Employee Benefit News

Fall 2018

WINDES
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Dear Valued Clients and Friends –

We are pleased to provide you with the latest developments and alerts related to retirement plans and our practice. In an effort to best serve you and keep you up to date on important developments, we will provide you with communications throughout the year. We hope you find them beneficial.

IRS Announces Cost of Living Adjustments for 2019

The IRS has announced cost of living adjustments (COLA) applicable to qualified plans for 2019.

The limit on elective deferrals to 401(k), 403(b), and 457(b) plans will increase from $18,500 to $19,000. Catch-up contributions will remain limited to $6,000.

The limitation on contributions to participants (including elective deferrals but excluding catch-up contributions) increases from $55,000 to $56,000. The limit on the annual retirement benefit under a defined benefit plan is raised from $220,000 to $225,000.

The annual compensation that can be considered for retirement plan purposes increases from $275,000 to $280,000. The threshold for determining a highly compensated employee increases from $120,000 to $125,000 for compensation paid in the prior year.

Follow the link below for our updated summary of the retirement plan limits:

https://windes.com/wp-content/uploads/2018/11/2019-Qualified-Plan-and-IRA-Limits-2011-2019.pdf

DOL Fast Tracks Regulations on Multiple Employer Plans

On August 31 of this year, President Trump signed an executive order to “strengthen retirement security.” Included in the order was a directive for the IRS to review the rules governing Multiple Employer Plans (MEPs), improving and lowering the cost of retirement plan disclosures, and updating the life expectancy tables for required minimum distributions. In unusually rapid fashion, the Department of Labor (DOL) issued proposed rules on MEPs on October 23, 2018.

The proposed rules, which are subject to a public comment period, authorize Association Retirement Plans (ARPs) and Professional Employer Organizations (PEOs) to sponsor defined contribution plans for their members. The ARP needs to be based on a common industry or geography and would also allow self-employed persons to join a sponsoring association. Member sponsors would still have fiduciary responsibilities and filing requirements.

Significantly, the rules do not address the concept of an "open" MEP, which would allow unrelated employers to join together in a single plan. This issue may be addressed by pending legislation in Congress during the lame duck session.

California Ruling Affects Independent Contractor Status

Earlier this year, the California Supreme Court issued a ruling that redefines the rules for determining independent contractors. The ruling rejected the old multi-factor standard and establishes an "ABC test" for determining independent contractor status, as follows:

A. The worker is free (contractually and in fact) from the control and direction of the hirer in connection with the work; **AND**
B. The worker performs work that is not the hiring entity's usual business; **AND**
C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The decision emphasizes that workers are presumed to be employees until they satisfy all three of these tests. Only then can they be considered an independent contractor. The method of reporting income (Form W-2 vs. 1099) is immaterial to this determination.

For retirement plan sponsors, employee status is important for determining who is required to be covered by the plan. By definition, independent contractors are not employees and cannot be covered by the plan. Excluded independent contractors who are later determined to be employees would be due retroactive benefits under the plan and would be precluded from sponsoring their own retirement plans for the period they were determined to be employees.

Employers would be advised to review the ruling to determine its effect on their own use of independent contractors. The ruling can be found at the following link:

https://law.justia.com/cases/california/supreme-court/2018/s222732.html

Compliance Spotlight: New Rollover Notice and Disaster Relief

Updated language for required participant distribution notices has been issued by the IRS. Participants who meet the plan requirements to receive an eligible rollover distribution are required to receive a notice describing the rollover options and the tax consequences of receiving a taxable distribution. The IRS, in Notice 2018-74, updated the model notices for the first time in four years. Plan sponsors who provide the updated notices will be considered in compliance with the requirements of Internal Revenue Code Section 402(f).

The updated 402(f) notices are divided into two versions: one for participants with a designated Roth account and one for non-Roth accounts. The new notices provide updated information regarding the

extension of the 60-day rollover rule for loan offsets and for the guidance on participant self-certification for rollovers deposited beyond the 60-day period. Also included is new information on the early distribution tax and disaster relief.

A key takeaway from these new updates is that sponsors should not rely on old notices. Providing participants with the most up-to-date notices is an important protection for plan sponsors and participants to keep the plan and rollovers tax-qualified.

Victims of recent disasters, whether from fire, hurricanes, tornadoes, or flooding, experience profound turmoil in all aspects of their life, including with respect to their financial records and responsibilities. The IRS recognizes that plan sponsors and plan participants often lose some or all of their records during such catastrophes, and therefore provides relief from filing deadlines and FAQs on how to gather benefit information. There is guidance specific to each federally declared disaster area regarding tax filing relief and for victims who are beneficiaries of qualified plans:

https://www.irs.gov/newsroom/tax-relief-in-disaster-situations

Private Letter Ruling Makes Headlines Regarding Student Loan Payments

In a Private Letter Ruling (PLR) earlier this year, the IRS allowed a company (subsequently self-identified as Abbott Labs) to make non-elective contributions to their plan based on student loan repayments. The ruling was reported by Forbes magazine and gained national attention this summer.

The IRS issues PLRs to address specific requests from taxpayers and plan sponsors. The PLR applies only to the applicant and cannot be relied on by any other plan sponsors.

The mounting student loan debt crisis has created interest among many plan sponsors to apply the PLR to their plans. While the PLR did resolve some issues that would arise from student loan payments as a contribution basis, the plan in question was a custom plan amended specifically to allow for these contributions. The overwhelming majority of retirement plans are established on pre-approved prototype documents, and student loan repayments would not be an allowable basis for allocating employer contributions.

Hopefully, this important issue will be further addressed by the IRS or through legislation. We will provide an update of any new developments.

Partners

We have partnered with several quality organizations to provide a full range of services to our retirement plan sponsor clients. These services include payroll, investment advice, fiduciary benchmarking, financial planning, insurance and estate planning. We have carefully chosen our referral partners and our clients have had excellent experiences from their interactions with these professionals. Please contact us with any needs you may have.

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With more than a century of combined experience in the employee benefits field, our professionals have the expertise and access to leading-edge resources that uniquely qualify us to provide our clients with complete administrative services that ensure the successful operation of their employee benefit programs. In addition, we work closely with existing advisors to provide the teamwork needed for successful administration of their clients' retirement programs.

Our professionals are members of the American Society of Pension Professionals and Actuaries and the National Institute of Pension Administrators and have earned nationally recognized professional designations.

The Windes Employee Benefit Services group is composed of the following individuals who are dedicated to providing your organizations with complete administrative and consulting services:

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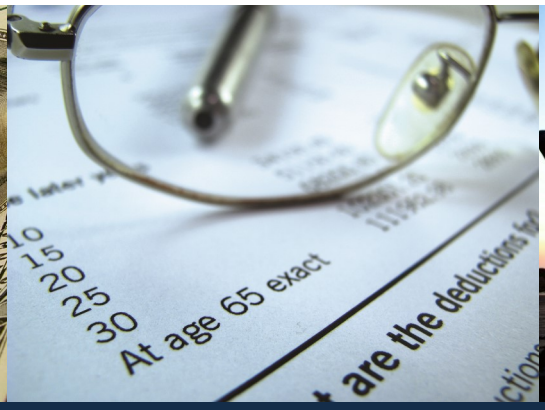

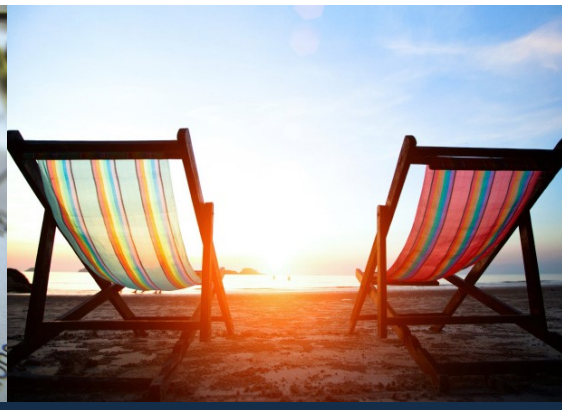

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