with state and federal agencies.

An employer that outsources payroll responsibilities should remember that it ultimately remains responsible for payment of federal taxes. Even though the employer may forward funds to the PSP, the employer is responsible if the PSP fails to make any tax payments, including any penalties or interest for late payments.

If problems arise, the Internal Revenue Service (IRS) will send correspondence to the employer's address. The IRS strongly suggests that employers list their own address (rather than the address of the PSP) to ensure that they stay informed of tax matters involving their businesses.

Verifying payment

The IRS recommends employers ensure that PSPs are using the Electronic Federal Tax Payment System (EFTPS) so they can confirm whether payments are being made. Note that electronic payment is required for payroll taxes over $200,000 in a calendar year.

Employers should register on the EFTPS system to get their own PIN and periodically verify payments.

A red flag should go up the first time a service provider misses a payment or makes a late payment.

Employers using EFTPS will have on-line access to their payment history for 16 months. In addition, employers may make additional payments that the PSP is not making, such as estimated tax payments.

An employer that outsources payroll remains responsible for payment of federal taxes.

If an employer suspects a PSP of improper or fraudulent activities involving the deposit of federal taxes or the filing of returns, the employer may file a complaint using Form 14157, *Complaint: Tax Return Preparer*. The IRS will expedite the handling and investigation of these complaints. Individuals and companies acting under the guise of a PSP have been prosecuted for stealing funds intended for tax payments.

Remember, employers are ultimately responsible for paying income taxes as well as both the employer and employee portions of Social Security and Medicare taxes.

Reporting agents

A reporting agent is a PSP that is authorized to perform certain acts on behalf of its clients' employees. A reporting agent provides payroll services for one or more employers (clients) using each client's employer identification number (EIN) to file returns on the client's behalf. A reporting agent may also deposit and pay taxes on the client's behalf.

The IRS provides Form 8655, *Reporting Agent Authorization*, for an employer to designate a PSP as a reporting agent. An employer may use this form to authorize a reporting agent to sign and file tax paperwork, whether electronic or hard copy.

The designation of a reporting agent does not relieve the employer from its responsibility of ensuring that all of its federal employment tax obligations are met. A reporting agent normally assumes no liability for its clients' tax withholding, reporting, payment, and/or filing duties, but another type of designation may create for joint liability.

An employer may appoint an agent under section 3504 of the Internal Revenue Code to withhold, report, and pay federal employment taxes. A significant difference is a section 3504 agent agrees to assume liability along with the employer for the Social Security, Medicare, and federal income tax withholding responsibilities. The IRS can seek to collect any unpaid taxes from both the employer and the section 3504 agent.

The section 3504 designation does not apply to Federal Unemployment Tax Act (FUTA) taxes, with a limited exception provided for certain household workers. A PSP seeking authorization to serve as a section 3504 agent must apply to the IRS for approval.

BottomLine

Employers that outsource payroll remain liable for unpaid taxes and should verify that payments are made. Some agreements make the PSP jointly liable for tax responsibilities.

SAMPLE

FAQs on cost sharing limits under the ACA

The Affordable Care Act (ACA) requires non-grandfathered group health plans to ensure that employees' (and dependents') annual cost sharing does not exceed the limits specified in the ACA. In short, the law limits an enrollee's out-of-pocket costs for essential health benefits.

For plan or policy years beginning in 2015, the maximum annual limit on cost sharing is $6,600 for self-only coverage and $13,200 for other than self-only coverage (such as family coverage).

For plan or policy years beginning in 2016, the maximum annual limit on cost sharing will be $6,850 for self-only coverage and $13,700 for other than self-only coverage. The maximum limit will increase annually by the premium adjustment percentage provided in the ACA.

The Department of Health and Human Services (HHS) issued a notice on February 27 clarifying that the self-only maximum annual limit on cost sharing applies to each individual under a plan. For example, if an employee enrolls in family coverage, no covered person in the family could be subjected to cost sharing in excess of the annual limit for self-only coverage. The notice applies to all non-grandfathered group health plans, including self-insured and large group health plans.

In response to this notice, HHS received questions on how the cost sharing provisions apply in various situations. To address these questions, the Departments of Labor, Health and Human Services, and the Treasury (Departments) issued FAQs on May 26, 2015. The Departments indicated that the notice will apply only for plan or policy years that begin in or after 2016, and it will apply to high-deductible health plans (HDHP) as well.

Self-only limits

One FAQ clarifies that the self-only maximum annual limit on cost sharing applies to an individual who is enrolled in family coverage under a group health plan.

For example, suppose a family of four (mother, father, and two children) is enrolled in family coverage under a group health plan in 2016 with an aggregate annual limit on cost sharing of $13,000. That total applies to all four enrollees combined, but the self-only limit of $6,850 for 2016 also applies to each individual family member.

If the mother incurs claims that would result in $10,000 of cost sharing, she is still limited to $6,850 in out-of-pocket costs for that year. The plan must bear the $3,150 difference between the $10,000 in cost sharing for her and the maximum self-only limit of $6,850.

Then, if each of the other three family members incur claims that would result in $3,000 of cost sharing, the total cost sharing for all four individuals would seem to be $15,850 (that is, $6,850 + $3,000 + $3,000 + $3,000). However, since the plan has a limit of $13,000 annually, the plan must bear the $2,850 difference between the $15,850 and the $13,000 annual limitation.

Dependent children

Another question involved dependent children and whether a plan must cover recommended women's preventive care services for dependent children without cost sharing, including services related to pregnancy.

The Departments answered yes, indicating that non-grandfathered group health plans offering group or individual health insurance coverage must cover specified recommended preventive care services without cost sharing for all participants and beneficiaries. If the plan covers dependent children, the plan must provide the full range of recommended preventive services applicable to the dependents (e.g., for their age group) without cost sharing and subject to reasonable medical management techniques.

For example, the Health Resources and Services Administration (HRSA) Guidelines recommend well-woman visits for adult women to obtain the recommended preventive services that are age- and developmentally-appropriate, including preconception care and many services necessary for prenatal care. Therefore, plans must cover these services for dependent children up to age 26, without cost sharing, if an attending provider determines that well-woman preventive services are age- and developmentally-appropriate for the dependent.

BottomLine

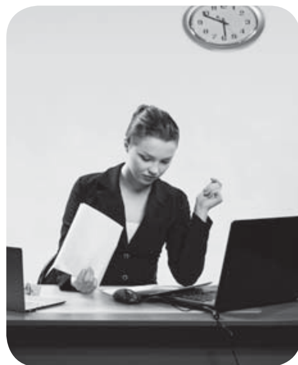
The self-only annual cost sharing limit applies to each individual in a family plan, and preventive care services with no cost sharing must be available to dependent children.

SAMPLE

39 percent of benefit plan audits had 'major deficiencies'

Employers that hired a third party to audit their benefit plan may not have received accurate information, according to a federal study.

The Employee Retirement Income Security Act (ERISA) requires employee benefit plans to file an annual report (Form 5500) of their financial condition and operations with the Department of Labor. Among other information, the annual report must include an audit report issued by an independent qualified public accountant (IQPA) stating whether the plan's financial statements and related information conform with generally accepted accounting principles.



The Employee Benefits Security Administration (EBSA), which enforces part of ERISA, published a study on the quality of benefit plan audits performed by certified public accountants (CPAs). The report, *Assessing the Quality of Employee Benefit Plan Audits*, reveals serious issues with the current auditing system. Though released in May 2015, the report evaluated plan audits from the 2011 reporting year.

The report examined more than 7,300 licensed CPAs nationwide who audited more than 81,000 employee benefit plans. EBSA's review found that 61 percent of audits complied with professional auditing standards or had only minor deficiencies, but the remaining 39 percent of audits contained major deficiencies that would lead to a rejection of the plan's Form 5500 annual report. These deficiencies put an estimated $653 billion and 22.5 million plan participants and beneficiaries at risk.

The research found that auditing firms with the most experience (those performing the most audits) tended to have the best records, while smaller firms that perform fewer audits tended to have more problems. Also, firms that were members of the American Institute of Certified Public Accountants' (AICPA) Employee Benefit Plan Audit Quality Center tended to have fewer audit deficiencies.

The report suggests that the Department of Labor increase outreach to CPAs as well as enforcement of audit standards, and also proposes legislative solutions. It recommends that Congress amend ERISA's definition of "qualified public accountant" to include additional requirements and qualifications to help ensure the quality of plan audits. Under the proposal, the Secretary of Labor would be authorized to issue regulations for the qualification requirements.

The report also urges Congress to repeal the ERISA limited-scope audit exemption and give the Secretary of Labor authority to define when a limited scope audit would be acceptable. According to the report, if auditors have to issue a formal opinion after a full audit, they will have a powerful incentive to rigorously adhere to professional standards and ensure that their opinion can withstand scrutiny. The report claims that the limited-scope audit exemption undermines this incentive by limiting auditors' obligations to stand behind the plans' financial statements.

Finally, the report suggests that ERISA be amended to give the Secretary of Labor authority to establish accounting principles and audit standards to protect the integrity of employee benefit plans, and the benefit security of participants and beneficiaries.

BottomLine

More than a third of benefit plan audits had major deficiencies, prompting the EBSA to suggest legislative action to revise auditing standards.

SAMPLE

2016 HSA contributions and deductible limits

The Internal Revenue Service issued Revenue Procedure 2015-30 to provide the 2016 contribution amounts for Health Savings Accounts (HSAs), as well as the minimum required deductibles and maximum out-of-pocket costs for high deductible health plans (HDHPs).

The individual HSA contribution limit will remain at $3,350 in 2016, but the family limit will increase from $6,650 to $6,750. Note that the HSA contribution limits include the combined employee and employer (if any) contributions.

The HDHP minimum deductible will not change, remaining at $1,300 for individual coverage and $2,600 for family coverage. However, the HDHP out-of-pocket maximum will increase from $6,450 to $6,550 for individual coverage, and from $12,900 to $13,100 for family coverage.

Fifth Circuit

FLSA private settlements

Two employees left their company and went to work for a competitor, in violation of their noncompete agreements. The company initiated legal action to enforce the agreements. In response, the former employees alleged that the company had failed to properly compensate them for overtime in violation of the Fair Labor Standards Act (FLSA).

The company and the former employees eventually reached a private settlement regarding the noncompete dispute. As part of that settlement, the former employees agreed to release the company from all claims under state and federal laws. However, the employees continued to pursue their claim for overtime pay.

In court, the company argued that the settlement and release of claims prevented the former employees from pursuing the overtime lawsuit. The district court agreed, finding that the employees simply chose "to remain silent about their overtime claims" when negotiating the settlement and therefore missed their chance to settle that claim. The employees appealed this decision.

The Fifth Circuit Court of Appeals reversed that decision, however, pointing out that the FLSA does not allow employees to waive their right to file FLSA claims.

Normally, a wage dispute must be settled under the supervision of a court or the Department of Labor. The Fifth Circuit noted that it has accepted private, unsupervised settlement agreements. However, those cases involved employees who actually received compensation for the disputed hours or wages owed. In the case at hand, the settlement resolved a dispute over the noncompete agreements, but the parties had never discussed overtime compensation or the FLSA during their negotiations.

Since the employees had not received any compensation for the disputed overtime, the settlement agreement did not resolve the overtime dispute. Further, since employees cannot waive their rights to FLSA claims, the release of claims did not prevent the former employees from pursuing their claim for back overtime pay.

Bodle v. TXL Mortgage Corporation (No. 14-20224) June 1, 2015

BottomLine

Although the Fifth Circuit recognizes private settlements of FLSA claims, the employees must have negotiated the disputed wages and received some compensation in return.

The Fifth Circuit includes the states of Louisiana, Mississippi, and Texas.

State Updates

Georgia: Payroll cards — State law now allows employers to pay employees via payroll cards. To do so, the employer must provide a written explanation of any fees associated with using the card, as well as a written notice that employees may opt out of the payroll card account. Employees who opt out may choose to receive wages by paycheck or direct deposit. The new law took effect May 5, immediately upon passage. Senate Bill 88

Illinois: W-2 filing — Employers that are required to file copies of W-2s on magnetic media under federal law must also file the W-2s with the state Department of Revenue using the same magnetic media. The W-2s must be filed no later than February 15 of the year following the year of the withholding, or if the IRS granted an extension, no later than the extension date. 86 Ill. Adm. Code §100.7300

Maryland: County tax credits — Maryland has both a state and a county personal income tax. Residents who pay income tax to another jurisdiction may apply those payments as a credit against the state tax but not the county tax. Some residents who claimed a credit on their county taxes were penalized, so they sued. The case reached the United States Supreme Court, and the residents won when the high court held that Maryland's personal income tax scheme violates the Commerce Clause of the U.S. Constitution. *Comptroller of the Treasury of Maryland v. Wynne*, No. 13–485, May 18, 2015

Oregon: Annual PHI reporting — A covered entity that is required to file an annual financial statement with the Department of Consumer and Business Services must now also provide a "protection of health information report." The report must be signed by the chief executive officer and must provide various assurances that the entity is taking steps to protect the confidentiality of personally identifiable and protected health information that the entity retains in electronic or hard copy form. House Bill 2551

SAMPLE

Offering retirement savings with a profit sharing plan

Employers start profit sharing plans to help attract talented employees and provide them with a vehicle for retirement savings. A profit sharing plan gives employers flexibility in choosing how much to contribute to employee accounts each year (out of profits or otherwise), or even make no contribution for a year. Contributions and earnings are generally not taxed until funds are distributed, and the plan may allow participants to take any vested benefits when they leave the company.

If you choose to establish a profit sharing plan, one of your first decisions will be whether to set up the plan yourself or consult a professional or financial institution (such as a bank, mutual fund provider, or insurance company) to help establish and operate the plan. There are four initial steps for setting up a profit sharing plan.

First, adopt a written plan document. If you hire a professional, that person likely will provide the plan document. If not, consider obtaining assistance from a financial institution or professional to create the plan. The plan document must describe how certain key functions are carried out, such as a formula to determine how contributions are allocated to participants' accounts. The most common formula gives each participant a percentage of his or her compensation. Contributions may also be subject to a vesting schedule.

Second, arrange a trust for the plan's assets. A plan's assets must be held in a trust to assure that assets are used solely for the participants and their beneficiaries. The trust must have at least one trustee to handle contributions, plan investments, and distributions. If you set up your plan through insurance contracts, the contracts do not need to be held in trust.

Third, develop a recordkeeping system to track and properly attribute contributions, earnings and losses, plan investments, expenses, and benefit distributions. If a financial institution assists in managing the plan, that entity will typically help keep the required records. In addition, a recordkeeping system will help you, your plan administrator, or your financial provider prepare the plan's Form 5500 annual return/report that must be filed.

You choose your business's contribution and may change the amount each year.

Finally, notify employees who are eligible to participate in the plan about certain benefits, rights, and features. In addition, a summary plan description (SPD) must be provided to all participants. The SPD is typically created with the plan document. A plan usually includes all employees, but it may exclude some employees under age 21 or employees with less than one year of service (two years in certain plans). Employees cannot be excluded merely because they are older workers.

Plan operation

If you hired someone to help set up your plan, that arrangement could include help operating the plan. You can decide on your business's contribution, and you may change the amount of contributions each year according to business conditions.

Employees could either be fully vested as soon as you make contributions, or they can become vested over time according to a vesting schedule. If you require two years of service to participate, all contributions are immediately vested. If you require only one year of service (or less) to participate, you may establish a vesting schedule.

You may need to conduct annual testing to ensure that contributions for employees are proportional to contributions for owners and managers. To preserve the tax benefits of a profit sharing plan, the plan must provide substantive benefits for rank-and-file employees, not just for business owners and managers. If you allocate a uniform percentage of compensation to each participant, no testing is required because your plan automatically satisfies this requirement.

After you decide on the terms of the profit sharing plan, you may consider the variety of investment options. One decision is whether to permit employees to direct the investment of their accounts or whether to manage the funds on their behalf. If you choose the former, you also need to decide what investment options to make available.

Depending on the plan design you choose, you may want to hire someone either to determine what investment options to make available or to manage the plan's investments. Continually monitoring the investment options ensures that your selections remain in the best interests of your plan and its participants.

BottomLine

A profit sharing plan can provide retirement savings for employees while allowing you some flexibility in making contributions, even changing the amount each year.

SAMPLE

Employers want to know

***Question:* An employee forgot to punch in at the start of the shift and his supervisor is not certain when he arrived. We suspect that the employee did not punch in because he arrived late. Do we have to pay him for the full day?**

Answer: Since you know the employee was at work, you do have to pay him for all hours that you know (or reasonably believe) that he worked. If the employee forgot to punch in, you may ask him to indicate his arrival time and use that as the start of his working day.

If you have a reason to suspect that the employee arrived late but won't admit to this, you may investigate the matter. Although the supervisor may not know the employee's arrival time, you might find other employees in the work area who saw him arrive, or you may have other information such as computer login times or security camera footage that indicate his arrival time.

If he arrived late, and you can verify the actual arrival time, you may use that time as the start of his workday. In addition, if you can prove (or reasonably believe) that the employee falsified his starting time, you may impose discipline that could include termination.

Even if you terminate the employee, however, the final paycheck must still include all hours actually worked on that day.

BottomLine

An employee's failure to punch in does not justify a refusal to pay for hours that he actually worked, or that the employer has reason to believe that he worked.

What Would You Do?

An employee provided a W-4 that listed only a dollar amount rather than a number of withholding exemptions. Can we accept it?

1. Yes, the employee can simply list a dollar amount.
2. No, the employee must list the claimed exemptions.
3. Yes, if the employee indicated single or married status.
4. Yes, if the employee otherwise claimed a total exemption.

Answer: The correct answer is Number 2, you cannot accept the form because the employee must list the claimed exemptions. IRS Publication 505 says that an employee cannot specify only a dollar amount for withholding. Each employee's W-4 must specify a filing status (either the single or married rate) and a number of withholding allowances (the number of exemptions claimed, even if zero). An employee can specify an additional dollar amount to be withheld, but cannot list only a dollar amount while leaving the exemptions blank. Finally, an employee who is totally exempt would not have any withholding, and would not need to list a dollar amount. You should explain the W-4 requirements and ask the employee to provide a properly completed form. According to another IRS guidance (Topic 753), "If an employee fails to give you a properly completed Form W-4, you must withhold federal income taxes from his or her wages as if he or she were single and claiming no withholding allowances."

BottomLine

Employees cannot claim only a dollar amount on a W-4, and if the form is incomplete, you must withhold at the single rate assuming no exemptions.

Copyright 2015 J. J. Keller & Associates, Inc.

Neither the *BottomLine Benefits & Compensation* nor any part thereof may be reproduced without the written permission of J. J. Keller. Government regulations change constantly, therefore, J. J. Keller cannot assume responsibility or be held liable for any losses associated with omissions, errors, or misprintings in this publication. This publication is designed to provide reasonably accurate information and is sold with the understanding that J. J. Keller is not engaged in rendering legal, accounting, or other professional services. If legal or other expert advice is required, the services of a competent professional should be sought.

DIRECTOR OF EDITORIAL RESOURCES: Paul V. Arnold

EDITOR: Ed Zalewski, PHR

CONTRIBUTING EDITORS: Dolly Clabault, PHR; Michael Henckel; Katie Loehrke

ISSN 1940-8323 GST R123-317687 (43006)

J. J. Keller & Associates, Inc.® Since 1953

Printed on Recycled Paper (30% Post Consumer)

Continuing duty to monitor retirement plan investments

The United States Supreme Court ruled that fiduciaries have a continuing duty to monitor retirement plan investments. Even if an investment was prudent at the time of selection, the fiduciary must ensure that the investment remains prudent. The court's May 18 decision highlights the need for fiduciaries to periodically review investment options provided to employees.

The case arose under the Employee Retirement Income Security Act (ERISA), which defines fiduciaries as individuals who manage an employee benefit plan and its assets. Fiduciaries have a duty to act prudently on behalf of the plan's participants. The defendant in this case had added mutual funds to a 401(k) plan in 1999 and in 2002. When the participants learned that those same funds had later been made available at a lower cost, they filed a lawsuit claiming they had paid excessive fees.

Six year limit

Plan participants may allege a breach of fiduciary duty and sue for damages or losses. However, a complaint must be filed no more than six years after "the date of the last action which constituted a part of the breach or violation" or "the latest date on which the fiduciary could have cured the breach or violation."

Since the lawsuit was filed in 2007, the District Court ruled that the funds added in 1999 were outside the six-year statute of limitations. The plan participants appealed, claiming that the funds underwent significant changes which should have prompted a due-diligence review. The Ninth Circuit Court of Appeals agreed with the District Court, and the employees appealed to the US Supreme Court.

Continuing duty

The Supreme Court addressed whether the decision to continue offering an allegedly imprudent investment was an "action" that extended the six-year statute of limitations for the duration of the imprudent investment. The court unanimously agreed that it did, and found that the funds added in 1999 could be subject to challenge, even though the funds were added to the plan more than six years before the complaint was filed.

Fiduciaries must remove older investments that became imprudent.

The Supreme Court stated that courts should look to the common law for trusts when evaluating the prudence of a fiduciary's duties, stating that, "a trustee has a continuing duty to monitor trust investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset."

Even if an investment was prudent when selected, the fiduciary should not assume that it will remain so and must consider all investments at regular intervals to ensure that they remain appropriate. The court stated, "A plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones."

Fiduciary or not?

An employer's business decisions are not fiduciary actions. For example, the decisions to establish a plan, determine the benefit package, include certain features, amend a plan, and terminate a plan are business decisions and are not governed by ERISA because the employer is acting on behalf of its business, not on behalf of the plan. However, when an employer (or someone hired by the employer) takes steps to implement these decisions, that person is acting on behalf of the plan and may be a fiduciary.

Employers often hire outside professionals (third-party service providers) to manage their retirement plans. Some employers, however, use an internal committee or human resources department to manage some or all of a plan's day-to-day operations. These are the plan's fiduciaries.

Whether acting as a fiduciary or using a third-party provider, employers should recognize the continuing duty to monitor investments and to eliminate those that may no longer be prudent. Employers acting as fiduciaries should adopt procedures for a periodic review of investment options, and employers using third-party providers should ensure that the provider is conducting periodic reviews. Failure to take such steps could result in a lawsuit for a breach of fiduciary duties.

The case was *Tibble et al. v. Edison International et al.*

BottomLine

Plan sponsors or fiduciaries have an ongoing duty to monitor the prudence of investment options and remove imprudent investments.

(43006)

SAMPLE