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Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes—businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d)—on compensation and benefit-related issues.

Now or Never: The Waiver Program for Annual Limits on Essential Health Benefits is Ending

What's happening?

The healthcare reform law required all group health plans – single employer, multiemployer, self-insured, fully-insured, grandfathered or not – to phase out annual limits on the dollar value of essential health benefits beginning January 1, 2011 for calendar year plans. Temporary one-year waivers of the restrictions on annual limits have been available under a federal government program for plans that would experience a significant decrease in access to benefits or a significant increase in premiums on account of the restrictions on annual limits. This waiver program, however, is coming to an end. Applications for new waivers or extensions of existing one-year waivers **will not be accepted** by the program **after September 22, 2011**. If your plan does not have a waiver or extension, it must immediately meet the annual limit requirements or face an excise tax of \$100 per day, per affected individual.

Who should care?

You should care if you are an employer:

- That contributes to a multiemployer health and welfare plan.
- That sponsors a plan that provides limited health coverage – including mini-med plans.
- That is acquiring another company that currently contributes to a multiemployer health and welfare plan or sponsors a plan that provides limited health coverage.

Most of the waivers provided thus far have been provided to these types of plans, keeping the cost of benefits and contributions from increasing significantly.

What must be done?

Does Your Plan Need a New Waiver?

A plan that currently does not have a waiver, but wants one must:

- Complete a waiver application and provide information explaining, among other things, that the plan was in existence prior to September 23, 2010 and that compliance with the new restricted annual limits requirement would result in a significant decrease in access to benefits and/or a significant increase in premiums.
- Provide adequate notice to participants of the plan informing them of the annual dollar limit under the plan and the fact that the plan does not meet the annual limits restrictions under the new law.
- Retain all records pertaining to the waiver application and permit the Department of Health and Human Services ("HHS") to conduct an audit of the application.

As a condition for receiving the waiver, the plan must re-submit information relating to the plan and the reasons why HHS should grant the waiver at the end of each calendar year until January 1, 2014.

Does Your Plan Need an Extension of an Existing Waiver?

If your plan needs to extend an existing waiver, similar to an applicant for a new waiver, the plan must complete a waiver application and provide certain information to HHS, such as the plan's current annual limit and a certification that the plan was in existence prior to September 23, 2010. The plan must also provide adequate notice of the waiver extension to participants. The plan must retain records relating to the application to extend the waiver, and the plan must re-submit this information at the end of 2012 and 2013.

It's now or never.

We do not expect HHS to re-open the waiver process after the September 22, 2011 deadline. This means that if your plan does not have a waiver – or an extension of an existing waiver – your plan will be required to come into compliance with the new restrictions on the plan's annual limits. Failure to comply with this requirement will result in an excise tax equal to \$100 per day, per affected individual until the plan comes into compliance. This means that a plan covering 1,000 employees, 500 spouses, and 1,000 children could face an excise tax of a quarter of a million dollars a day.

Please contact one of us if you need assistance determining whether the multiemployer plan to which you

contribute, the plan you sponsor, or the plan of a company you are considering purchasing has applied or should apply for a waiver or an extension, or you want assistance applying for a waiver or an extension.

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