

BENEFICIAL PRIMER

The advantages of learning to speak ERISA and considerations for plan revisions

Just when you thought your holiday season couldn't get more hectic, a formidable stack of amendments and modifications to your existing benefit plans is about to land in your inbox. And, while a review of your company's benefits programs is probably the last thing you want to work into your schedule, the regulatory playing field is changing so much that it's critical that you take the time to dig in and learn to speak ERISA, or the Employee Retirement Income Security Act.

The more things change ...

For starters, the deadline to adopt a good-faith Pension Protection Act amendment is the last day of the 2009 plan year. Why is this important? Making the amendment is necessary to effect compliance with a range of federal laws. Moreover, self-funded plans, Health Reimbursement Arrangements and cafeteria plans that include Health Flexible Spending Accounts must now be amended to ensure compliance with Michelle's Law, the Genetic Information Nondiscrimination Act and the Mental Health Parity and Addiction Equity Act.

It's essential that you at least ask your third-party plan administrator to summarize these changes and their implications for your business.

... the more they stay the same

To compound this year's benefits complexity, the Professional Underwriting Society predicts a substantial increase in lawsuits under the ERISA against investment firms, retirement plan operators and their insurers.

What's the best course of action? First,



EMPLOYMENT LAW

John T. Palter

carefully select and, then, review the performance of your third-party plan administrator. Second, take the time to understand the investment options, strategies and costs. Finally, discuss whether your plan provides your employees with all available tax benefits.

A tale of two Roths

One more change companies should seriously consider: adding a Roth feature to new or existing 401(k) or 403(b) plans. Adding a Roth feature allows participants in the plan to designate some or all of their elective pretax contributions as designated post-tax Roth contributions.

Whether contributions to a Roth account over a traditional pretax account are financially advantageous depends, of course, on the individual taxable income projections of each plan participant, but many employees appreciate the freedom to choose which investment strategy — traditional, Roth or a combination of the two — best suits their particular needs and goals.

When you're weighing whether it makes good business sense for your company to add a Roth feature, consider:

First, discuss the potential change with your plan administrator and determine the

administrator's readiness and willingness to accept and administer the change, particularly because Roth contributions and their earnings require a separate accounting and must be kept in a separate account. In line with this requirement, you should also determine whether such a change would increase administration fees and, if so, by how much.

Second, consider the impact that a change would have on your employees and, particularly, your HR/benefits/payroll staff, and consider what changes to the payroll systems will be required to handle the different tax treatment of payroll deductions.

Third, remember that — like any change in a plan — adding a Roth feature requires, among other things, updating all plan documents and related information and creating notices to employees of changes to the plans. As a result, you should also consider the time and costs needed to perform these tasks. Having said that, keep in mind that legislative changes applicable to 401(k) plans already require certain changes or amendments to plan documents and plan administration, so the added costs of performing these tasks may not be that significant.

As you finalize your firm's year-end business plan, make the time to assess, develop and implement a long-term plan for your employee's personal and financial success.

PALTER is a trial lawyer and managing member of Riney Palter PLLC (www.rineypalter.com). For the past 25 years, he has advocated the interests of emerging growth and institutional clients in complex commercial, employment and intellectual property disputes. Contact him at jtpalter@rineypalter.com