Employee Benefits Report

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401(k) Fees: What Do Plan Sponsors Need to Know?

Fewer than one in five 401(k) plan participants know what they are paying in fees, according to Sen. Herb Kohl. And fees make a difference. Families who save their retirement funds in high-fee accounts could end up with one-quarter less money in retirement than those saving to low-fee accounts, according to the Congressional Research Service.

The Defined Contribution Fee Disclosure Act of 2009, co-sponsored by Sen. Kohl, would require 401(k) plan providers to disclose all fees to plan sponsors. Employers could use this information to select the best plans for their employees, and pass the information on to their employees, if they request it.

Investigations by the Congressional Research Service found that fees of 2 percent or higher are not uncommon. For couples who save their entire lifetime, the CRS study found that an annual fee of 2 percent rather than a more reasonable 0.4 percent could reduce savings by nearly $130,000.

According to the Act's sponsors, it would help savers by:

- Increasing the information given to employers who sponsor 401(k) plans. Employers need to have a comprehensive list of all of the fees that they are paying and why.
- Giving participants information about the overall levels of fees when they choose investment options and on their quarterly statement. The pre-selection notice would include other critical information for plan selection, such as historical returns, the level of risk and basic investment guidance. A quarterly statement would help people understand over time how much they have paid in fees and help them compare fees against returns.
- Requiring disclosure of relationships between all par-

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This Just In

Employers' goals for their health plans have changed with the economic climate. In a 2008 survey by Hewitt Associates, employers ranked "offering competitive benefits" as their most important benefit objective, followed by "promoting accountability" and "tightly managing health care cost trends." By 2009, employers' focus had switched to "promoting employee accountability" first, followed by "offering competitive benefits" and "managing health risk."

Most companies surveyed (75 percent) plan to focus on improving employee health and productivity in the next three to five years. Hewitt reported that most employers are not planning to make drastic changes to their health benefits in 2010. "Instead, they are focusing on both conventional and progressive approaches to address the costs related to their health care plans in light of the economic climate." These include shifting more costs to employees, reducing the number of plans available, increasing focus on wellness, and switching to consumer-driven plans.

Time to Spring Clean Your Benefit Plans?

Just like a house that's been shut up all winter, your benefits plans might have some unnecessary clutter. As many as 10-15 percent of dependents enrolled in your plan might be ineligible.

Although employers have no obligation to subsidize dependent coverage, many do. By dropping coverage for ineligible dependents, your firm saves that premium contribution. Even if you don't subsidize dependent coverage, having ineligible dependents on your benefit rolls will likely increase your utilization (and costs), since those people most likely to use health insurance are the most likely to buy it.

More than one-quarter of plan sponsors and employers are conducting audits to determine whether employees and dependents covered under their benefit plans are actually eligible, according to the International Foundation of Employee Benefit Plans' (IFEBP) Employee Benefits Survey: U.S. and Canada 2009. If you haven't conducted an audit, you will likely find it worthwhile. IOMA, the Institute of Management and Administration, reports that an audit of a large plan can generally expect to find 10-15 percent of covered dependents are ineligible; smaller plans might uncover an ineligible rate of 5 percent.

Here are the steps to conducting your firm's eligibility audit.

1 Employees. Review the eligibility criteria outlined in your health plan documents. If the plan imposes a waiting period before health benefits begin, make sure enrolled employees have met the requirement. If your plan covers only full-time employees, make sure all employees meet the service requirement. Allowing some employees with reduced hours to retain coverage and not others is discriminatory and could land you in hot water.

2 COBRA beneficiaries. Do you have former employees receiving benefits under COBRA? If so, make sure they meet eligibility criteria — beneficiaries can generally continue coverage under COBRA for up to 18 additional months after a "qualifying event" changes their employment or dependent status.

Check whether COBRA beneficiaries are current on premium payments — if not, you can remove them from your plan.

Ordinarily, employers can charge COBRA recipients 102 percent of the cost of premiums. (The extra 2 percent helps cover your administrative costs.) However, those workers who lose their jobs between Sept. 1, 2008, and Dec. 31, 2009 and cannot get other health coverage (such as through a spouse's plan or Medicare) qualify for a premium subsidy under the federal stimulus package passed in February. These workers pay 35 percent of premiums; the employer pays the remaining 65 percent and receives an offsetting tax credit. In some cases, the insurance company does not collect the 65 percent from the employer and it takes the offsetting tax credit. Workers are not eligible for the premium reduction if they can get other group health coverage (such as a spouse's plan) or Medicare. If adjusted gross income exceeds $125,000 for individuals (or $250,000 for married couples filing jointly), the subsidy begins to phase out.

3 Dependents. Next, review your health plan's criteria for dependent eligibility. Does the definition of "family member" meet current state laws and mandates? If you haven't updated your plan documents in a while, some areas to pay attention to include: Who qualifies as a spouse? Do you need to cover same-sex spouses or domestic partners? When does a person no longer qualify as a spouse — after legal separation or after divorce? Does your state require group health plans to extend dependent coverage to full-time students past the age of 19?

4 Amnesty period. Many employers conducting eligibility audits offer an amnesty period, typically 30 to 90 days, in which employees can voluntarily drop ineligible dependents from their plan with-

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ties with financial interest in the plan. The U.S. Government Accountability Office (GAO) found that employees and employers "may not have information on arrangements among service providers that could steer plan sponsors toward offering investment options that benefit service providers but may not be in the best interest of participants." Increasing disclosure of these business arrangements is key to consumer protection.

Practically speaking, how would the law affect employers that sponsor 401(k) plans? Despite the likely increase in paperwork, the vendor disclosure requirements will make it easier for employers to meet their fiduciary responsibilities. The U.S. Department of Labor says fiduciaries have the following responsibilities:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- Carrying out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments; and
- Paying only reasonable plan expenses.

So when is an employer (or someone it hires) a fiduciary? That depends on whether they are exercising discretion or control over the plan. When making decisions on behalf of its business, not the plan, the employer is not a fiduciary. Examples of these decisions would include the decisions to establish a plan, determining the benefit package and terminating a 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, in carrying out these actions, may be a fiduciary.

If the bill becomes law, it will require the U.S. Secretary of Labor to make educational and compliance materials available to small employers that will help them select and monitor service providers for individual account plans, investment options under such plans, and fees relating to such options, and provide services to assist small employers in finding and understanding affordable investment options for such plans.

For more information on the fees you and your employees might be paying, see the article "Uncovering and Understanding Hidden Fees in Qualified Retirement Plans" from the *Elder Law Journal,* available online at http://www.401khelpcenter.com/pdf/mdh_understanding_fees_v4.pdf. And if you need assistance in evaluating retirement plans or communicating plan information to your employees, please contact us. ■

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out penalty. If you offer an amnesty period, make sure employees know the criteria for dependent coverage eligibility and who they have enrolled as a dependent under their plan. Notify them that they will be charged for back premiums if they do not drop ineligible dependents within the amnesty period and that they may be required to provide proof of dependents' eligibility.

5 The audit. After the amnesty period, you may elect to audit all employees or conduct a random audit, depending on the number of enrollees. In an audit, your plan administrator or consultant would look for inconsistencies, such as benefit checks being sent to a spouse at a different address. Because the auditor will have to ask questions about dependents and other personal matters, you may wish to hire an outside consultant to eliminate any suggestions of discrimination.

6 Cleanup. When the audit turns up dependents whose status is questionable, you can require employees to provide documentation to prove the dependent's eligibility. These might include marriage certificates, joint federal tax returns, municipal or state registration of domestic partnership or civil union, partnership affidavit, birth certificate, adoption certificate, guardianship documents, divorce decree showing custody and school or college records. If an enrolled dependent is indeed ineligible for coverage, you can charge the employee for premiums paid while the covered dependent was ineligible. Often, the error might stem from ignorance or oversight. However, if the employee committed deliberate fraud, you could have grounds for termination and might want to consult an employment attorney for advice.

7 Maintenance. Now that you've cleaned your benefit rolls, keep them clean. Instead of handling dependent enrollments on the honor system, require employees to provide proof of eligibility upon enrollment. Then schedule regular audits of your benefit enrollments. The money you save on premiums could more than cover the cost of an audit. ■

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associations, school districts and unions.

Vision insurance generally covers the following basic services:

- ✔ Annual eye examinations, including dilation
- ✔ Eyeglass frames
- ✔ Eyeglass lenses
- ✔ Contact lenses
- ✔ LASIK and PRK vision correction at discounted rates.

Vision insurance costs vary for employers, depending on the size of the company and how the program is designed. It may even be offered at no cost to the employer as part of a voluntary (employee-paid) benefits program. Typically, vision plan premiums range between $5 and $15 per employee per month, depending on benefits selected.

For both employees and employers, vision care costs only a fraction of the cost of vision problems or impairment. For more information, please contact us. ■

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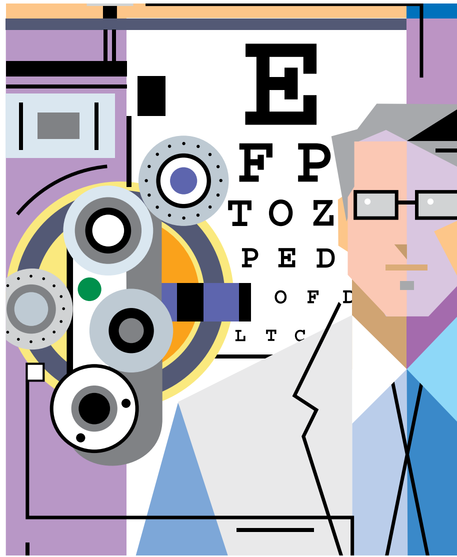

The Clear Benefits of Offering Vision Health

Just 28 percent of companies offer vision care, while 72 percent offer medical care, 68 percent offer prescription drug benefits and 46 percent offer dental benefits. Companies that don't offer vision care may want to rethink their strategy. Vision disorders decrease productivity, costing businesses an estimated $8 billion annually, according to a report released by the Vision Council of America (VCA).

High cost of blurred vision

"Uncorrected vision problems are costing employers billions of dollars," said Ed Greene, CEO of VCA. "Direct medical costs associated with vision disorders exceed similar medical expenditures for breast cancer, lung cancer and HIV, yet few Americans get regular eye exams or have vision coverage in their health plans," said Greene.

The employees most at risk for developing vision problems that affect their work performance include engineers, construction workers, stockbrokers, software developers, accountants and administrative assistants.

The report found that an estimated 11 million Americans have uncorrected vision problems, ranging from refractive errors (near- or far-sightedness) to sight-threatening diseases such as glaucoma or age-related macular degeneration. Nearly 90 percent of those who use a computer at least three hours a day suffer vision problems associated with computer-related eye strain.

Another study cited in the *Journal of the American Optometric Association* found that in the presence of very little visual degradation, such as glare on a monitor, employees show an efficiency decline of four percent to 19 percent in accomplishing standard tasks. Translating that percentage into dollars, just a four percent improvement in efficiency of an employee earning $30,000 per year would be worth $1,200.

And here may be the most telling statistic of the VCA report: employers gain as much as $7 for every $1 spent on vision coverage.

Types of packages

Vision insurance typically comes in the form of either a vision benefits package or a discount vision plan.

Typically, a vision benefits package provides enrollees with eye care services in exchange for an annual premium or membership fee, a yearly deductible for each enrolled member, and co-pay each time a member accesses a service.

A discount vision plan provides eye care at fixed discounted rates after an annual premium or membership fee. The participant pays the total bill, less the applicable discount, at the time of service.

Both kinds of plans can be custom-designed to meet the different requirements of a wide range of customers, including small and medium-sized businesses, non-profits,

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Lilly Ledbetter Fair Pay Act of 2009

On January 29, 2009, President Obama signed the Lilly Ledbetter Fair Pay Act of 2009, which overrules a 2007 Supreme Court ruling, *Ledbetter v. Goodyear Tire & Rubber Co.*, Inc. In the case, the Court did not address Ledbetter's claim of pay discrimination, but ruled only on the statute of limitations, saying that a compensation discrimination charge must be filed within 180 days of a discriminatory pay-setting decision (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination).

The Act restores the pre-Ledbetter position of the Equal Employment Opportunity Commission that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began.

Lilly Ledbetter started work as a salaried factory worker at the Goodyear Tire & Rubber Co. in 1979. By the time she retired in November 1998, she was earning $3,727 per month, as compared to 15 men with similar qualifications who had started at the same pay but who then earned from $4,286 to $5,236 per month. She filed a complaint with the EEOC claiming that each paycheck that she received that was less than her male counterparts' was a discriminatory action; the claim ended up in the Supreme Court.

Under the Act, individuals can now file a charge each time they receive compensation that is based in whole or part on the discriminatory decision or other practice. It allows individuals to recover back pay for up to two years preceding the filing of the charge and has a retroactive date of May 28, 2007, applying to all claims of discriminatory compensation pending on or after that date.