

EMPLOYEE FRINGE AND WELFARE BENEFIT PLANS

2012 Edition

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By

MICHAEL J. CANAN

Gray, Robinson, P.A.
Orlando, Florida

and

William D. Mitchell

Mitchell Law Group
Tampa, Florida

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ABOUT THE AUTHORS

Michael J. Canan is a shareholder in Gray Robinson, P.A., a 250-lawyer Florida firm. He is a graduate of Stanford University, B.A.; University of California, Berkley (Boalt Hall), J.D.; and New York University, L.L.M. (Taxation). Mr. Canan specializes in Employee Benefits, including both qualified and non-qualified retirement plans, ESOPs and fringe and welfare benefit plans. He is a co-author of *Employee Fringe and Welfare Benefit Plans* and has authored *Qualified Retirement Plans* since the first edition in 1977. He is Board Certified in Taxation and is a member of the American College of Employee Benefits Council. He has served as a member of the Gulf Coast Commissioners' Advisory Council for Exempt Plans, and is a member of the Editorial Board of the Journal of Deferred Compensation. He can be reached at mike.canan@gray-robinson.com.

William D. Mitchell, of Mitchell Law Group in Tampa, Florida is a frequent lecturer on the subject of employee benefits and the author of numerous articles in the benefits field. Mr. Mitchell received a B.A. in Economics from the University of Washington, an M.A. in Economics from the University of California at Berkeley, a J.D. from the University of California at Berkeley, and an M.A. in Taxation from Georgetown University. Mr. Mitchell has been an adjunct professor at the University of South Florida, has been listed in Who's Who in America, and has an "av" rating from Martindale-Hubbell. He is both board certified in Labor and Employment Law in Florida and the past chair of the Certification Committee for Labor and Employment Law in Florida. He has litigated numerous benefits cases and has been designated a leading Florida attorney in benefits. As a participant in Operation Helping Hand, he helps provide legal and financial aid to severely wounded active duty military personnel. He can be reached at www.askmitch.net.

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We appreciate the continued comments of readers, which result in improvements in each successive edition.

MICHAEL J. CANAN
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PREFACE

The 2012 edition reflects new statutory changes, numerous new cases, new regulations and administrative guidance, including the following:

- Considerable material has been added in Chapter 10A to existing sections under the discussion of PPACA and new sections have been added on Co-Ops and Exchanges, Disclosure of benefits, Religious organizations and Litigation;
- Some of the major items added to the PPACA discussion, largely based on guidance from interim regulations and administrative guidance are as follows:
 - Internal and external review procedures for group health plans including self-funded plans;
 - Coverage of children until age 26;
 - Payment of out of network emergency charges;
 - Limited exceptions to the employer or insurer retroactively eliminating coverage;
 - Methods of providing participants with notice that a plan is grandfathered,
 - Status of cases litigating the constitutionality of PPACA;
 - Ability of a grandfathered plan to change insurers but keep grandfathered status;
 - Tax credit available to an eligible small employer with respect to its contributions to purchase health insurance;
 - Explanation of benefits and coverage to participants in a group health plan;
 - Some relaxation of the guidance requiring that urgent care claims be decided within 24 hours;
 - Timing of PPACA reporting requirements of the employer as to employee coverage;
 - Situations in which elimination of a benefit package will not cause a loss of grandfathered plan status;
 - “Shared responsibility” requirements placed on employers with at least 50 full-time employees who fail to offer affordable minimum essential coverage;
 - Guidance of the implantation of Affordable Insurance Exchanges;

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- Granting of waivers, largely for self-insured “limited benefit” or “mini-med” plans;
- Information to be provided by participants and beneficiaries under a summary of benefits and coverage.
- Cases on when employer misinformation to participants constitutes a breach of fiduciary duty.
- Cost of living adjustments in the adoption credit and a change in the law making the tax credit refundable.
- Changes in the MSA and HSA cost of living numbers.
- Use of smart cards by employers to provide tax prequalified transportation fringes.
- Use of FSA and HRA debit cards to purchase over the counter medicines and drugs on or after January 15, 2011, where they are backed by a prescription.
- Guidance that a wellness program is subject to HIPAA’s nondiscrimination rules only if it is part of a group health plan.
- A Tax Court case in which the conversion of a multi-employer 419A(f)(6) plan to a single-employer 419(e) plan resulted in constructive distribution to the participant.
- A case in which some communications between the attorney and the trustees were held not subject to the attorney-client privilege and some communications were determined to be protected.
- Third Circuit case in which the court considered, using as guidance the Supreme Court decision in *Metropolitan Life Insurance Co. v. Glenn*, whether the insurer that issued the disability policy was conflicted from making a determination adverse to the participant.

As in the past, we encourage comments and suggestions from readers. Michael Canan’s e-mail address is: MCanan@gray-robinson.com and William Mitchell’s e-mail address is: Mitchlaw@askmitch.net.

MICHAEL J. CANAN
WILLIAM D. MITCHELL

Orlando, Florida
Tampa, Florida
January 2012

COST OF LIVING ADJUSTMENTS 2012

Under IRC § 132(f) the qualified transportation fringe limit for transportation in a commuter highway vehicle and the transit pass is \$125 per month in 2012 (down from \$230 in 2011 due to a law change), and for qualified parking the exclusion is unchanged at \$240 per month for 2012 (up from \$230).

For Archer medical savings accounts (MSAs) the term “high deductible health plan” as defined in IRC § 220(c)(2)(A) has the following dollar limits for 2012: for self-only coverage, a health plan that has an annual deductible that is not less than \$2,100 (up from \$2,050 in 2011) and not more than \$3,150 (up from \$3,050 in 2011), and under which the annual out-of-pocket expenses required to be paid (other than premiums) for covered benefits does not exceed \$4,200 (up from \$4,100 in 2011). For family coverage for 2012, a high deductible health plan must have an annual deductible that is not less than \$4,200 (up from \$4,100 in 2011) and not more than \$6,300 (up from \$6,150 in 2011), and under which the annual out-of-pocket expenses required to be paid (other than premiums) for covered benefits does not exceed \$7,650 (up from \$7,500 in 2011).

For health savings accounts (HSAs) for taxable years beginning in 2012, under IRC § 223(c)(2) a high deductible health plan is a health plan with an annual deductible for out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) that for self-only coverage is not less than \$1,200 (unchanged from 2011) or more than \$6,050 (up from \$5,950 in 2011); and for family coverage is not less than \$2,400 (unchanged from 2011) or more than \$12,100 (up from \$11,900 in 2011). The monthly contribution limitation for deductions under IRC § 223(b)(2) for an individual with self-only coverage under a high deductible plan as of the first day of such month is 1/12 of \$3,100 (up from in \$3,050 in 2011), and is 1/12 of \$6,250 (up from \$6,150 in 2010) for family coverage. The catch-up for individuals who will be 55 or older by the end of the taxable year remains at \$1,000 for 2012.

The deductible limit on annual premiums for long-term care for 2012 are—

- for an individual 40 or younger, \$350 (up from \$340)
- for an individual older than but not over 50, \$660 (up from \$640)

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- for an individual older than 50 but not over 60, \$1,310 (up from \$1,270)
- for an individual older than 60 but not over 70, \$3,500 (up from \$3,390), and
- for an individual older than 70, \$4,370 (up from \$4,240)

For a written adoption program, the maximum payment or tax credit per adoption is \$12,650 (down from \$13,360 in 2011 due to a law change), with a phase-out of the exclusion beginning at \$189,710 AGI in 2012 (up from \$185,210 in 2011) with the entire exclusion eliminated if AGI reaches \$229,710 as adjusted for the cost of living for 2012.

The taxable wage base for FICA purposes is increased from \$106,800 in 2011 to \$110,100 for 2012.

The compensation cap under IRC § 401(a)(17), 404(1), and 408(k) was at \$245,000 in 2011 and is increased to \$250,000 in 2012.

Employees with compensation of at least \$115,000 in 2011 are highly compensated employees for 2012 for purposes of IRC § 414(q)(1)(B) (up from \$110,000 in the prior year).

The annual compensation of a person who is a key employee by virtue of being an officer of the employer increased from \$160,000 in 2011 to \$165,000 for 2012.

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