SHRM GU Chapter Breakfast Brief Employee Benefits 10.05.2022

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- ✓ **Cafeteria Plans** – A simple way to reduce both employer and employee taxes
- ✓ **Health Savings Accounts** – The best tax-free way to save for healthcare expenses now and in retirement
- ✓ **DOL Investment Advice Fiduciary Rule** – What investment advice can you give to participants in your retirement plan
- ✓ **Pooled Employer Plans** – The new way to save on retirement plan audits and administrative expenses

Cafeteria Plan

Employee benefit plan under IRC Section 125, which allows employees to reduce their taxable income by deducting certain tax-deductible expenses before ***any*** taxes are withheld from their pay.

Employers save on FICA taxes, too!

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Cafeteria Plan cont…

Eligible tax-deductible expenses include:

- Group insurance premiums (e.g., health, dental, vision, etc.)
- Healthcare expenses not covered by insurance (co-pay, deductible, medical expenses not covered in insurance policy like LAYSIK)
- Dependent care expenses
- Contributions to a Health Savings Account (HSA)
- Many more

Cafeteria Plan cont…

Caf Plan vs claiming expenses on your tax return (1040):

- 1040 - only can claim healthcare expenses that exceed 7.5% of your income
- Caf Plan – can claim 100% of expenses from ***all*** payroll taxes (Local and FICA) regardless of the amount of the expense
- 1040 – only see tax saving when you file your 1040 or get your tax refund
- Caf Plan – immediate tax savings every pay period
- 1040 – must itemize deductions on Schedule A
- Caf Plan – deductions reported on your W-2 (optional)

Cafeteria Plan cont…

Tax saving example - GovGuam PPO1500 Plan (SelectCare):

Class IV employee medical + dental premium = $13,468/yr
Income taxes at 29.65% (Local+FICA) = savings ~ $4,000/yr
Income taxes at 39.65% = savings ~ $5,340/yr
Employer saves 7.65% (FICA) = $1,030/yr

Tax savings can be greater if you include out-of-pocket healthcare expenses, dependent care expenses, HSA contributions, etc.

Health Savings Account

IRC Section 223 allows individuals to save money ***tax free*** to pay for qualifying healthcare expenses if enrolled in a qualifying high deductible health plan (HDHP).

For 2022, you can save up to $3,650 if you have HDHP single coverage, and up to $7,300 if you have family coverage. If over age 55, you can save an additional $1,000.

HSA is like an IRA but way better.

Health Savings Account cont…

How HSA is similar to a traditional IRA:

- Offered by banks, insurance companies and financial institutions
- HSA contributions are tax-deductible
- HSA contributions and earning grow tax-deferred
- Able to invest in mutual funds, stocks and bonds
- HSA is portable – not tied to an employer
- Able to transfer to other HSA providers
- Must report HSA contributions and withdrawals on your tax return
- May be subject to tax and penalty for nonqualified withdrawals

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Health Savings Account cont…

How HSA is different than a traditional IRA:

- Can only contribute to HSA if you are enrolled in a HDHP
- HSA cannot be rolled over to an IRA or retirement plan
- HSA contributions are not reduced due to income or other retirement savings
- HSA does not require minimum distributions (RMD) at age 72
- HSA is not protected from creditors or bankruptcy

Health Savings Account cont…

Triple tax-free savings:

- Contributions are tax-deductible
- Earnings grow tax-deferred
- Withdrawals are tax free if used to pay medical expenses

In other words, no taxes going in, no taxes while it's in, and no taxes when you take it out.

Health Savings Account cont…

Other advantages:

- ➢ HSA contributions can be deducted tax-free from your pay if part of a Caf Plan
- ➢ You can pay for healthcare expenses even if no longer in a HDHP
- ➢ HSA can help pay for healthcare expenses in retirement instead of using your retirement savings, including:
  - ➢ Long-term care insurance premiums
  - ➢ Assisted living facilities

According to Fidelity, the average healthcare cost for a retired couple is approximately $315,000

Health Savings Account cont…

Why an HDHP with HSA may be a good option:

- Premiums for a HDHP are usually much lower
- Yes, the HDHP deductible is high but the savings on the premiums and on taxes usually cover the deductible
- Works best for those that do not have high medical expenses

Health Savings Account cont…

Example how an HDHP with HSA can work for you:

- GG Class IV premiums for PPO1500 + dental = $13,468/yr
- GG Class IV premiums for HSA2000 + dental = $6,422/yr
- Savings on premiums = $7,046
- Tax savings on premiums thru Caf Plan = $1,904 (6422x29.65%)
- HSA contribution to cover deductible = $4,000
- Tax savings on HSA contribution = $1,186 (4000x29.65%)
- **Total savings on premium and taxes = $10,136**

Investment Advice Fiduciary Rule

DOL Prohibited Transaction Exemption (PTE) 2020-02 - Improving Investment Advice for Workers and Retirees:

- Employee Retirement Income Security Act of 1974 (ERISA) originally defined “investment advice” but times have changed.
- DOL proposed updates in 2010 and the battle between financial institutions and federal government began.
- Federal government finally prevailed in 2020 and implementation of the new rule took effect this year.
- But DOL isn’t done yet. More guidance and expansion expected.

Investment Advice Rule cont…

"The DOL's definition of fiduciary demands that retirement advisors act in the best interests of their clients and put their clients' interests above their own. It leaves no room for advisors to conceal any potential conflict of interest and states that all fees and commissions for retirement plans and retirement planning advice must be clearly disclosed in dollar form to clients."

Investment Advice Rule cont…

"The definition has been expanded to include any professional making a recommendation or solicitation in this area, not simply giving ongoing advice. Previously, only advisors who were charging a fee for service (either hourly or as a percentage of account holdings) on retirement plans were likely to be fiduciaries. "

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Investment Advice Rule cont…

Prohibited Transaction Rule Resulted in "Suitable" Investment

- To avoid PT, investment advisors only gave "suitable" investment options.
- "Suitability" means that an investment recommendation is deemed appropriate as long as it meets the participant's general objective (e.g., due to age).
- But are you, as the Plan Administrator, fulfilling your "fiduciary" duty by only providing "suitable" investment options?

Investment Advice Rule cont…

Regarding ERISA Fiduciary Rule, Fred Reish of the law firm Reish Luftman & Reicher said, *"However, there may be an additional duty under the ‘circumstances then prevailing.’ For example, if the plan sponsor knows the workforce is unsophisticated about investing, what would a knowledgeable and prudent person do in a similar situation? Under the general prudence rule an argument could be made that the plan fiduciaries cannot fulfill their duty to act prudently if they do not make investment advice available."*

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Investment Advice Rule cont…

Hence, Prohibited Transaction ***Exemption*** 2020-02 allows IAs to give advice that is otherwise prohibited if they comply with the following conditions (not all inclusive):

- Act and state that they are a “fiduciary” (i.e., only have the best interest of the participant)
- Disclose, in writing, any conflicts of interest (e.g., receiving a fee, recommend rolling over to their institution’s IRA)
- Maintain written policies and procedures to ensure compliance
- Conduct annual reviews to show they remain in compliance

Pooled Employer Plan

A Pooled Employer Plan (PEP) is a multiple-employer 401(k) plan designed to take the burden of administration off employers' hands. Most of the administration and investment decision-making is shifted to a Pooled Plan Provider (PPP), adding a significant layer of fiduciary protection not previously available with other retirement plans.

Pooled Employer Plan cont…

With a PEP, the employer can, in most cases, transfers the following responsibilities to the PPP:

- Investment selection/monitoring
- Distributions and rollovers
- Annual report Form 5500 filings
- Hardship distributions
- Annual plan audit
- Participant loans
- Plan document/restatement
- Participant notices
- Annual testing

Pooled Employer Plan cont…

Advantages:

- Reduced administrative costs (F5500, audit, bond, admin, etc.)
- Economies of scale (asset fees, investment management, etc.)
- One-stop shopping (PPP takes care of the plan doc, selection of TPAs, trustee, asset managers, etc.)
- Reduced fiduciary exposure (PPP is the PA, trustee)

Pooled Employer Plan cont…

Disadvantages:

- Pooled Plan Provider, for most part, choose the trustee/ recordkeeper/ TPA/ auditor/ investment advisor
- PPP may limit investments or investment management
- PPP may limit plan design options
- Only available for 401(k) plans

Pooled Employer Plan cont…

Requirements to be a Pooled Plan Provider (PPP):

- Register with DOL and IRS
- Acknowledge, in writing, it is the named fiduciary and PA
- Maintain an ERISA fidelity bond covering the PEP
- Act as trustee or appoints a trustee over the PEP

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Additional information on all topics presented can be found on the SHRM website.