

Year-end employee benefits and compensation planning

December 8, 2014

In brief

The end of the calendar year provides a great opportunity for employers and employees to plan for 2015. December may be the last time to take some actions in order to be effective in 2015, such as nonqualified plan salary deferral elections, while in other cases December provides a new opportunity to ensure arrangements are ready for new rules in 2015, such as the Affordable Care Act (ACA) employer mandate. Here is our list of key considerations for the end of 2014 and the beginning of 2015, along with our wishes for a safe and happy holiday season.

In detail

Employers and employees must make certain decisions by the end of the year, such as whether or not to use HATFA interest rates for pension plans for 2013 plan years and how to identify full-time employees each month in 2015 for purposes of the ACA employer mandate. For other issues, while December is not an absolute deadline, employers should take advantage of this time to review systems and to plan for 2015.

Must-dos for 2014

Use of HATFA interest rates for pension plans

The Highway and Transportation Funding Act of 2014 (HATFA) extended the interest rate smoothing provisions originally enacted in the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21). The new interest

rates affect the calculation of minimum required contributions beginning with the 2013 plan year, as well as the determination of a plan's adjusted funded target attainment percentage (AFTAP) for purposes of the Code section 436 restrictions on underfunded plans.

Plan sponsors have until December 31, 2014 to make decisions on whether and how to apply the new HATFA interest rates for 2013 plan years. Under HATFA, the changes to the interest rates apply for plan years beginning after December 31, 2012, but a plan sponsor may elect not to have these modifications apply to any plan year beginning in 2013, either for all purposes, or solely for purposes of determining the plan's AFTAP for the year for purposes of the benefit restrictions under Code

section 436. The HATFA rates are required for 2014 plan years.

Notice 2014-53 provides that this election may be made by providing written notice to the enrolled actuary and to the plan administrator specifying the name of the plan, the employer identification number (EIN) and plan number, and whether the HATFA rates are being deferred for all purposes or only for purposes of determining the AFTAP. The election is irrevocable and must be made by the later of the deadline for filing the annual reports for the 2013 plan year (the Form 5500 series) or December 31, 2014. A plan sponsor that wishes to defer the use of the HATFA segment rates both for funding and for benefit restriction purposes will be deemed to have made that election if the Form 5500 series is filed for the year and the Schedule SB reflects the

MAP-21 rates. A deemed election may be revoked by filing amended forms by December 31, 2014 in accordance with Notice 2014-53. For additional information, please see our [HRS Insight](#).

Observation

Plan sponsors must decide whether and how to apply the HATFA rates for 2013 and communicate that decision to the plan's actuary and the plan administrator by December 31, 2014. Sponsors should be working now with the plan's actuary to determine the best approach for the plan's overall funding.

Identification of full-time employees

Because the ACA employer mandate and requirement to report to employees and to the IRS about employer-provided health coverage becomes effective as of January 1, 2015 (see discussion below), employers must be in a position to identify their full-time employees under ACA rules beginning on January 1. This means any measurement periods must have been established and employee work time measured and determined by the end of this year. For more information, please see our [HRS Insight](#).

Use of bonus pools

Employers with calendar year bonus programs should consider the use of bonus pools to fix a stated minimum bonus payment. If the payment is then made by March 15, 2015, employers may be able to deduct the bonus for 2014 even if the specific employees receiving the bonus are not identified at year-end.

Observation

IRS has begun to examine certain bonus pool arrangements and has added new limitations. Employers should evaluate these limits in

deciding whether to establish a bonus pool.

Elections under Code section 409A

2015 salary deferral and certain bonus deferral elections for nonqualified plans must be made by December 31, 2014. The election must provide the time when the deferred salary will be paid and the form of payment, such as a lump sum or a specific installment period.

Observation

Because the elections become irrevocable at the end of the year, employees should review so-called evergreen elections (elections that roll forward each year unless the employee takes actions to change or revoke the election).

TRP fees due in January 2015

Employers should have registered on www.pay.gov and scheduled payment of transitional reinsurance program (TRP) fees for January 2015. These payments must be made in one or two installments, with the first installment (or full payment) due on January 15, 2015.

Windsor amendments

The US Supreme Court's decision in *United States v. Windsor* means that employees who are legally married under the laws of any state or foreign country are also recognized as married for federal tax purposes. Qualified plans must be operated consistent with *Windsor* effective June 26, 2013 (the date the Supreme Court's opinion was published). Therefore, all qualified retirement plans must generally recognize a same-sex marriage as equivalent to an opposite-sex marriage for all purposes as of that date, provided the marriage was valid under the laws of the state or foreign jurisdiction in which it was performed. In applying the ruling, the IRS concluded that qualified

retirement plans must apply a state of celebration rule for purposes of recognizing same-sex marriages. IRS issued guidance on required provisions and choices employers may have in applying *Windsor*. While each plan's current terms, as well as the plan sponsor's decisions regarding discretionary provisions, will dictate whether plan amendments are necessary, the deadline for adopting required plan amendments (for example, because the plan defines the terms 'marriage' or 'spouse' to include only opposite-sex marriages/spouses) is generally December 31, 2014, or if later, the due date for filing the plan sponsor's federal income tax return for the period that includes June 26, 2013. The deadline for adopting discretionary amendments is generally the last day of the plan year in which the amendment is put into effect operationally. For more information, please see our [HRS Insight](#).

Planning for 2015

While these decisions do not need to be made by the end of 2014, early planning can help companies avoid last minute problems.

Annual list of amendments to qualified plans

Each December, the IRS publishes its Cumulative List of Changes in Plan Qualification Requirements. The 2014 Cumulative List is to be used by plan sponsors and practitioners submitting determination letter applications for plans during the period beginning approximately February 1, 2015 and ending approximately January 31, 2016. Employers should review the cumulative list and determine if plan amendments are necessary, being certain to adopt any required amendments by the end of the appropriate plan year.

First year of ACA employer mandate

The ACA employer mandate begins in 2015 for employers with at least 100 full-time equivalent employees. These employers must offer minimum essential health insurance coverage that meets certain affordability tests to at least 70% of their full-time employees each month in 2015. If these requirements are not met, the employer will face significant tax penalties. For many employers, the 2014 open enrollment season was the first opportunity to test enrollment systems to ensure that full-time employees were identified and offered coverage, as well as to obtain Social Security numbers for all covered dependents, which will be necessary for reporting.

Observation

Employers should take the opportunity to review the enrollment process to make sure that all eligible employees received enrollment information. Employers should also review any procedures used to track work hours for purposes of determining an employee's eligibility for coverage.

ACA reporting for 2015

Employers with at least 50 full-time equivalent employees (100 for 2015) must report to employees and the IRS about the healthcare coverage they offer. Systems must be in place for each entity in the controlled group to track the total number of employees, the number of full-time employees, whether each employee (and eligible dependent) was offered coverage, the employees who elected coverage for themselves and their identified dependents, and whether that coverage meets minimum value and is affordable. Employers with self-insured plans must report the 2015 results in January 2016 to employees on Form 1095-C, and cumulatively to IRS on Form 1094-C. Third party insurers will report coverage under

individual and group plans on Form 1095-B with notice to IRS on transmittal Form 1094-B. For additional information, please see our [HRS Insight](#).

Observation

Various entities within each employer, including Payroll, HR, Tax, Finance and Internal Audit, must be coordinating their efforts in order to comply with the ACA reporting requirements for 2015.

Performance goals for 2015 restricted stock grants

The IRS finalized regulations that impose stricter requirements for performance goals related to grants of restricted stock. Under the final regulations, in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered. The regulations take the position that a low profit goal for a business that has a history of higher profits is not a substantial risk of forfeiture absent other facts, and so the grant would be taxable when any required service period ended.

Observation

Grants of restricted stock are often made at the first board meeting of the year. Boards of directors and executives should consider the impact of the new regulations when setting performance goals. If on exam, the IRS were to determine that the risk was not significant enough, the employee would recognize income at grant and be subject to interest and possible penalties for late payment of tax.

Compensation deduction limits for covered health insurance providers

Section 162(m)(6) imposes a \$500,000 limit on deductions for compensation earned each year by employees, directors and other service providers of certain health insurance issuers. The deduction limit also applies to other entities within the covered health insurance provider's parent-subsidiary controlled group. Health insurance issuers need to determine whether section 162(m)(6) applies, and if so, identify the other entities that are impacted by the limits. Systems need to be in place to track when compensation is earned and paid for purposes of imposing the annual limit. IRS issued final regulations that become effective in 2015 for most issuers. For more information, please see our [HRS Insight](#).

Observation

Health insurance issuers who established tracking systems before the final regulations were issued should review the systems in light of the final regulations. The final regulations provide additional flexibility in certain areas, such as stock compensation.

Interest rate crediting for cash balance plans

Final regulations on market rates of interest in cash balance and other hybrid plans were published this year. The IRS also issued proposed regulations that address how employers can correct interest crediting rates that do not comply with the final regulations on market rates of interest. If an investment-based interest crediting rate does not comply with the requirements set forth in the final regulations, the plan sponsor is permitted to amend the plan to replace the noncompliant investment-based interest crediting rate with a permissible investment-

based interest crediting rate that has similar risk and return characteristics as the noncompliant rate. If this is not possible, then the plan is to be amended to use a permissible investment-based interest crediting rate with less volatility that is otherwise similar to the noncompliant rate.

The general approach is to permit amendments that bring the plan into compliance by changing only the specific feature that causes the plan's rate to be non-compliant, and leaving alone the remaining features of the rate. For example, if a plan uses an otherwise permitted bond-based rate but has an impermissible lookback month to determine interest credits, the plan would have to be amended only to correct the lookback month and the bond-based rate would remain. For additional information, please see our [HRS Insight](#).

Observation:

Plan sponsors will need to review their plans to be sure they are compliant with the new rules. Many sponsors were waiting for the final regulations to clarify if changes were needed, but did not have clear guidance on how and when to make the changes. The final regulations specify that in most cases this can be done by 2016 without applying

retroactive fixes or reducing existing participant balances.

Possible changes to share-based payment accounting

In October 2014, the Financial Accounting Standards Board (FASB) began a project to simplify and improve accounting for share-based payments such as restricted stock units. The FASB's tentative positions, if finalized, will have a major impact on some of the more complex areas of stock compensation accounting. The FASB project will examine share-based payments in the following areas:

- minimum statutory withholding requirements and cash flow presentation
- accounting for forfeitures
- accounting for income taxes upon vesting or settlement of awards.

In addition, the project will examine:

- the impact of certain features such as repurchase features on the classification of awards as liability or equity
- practical guidance for private companies on intrinsic value,

expected term and formula value plans

- accounting for share-based payments to non-employees.

For additional information, please see our [HRS Insight](#).

Observation

While the changes may make the accounting easier, there may be some significant changes and transition needed. Companies that maintain share-based payment compensation programs for their employees should review the FASB accounting alternatives and monitor FASB guidance for additional changes and proposals.

The takeaway

Although December is already very busy for most, employers and employees need to make certain decisions by the end of the year. And December is the last time to evaluate certain health insurance programs before the employer mandate becomes effective. Employers and employees should take this time to review and make needed decisions.

Let's talk

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